

10-1-2018

When Sports Stand Against Human Rights: Regulating Restrictions on Athlete Speech in the Global Sports Arena

Faraz Shahlaei

Recommended Citation

Faraz Shahlaei, *When Sports Stand Against Human Rights: Regulating Restrictions on Athlete Speech in the Global Sports Arena*, 38 Loy. L.A. Ent. L. Rev. 99 (2017).

Available at: <https://digitalcommons.lmu.edu/elr/vol38/iss1/3>

This Article is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles Entertainment Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

WHEN SPORTS STAND AGAINST HUMAN RIGHTS: REGULATING RESTRICTIONS ON ATHLETE SPEECH IN THE GLOBAL SPORTS ARENA

*Faraz Shahlaei**

Even after the International Olympic Committee’s quick and harsh response to the “black power salute” in the 1968 Olympic Games—positing that the apolitical Olympic Games were not a suitable venue for domestic political statements—athletes continued using their platform to protest human rights violations. Should such conduct be allowed? Are athletes entitled to display their political opinions on the field? Or should athletic organizations be allowed to regulate their athletes’ protests and political speech in the arena? On the one hand, freedom of speech is a fundamental human right. On the other, sports have a long history of remaining apolitical—limiting political expression during games through formal contracts, regulations, and longstanding traditions. While international athletic organizations may have reason to remain politically neutral, this paper recommends that political speech relating to internationally agreed upon, core human rights values should be the exception.

* 2017 L.L.M.Candid. ate, Pepperdine School of Law’s Straus Institute for Dispute Resolution; Masters of International Law, University of Judicial Sciences and Administrative Services, Tehran, 2016; L.L.B., University of Allameh Tabataba’i, Tehran The author gratefully acknowledges the tremendous assistance of Hannah Kazim and Shadi Maghareh who patiently reviewed this text, and whose comments were of great help in writing this article.

I. INTRODUCTION

“Sport[ing] events are not just competitions; they are platforms for social interaction and the promotion of many ideals such as respect, fair play, integrity, tolerance and solidarity.”¹

Technological advances continue to increase our quick, efficient, and continuous access to information.² In the world of sports, media coverage is so pervasive that billions across the world can view each goal, touchdown, home run, and slam-dunk.³ Needless to say, the global sports arena provides a powerful communication forum—one that can be used to raise awareness about essential human rights issues.

The past few decades are replete with instances of such use. In 1967, famed boxer Mohammad Ali made his statement when he refused to fight in Vietnam.⁴ Several black athletes, including basketball star Kareem Abdul-Jabbar, later joined his campaign.⁵ During that same year, Harry Edwards, a prominent black activist from the University of California, Berkeley, created the “Olympic Project for Human Rights” to protest racial segregation.⁶ A few years later, U.S. Olympic athletes

1. United Nations Office on Sport for Development and Peace, *Annual Report 2015*, U.N. 1, 17 (2016), [https://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/UNOSDP_Annual_Report_2015%20\(1\).pdf](https://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/UNOSDP_Annual_Report_2015%20(1).pdf) [https://perma.cc/48DG-AK54].

2. See Paul McFedries, *Information at Your Fingertips Technically Speaking*, IEEE SPECTRUM (Apr. 1, 2009, 4:00 AM), <https://spectrum.ieee.org/computing/software/information-at-your-fingertips> [https://perma.cc/X2D8-BVZ8].

3. See *How Do We Know that Rio 2016 Was a Success*, INT’L OLYMPIC COMM. (Dec. 6, 2016), <http://www.olympic.org/news/how-do-we-know-that-rio-2016-was-a-success> [https://perma.cc/FVX6-MH59] The 2017 super bowl had more than 111 million viewers See Frank Pallotta, *More than 111 Million People Watched Super Bowl LI*, CNN (Feb7, 2017, 10:36 AM), <http://money.cnn.com/2017/02/06/media/super-bowl-ratings-patriots-falcons/> [http://perma.cc/278T-BLYB].

4. Kareem Abdul-Jabbar, *Abdul-Jabbar: Insulting Colin Kaepernick Says More About Our Patriotism than His*, WASHPOST (Aug. 30, 2016), http://www.washingtonpost.com/posteverything/wp/2016/08/30/insulting-colin-kaepernick-says-more-about-our-patriotism-than-his/?utm_term=.b68866d5de1b [http://perma.cc/S5H9-92H2].

5. See *id.*

6. See Dave Zirin, *The Explosive 1968 Olympics*, 61 INT’L SOCIALIST REV. (2008).

wore “Olympic Project for Human Rights” badges during the iconic “black power salute” at the 1968 Mexico City Olympic Games.⁷

Sports organizations, however, have been less than supportive of their athletes’ free expression. The International Olympic Committee (“IOC”), for example, reacted swiftly and harshly to the 1968 black power salute, immediately suspending the involved athletes.⁸ This raises the question: Should athletic organizations be allowed to regulate their athletes’ speech, or should athletes be entitled to express their opinions on the field? On the one hand, sport has a long history of remaining apolitical, limiting expression during games through formal contracts, regulations, and longstanding traditions.⁹ On the other hand, freedom of speech is a fundamental human right.¹⁰

This article concludes that sports organizations should allow athletes to convey human-rights-related messages on the field. Part II overviews the international community’s recognition of free speech as a fundamental human right. Part III observes that although the sports arena presents a unique and powerful platform for raising awareness and promoting change, athletes are often restricted from such use. Part IV reasons that although large sports organizations are already bound by international law, albeit indirectly, they should be directly bound by it because of their tremendous political influence. Building upon that, Part V concludes that athletic organizations must not restrict athletes’ exercise and promotion of such rights.

