Proposal for Executable Governance in Sports Organizations through Articles of Incorporation —A Different Approach to Prevent Serious Accidents and Harassment— (Secondary Publication)[†]

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定款からみたスポーツ組織のガバナンス強化に関する提言
—重大事故・ハラスメント防止のために何が必要か— (二次出版)[†]

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1. Introduction

In 2011, the Government comprehensively revised the Sports Promotion Act and enacted a new law, the Basic Act on Sports, for the first time in 50 years. One significant aspect of the revision encourages sports organizations. Article 5, paragraph 2 stipulates that “Sports organizations shall endeavor to ensure the transparency of their operation and to devise standards regarding their activities that they should meet in order to properly promote sports.” This was added to prompt sports organizations to improve their governance. Despite claims about the importance of governance, incidents of misconduct and harassment by sports organizations are continuously coming to light. These circumstances are certainly the result of a neglect of governance. That said, the world of college

sports has recently started to work toward improving the governance of their own organizations through incorporation, whereas in the past such organizations had been voluntary. The National Collegiate Athletic Association (NCAA) is the organization that oversees college sports in the U.S. In July 2018, the Sports Agency launched a preparatory committee to establish a Japanese version of the NCAA. The committee was established to launch such an organization in April 2019 in order to pave the way for incorporation¹⁾. One topic in the area of medicine in particular is to draft safety guidelines with respect to serious accidents such as head injuries, neck injuries, heat stroke, and heart attacks²⁾.

With this context in mind, the current study examined whether governance is truly functioning and instilled in organizations and whether it is worthwhile. Here, examples of

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governance include improved conditions to ensure athlete safety and efforts to prevent serious accidents and harassment. What follows are several proposals for policies to improve implementable governance.

2. Future requirements of articles of incorporation

First, the current study examines what governance needs to be doing, assuming that it is functioning. Many sports organizations have instituted “ethics rules” and “guidelines,” regardless of whether the organization is incorporated or not. Many ethics rules do in fact have provisions stipulating that violence and harassment “must not occur,” but the undeniable reality is that these provisions do not specify who should punish whom if an incident actually occurs. A look at the way authorities have handled incidents of misconduct in the past is “frustrating” because incidents are not dealt with by someone in charge with clear authority. Instead, third-party investigative committees have been created but no one is in charge of looking into incidents.

Why is there a sense of “frustration”? It is presumably due to the fact that rights and obligations have not been clarified (Note 1). The relationship between rights and obligations is ambiguous (e.g. the relationship between athletes and an organization, the relationship between a manager/coach and an organization, and the relationship between a manager/coach and athletes), making the question of where responsibility rests more complicated.

Thus, the current study focused on the articles of incorporation of incorporated sports organizations. Articles of incorporation stipulate fundamental rules concerning aspects such as the purpose and activities of a given organiza-

tion. This study examined whether the intent to prevent serious accidents and harassment is embodied in articles of incorporation, and terms such as “ethics” are clearly mentioned in articles of incorporation of all of the national sports federations under the Japan Sport Association (JSA)³⁾. The terms “ethics rules” or “codes of ethics” were found in articles of incorporation of only 2 of 59 sports organizations (Note 2). When interpreting this finding, one must take into consideration the fact that articles of incorporation are the basic principles of an organization. A form of self-imposed standards, articles of incorporation are legally binding on the elements of an organization, and ethics are often stipulated in separate “rules” rather than being covered in the articles of incorporation. Most of the articles of incorporation of the sports organizations in the JSA follow this format. Hence, organizations are not legally liable for failing to specify “ethics rules” in their clearly legally binding articles of incorporation. Nonetheless, a clear mention of a code of ethics in articles of incorporation, like those of the 2 organizations mentioned earlier, is persuasive now more than ever as the importance of governance is being emphasized. Moreover, the times require organizations to stipulate ethics in further detail in the form of ethics rules or the like.

3. Attempts to embody rights and obligations

Second, this study needs to determine whether the relationship between rights and obligations can even be further clarified in articles of incorporation. This section will delve into that question by looking at the articles of incorporation (Note 3) of the Kyoto University American Football Club (Kyoto Univ. Corporation Club, or KUCC), which was incorpo-

rated in August 2016. Article 3 (Purpose) of KUCC's Articles of Incorporation covers "(9) Employment (dismissal) of a coach and his/her assignment to the Club" and "(10) Assessment and awarding of a bonus for a coach assigned to the Club." These provisions stipulate that KUCC has signed a contract with a coach who will be assigned to the Club, and it also stipulates that an assessment of a coach will be disclosed at a general meeting of the members of KUCC. A point worth noting is that Kyoto University is a founding member of KUCC. In August, 2018, the American Football Club of the University of Tokyo also established the University of Tokyo Warriors Club, and Article 3 (Purpose) of the Articles of Incorporation covers "(7) Employment (dismissal) of a coach and his/her assignment to the Club" and "(8) Assessment and awarding of a bonus for a coach assigned to the Club" (Note 4). Thus, those provisions describe the Club's purpose distinctly different from the routine description found in conventional articles of incorporation, which mentions topics such as publicity, coaching, and training. In order to remain highly competitive, athletes need excellent coaches as well as meal management and training facilities to enhance stamina. Consequently, raising and securing funding is absolutely essential to meeting these demands. Incorporation is unavoidable for any organization that seeks to gain external credibility, and yet incorporation alone is not enough. An organization must accept responsibility by specifying the relationship between rights and obligations in its articles of incorporation in order to ensure effective governance. The embodiment of governance should be viewed as an expression of intent. This means that conventional college sports have transformed from a simple

extracurricular activity into a sporting activity conducted by a responsible organization. The incorporation of organizations and the appearance of this type of governance should spread extensively in the future.

