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Dragging Their Devotion: The Role of International Law in Major League Baseball's Dominican Affairs¹

Vanessa Marie Zimmer*

I. INTRODUCTION

¶1 As a child, one who asked what I wanted to be when I grew up was treated to the naïvely comical response that I was going to be “a doctor and a basketball player, like Dr. J.” It never occurred to me that Julius Erving was not a medical doctor as well as an athlete of superhuman capabilities. It never occurred to me that I was a girl. It never occurred to me that I was a short girl. It never occurred to me that I was a short uncoordinated girl. I was going to be a doctor and a basketball player. In the Dominican Republic one need not ask its children what they want to be when they grow up- the answer is always *pelotero*.²

¶2 The relationship between Dominicans and baseball is one that transcends metaphor and other descriptive devices. Yet when attempting to speak on the matter, I am reduced to such hyperbole and can only say that Dominicans love and pursue baseball with the passion and fervor of an adolescent boy groping beneath yards of crinoline in a limousine for a prom-night foray. Perhaps the hyperbole is good thing, as it captures the intensity of the relationship. Dominicans do not “play” baseball because it is not a game, but is something on which their livelihoods often depend.

¶3 The insatiable Dominican appetite for baseball had me at hello. Can it be true- there is a tropical island of palms and warm tides that revolves around the pastime that has made me happy and sad in ways no other thing or person can? *Si*, but that's not quite the whole story, is it? There is passion, but there is poverty. There is triumph and fortune to be had for the few, but there is failure and a per capita income of \$1,600 a year for the rest.³

¶4 The Dominican presence in baseball is nothing new. From the Nation's own storied past of *béisbol romántico* in the early 1950's to the establishment of a structured relationship between Dominican and American leagues in the mid 1950's, Dominicans have embraced the American sport and been embraced by it in return.⁴ However, the Dominican presence is of particular importance now as so many Latin players, who are

¹ Dominican baseball *aficionado* Pedro Julio Santana has said “Baseball is born of the breast of those who come dragging with them their devotion to the sport.” ROB RUCK, *THE TROPIC OF BASEBALL* 40 (University of Nebraska Press 1998) (1991).

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² Ballplayer.

³ Mike DiGiovanna, *In Dominican, The Truth Hurts*, SUN-SENTINEL, Feb. 2, 2003 at 10C.

⁴ ALAN M. KLEIN, *SUGARBALL* 33 (1991).

primarily Dominican, provide the labor for Major League teams. While in 1987 there were approximately fifty Dominicans playing in the major leagues, as of today 1,443 Dominican players are signed to professional contracts.⁵ In addition, as Latinos obtain more ownership and management positions within Major League Baseball, issues regarding the treatment of Latin players will likely become a greater priority for the League. Anaheim Angels owner Arte Moreno, baseball's first Latino majority owner is a prime example of this as his team is built around Dominican powerhouses like Bartolo Colon, Jose Guillen and the 2004 recipient of the American League Most Valuable Player Award, Vladimir Guerrero.⁶

¶5 There has been a fair amount of scholarship on the Dominican Republic's entanglements with American baseball, and I am hardly a trail-blazer. However, most academic legal commentary has focused on the responsibilities of Major League Baseball toward its Dominican recruits. My work instead aims to explore the Dominican Republic's responsibilities as an autonomous nation toward its citizens who are involved with Major League Baseball in one capacity or another. My feeling is that although the Dominican Republic is without many of the vital resources necessary to implement social change, action is required, however minor, to protect its people as the Nation is a party to international conventions and covenants that ensure a certain level of treatment toward its citizens.

A. *The Land of the Free and the Home of the Draft*

¶6 One can only recognize certain deficiencies of the process by which Dominican recruits come to play for Major League Baseball by contrasting that process with the markedly different way in which American players become part of the League. In the United States, Canada and Puerto Rico, teams may not sign high school players, making the effective minimum signing age 18 years.⁷ If an amateur athlete enters the Draft from college he is afforded additional protections by various rules and regulations of the National Collegiate Athletic Association that prevent professional teams and agents from taking advantage of him.⁸

¶7 Once a player enters the Draft by asking that his name be placed on the Draft List, he is protected by the provisions of the current Major League Baseball Collective Bargaining Agreement.⁹ Upon signing with a Major League team the player is bound to that franchise for a term of six years and guaranteed a minimum salary.¹⁰

⁵ JOHN KRICH, *EL BEISBOL 156* (Ivan R. Dee 2002) (1989). Lee Diekemper, *FSL Notebook*, TAMPA TRIBUNE, May 23, 2004 at 13.

⁶ Phil Taylor, *Pennies From Heaven*, SPORTS ILLUSTRATED, Feb. 9, 2004 at 58. Guerrero is the fourth Dominican to receive MVP honors, following Miguel Tejada's 2002 win. Associated Press, *Sheffield finishes second in voting* (Nov. 16, 2004), available at <http://sports.espn.go.com/mlb/story?id=1924078>.

⁷ Steve Fainaru, *Baseball's Minor Infractions*, WASH. POST, Oct. 26, 2001 at D01.

⁸ See 2004-2005 NCAA Division I Operating Bylaws 12.2, available at http://www2.ncaa.org/legislation_and_governance/rules_and_bylaws/, which regulate amateur involvement with professional teams as well as the procedures through which a student athlete enters a professional draft. Operating Bylaws 12.3 regulate the use of, and interaction with, professional agents, stating an amateur athlete may not be represented by an agent for the purpose of marketing his athletic ability or reputation, may not sign with an agent to be represented in the future and may not receive benefits from prospective agents. Operating Bylaw 12.3.2 does, however, permit student athletes to obtain attorneys for their own financial and professional protection.

⁹ 2004-2005 NCAA Division I Operating Bylaw 12.2.4.2, available at

¶8 These protections that are afforded draftees reflect what Major League Baseball and the Major League Baseball Players' Association, also known as the Players' Union, believe is necessary for a fundamentally fair playing field between teams and players in labor relations. These mechanisms are guarantees of rights players and draftees have earned through negotiations with the League and are considered vital in maintaining evenhandedness to both teams and athletes during the process of signing American, Canadian and Puerto Rican players to fill Major League rosters.

¶9 While drafting guidelines apply solely to the United States, Canada and Puerto Rico, this is the case simply because those are the only countries whose players are a party to the Collective Bargaining Agreement. Additionally, there is no reason to believe these protections were intended to cover only American, Canadian or Puerto Rican players due to an inherent superiority of their nationality or that the protections of the Collective Bargaining Agreement must be limited to those three countries. Thus, these protective measures should be kept in mind when thinking of players who fall outside the protection of the CBA.