II. FREEDOM OF EXPRESSION AS A HUMAN RIGHT

It is a fairly new belief that all persons, by virtue of their humanity, are entitled to certain human rights.¹¹ While this concept existed

7. *Id.*; Zach Johnk, *National Anthem Protests by Black Athletes Have a Long History*, N.Y. TIMES (Sept. 25, 2017), <https://www.nytimes.com/2017/09/25/sports/national-anthem-protests-black-athletes.html> [<https://archive.is/mE43X>].

8. Johnk, *supra* note 7.

9. See Frédérique Faut, *The Prohibition of Political Statements by Athletes and Its Consistency with Article 10 of the European Convention on Human Rights: Speech Is Silver, Silence Is Gold?*, 14 INT’L SPORTS L. J. 253, 253 (2014).

10. See G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 19 (Dec. 10, 1948) [hereinafter UDHR].

11. *A Short History of Human Rights*, UNIV. OF MINN. RES. CENTER, <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/short-history.htm> [<https://perma.cc/33S5-MDJT>].

previously in many cultures' documents and traditions, it took the barbarities of "World War II to propel [it] onto the global stage and into the global conscience."¹² Nazi Germany's extermination "of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world" and lead it to form the United Nations ("U.N.").¹³ This marked the beginning of a new human rights movement, one that emphasized the dignity of the individual.¹⁴ The movement picked up steam with the international community's adoption of key documents codifying essential human rights.¹⁵ Two of those documents are the Universal Declaration of Human Rights ("UDHR")¹⁶ and the International Covenant on Civil and Political Rights ("ICCPR").¹⁷

Both the UDHR and the ICCPR recognize freedom of expression as a human right.¹⁸ The UDHR defines the right to freedom of expression unambiguously: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."¹⁹ Similarly, article 19(2) of the ICCPR provides: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."²⁰

12. *Id.*

13. *Id.*

14. *See* KATE PARLETT, *THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM*, 303 (2011).

15. *Id.* at 301–20.

16. *See* G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

17. *See* International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

18. *See* UDHR, *supra* note 16, art. 19; ICCPR, *supra* note 17, art. 19, ¶ 2.

19. UDHR, *supra* note 16, art. 19.

20. ICCPR, *supra* note 17, art. 19, ¶ 2.

Freedom of expression is more than just a human right; it is an essential tool for maintaining a properly functioning representative democracy.²¹ Both the U.N. Human Rights Council and the U.N. General Assembly consider freedom of expression as “one of the essential foundations of a democratic society and one of the basic conditions for its progress and development.”²² The General Assembly describes freedom of expression as a touchstone of all other freedoms.²³ Freedom of expression is essential to the enjoyment of many other fundamental rights,²⁴ as it allows individuals and groups to protest violations of those rights.

As with any other liberty, however, the right to free expression is not absolute. Both the UDHR and ICCPR recognize that the administration of this right may require certain restrictions.²⁵ Article 19 paragraph 3 of the ICCPR provides that the right to freedom of expression “may therefore be subject to certain restrictions . . . as are provided by law and are necessary” for the “respect of the rights or reputations of others” or for “the protection of national security[,] . . . public order, . . . public health or morals.”²⁶

Even so, these restrictions have their limits. In its General Comment number 34, the U.N. Human Rights Committee narrowed the scope of paragraph 3’s allowable restrictions. First, it explained that restrictions not mentioned in that paragraph are strictly prohibited.²⁷ Second, it clarified that restrictions that are imposed must be “directly

21. U.N. Secretary-General, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 5, U.N. Doc. A/71/373 (Sept. 6, 2016).

22. *Id.*

23. G.A. Res. 59(I) (Dec 14, 1946).

24. See Michael O’Flaherty, *Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment No 34*, 12 HUM. RTS. L. REV. 627, 631 (2012).

25. Human Rights Comm., Gen. Comment No34, ¶ 21, U.N. Doc. CCPR/C/GC34 (Sept12, 2011); ICCPR, *supra* note 17, art. 19, ¶ 3.

26. ICCPR, *supra* note 17, art. 19, ¶ 3.

27. Human Rights Comm., Gen. Comment No. 34, ¶ 22, U.N. Doc. CCPR/C/GC34 (Sept. 12, 2011).

related to the specific need on which they are predicated.”²⁸ Laws creating those restrictions “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and . . . must be made accessible to the public.”²⁹ Additionally, the “law[s] may not confer unfettered discretion for the restriction of freedom of expression on those charged with [their] execution.”³⁰

Moreover, restrictive laws must “be proportionate to the interest to be protected.”³¹ For example, the interest in allowing public and political debate holds particularly high value.³² As a result, laws restricting this right would likely need to be narrower in scope than, say, for commercially-driven expression. This “principle of proportionality” applies both to “the law that frames the restrictions [and to] . . . the administrative and judicial authorities . . . applying the law.”³³

Athletic Organizations’ Restrictions on Athletes’ Use of Sports Arenas to Convey Political Messages

Despite recognizing and using the global sports arena as a unique and powerful forum, many athletic organizations prohibit athletes from doing so themselves.

III. SPORTS ARENAS PROVIDE A KEY PLATFORM FOR PUBLIC EXPRESSION

Because of their widespread media coverage, sports arenas provide a powerful forum for the communication of ideas: “[h]alf the world’s population watched coverage of the Olympic Games Rio 2016.”³⁴ Similarly, 3.2 billion people around the world watched the 2014 Fédération Internationale de Football Association (“FIFA”) World

28. *Id.* (citation omitted).

29. *Id.* ¶ 25 (citation omitted).

30. *Id.* (citation omitted).

31. *Id.* ¶ 34 (citation omitted).

32. *Id.*

33. *Id.* (citation omitted).