4. Importance of communication

Third, articles of incorporation specifying rights and obligations are an indication of a desire to foster observance of the law. A key question is elucidating what is needed to further improve both governance and credibility. In addition to observance of the law, "communication" is required for the interaction. It may sound unrelated; however, communication plays an important role when thinking about governance. Attempting to view governance from the perspective of regulation will lead to ossified concepts. For organizations to recognize their mutual value and to gain external credibility, they need to a person with communication skills to link parties insider and outside the organization. Such person is referred to as "boundary spanner"⁴⁾. To that end, a boundary spanner must be seen as an important role in terms of an organization's operations. Experts such as school counselors and psychologists are involved in school and medical settings. Sports doctors are not the only experts required in the world of sports, and an effort should be made to train boundary spanners. A boundary spanner is a facilitator who takes into account information from relevant parties and who communicates misunderstood actions by athletes and coaches, and differences in opinion of athletes and coaches. The boundary spanner understands the thoughts of others and can thus facilitate talks within an organization or with clients. The boundary spanner has an important role as an organization's conduit to other parties,

and he or she is essential to enhancing governance.

5. Conclusion

Various studies have already examined governance from multiple angles. The current study focused on articles of incorporation of sports organizations in an attempt to determine whether they mention codes of ethics or define the relationship between rights and obligations. Although most organizations did not specify codes of ethics in their articles of incorporation, this study presented recent examples of efforts to do so in conjunction with incorporation. This trend should be viewed as an effort to enhance governance. Hopefully, this trend will prompt incorporated organizations to reexamine their articles of incorporation and lead voluntary sports organizations to be fully mindful of governance when they incorporate in the future.

Without question, findings from other fields must be compiled in order to achieve effective governance. Even if various data are assembled (including those from medicine based on scientific grounds) and are shared among organizations, an organization will suffer considerably if it has not laid the foundation to accept that information. Articles of incorporation are an organization's touchstone. For sports organizations to flourish in the future, they must first change their mindset to where "articles of incorporation are the starting point for thinking about governance."

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(Note 1) These types of points have already been raised with the Preparatory Committee to Establish a Japanese Version of the NCAA when its Working Group met on July 24, 2018.

(Note 2) These two organizations are the Japan Tennis Association (JTA) and the Japan Bound Tennis Association (JBTA). Article 3 (Conduct) of the JTA's Articles of Incorporation stipulates that the JTA will operate "in accordance with the Ethics Rules as specified separately," and Article 43 (Various Rules and Detailed regulations) of the JBTA's Articles of Incorporation stipulates that the JBTA will operate in accordance with various rules, which include Ethics Rules. The JTA's Articles of Incorporation can be found here https://www.jta-tennis.or.jp/Portals/0/resources/JTA/pdf/about_jta/businessplan/outline.pdf and the JBTA's Articles of Incorporation can be found here <http://boundtennis.or.jp/org/file/teikan2014.pdf>

The above information was current as of March 1, 2020.

(Note 3) Based on information provided by the Kyoto University American Football Club. Moreover, materials on establishment state that "the form of university support will be clarified via incorporation"

(Note 4) Based on information provided by the University of Tokyo Warriors Club. Moreover, materials on enhancing the system of support state that the "framework for strategy implementation" will be to "include alumni, family members, and fans as members as a unified support organization and to encourage their activities."

References

- 1) Sports Agency. First Meeting of the Preparatory Committee to Establish a Japanese Version of the NCAA. Meeting materials. July 24, 2018. <https://www.mext.go.jp/sports/>

- content/1408094_007.pdf (in Japanese) (Accessed March 1, 2020)
- 2) Sports Agency. First Meeting of a Working Group of the Preparatory Committee to Establish a Japanese Version of the NCAA. Meeting materials. July 24, 2018. https://www.mext.go.jp/sports/b_menu/shingi/021_index/bunkabukai/shiryō/___icsFiles/afield-file/2018/08/01/1407700_003.pdf (in Japanese) (Accessed March 1, 2020).
 - 3) Japan Sports Association. National Sports Federations. <http://www.japan-sports.or.jp/about/tabid565.html#01> (in Japanese) (Accessed March 1, 2020).
 - 4) Tushman, M. Special boundary roles in the innovation process, *Administrative Science Quarterly*, Vol.22, No.4, pp.587-605, 1977.