II. THE COUNTRY DISGUISED AS A TRYOUT CAMP¹¹

¶10 Currently however, Dominican recruits are not sheltered by like protections and the process by which they come to play for Major League teams is worlds apart from their American counterparts, despite the close geographical nexus of the two nations. These differences in the treatment of Dominican versus American athletes by Major League Baseball has raised three main identifiable issues in the past: 1) the legal signing of sixteen year old players, as well as violations of the minimum signing age by Major League teams; 2) the presence of *buscones* and the non-enforcement of existing regulations for *buscones* in the Dominican Republic; 3) questionable conditions at some Major League teams' Dominican training facilities as well as independently run academies.

A. Sweet Sixteen

¶11 According to Major League Rule 3(a)(1)(B), a player not subject to the Draft may be signed at age seventeen, or at age sixteen, providing he will turn seventeen prior to either the end of the baseball season in which he is signed or September first of the year in which he is signed.¹² However, it is commonplace for teams to violate the so-called "seventeen-year-old rule" and sign players who have not yet become legally eligible.

¶12 If media coverage of underage signings is a reflection of widespread practice, then over the past seven years such deceptions have become almost passé, prompting Dodgers Senior Vice President Tommy Lasorda to announce, "I bet you there's fifty ballplayers in

http://www2.ncaa.org/legislation_and_governance/rules_and_bylaws/.

¹⁰ The 1976 Collective Bargaining Agreement, and each CBA thereafter, provides a player becomes a free agent after six years. William Gould, *The Globalization of Baseball: The Game Played and Heard and Watched Round the World (With Apologies to Soccer and Bobby Thompson)*, 8 IND. J. GLOBAL LEGAL STUD. 85, 99 (2000).

¹¹ This phrase was used by John Krich in his book *El Beisbol*. Krich, *supra* note 5.

¹² Angel Vargas, *The Globalization of Baseball: A Latin Perspective*, 8 IND. J. GLOBAL LEGAL STUD. 21, 26 (2000).

the major leagues that have signed illegally.”¹³ Lasorda’s bold statement was prompted by the news that Dodgers third baseman Adrian Beltre was signed illegally and knowingly at age fifteen when a Dodgers scout had altered Beltre’s birth certificate with white-out to make him appear to be of signing age.¹⁴ In a similar indiscretion in 1997, the Florida Marlins signed a Dominican pitcher by the name of Ricardo Aramboles for \$5,500. However, an agent leaked information to the Commissioner of Baseball, which proved Aramboles was only fourteen years of age. Aramboles was released from his contract.¹⁵

¶13 The Cleveland Indians were also exposed for violating Major League Rules by signing fifteen-year-old Laumin Bessa, dating relevant documents in advance so as to appear that they were signed after Bessa’s sixteenth birthday.¹⁶

¶14 In addition to the signing of underage players, teams have been known to hide prospects as young as fourteen years old at remote Dominican training facilities to prevent the children from signing with another team or from finding an agent who would demand more money for him. Once the children are of legal age they are either signed by the team or simply cut loose.¹⁷ And although Major League Rules prohibit the signing of a player under the age of sixteen, there is no prohibition against academies hosting children between the ages of twelve and sixteen.¹⁸ Another option is for clubs to pay off-the-book commissions to local Dominican scouts who groom young players, then funnel them to Major League teams upon reaching signing age.¹⁹

¶15 It has been suggested by past scholarship and media coverage that the practice of signing underage players is widespread. This assumption is based on the belief that the player’s incentive to lie and the team’s incentive to accept that lie are too great for either party to avoid.²⁰ However, it is important to note that while this could be an accurate depiction of a widespread practice, there is to my knowledge, no empirical data or research of any other kind that suggests this is so. Thus the several cases over the past decade that have received widespread media coverage may very well be the exception, rather than the rule. Alan M. Klein, Professor of Anthropology at Northeastern University and noted sports anthropologist supports this theory. Klein, who has researched Dominican baseball extensively and whose book *Sugarball* is the foremost authority on the subject, believes the number of actual underage signings is “miniscule” and notes that since the appointment of Raphael Perez to the Dominican Baseball office in 2000, there have been no known instances of signing players at an illegal age.²¹

¹³ Associated Press, *Lasorda Defends Dodgers’ Actions* (Nov. 16, 1998), available at <http://espn.go.com/mlb/news/1999/1116/174860.html>.

¹⁴ Fainaru, *supra* note 7.

¹⁵ *Id.*

¹⁶ Bessa, realizing that because he had not yet turned sixteen there was no valid contract, left the Indians training camp, kept his \$30,000 signing bonus and legally signed with the Atlanta Braves for half a million dollars. When Indians scout Luis Aponte demanded the \$30,000 be returned, Bessa threatened to alert the Commissioner’s Office of the Indians’ illegal actions and Aponte promptly dropped the matter. This is one instance where Dominican governmental regulation of the seventeen-year-old rule would have proven fruitful for Major League Baseball.

¹⁷ Fainaru, *supra* note 7.

¹⁸ Vargas, *supra* note 12 at 29.

¹⁹ Fainaru, *supra* note 7.

²⁰ Steve Fainaru and Dave Sheinin, *Indians are Hit With Penalties*, WASH. POST, Feb. 27, 2002 at D01.

²¹ Telephone interview with Professor Alan M. Klein, Professor of Anthropology, Northeastern

¶16 While the problem of signing or dealing with children under the age of sixteen is perhaps the most vital age-related issue for the Dominican Republic and Major League Baseball, there also exists the problem of players presenting fraudulent documentation to appear younger than their true age in order to avoid seeming “past their prime” and less attractive to Major League scouts.²² This practice was exposed during an immigration crack-down that followed the attacks of September 11, 2001.²³ While deception regarding one’s age is recognized as a survival tactic for impoverished Dominican players anxious to make a living, it is also a clear violation of United States immigration law and persistent violations by Dominican citizens could cause strife between the two nations.²⁴

B. Finder’s Keepers

¶17 A second major difference between the way in which domestic, Canadian and Puerto Rican prospects are signed, as opposed to Dominican prospects, is that while draftees are protected by state laws and NCAA regulations regarding the acquisition of agents, Dominican players are offered no such protection and thus find themselves at the mercy of *buscones*, or “finders” who take large portions of their signing bonuses.²⁵ In fact, a Dominican player can expect to part with as much as fifty percent of his signing bonus, in contrast to the three to five percent commissions that sports agents in the United States receive.²⁶

¶18 While there is no empirical data to suggest that player abuse by *buscones* is rampant in the Dominican Republic, the story of Enrique Soto and Willy Aybar exemplifies the problems of informal representation. Soto, the most famous Dominican *buscon*, discovered Aybar at age thirteen and molded his development as a player.²⁷ Upon signing with the Dodgers, the team released the first half of Aybar’s bonus, \$490,000, to Soto, who deposited the check in his personal bank account. Soto then paid the American agent, Rob Plummer, who negotiated the contract, \$35,000, and finally awarded Aybar’s family a lump sum of \$6,250 and a stipend of roughly two thousand

University (Nov. 18, 2004).