34. See *How Do We Know that Rio 2016 Was a Success*, INT’L OLYMPIC COMMITTEE (Dec. 6, 2016), <http://www.olympic.org/news/how-do-we-know-that-rio-2016-was-a-success> [<https://perma.cc/FVX6-MH59>].

Cup.³⁵ As a result, sports arenas—and the athletes that play in them—are uniquely situated to connect with people across nations, cultures, religions, and economic classes.

Professor Genevive Lakier of the University of Chicago School of Law explains that spectator sports are a uniquely powerful medium for communicating messages

because of the aura of authenticity that games possess as competitions. The fact that what audiences see when they watch a sports game is the genuine struggle of the competitors to win, rather than a scripted simulacrum of that struggle, gives sport an aura of authenticity that narrative art, no matter how gripping, cannot match.³⁶

But sports arenas are more than just *potential* fora for the dissemination of ideas; according to Lakier, they are by *default* expressive environments:

The explicit orientation of spectator sports toward an audience establishes a strong presumption that something expressive is taking place. After all, why else would individuals address an audience if they did not wish to thereby communicate a message of some sort? And why would the audience pay good money to watch them if they received no messages from the act?³⁷

Even the U.N. recognizes sports' influential power. Between 1993 and 2008, the U.N. General Assembly adopted twelve resolutions supporting the IOC and Olympic Movement, acknowledging “the critical role of sports in society.”³⁸ Eight of those resolutions are entitled, “Building a peaceful and better world through sports and the Olympic ideal”; the other four are entitled “Sport as a means to promote

35. 2014 FIFA World Cup Reached 3.2 Billion Viewers, One Billion Watched Final, FIFA (Dec. 16, 2015), <http://www.fifa.com/worldcup/news/y=2015/m=12/news=2014-fifa-world-cuptm-reached-3-2-billion-viewers-one-billion-watched—2745519.html> [perma.cc/Z2TA-3A62].

36. Genevieve Lakier, *Sport as Speech*, 16 U. PA. J. CONST. L. 1109, 1134 (2014).

37. *Id.* at 1116.

38. Letter from the Permanent Representative of Italy to the U.N., (July 14, 2009), http://www.un.org/ga/search/view_doc.asp?symbol=A/64/145 [https://perma.cc/MH3X-VE83].

education, health, peace and development.”³⁹ In similar fashion, the European Union amended its constitution in 2007 to recognize sports as a “social and educational function.”⁴⁰

In 2001, the U.N. enshrined its recognition of sports as an agent for social progress by establishing the Office on Sport for Development and Peace.⁴¹ Then, in 2013, the U.N. declared April 6th the “International Day of Sport for Development and Peace.”⁴² During that same year, the U.N. Human Rights Council recognized “sport[s] as a universal language that contributes to educating people on the values of respect, diversity, tolerance, and fairness and as a means to combat all forms of discrimination and promote social inclusion for all.”⁴³

But sports can do more than just facilitate social progress; sporting events can also expose countries’ human rights violations and compel their compliance with international law. For example, U.N. Secretary-General Boutros Boutros-Ghali suggested that banning countries from the Olympic Games could be a powerful tool for the international community to show its disapproval of those countries’ human rights violations.⁴⁴ Such a ban has already been credited with changing South Africa’s oppressive apartheid regime.⁴⁵ Similarly, the 2008 Beijing Olympics⁴⁶ and 2014 Sochi Games⁴⁷ highlighted their host countries’

39. *Id.*

40. Treaty of Lisbon art. 2, ¶ 124, Dec. 17, 2007, E.T.S. No. 2007/C 306/01.

41. See *United Nations Office on Sport for Development and Peace*, U.N., <https://www.un.org/sport/why-sport/history> [<http://perma.cc/4H7N-8ASV>].

42. G.A. Res. 67/296, ¶ 1 (Sept. 18, 2013).

43. Human Rights Council Res. 24/1, U.N. Doc. A/HRC/RES/24/1, at 1 (Oct. 8, 2013).

44. Julie H. Liu, *Lighting the Torch of Human Rights: The Olympic Games as a Vehicle for Human Rights Reform*, 5 NW. U. J. HUM. RTS. 213, 233 (2007) (citation omitted).

45. *Id.*

46. *China: Olympics Harm Key Human Rights*, HUMAN RIGHTS WATCH (Aug. 6, 2008, 8:00 PM), <https://www.hrw.org/news/2008/08/06/china-olympics-harm-key-human-rights> [<https://perma.cc/HD5W-JCAC>].

47. *Russia: Winter Games Olympic Torch Throws Light on Human Rights Violations*, AMNESTY INT’L (Oct. 3, 2013, 12:00 AM), <https://www.amnesty.org/en/latest/news/2013/10/russia-winter-games-olympic-torch-throws-light-human-rights-violations> [<https://perma.cc/4235-SZ6M>].

human rights violations. In Beijing, Human Rights Watch observed state abuses such as the “harassment and restriction of foreign media,” the removal of “undesirables” from the city of Beijing, and “[t]he silencing of Chinese citizens who express[ed] concerns about Olympic-related rights abuses.”⁴⁸ In Sochi, Amnesty International reported state issues such as “homophobic legislation” and the detainment of individuals engaged in peaceful protest.⁴⁹

A. *Despite Doing So Themselves, Athletic Organizations Prohibit Athletes from Communicating Their Messages on the Field*

Major athletic organizations recognize the global sports arena’s enormous potential as a forum for promoting human rights issues.⁵⁰ For example, in 2006, FIFA launched its “Say No to Racism” campaign.⁵¹ During that campaign, the organization prominently displayed “Say No to Racism” banners during pre-match formalities.⁵² Similarly, “[s]ince 2009, the NFL has dressed up its fields, sidelines and players in pink every October to raise awareness and funds for breast cancer screenings and education in conjunction with the American Cancer Society.”⁵³ The league also sells “Breast Cancer Awareness Gear on its website.”⁵⁴

While organizations engage in such public expression as a whole, many of them prohibit athletes from doing so as individuals. Article 50 section 2 of the Olympic Charter provides that “[n]o kind of demonstration or political, religious or racial propaganda is permitted in

48. *China: Olympics Harm Key Human Rights*, *supra* note 46.