²² To give an example of how rampant this practice is, 18 players for the San Diego Padres alone were found to be using false names that carried younger ages with them. DiGiovanna, *supra* note 3.

²³ *Id.*

²⁴ This strife could result from Major League teams feeling cheated by Dominican players who fail to disclose their true age to teams before signing. For example, Mike Berger, scout for the Houston Astros, has expressed anger over the deception of some Dominican recruits, saying “Fair is fair. And there’s been misrepresentation, plain and simple. It’s all about projection, three, four, five years down the road. It hasn’t been fair. Not fair to the competition. And certainly not fair to ownership.” Paul Meyer, *A Story For the Ages*, PITTSBURGH POS-GAZETTE, Mar. 17, 2002 at D-1.

²⁵ California Business & Profession Code §18897.8(a) provides that “. . . any student athlete. . . may bring a civil action for recovery of damages from an athlete agent, if that. . . student athlete. . . is adversely affected by the acts of an athlete agent,. . . if, because of those acts, the student athlete is suspended or disqualified from participation of one or more. . . sports events by or pursuant to the rules of a state or national federation or association for the promotion and regulation of interscholastic or intercollegiate sports. CAL. BUS. & PROF. CODE § 18897.8(a)(2004). 2004-2005 NCAA Division I Operating Bylaws 12.3 available at www2.ncaa.org/legislation_and_governance/rules_and_bylaws/.

²⁶ Steve Fainaru, *The Business of Building Ballplayers*, WASH. POST, June 17, 2001 at A01.

²⁷ Soto now runs The Enrique Soto School, an independent baseball academy that he claims costs him more than eleven thousand dollars per month, thus justifying his high take from the signing bonuses of his recruits.

dollars a month.²⁸ Although Soto returned roughly \$185,000 to the Aybars it is believed he is still in possession of over \$200,000 of Aybar's signing bonus.²⁹

¶19 While Aybar received a signing bonus of \$1.4 million, most Dominican players receive substantially less. Because non-draftees are signed as free agents the player may go to the team with the highest bid for his services. However, there is no floor on what a team may offer, and signing bonuses for Dominican and Latin players are small in comparison to those draftees receive. For instance, in 2000 the Cleveland Indians signed forty Latin American players for approximately \$700,000. Their first draft pick, an eighteen-year-old pitcher from the United States, was paid more than one million dollars above that price.³⁰

C. Academia

¶20 The most marked departure Dominican baseball takes from the American system is in the presence of baseball academies in the Dominican Republic. There are two varieties of academies: those owned by Major League Baseball teams and those operated by *buscones* independently. A player finds himself in the former upon joining an American team, when he is usually unable to travel to the United States immediately. This is due to visa restrictions for Dominicans at the time a player is signed, as well as the player's individual skill level and corresponding value to the team.³¹ If a player cannot obtain a visa to train and live in the United States, or if he is not deemed a capable candidate to enter the American minor or major leagues he is required to train at his team's Dominican facility.

¶21 Although the Cincinnati Reds were the first American team to play in the Dominican Republic in 1935, the system of scouting Dominican players for American teams was first formalized by the Toronto Blue Jays and Los Angeles Dodgers through scouts Epy Guerrero and Ralph Avila.³² The first academy to be supported by an American team was that of the Blue Jays.³³ The purpose of academies began as a way to prepare Dominican players for the rigor of the major leagues so they would not be released by teams *en masse* after arriving in the United States.³⁴

²⁸ Fainaru, *supra* note 26.

²⁹ Steve Fainaru, *Scout Returns Money*, WASH. POST, July 11, 2001 at D01.

³⁰ Fainaru, *supra* note 7. In response to my inquiries about the disparity between American and Dominican signing bonuses, Lou Melendez, Director of International Operations for Major League Baseball, stated that top Dominican players receive proportionally large signing bonuses, just as top American players do. In addition, Melendez asserted a disparity exists largely when comparing Dominican bonuses to those secured by Americans chosen in the first seven rounds of the Draft alone, and that if Dominican bonuses are compared to the overall average bonus a draft-pick receives the disparity is not so large: "You must distinguish between drafting 400 Dominican players and everyone in the draft." Telephone interview with Lou Melendez, Director of International Operations for Major League Baseball (Nov. 29, 2004).

³¹ As of 1998, Major League clubs were collectively awarded 865 visas per year. The system of visa disbursement to foreign players was developed by Major League Baseball, the United States Department of Labor and the Immigration and Naturalization Service, under the assumption that foreign-born players occupy positions on the team that cannot be filled by United States citizens. Ruck, *supra* note 1 at 85, 196.

³² *Id.* at 33.

³³ Klein, *supra* note 4 at 65.

³⁴ *Id.* at 63.

¶22 Although academies are not a new phenomenon, in the past decade there has been increased attention paid to their conditions and the quality of life players experience during their academic stay. While some have painted idyllic pictures of academies being akin to Hilton Hotels, others argue there are serious human rights queries to be made.³⁵ For instance, Angel Vargas, President of the Venezuelan Baseball Players Association and the General Secretary of the Caribbean Baseball Players Confederation, points to several problems with Major League academies in Latin America.³⁶ First, Vargas points to the fact that children training at the academy as young as thirteen years of age are held to the same physically demanding workouts as signed sixteen and seventeen-year-old players. Vargas also lists other common player complaints about academies, including lack of security against personal and property crimes, lack of a consistent and adequate clean water supply, lack of consistent and adequate basic sanitation, the failure to maintain buildings, lack of sufficient food and nutrition and lack of a trained medical staff.³⁷ Although I do not doubt Vargas' honesty, there is no empirical data to suggest that such violations are presently occurring at Major League academies on a grand scale. Professor Klein, while admitting that some academies were "checkerboard" in the mid 1990's, stated that during his most recent research trip to the Dominican Republic he became convinced the conditions at Major League academies are no longer a concern, explaining "I've seen reports on bed sheets."³⁸

¶23 Regardless of the state of Major League academies, the query into human rights remains with regard to independent academies that are run as distinct and separate entities from each other and Major League Baseball. Players who stay at independent academies are unsigned youths looking to refine their skills and catch the eyes of Major League scouts who canvass these camps in search of raw talent. These facilities, by and large, do not have the resources of Major League academies and probably cannot meet their standards of proper room and board, medical attention, nutrition, and like needs. However, this is hard to gauge because of the private nature of these enterprises. One academy, *Campo de Suenos*, and its founder, former Dodger Manny Mota, are described in Mother Theresean terms: "Here Manny Mota has created a baseball center for hundreds of neighborhood children. . . Even when the Motas return to Los Angeles for eight months of the year, three cooks continue to provide free daily hot meals."³⁹ In

³⁵ In her student comment, *Swinging for the Fence: A Call for Institutional Reform as Dominican Boys Risk their Futures for a Chance in Major League Baseball*, Diana L. Spagnulo extols the virtue of Major League academies, describing how they house and train the young men, while also providing them with laundry service, a diet that is regulated by a nutritionist and English lessons. 24 U. PA. J. INT'L ECON. L. 263, 273-274 (2003). *Washington Post* reporters Margaret Engel and Bruce Adams give a similarly glowing review of the Dodgers' academy *Campo Las Palmas*: "As we watched young Dodger recruits go through their stretching exercises, a maintenance worker was carefully brushing the dirt from the warning track off the grass. The red tile floors in the clubhouse clean enough to eat off." Margaret Engel and Bruce Adams, *A League of Their Own*, WASH. POST, Mar. 11, 2001 at W21.

³⁶ Vargas, *supra* note 12 at 21, 29.

³⁷ While Vargas lists these complaints as specific to Venezuelan academies, he has heard similar reports of Dominican camps. It should also be noted that Vargas believes the academies run by the Houston Astros and Los Angeles Dodgers in Venezuela and the Oakland A's in the Dominican Republic have no such problems and are run in a fair and professional manner. *Id.* at 21, 29-30.

³⁸ Telephone interview with Professor Alan M. Klein, *supra* note 21.

³⁹ Engel, *supra* note 35. No disrespect is intended; the Manny Mota International Foundation does, in fact, provide children with a safe and nurturing environment as well as other community services such as pre-natal care to expectant mothers. See <http://www.mannymotafoundation.org>.

contrast, an independent baseball academy (in past years affiliated with the Texas Rangers) owned by former Dominican Senator Victor Garcia Sued in Barranquita is described as an eight-by-ten cinderblock room behind the field dugout that holds four sets of bunk beds for academy attendees.⁴⁰

D. Base-law

¶24 These issues are specific to Dominican, and other Latin American players, however, they stem from the American trend of loose regulation of Major League Baseball's activities. Since 1922 the League has enjoyed a rare exemption from the bounds of the Sherman Anti-Trust Act.⁴¹ This *laissez-fair* attitude toward the sport encourages the government to ignore possible problems or abuses within the sport. In addition, the appointment of a Commissioner of Baseball in 1921 following the infamous Black Sox Trial, left Major League Baseball to develop its own internal rules and rule-enforcing mechanisms that are largely uninterrupted by courts.⁴² For example, there is uncontested evidence that the Dodgers, in 1996 and 1997 under the actions of their head Dominican Scout, Pablo Peguero, violated the U.S. Embargo against Cuba by holding secret try-outs for two Cuban players and arranging for their defection. Despite these facts, the United States Government has taken no remedial action, leaving punishment in the hands of the Baseball Commissioner.⁴³

¶25 Thus, the establishment of Major League Baseball as a largely autonomous enterprise with an internal legal system has given it the ability to act solely with its own interests in mind; what is most profitable for the League has become the status quo regardless of implications that fall outside the sport, such as the Embargo or accusations of human rights violations by teams.

¶26 In addition, Dominican dependence on Major League Baseball for economic revenue has assured the League a favorable position with the Dominican Government. The economic crutch provided by Major League Baseball cannot be understated: a study conducted by Major League Baseball in June of 2003 showed that it injects \$76 million annually into the Dominican economy through payments to players, scouting trips and donations. \$14.7 million of the sum is paid directly to the Dominican Republic by thirty baseball academies that are run by Major League teams in conjunction with baseball's Dominican office. The same study shows the League has created 1,200 jobs in the Caribbean nation.⁴⁴

¶27 Another reason there has been no formal move by Major League Baseball to deal with issues raised by the way in which Dominicans are recruited is that the

⁴⁰ Michael Kinsley, *Everybody*, THE SPORTING NEWS, Feb. 19, 2001 at 50.

⁴¹ In *Federal Baseball Club of Baltimore Inc. v. National League of Prof'l Baseball Clubs* Chief Justice Oliver Wendell Holmes delivered an opinion that stated "exhibitions of base ball . . . are purely state affairs" and the inducement of free persons to cross state lines and the payment to them for services rendered were not enough to change the character of the business, thus exempting Major League Baseball and player contracts restricting player mobility from United States antitrust law.

Gould, *supra* note 10 at 90.

⁴² ELIOT ASINOF, EIGHT MEN OUT 225 (1963).

⁴³ Scott Cwiertny, *The Need for a Worldwide Draft: Major League Baseball and its Relationship with the Cuban Embargo and the United States Foreign Policy*, 20 LOY. L. A. ENT. L. REV. 391, 393 & 410 (2000).

⁴⁴ *News & Notes*, PITTSBURGH POS-GAZETTE, July 25, 2003 at B-5.

internationalization of baseball did not happen with a boom or announcement but instead has taken place slowly throughout the past few decades. Thus there was never a Dominican movement within American baseball to bring attention to the issues facing Dominican players (that is, until now). Though Dominicans have been recruited by Major League teams since racial integration made the practice permissible, there have never been more Dominicans in the League than in the present era.⁴⁵ As of 1998, almost a tenth of all Major League players hailed from the Dominican Republic and there were more Latinos than African-Americans in the League. Only California, with four times the population of the Caribbean Island saw more of its residents enter the Majors.⁴⁶ The current significant presence of Dominican Major Leaguers requires an active exploration into the way in which Dominican players are brought into the League with the aim of learning whether rampant and serious abuses are occurring and the proper response if they are.

III. PAST ACADEMIC DISCOURSE

¶28 The general academic response to the process by which Dominicans come to play American baseball has consisted of calls for reform within Major League Baseball as well as calls for independent collective action on the part of Dominican players within the League. While this type of action would certainly be welcome, it is not legally mandated and has thus far come to naught, giving us no reason to believe this will change in the immediate future.

¶29 In the most recent commentary on the matter Diana L. Spagnulo, a law student and former Peace Corps Volunteer in the Dominican Republic, calls for Major League Baseball to implement educational programs for Dominican players, stating:

Educating Dominican players would serve to address the majority of concerns surrounding the current recruiting system. . . . Just as the baseball academies train players for their transition to the United States, MLB could provide ongoing education for players that would not only ease their transition back into Dominican culture, but would prepare them for vocational prospects once they return. This type of education would be invaluable for both the players and their country.⁴⁷

¶30 While no one would disagree that education is a vital component to solving any problem, Spagnulo's response falls short in a few key ways. First, it places the burden of providing education to Dominicans on the shoulders of Major League Baseball. It seems obvious that is the duty of the Dominican Republic to educate its own people; to place the heavy burden of general education on a private American corporation operating within the State before it is placed on the State itself, simply because Major League Baseball is a "rich" company and the Dominican Republic is a "poor" nation is an absurd notion.⁴⁸

⁴⁵ Ruck, *supra* note 1 at 101.

⁴⁶ *Id.* at 196.

⁴⁷ Spagnulo, *supra* note 35 at 285.