49. *Russia: Winter Games Olympic Torch Throws Light on Human Rights Violations*, *supra* note 47.

50. See, e.g., *FIFA Against Racism: A Decade of Milestones*, FIFA (Mar. 2, 2011) <http://www.fifa.com/sustainability/news/y=2011/m=3/news=fifa-against-racism-decade-milestones-1384919.html> [<http://perma.cc/W3B3-G2TD>].

51. *Id.*

52. *Id.*

53. Jenny Vrentas, *NFL Moves on from Pink October*, SPORTS ILLUSTRATED (Dec. 13, 2016), <https://www.si.com/mmqb/2016/12/13/nfl-breast-cancer-awareness-month-october-becomes-all-cancer-awareness-month> [<http://archive.is/9CnjY>].

54. *NFL Breast Cancer Awareness Gear*, NFL, http://www.nflshop.com/Breast_Cancer_Awareness_Gear [<https://perma.cc/5W37-H73L>].

any Olympic sites, venues or other areas.”⁵⁵ Often, contracts place specific restrictions on what athletes can say and do in public.⁵⁶ The Union of European Football Associations (“UEFA”) and FIFA prohibit any kind of political, religious, or personal slogans on a player’s basic equipment.⁵⁷ U.S. organizations, such as the NFL, have similar rules preventing athletes from conveying political messages on their uniforms or equipment.⁵⁸

Moreover, sports organizations appear to impose these restrictions subjectively, exposing athletes to a broad risk of sanctions for even minor transgressions.⁵⁹ For example, in 2016, FIFA fined the English Football Association 45,000 Swiss francs because their members displayed “poppies”—a symbol of National Armistice Day—during the World Cup qualifier against Scotland.⁶⁰ Similarly, Scottish and Irish clubs were fined for flying the Palestinian flag in stadiums.⁶¹ During the Sochi Games, the IOC even reprimanded athletes for placing small

55. *Olympic Charter*, INT’L OLYMPIC COMM. 1, 91 (Aug. 2, 2016), <https://www.olympic.org/documents/olympic-charter> [<https://perma.cc/CD34-EDZJ>].

56. Laurence Halsted, *Olympic Athletes Must Exercise Their Right to Speak Beyond Their Sport*, GUARDIAN (May 19, 2016, 5:00 AM), <https://www.theguardian.com/sport/blog/2016/may/19/olympic-athletes-speak-out-politics-social-issues-laurence-halsted-fencer-rio-games> [<https://perma.cc/3YFP-BEAY>].

57. Fédération Internationale de Football Association, *Laws of the Game (2015/2016)*, FIFA 1, 24 (2015), http://resources.FIFA.com/mm/document/footballdevelopment/refereeing/02/36/01/11/lawsofthegameweben_neutral.pdf [<https://perma.cc/8RTE-4B7C>].

58. *2016 Official Playing Rules of the National Football League*, NFL 1, 23 (2016), <http://edge-operations.nfl.com/media/2224/2016-nfl-rulebook.pdf> [<http://perma.cc/F9C9-H4AR>].

59. See Charles Maurice, *Politics and Sport: How FIFA, UEFA and the IOC Regulate Political Statements by Athletes*, LAWINSPOUR (May 20, 2016), <http://www.lawinsport.com/articles/item/politics-and-sport-how-fifa-uefa-and-the-ioc-regulat-political-staetments-by-athletes> [<http://perma.cc/6JL3-RQQQ>].

60. PA Sport, *FIFA Fines English, Scottish, Welsh and Northern Irish FAs for Poppies*, ESPN FC (Dec. 19, 2016), <http://www.espnfc.com/blog-fifa/story/3023352/fifa-fines-home-nations-for-poppies> [<https://perma.cc/E8NB-WH5M>].

61. *Celtic and St Johnstone Fined by UEFA for Displaying Palestinian Flags at European Games*, DAILY RECORD (Sep. 2, 2014, 10:39 AM), <http://www.scotlandnow.dailyrecord.co.uk/sport/celtic-st-johnstone-fined-uefa-4150513> [<http://archive.is/PSHn3>].

stickers on their helmets in memory of deceased freestyle skier Sarah Burke, calling the gesture political.⁶²

IV. MAJOR ATHLETIC ORGANIZATIONS' DUTIES UNDER INTERNATIONAL LAW

Non-Governmental Organizations (“NGOs”), athletic organizations included, are growing more and more powerful in the global political arena.⁶³ As a result, certain large NGOs, like the IOC, possess the necessary traits for “legal personality.”⁶⁴ Accordingly, international law—which currently only applies to governmental bodies—should also apply to these NGOs.

A. *NGOs Play an Increasing Role in the Formation of International Law*

When it comes to the formation and enforcement of international law, NGOs play an increasingly significant role. For example, the International Committee of the Red Cross (“ICRC”), a Swiss entity ascribed legal authority by the 1949 Geneva Conventions, influences and promotes international humanitarian law.⁶⁵ For example, in 2005, the ICRC published a 5,000 page report identifying 161 rules that serve as current customary international law.⁶⁶

62. Karolos Grohmann, *IOC Bans Burke Memorial Stickers, Norway Armbands a No-No*, REUTERS (Feb. 10, 2014, 1:42 AM), <http://uk.reuters.com/article/uk-olympics-stickers/ioc-bans-burke-memorial-stickers-norway-armbands-a-no-no-id.UKBREA190B620140210> [<https://perma.cc/3QNG-QEDQ>].

63. See Menno T. Kamminga, *The Evolving Status of NGOs under International Law: A Threat to the Inter-State System?*, in XIII/3 NON-STATE ACTORS AND HUMAN RIGHTS 93, 101 (Philip Alston, ed. 2005)

64. See David. J. Ettinger, *The Legal Status of the International Olympic Committee*, 4 PACE INT'L L. REV. 97, 102–109 (1992).

65. *The ICRC Since 1945: The Geneva Conventions of 1949*, INT'L COMM. OF THE RED CROSS (Mar. 5, 2005), <https://www.icrc.org/eng/resources/documents/misc/icrc-genevaconventions-revision-1949.htm> [<https://perma.cc/62FW-9BNR>].

66. François Bugnion, *Customary International Humanitarian Law*, INT'L COMM. OF THE RED CROSS (Nov. 16–19, 2005), <https://www.icrc.org/eng/resources/documents/statement/statement-customary-law-161105.htm> [<https://perma.cc/RQX5-RHCE>].

The global community itself recognizes NGOs' real and distinct power.⁶⁷ In its charter, the U.N. expressly acknowledges NGOs as legitimate sources for consultation in their areas of competency.⁶⁸ A 1998 U.N. General Assembly resolution explicitly recognized NGOs' contribution to promoting human rights.⁶⁹ The U.N. Committee Against Torture recognizes NGOs as valuable sources for information-gathering and report-writing;⁷⁰ it allows the direct submission of these reports to the committee for consideration.⁷¹ The committee also meets with NGOs and National Human Rights Agencies three times a year, even before meeting with state representatives.⁷²

B. Major NGOs Should Be Ascribed Legal Personality

While legal personality—recognition as an equal international-community member—has traditionally been restricted to sovereign states, modern international-law theories suggest non-state actors should be included as well.⁷³ And while the idea of separating legal personality from the territorial boundaries of sovereign states may seem “far-reaching,”⁷⁴ certain NGOs already possess many of the traits necessary for global recognition, including their direct or indirect influence in areas of international law⁷⁵ and their power to enter into relationships

67. Kamminga, *supra* note 63, at 109.

68. U.N. Charter art. 71 (providing that “[t]he Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence”)

69. G.A. Res. 53/144, art. 16, 18 (Mar. 8, 1999).

70. United Nations Committee Against Torture, *Information for Civil Society Organisations and National Human Rights Institutions (NHRIs)*, U.N. HUM. RTS. OFF. OF THE HIGH COMMISSIONER, <http://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx> [<http://perma.cc/RG9Z-HRT2>].

71. *Id.*

72. *See id.*

73. REPHAEL HAREL BEN-ARI, *THE NORMATIVE POSITION OF INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS UNDER INTERNATIONAL LAW* 7–11 (2012).

74. *Id.* at 11.

75. *See id.* at 12.

with other recognized members of the international community, including nation states.⁷⁶

The IOC is a prime example of an NGO that meets the legal-personality criteria.⁷⁷ Established in 1894 and headquartered in the city of Lausanne, Switzerland, the IOC is recognized as the highest authority in sports.⁷⁸ It has been described as “the nerve centre of a rapidly developing corporate monolith, commanding an extraordinary budget,” and generating revenues in the hundreds of millions.⁷⁹ As a recognized and legitimate international personality, the IOC has the ability to exert tremendous influence over sovereign states, forcing them to comply with its rules and regulations.⁸⁰ The IOC’s influence was highlighted during the Helsinki Accords, where dozens of European nations recognized the Olympic Charter as effectively having the same authority as international customary law.⁸¹

Additionally, the IOC has the capacity to enter into relations with states and other organizations, a criterion international law scholar Malcolm Shaw argues is a significant element of legal-personality recognition.⁸² Much like state ambassadors, IOC members act as formal IOC representatives when engaging with national governments.⁸³ These governments enter into formal agreements with the IOC whereby they agree to abide by the IOC’s rules and regulations and comply with

76. See Ettinger, *supra* note 64, at 102.

77. *Id.* at 102–03.

78. *Olympic House*, INT’L OLYMPIC COMM., <http://www.olympic.org/olympic-house> [<https://perma.cc/LXU8-EL97>]; The Organisation, INT’L OLYMPIC COMM., <http://www.olympic.org/about-ioc-institution> [<https://perma.cc/LP5K-A3BS>].

79. Gareth Edwards, *Faster, Higher, Stronger: A Critical Analysis of the Olympics*, 1 *Irish Marxist Rev.* 73, 80–81 (2012).

80. See Ettinger, *supra* note 64, at 115.

81. Ettinger, *supra* note 64, at 104–05.

82. MALCOM N. SHAW, *INTERNATIONAL LAW* 260 (6th ed., Cambridge Univ. Press 2008).

83. Olympic Charter, INT’L OLYMPIC COMMITTEE 1, 33 (Aug. 2, 2016), <https://www.olympic.org/documents/olympic-charter> [<https://perma.cc/CD34-EDZJ>] (stating “Members of the IOC represent and promote the interests of the IOC and the Olympic Movement in their countries and in the organizations of the Olympic Movement in which they serve.”).

customary international law.⁸⁴ States that ignore the Olympic Charter's rules face suspension from future international events.⁸⁵

Like state-actors, the IOC also has a formal relationship with the U.N.⁸⁶ Both organizations are officially committed to working together to better the world through sport.⁸⁷ In fact, the concept of the "Olympic truce" is considered in the framework of the UN Charter.⁸⁸ More importantly, the U.N. General Assembly granted the IOC international observer status based on its contributions in furtherance of U.N. Millennium goals.⁸⁹ This gave the IOC the same legal status as the International Committee of the Red Cross,⁹⁰ the International Federation of Red Cross and Red Crescent Societies,⁹¹ and the Inter-Parliamentary Union,⁹² affirming the IOC's unique status as a key member in the international community.