⁴⁸ Although some multi-national corporations, such as The Gap, have taken steps to monitor their international operations, particularly when dealing with contractors these examples are not "entirely

Although I agree with Douglass Cassel's assertion that in economies with a substantial measure of free enterprise governments alone cannot guarantee social and economic rights, these rights should be guaranteed through the regulation of business by government, and should not be made the direct responsibility of businesses.⁴⁹ This is in large part because the purpose of a corporation is to make a profit and act in its own interests in order to do so. Thus while Spagnulo may be correct in asserting education by Major League Baseball would be invaluable for players and the Dominican Republic it is unclear how it would be so for the enterprise of Major League Baseball itself. Additionally, if Major League Baseball did choose to educate its Dominican recruits on a variety of matters, this education would not be answerable to governmental standards and would probably occur on paper, rather than in practice.

¶31 The second shortcoming of Spagnulo's analysis is that any reforms instituted by Major League Baseball would not apply to independent academies, leaving a large segment of potential Major League players still unprotected. In addition, because many players attend independent academies prior to attending Major League training camps, education in the former would be more vital than the latter and the former is not within the ambit of Major League Baseball's control. The League could institute a coercive policy that it not engage in business with independent academies unless they met the same standards as Major League facilities, but is unlikely Major League Baseball would risk losing the rich talent pool those academies provide. Even if the League did institute such a policy, it would only harm the players we seek to assist by denying them a shot at the big leagues.⁵⁰

¶32 The third and most important way in which education by Major League Baseball fails to be a solution is that it would not assuage the problems of abuse by *buscones* nor would it address the issue of lax governmental enforcement of regulation over *buscones*. As Lou Melendez emphasizes, "We have no control over individuals called *buscones*. Those things have to be regulated by the government."⁵¹

¶33 In their article *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, Arturo J. Marciano, a Venezuelan attorney, and David P. Fidler, a law professor at Indiana University, take the stance that as a corporation Major League Baseball deserves criticism from Non Governmental Organizations working to promote human rights and labor standards, in the same way that other multi-national corporations are subject to such criticism, if Major League Baseball engages in human rights abuses.⁵² The duo suggest that because Major League

comparable case studies." Douglass Cassel, *Corporate Initiatives: A Second Human Rights Revolution?*, 19 FORDHAM INT'L L.J. 1963, 1969 (1996).

⁴⁹ Douglass Cassel, *Human Rights and Business Responsibilities in The Global Market Place*, 11 BUSINESS ETHICS QUARTERLY, NO.2. 261 (2001).

⁵⁰ I am reminded of a lecture I attended several years ago in Santa Barbara, California where a worker from a sweatshop in Mexico that produced clothing for Wal-Mart urged the students in the audience to work toward social change, but not through the boycott of goods produced by sweatshops, as that only leaves workers unemployed and without desperately needed wages. An "embargo" against dealing with independent academies would likely have a similar harmful effect on Dominican players.

⁵¹ Telephone interview with Lou Melendez, *supra* note 30.

⁵² Arturo J. Marciano and David P. Fidler, *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, 6 IND. J. GLOBAL LEG. STUD. 511, 513 (1999). While the role of organizations devoted to working toward fair labor practices and social justices cannot be underestimated or undervalued, there presently seem to be only a few organizations that have attempted to

Baseball is a business the solution to unfair labor practices in the Dominican Republic is the unionization of Dominican players.⁵³ While this would certainly be an effective mechanism for change within the League it would likely never come to fruition as it requires those in power, meaning Dominican players already signed to teams, to jeopardize their job security by organizing a labor union of some sort.⁵⁴ While Latino players may favor the rewards a specialized Latino union could reap, it seems unlikely that enough players would risk being black-balled in the process, as Latino players already struggle against unfair portrayals of themselves as being hot-headed, uncooperative and over-eager to “stir the pot” and disrupt team cohesion.⁵⁵ Although collective action would assist some, it would likely earn the ire of the larger baseball community, as history shows those who push the envelope for reform are not necessarily rewarded with thanks.⁵⁶

¶34 Marcano and Fidler also argue for institutionalized reform within Major League Baseball through the prism of international legal mechanisms, such as the Convention on the Rights of the Child and the Covenant on Economic Social and Cultural Rights, arguing that although Major League Baseball is not a state party to the mechanisms they should still be held to the standards of state parties.⁵⁷ This is, however, a moral argument that ignores the complications of international law and state sovereignty, rather than a feasible legal solution. Thus the authors’ proposal that Major League Baseball change the way it operates internationally by setting up an international office that would create and enforce rules that allow foreign players, agents, coaches, parents and NGOs direct access to complain about violations of Major League Baseball’s international rules seems

combat Major League practices in Latin America- the Venezuelan Baseball Players Association and the Caribbean Baseball Players Confederation, both of which are spear-headed by Venezuelan baseball activist Angel Vargas, and Vargas himself admits the Association is under-staffed, under-funded and its calls for reform have been met with resistance by the Venezuelan officials involved in Major League Baseball’s affairs. Vargas, *supra* note 12 at 31.

⁵³ Marcano, *supra* note 52 at 514.

⁵⁴ It is worth noting that groups such as the Latino Sports Initiative do concern themselves with labor issues, agent relations, and finances in professional sports, as they affect Latino players. Lou Melendez informed me that he had just returned from a conference in the Dominican Republic where the LSI addressed these issues. Telephone interview with Lou Melendez, *supra* note 30.

⁵⁵ As Rob Ruck notes, “the image of Latin players as hotheads had been firmly imprinted on the sporting public.” Former Dominican baseball great Juan Marichal adds, “They call us hot-tempered and say that we don’t play under control- that we are too emotional.” Ruck, *supra* note 1 at 82. The recent suspension of Dominican outfielder Jose Guillen by the Anaheim Angels for an undisclosed act that “violated rules in his contract,” according to Angels’ General Manager Bill Stoneman, set off a media frenzy that focused on Guillen’s seeming inability to act as part of the team. Interestingly, while Caucasian managerial figures Stoneman and Mike Sciosia condemned Guillen, his Puerto Rican-American teammate, catcher Bengie Molina stated of the outfielder “He’s aggressive, he’s a good teammate. . . I would be more than glad to have him back.” ESPN.com News Services, *Forget the Playoffs: Guillen Banned Without Pay* (Sep. 26, 2004), <http://sports.espn.go.com/mlb/news/story?id=1889533>.

⁵⁶ Curt Flood, the St. Louis outfielder that accused Major League Baseball of involuntary servitude in violation of the 13th amendment filed suit to have the reserve clause, which prevented players from refusing a trade to another team, expunged from player contracts. The Supreme Court ruled against Flood in 1972. Although Flood had three all-star appearances, seven Gold Glove awards and two World Series Championships he was black-balled by the League and the public for challenging the League’s rules that favored ownership over labor. Flood never was inducted in the Baseball Hall of Fame nor was he afforded opportunities to coach or manage other players and was singled out as an “ingrate, destroyer and troublemaker.” Incidentally, Flood was African-American. Tony McClean, *The Plight of Curt Flood*, BLACK ATHLETE SPORTS NETWORK, Mar. 8, 2004, <http://www.blackathlete.com/Baseball/030804.html>.