Furthermore, the IOC works on a wide range of issues with international agencies,⁹³ including the U.N. Educational, Scientific, and

84. Ettinger, *supra* note 64, at 104.

85. For example, in 2010, the IOC suspended Kuwait's National Olympic Committee because of "political interference by the government in the Kuwaiti sports movement," thereby impeding the movement's ability to comply with the Olympic Charter *The IOC Suspends the NOC of Kuwait*, INT'L OLYMPIC COMMITTEE (Jan. 4, 2010) <https://www.olympic.org/news/the-ioc-suspends-the-noc-of-kuwait> [<http://perma.cc/N8RY-FFZJ>].

86. *See, e.g., Cooperation with the U.N.*, INT'L OLYMPIC COMMITTEE, <https://www.olympic.cooperation-with-the-un> [<https://perma.cc/85LC-VLCE>].

87. *See* United Nations Office on Sport for Development and Peace, *Annual Report 2015*, U.N. 1 (2016), https://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/Annual_Report_2015_final.pdf [<https://perma.cc/W6J5-35XM>].

88. G.A. Res. 70/4, ¶ 2 (Nov. 13, 2015).

89. G.A. Res. 64/3, ¶ 1 (Oct. 22, 2009); *IOC Becomes UN Observer*, INT'L OLYMPIC COMMITTEE (Oct. 19, 2009), <http://www.olympic.org/news/ioc-becomes-un-observer> [<http://perma.cc/E6TG-68L8>].

90. *See* G.A. Res. 45/6, ¶ 1 (Oct. 16, 1990).

91. *See* G.A. Res. 49/2, ¶ 1 (Oct. 19, 1994).

92. *See* G.A. Res. 57/32, ¶ 1 (Nov. 19, 2002).

93. Letter from the Permanent Representative of Italy to the UN., (July 14, 2009), http://www.un.org/ga/search/view_doc.asp?symbol=A/64/145 [<https://perma.cc/MH3X-VE83>].

Cultural Organization (UNESCO); the U.N. International Children's Emergency Fund (UNICEF); the U.N. Programme on HIV/AIDS (UNAIDS); the U.N. Environment Programme (UNEP); the World Health Organization (WHO); the World Food Programme (WFP); and the U.N. High Commissioner for Refugees (UNHCR).⁹⁴ The relationship goes both ways: as of 2009, the United Nations now plays a role in the Olympic Games.⁹⁵

C. *International Law Should Apply to NGOs Directly*

NGOs are already bound by international law, albeit indirectly. States, as parties to human rights conventions, bear an affirmative obligation to protect human rights within their boundaries.⁹⁶ Article 10 of the European Convention on Human Rights ("ECHR") requires that states "take action to prevent the freedom of expression of a private individual from being infringed."⁹⁷ As such, states must ensure that all private entities operating within their territory, NGOs included, comply with these human rights laws too.⁹⁸ International court decisions interpreting the ECHR have confirmed this obligation.⁹⁹ Thus, not only must states avoid interfering with their citizens' free expression, but they must also prevent others within their state from doing the same.¹⁰⁰ It follows, then, that states must ensure that athletic organizations within

94. *Id.*

95. *See* Cooperation with the U.N., *supra* note 86

96. Frédérique Faut, *The Prohibition of Political Statements by Athletes and Its Consistency with Article 10 of the European Convention on Human Rights: Speech Is Silver, Silence Is Gold?*, 14 INT'L SPORTS L. J. 253, 260 (2014).

97. *Id.* at 259–60.

98. *See id.* at 260.

99. *Id.* at 260–61; *see also* ECHR, *Dink v. Turkey*, 14 September 2010, application nos2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, para. 106 and 137 (holding that the Turkish government violated Article 10 of the ECHR by failing to prevent the assassination of an outspoken Turkish reporter of Armenian descent, even though authorities knew of the assassination plot).

100. Faut, *supra* note 96, at 259–60.

their territory do not violate athletes' human rights, including their right to free expression.¹⁰¹

As influential and powerful members of the international community, however, large NGOs themselves should be bound by international law. In apparent support of this notion, some international-law scholars have ceased endorsing states as the sole subjects of human rights obligations; their attention has shifted largely towards NGOs who already play an important role in the international legal community.¹⁰² These NGOs—trade unions, church groups, and other non-state actors—have stopped relying on governments to regulate transnational corporations' behavior and sanction international law violations.¹⁰³ Instead, these organizations themselves have begun enforcing compliance by mobilizing public opinion and exerting direct pressure on companies and international organizations.¹⁰⁴ And because they can express opinions that public officials may be unable or unwilling to express, these non-state actors can serve as a voice for politically-oppressed minority groups.¹⁰⁵

Moreover, the UDHR's Preamble addresses "individuals" without distinguishing between public and private actors.¹⁰⁶ This seems to imply that the declaration's rules bind state and non-state actors alike. Thus, just as states owe an affirmative obligation to protect human rights within their boundaries,¹⁰⁷ the Preamble's broad language is consistent with NGOs—like the IOC—being held to that same standard. NGOs seem to have already assumed this responsibility. In 2015,

101. See generally Faut, *supra* note 96, at 261.

102. See August Reinisch, *The Changing International Legal Framework for Dealing with Non-State Actors*, in *NON-STATE ACTORS AND HUMAN RIGHTS* 75 (Philip Alston ed., 2005).