⁵⁷ Marcano, *supra* note 52 at 552-59.

unlikely to evolve beyond a mere proposal.⁵⁸ And because the League is barely answerable to U.S. Courts it seems unlikely it would answer to academic calls for reform, particularly in the absence of concrete data that such abuses are occurring at all, let alone at a high enough rate to justify action.⁵⁹

IV. THE RESPONSE OF MAJOR LEAGUE BASEBALL

¶35 The League has thus far demonstrated a lukewarm, at best, passion for addressing wrongs committed by teams in pursuit of Dominican players, issuing fines and temporary shut-downs of Dominican operations that, while punitive, are not remedial. For their signing of underage Adrian Beltre, the Dodgers were fined \$200,000 and two officials involved in the illegal activity were suspended.⁶⁰ Although \$200,000 will hardly break the bank for one of the most storied franchises in baseball history, it is still larger than the \$50,000 fine imposed on the Cleveland Indians for signing 15 year-old Venezuelan Laumin Bessa. Although the Indians' punishment included a two-month suspension of its Venezuelan facilities this will not change the way the team recruits Latin Americans, but merely halt it temporarily.⁶¹

¶36 This is in accord with the League's current *modus operandi* of acknowledging the fuzzy notion of a "problem" without bogging themselves down in details or specific solutions. Sandy Alderson, Executive Vice President for Baseball Operations for the Commissioner's Office offers a vague attempt at appeasement, saying "I think there are significant problems that exist that we're now addressing."⁶² And while general admissions are better than denials, it would be helpful for critics, as well as the League, if the Commissioner's Office were to explicitly identify what it perceives as problems in need of solving, along with considered solutions. However, I am the first to admit that this may not be possible with the lack of current information available. For example, there is no research available regarding *buscones* or independent academies. Thus the League is not wholly responsible for answering questions with generalities, as the accusations against it are mere generalities. While academics like Fidler, Marcano and Angel Vargas are quick to point the finger at Major League Baseball, they have presented sparse anecdotes to support their assertions rather than concrete evidence.

¶37 To the League's credit, where there has been evidence of violations, such as with the underage signings, it has acted. Major League Baseball has an office in Santo Domingo to "regulate and facilitate," day-to-day operations such as conducting verifications of recruits' birth certificates in conjunction with local authorities.⁶³

¶38 Thus far, the most substantial response by Major League Baseball has been an agreement in the current Collective Bargaining Agreement to form a study committee

⁵⁸ The authors themselves dismiss their notion as "hopelessly naïve." *Id.* at 572.

⁵⁹ At the most recent meeting of team general managers the issue of signing Dominican players was raised only when executives were cautioned to be vigilant in the verification of Latino recruits' ages while the issue of instant-replay dominated the League's attention. Associated Press, *Time For Further Review?* (Nov. 11, 2004), available at <http://sportsillustrated.cnn.com/2004/baseball/mlb/11/11/bbo.gmmeetings.ap/index.html?cnn=yes>.

⁶⁰ Fainaru, *supra* note 7.

⁶¹ Sheinin, *supra* note 20.

⁶² Fainaru, *supra* note 7.

⁶³ Meyer, *supra* note 24.

with the goal of moving toward an international draft.⁶⁴ Currently, however, there has been no action toward an international draft beyond that statement of intent and I remain doubtful as to whether an international draft is practically feasible. This is largely due to the fact that it would require codification in a new Collective Bargaining Agreement, the terms of which are labored over, sometimes with the threat of a player strike by the Players Union. Even if an international draft were to come to fruition, not all agree it would be beneficial to Dominican players.⁶⁵ In addition, it would not address the substandard conditions of independent baseball academies in the Dominican Republic, nor would it regulate *buscones*.⁶⁶

¶39

In sum, Major League Baseball has no legal obligation as a corporation to act to remedy any perceived problems with the process of Dominican recruitment currently employed by Major League teams. Thus even if Major League teams employ methods and behavior that would not be acceptable today in the United States, as Marcano and Fidler assert, this is not illegal until the Dominican Republic declares it so.⁶⁷ Until that time Major League Baseball is under no obligation to act with uniform fairness toward its international recruits. American baseball standards for contract signings, training programs and the retention of sports agents have not reached the point of *jus cogens* and must be codified by the Dominican Republic if they are to have effect and import there. Thus, the burden falls to the Dominican Republic to act on behalf of its own people, as well as to international mechanisms to pressure the Dominican Republic to act.⁶⁸

⁶⁴ Spagnulo, *supra* note 35 at 283. Although one newspaper reports that Major League Baseball is seeking to implement initiatives in the Dominican to ensure the continued education of Dominican youth and to train *buscones*, this information does not come from the League itself, but from an American who helped to establish the League's Dominican office, and is thus not representative of the League's true intentions or actions. Fainaru, *supra* note 29.

⁶⁵ Victor Garcia Sued feels an international draft would place Latin players at a disadvantage because most Latin players suffer from malnutrition with physical development that is two to three years behind players in the United States and the Far East. Sued also argues an international draft would halt competition among Major League teams from Latin players thus keep their salaries and signing bonuses down. Kinsley, *supra* note 40.

⁶⁶ To address the issue of *buscones* operating in the Dominican Republic, Major League Baseball is reportedly "considering" a national registration system that would allow the League and the Dominican Government to monitor agents and impose penalties when indiscretions are committed. However, the League stated it does not know how much control it can exert over individuals who operate in a foreign country and are not employees of Major League Baseball. And in response to this quasi-proposal Dominican Baseball Commissioner Jose Daniel Calzada stated that between the League and the Dominican Government, "we're the only one that has the power to take legal action" and thus the League would have to in good faith, agree to not deal with unlicensed agents. A possible roadblock to this plan is that there is clearly a disconnect between Major League Baseball's American and Dominican offices; Calzada states of the relationship "We're together, but not sufficiently. . . Major League baseball has to learn to trust us more." Steve Fainaru, *MLB Looks to Regulate Dominican Agents*, WASH. POST, Sep. 17, 2003 at D01.

⁶⁷ Marcano, *supra* note 52 at 531.

⁶⁸ While I realize it sounds simplistic and harsh to essentially scold the Dominican Republic to take care of its own citizens I feel that it is simply necessary in this situation, particularly since the Nation has availed itself to such criticism by becoming a party to various international human rights mechanisms. In addition, I feel it is more paternalistic to encourage American industry to somehow solve the problems of the Dominican Republic than for the international community to assist the Dominican Republic in solving its own problems.

V. PROPOSED ACTION

¶40 The Dominican Republic is a member of Organization of American States, the principal regional legal system for protecting human rights under the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.⁶⁹ Through its membership or affiliation with these international mechanisms, the Dominican Republic has promised to ensure its citizens a certain degree of protection against human rights violations. Provisions of the American Declaration of the Rights and Duties of Man that are particularly pertinent to the subject of Dominican players for Major League Baseball are: Article VII, which gives children the right to special protection, care and aid, Article XI, which grants the right to preservation of health and well-being, Article XII, which grants the right to an education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society, Article XIV, which grants the right to work and fair remuneration, Article XV, which grants the right to leisure time, and Article XXII, which affords the right of association.⁷⁰ There is the possibility that after an investigation, it may be found that children are being denied their right to education by their stays at baseball academies or that these academies violate minors' and young men's rights to preservation of health and well-being. It is also possible that investigation would yield the conclusion that the entire system of Dominican recruitment violates the rights of children to special protection, care and aid and that the right to fair remuneration is violated by the proportionately low signing bonuses received by Dominican recruits. In addition, the right to free association may be violated when minors are kept at academies without contracts, simply for the purpose of hiding recruits from other teams.⁷¹ Lastly, if the academies are as strenuous as has been depicted by scholars, they may violate the right to leisure time.

¶41 In light of these international human rights obligations, I feel it is necessary for the Inter-American Commission on Human Rights to investigate with a fact-finding mission, as the Dominican Republic has possibly violated these mechanisms by failing to enforce its own laws in place to regulate the baseball industry, failing to act ethically by allegedly being "on-the-take" from *buscones* and failing to protect the rights its children who attend academies with substandard conditions or are signed illegally by teams, as well as the prior reasons I have stated.⁷²

¶42 The Dominican Republic has the duty to ensure that all international legal wrongs committed in its territory have been dealt with to the degree that international law requires. It seems that scholars have been hesitant to critique the Dominican Republic for allowing these possible abuses to occur within its borders because it is easier to criticize big business than a small developing nation where the annual per capita income is \$1,600

⁶⁹ Inter-American Commission on Human Rights, *What is the IACHR?*, <http://www.cidh.oas.org/what.htm>.

⁷⁰ Inter-American Commission on Human Rights, *American Declaration of Rights and Duties of Man*, <http://www.cidh.oas.org/Basicos/basic2.htm>.

⁷¹ It is important to note that documentation of instances of scouts and academies separating children from their families, hiding them so other scouts will not get hold of them and failing to pay them promised bonuses seems to be limited to the 1980's. I was unable to find documentation of any recent instances of this sort, though general allegations have been made by other scholars.

⁷² Tony Bernazard, Special Assistant to the Executive Director of the MLB Players Association, claims that Dominican Baseball Commissioner Jose Daniel Calzada is a "crook" whose unwillingness to regulate *buscones* stems from the fact that he is "on the take from the *buscones*." Spagnulo, *supra* note 35 at 286.

a year.⁷³ And while I recognize the obstacles facing the Dominican Republic regarding the implementation of a regulatory structure for the recruitment of Major League players, the fact remains that as a member of the Organization of American States and a party to the American Declaration of the Rights and Duties of Man and that American Convention on Human Rights, the Dominican Republic has the legal and moral duty to ensure the rights its citizens are guaranteed by such membership. If these alleged wrongdoings are not investigated and either disproved or affirmed and remedied, these international regional mechanisms will be weakened, as will be the credibility of the Dominican Republic.

¶43 Thus, I recommend the Inter-American Commission on Human Rights carry out on-site observations of the recruiting process, prepare a report on possible human rights violations and make recommendations to the Dominican Republic for the enforcement of existing measures and the adoption of new ones to remedy any problems the Commission may find. Because the Dominican Republic has welcomed the Commission to its territory in the past, it would be likely to do the same in this instance.⁷⁴

¶44 To date, the IACHR has conducted 87 on-site visits in 23 member states to explore allegations of human rights abuses in the Americas.⁷⁵ The Commission has visited the Dominican Republic five times since 1961 and in its 1999 report on the Country identified ten main categories of human rights issues that are pertinent in the Dominican Republic: Political and Juridicial Organization, the Right to Judicial Recourse and the Administration of Justice, the Right to Life, the Right to Humane Treatment, the Right to Personal Liberty, the Right to Freedom of Thought and Expression, Prison Conditions and the Situation of Prisoners, the Situation of Haitian Migrant Workers and their Families, the Situation of Women, and the Situation of Minors.⁷⁶ The Situation of Minors is particularly relevant to Major League Baseball's Dominican Affairs, as recruits are often under the age of eighteen. In its report following its 1999 on-site Dominican visit, the Commission made several key findings and recommendations concerning the situation of minors in the Dominican Republic. The Commission identified minors dropping out of school to join the workforce as the most serious problem Dominican children face. It also reiterated that Title II of the Dominican labor code prohibits children below fourteen years of age from working and that despite that provision, the early insertion of minors in the work force has resulted in the frequent abandonment of their education. The Commission recommended that the Dominican State adopt programs to ensure strict surveillance of the situation of minors, especially those who have been victims of domestic violence.⁷⁷ The issues identified by the IACHR with regard to the treatment of minors should be examined further, with specific attention paid

⁷³ DiGiovanna, *supra* note 3.

⁷⁴ I also believe the IACHR would be welcomed, because even if the Dominican Republic feels there are no human rights queries to be made regarding the recruitment of Dominican players for Major League teams, the Commission's visit would provide the Nation with the opportunity to answer criticisms that have been made and prove there are no wrongs being committed.

⁷⁵ Inter-American Commission on Human Rights, *supra* note 69.

⁷⁶ Inter-American Commission on Human Rights, *On-Site Visits*, <http://www.cidh.oas.org/visitas.htm>
Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in the Dominican Republic*, <http://www.cidh.oas.org/countryrep/DominicanRep99/Table.htm>.

⁷⁷ Inter-American Commission on Human Rights, *Report on the Situation of Minors in the Dominican Republic*, <http://www.cidh.oas.org/countryrep/DominicanRep99/Chapter11.htm>.

to their relation to the way in which Dominican children seek to play for Major League Baseball.

¶45 Just as past Dominican on-site visits have been successful so would this observation. Because executives of Major League Baseball and officials within the Dominican government have acknowledged problems with the recruitment of Dominican players to some degree, the Commission would likely be able to engage them further, becoming better able to accurately assess the situation. Input from Dominican Baseball Commissioner Jose Daniel Calzada, Jose Escarraman, president of the National Association of Independent Baseball Programs, Rafael Perez, the manager of baseball's Dominican office, Dominican and Latin American scouting directors for Major League clubs and Lou Melendez, Major League Baseball's Vice President of International Operations and Dominican Sports Minister Cesar Cedeo would be vital to the Commission. In addition, the Commission could interview scholars, journalists and authors who have experience with the issue. For instance, Professor Alan M. Klein has spent considerable time in the Dominican Republic studying the intersection of Dominican and American baseball. Steve Fainaru of *The Washington Post* has also contributed to the information currently available regarding Major League Baseball's Dominican involvements.