103. *Id.*

104. *Id.*

105. LUNG-CHU CHEN, *AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW* 82–83 (3rd ed., Oxford Univ. Press 2016).

106. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR] (stating in its preamble that "[e]very individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms").

107. Human Rights Comm., Gen. Comment No. 34, ¶ 7, U.N. Doc. CCPR/C/GC34 (Sept. 12, 2011).

leading human rights NGOs established the Sport and Rights Alliance (“SRA”) to ensure human rights rules are respected, particularly during large sporting events.¹⁰⁸ The SRA consults with the decision-makers of large international athletic events to ensure they run their events in a manner respectful of human rights.¹⁰⁹ For example, in 2015 the SRA called upon the European Olympic Committee to compel Azerbaijan to release unjustly imprisoned journalists and human rights activists prior to the European Games’ opening ceremony.¹¹⁰

D. Athletic Organizations’ Must Allow Their Athletes Free Expression

International law, whether applied directly to the organizations themselves or indirectly through sovereign states’ obligations, prohibits NGOs—such as athletic organizations—from restricting free expression. Thus, the IOC’s ban on demonstrations or propaganda,¹¹¹ the UEFA and FIFA’s prohibition on uniform or equipment slogans,¹¹² and similar policies by the NFL¹¹³ violate the UDHR and ICCPR.¹¹⁴ The SRA has been no help in this regard: its progress has been limited to addressing labor rights, anti-corruption measures,¹¹⁵ and the arbitrary

108. See *Sports and Rights Alliance*, AMNESTY INT’L, <http://www.sportandhumanrights.org/wordpress/index.php/2015/07/06/sport-and-rights-alliance/> [http://perma.cc/95XJ-PGS6].

109. See *id.*

110. See *id.*

111. Olympic Charter, *supra* note 83, at 91.

112. Fédération Internationale de Football Association, *Laws of the Game (2015/2016)*, FIFA 1, 24 (2015), http://resources.FIFA.com/mm/document/footballdevelopment/refereeing/02/36/01/11/lawsofthegameweben_neutral.pdf [https://perma.cc/8RTE-4B7C].

113. *2016 Official Playing Rules of the National Football League*, NFL 1, 23 (2016), <http://edge-operations.nfl.com/media/2224/2016-nfl-rulebook.pdf> [http://perma.cc/F9C9-H4AR].

114. UDHR, *supra* note 106, art. 19 (provid. ing that “[e]veryone has the right to freedom of opinion and expression”); International Covenant on Civil and Political Rights art19, ¶ 2, Dec19, 1966, 999 U.N.T.S.171 [hereinafter ICCPR] (provid. ing that “[e]veryone shall have the right to freedom of expression”).

115. See *Agenda 2020: Human Rights, Labour Standards and Anti-Corruption Measures Must Be Central to Olympic Games Bids*, AMNESTY INT’L UK (Feb. 24, 2015, 10:51 PM), <https://www.amnesty.org.uk/press-releases/agenda-2020-human-rights-labour-standards-and-anti-corruption-measures-must-be> [https://perma.cc/8C3Y-TC6M].

detention of opposition members;¹¹⁶ it has yet to adequately address freedom of expression violations.¹¹⁷

To be fair, athletic organizations face a tough choice. While, as explained above, these organizations must comply with international law, they also bear an interest in “maintaining the independence (and ‘purity’) of sport.”¹¹⁸ The broadcast of strong political messages at games could hinder their ability to draw together people with starkly different views and opinions.¹¹⁹ Without this ability, these organizations could face heavy financial loss from decreased fandom. Such a decrease could also diminish these organizations’ platform for broadcasting the positive messages they already communicate, such as FIFA’s campaign against racism¹²⁰ and the NFL’s quest for breast cancer awareness.¹²¹

Perhaps the solution lies somewhere in the middle. A theoretical difference could exist between purely political gestures and ones that relate to human rights issues. To maintain their general political objectivity, sports organizations could continue to prohibit purely domestic political gestures,¹²² such as flying a banner in support of a preferred presidential candidate. At the same time, they could allow athletes to express support for human rights, such as racial equality.¹²³

116. *Azerbaijan: New Sport and Rights Coalition Calls for Prisoners releases Ahead of Baku Games in June*, AMNESTY INT’L (Apr. 7, 2015, 12:10 PM), <https://www.amnesty.org.uk/press-releases/azerbaijan-new-sport-and-rights-coalition-calls-prisoner-releases-ahead-baku-games> [<https://perma.cc/HM2T-Q7VG>].

117. *See Sports and Rights Alliance, supra* note 108.

118. *See Maurice, supra* note 59.

119. *See id.*

120. *FIFA Against Racism: A Decade of Milestones*, FIFA (Mar. 2, 2011) <http://www.fifa.com/sustainability/news/y=2011/m=3/news=fifa-against-racism-decade-milestones-1384919.html> [<http://perma.cc/W3B3-G2TD>].

121. Jenny Vrentas, NFL Moves on from Pink October, SPORTS ILLUSTRATED (Dec. 13, 2016), <https://www.si.com/mmqb/2016/12/13/nfl-breast-cancer-awareness-month-october-becomes-all-cancer-awareness-month> [<http://archive.is/9CnjY>]; *see* NFL Breast Cancer Awareness Gear, NFL, http://www.nflshop.com/Breast_Cancer_Awareness_Gear [<https://perma.cc/5W37-H73L>].

122. *See, e.g., FIFA to Investigate Argentina’s Falklands Banner*, BBC (Jun. 14, 2014) <http://www.bbc.com/sport/football/27846311> [<https://perma.cc/U2S6-A9R4>].