¶46 Finally, the Commission could solicit interviews from players who have attended or are attending baseball academies, both Major League sponsored and independent, to get first-hand accounts of the conditions at such camps and whether players feel abused or mistreated. The IACHR could also solicit interviews with known *buscones* as well as players who have dealt with them to gain a more accurate understanding of the system and whether the rights of Dominican minors are being violated. It could also seek to speak with players who were signed illegally as sixteen-year-olds in an attempt to understand whether the underage players were being pressured by *buscones* or their families to lie.

¶47 An official fact-finding mission of this kind would be extremely helpful for the Dominican Republic because it would help the nation begin to assert some control over what has been uncontrollable in the past. It would also help Major League Baseball by assuring their practices in the Dominican Republic are legal and ethical under the American Declaration of the Rights and Duties of Man and the American Covenant on Human Rights. Lastly, such a mission would lay to rest any false accusations being made against the Dominican Republic or Major League Baseball by scholars who have, in the absence of empirical research, seized upon scattered media coverage and personal anecdotes and declared that gross human rights violations are occurring.⁷⁸

¶48 In the event the IACHR believes this issue is not grave enough to warrant an on-site investigation, I would urge them still to consider engaging in fact-finding without on-

⁷⁸ For example, Marcano and Fidler state that "Many Latino players who have experienced life in the baseball academies report being subject to very hard physical and emotional conditions, including oral and physical abuse and lack of proper medical treatment for injuries. Injuries to players sometimes result not in medical attention but in release from the academy." However, the authors give no specific instances of these occurrences, providing only the footnote that "These observations derive from the knowledge and experience gained by Arturo Marcano in his years of involvement with professional and amateur baseball in Latin America. Marcano, *supra* note 52 at 545, 577. While I do not doubt that Marcano has such knowledge and experience I would expect a more involved explanation, rather than general accusation, including interviews with those who have alleged such abuses, from an article in a prestigious law journal.

site observation, as is sometimes practiced when on-site visits would be impracticable, costly or exhaust human resources.⁷⁹ Many of the interviews I have suggested would still be possible through the telephone, letter correspondence and email.

¶49 Regardless of whether a visit is on or off-site the Commission has the authority to consider a wide variety of sources in drafting reports. For example, in the report detailing its 1997 on-site visit to Columbia, the IACHR drew from official legal codes, legal texts, jurisprudence of Columbian tribunals, reports of State institutions, information provided by non-governmental human rights organizations in Columbia, information from the press, as well as information provided by international human rights organizations, in addition to that it gathered during its on-site visit.⁸⁰

¶50 Should the IACHR find the allegations of various mistreatments and abuses to be true, the Commission could make a variety of recommendations to the Dominican Republic to remedy the situation. For example, it could urge the swift passage of *la ley de portas*, a bill with the aim of gaining governmental control over *buscones* that is currently being bounced around the Dominican Congress.⁸¹

¶51 In the event that both on and off-site observations are declined by the Commission, a symbolic recognition of the issue at hand would still be a powerful step in the direction toward accurate fact-finding by independent scholars and action by the Dominican Republic to act within its current resources to remedy problems. In addition to its power to conduct observations and prepare reports, the IACHR has the general power to “develop an awareness of human rights among the peoples of America.”⁸² Because this promotion of human rights awareness is not explicitly limited to formal observations and reports, perhaps the Commission could issue a statement that they are concerned about the treatment of Dominican citizens who are being recruited by Major League Baseball and they would like to see remedial action taken by the Dominican government and/or Major League Baseball. Although non-binding and purely symbolic, this may still be an effective way to promote human rights in the Dominican Republic as an acknowledgment without formal recommendations would be better than no acknowledgement at all.⁸³

⁷⁹ INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS, 502 (David Weissbrodt, Joan Fitzpatrick & Frank Newman, eds., 2001).

⁸⁰ *Id.* at 487.

⁸¹ Lou Melendez informed me that Major League Baseball fully supports this bill and would comply with it in any way necessary. For now, however, Major League Baseball’s regulation of *buscones* is limited to not allowing payments to be made from clubs directly to *buscones*. Telephone interview with Lou Melendez, *supra* note 30. Oneiri Fleita, Director of Latin American Scouting for the Chicago Cubs, cautioned however, that even with the implementation of legislation there is no way to know if players are giving *buscones* more money than is permitted on the side. Telephone interview with Oneiri Fleita, Director of Latin American Scouting for the Chicago Cubs (Dec. 4, 2004).

⁸² American Convention on Human Rights, Chapter VII, Sec. 2, Art. 41(a)
<http://www.cidh.oas.org/Basicos/basic3.htm>.

⁸³ I believe a symbolic announcement would be effective in the promotion of human rights in the same way membership of states to international human rights mechanisms is effective in doing such, even though human rights abuses may still occur within the country’s borders. Membership is a step in the right direction and sends a clear message that human rights violations are not desired. I believe that even the most vague acknowledgment by the Commission that a problem may exist with the way Major League Baseball recruits Dominican players would be a similar step in the right direction.

VI. CONCLUSION

¶52 If you are left a tad confused by this analysis, it is warranted, as I myself am confused. This is not a simple issue, as it involves international law, a multi-national corporation, an impoverished nation and a sport that elicits a great deal of passion by both players and critics. The human rights violations that have been alleged in connection with Major League Baseball and Dominican citizens are serious, but lack the horrific imagery that genocide, mass rape, torture and other human rights violations unfortunately do not. This combination of facts may leave you wondering why I feel this issue deserves attention in a journal of international human rights. The answer is simply that human rights violations of any kind, however small, in an ideal world should not be tolerated. Sadly this is not an ideal world. But I see my job as an academic to include a certain degree of hope and idealism. I recognize that other crises may take precedence over this issue. However, if you, the reader, take only one thing from this scholarly venture into the realm of professional sports I hope it is that human rights are not merely an abstraction confined to the academic or political realm, but are a set of values to be kept in mind in everything we do. Even small acts such as buying a ticket to a baseball game have consequence for someone else someplace else.

¶53 Until credible empirical research is conducted that sheds light on which allegations against Major League Baseball and the Dominican Republic are fact and which are fiction, I cannot say with certainty that human rights violations are occurring. I also cannot say with certainty that they are not occurring. This troubles me, as it should trouble you.

¶54 I began my argument with an anecdote to communicate my passion for sports and the entertainment, hope and escape they provide. I am grown-up now, and am neither a doctor, nor a basketball player (though I am still short and uncoordinated), but I am still a lover of baseball and I am not eager to see the game prosper at the expense of Dominican youth who also love the game, and deserve better from it. If wrongs are being committed, they must be righted, and if no wrongs are being committed, then . . . you guessed it- play ball!