123. *See Kareem Abdul-Jabbar, Abdul-Jabbar: Insulting Colin Kaepernick Says More About Our Patriotism than His*, WASHINGTON POST (Aug. 30, 2016), <http://www.washingtonpost.com/>

In this context, it is possible for an athlete to discuss fundamental rights addressed in international instruments, like the right to life, the right to be free from discrimination, the right to health, and the right to education, among others.¹²⁴ However, expression that clearly advertises a political or religious stance can be prohibited because of the different nature of sport activities.

A huge challenge is defining “political statements.” The lack of clear criteria of what constitutes a political statement allows for subjective interpretation of statutes and regulations.¹²⁵ The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression points out how governments treat “words as weapons.”¹²⁶ By adopting ambiguous laws, government officials maintain unfair discretion.¹²⁷

This idea is also relevant when it comes to athletic organizations. Confusion as to what constitutes a political statement creates a barrier to effective public oversight. And this, coupled with the fact that IOC Executive Board decisions are final with regards to “disqualification or withdrawal of accreditation,”¹²⁸ places athletes’ fates in the hands of the Executive Board’s unfettered discretion.

By limiting these restrictions accordingly, sports organizations would afford athletes the same right available to celebrities in the film, television, and music industries: the right to use their platform to highlight injustices and to communicate their beliefs on human rights

posteverything/wp/2016/08/30/insulting-colin-kaepernick-says-more-about-our-patriotism-than-his/?utm_term=.b68866d5de1b [http://perma.cc/S5H9-92H2].

124. See UDHR, *supra* note 106.

125. See Charles Maurice, *Politics and Sport: How FIFA, UEFA and the IOC Regulate Political Statements by Athletes*, LAWINSPO (May 20, 2016), <http://www.lawinsport.com/articles/item/politics-and-sport-how-fifa-uefa-and-the-ioc-regulat-political-staetments-by-athletes> [http://perma.cc/6JL3-RQQQ].

126. U.N. Secretary-General, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, ¶ 3, U.N. Doc. A/71/373 (Sept. 6, 2016).

127. See *id.*

128. Frédérique Faut, *The Prohibition of Political Statements by Athletes and Its Consistency with Article 10 of the European Convention on Human Rights: Speech Is Silver, Silence Is Gold?*, 14 INT’L SPORTS L. J. 253, 256 (2014).

issues without fear of repercussion.¹²⁹ Additionally, by only restricting purely political messages, which are often highly-charged hot topics, sports organizations would likely be complying with the ICCPR's allowance for restrictions necessary "[f]or respect of the rights or reputations of others" and "[f]or the protection of national security or of public order."¹³⁰

IV. CONCLUSION

By virtue of their global platform at sporting events, athletes hold tremendous potential to promote human rights values.¹³¹ International law guarantees their right to do so.¹³² And whether applied to them directly, or indirectly through the states within which they reside, athletic organizations, too, are bound to uphold this guarantee.¹³³ Nevertheless, athletic organizations continue to restrict their athletes' freedom of speech in contravention of international law.¹³⁴

Despite these restrictions and the risk of penalties, athletes continue to use their platform to promote human rights. In 2012, several NBA stars wore hooded sweatshirts to stand in solidarity with Trayvon Martin's family, an unarmed black teenager fatally shot by a neighborhood crime-watch volunteer.¹³⁵ That same year, professional

129. See Steve Dove, *Asghar Farhadi Oscar 2017 Winner Speech Delivered By Anousheh Ansari*, THE OSCARS (Feb. 27, 2017, 3:30 AM), <http://oscar.go.com/news/winners/asghar-farhadi-oscar-2017-winner-speech-delivered-by-anousheh-ansari> [<http://perma.cc/3LVU-BVTZ>]; Dave Lewis, *11 of the Most Political Moments in Oscar History*, L.A. TIMES (Feb. 24, 2017, 5:00 AM), <http://www.latimes.com/entertainment/movies/la-et-mn-controversial-oscar-moments-20170226-story.html> [<http://perma.cc/GP8A-QAB9>]; Giovanni Russonello, *Beyoncé's and Adele's Grammy Speeches: Transcripts*, N.Y. TIMES (Feb. 12, 2017), http://www.nytimes.com/2017/02/12/arts/music/beyonce-speech-grammys-trump.html?_r=0 [<http://perma.cc/G78H-EKJQ>].

130. ICCPR, *supra* note 114, art. 19, ¶ 3.

131. See, e.g., Genevieve Lakier, *Sport as Speech*, 16 U. PA. J. CONST. L. 1109, 1134 (2014).

132. See *supra* Part II.

133. See *supra* Part IV.

134. See *supra* Part III.

135. *Heat Don Hoodies After Teen's Death*, ESPN (Mar. 24, 2012), http://www.espn.com/nba/truehoop/miamiheat/story/_/id/17728618/miami-heat-don-hoodies-response-death-teen-trayvon-martin [<https://perma.cc/8L2A-D2SU>].

soccer player Anton Ferdinand refused to shake the hand of John Terry, a player who had previously made racial slurs on the field.¹³⁶ In 2014, several NBA and NFL players protested racism and police shootings of unarmed African Americans by wearing shirts displaying the phrase “I Can’t Breathe,”¹³⁷ and posing on the field with the “hands up don’t shoot” gesture.¹³⁸ To this day, some players continue to refuse to stand during the U.S. National Anthem to protest racial inequality.¹³⁹

Instead of restricting their rights, athletic organizations should encourage athletes to use their “influence and experience as role models,”¹⁴⁰ and to be leaders who contribute to “promoting peace and human understanding through sport.”¹⁴¹ The promotion of human rights should remain politically neutral. And if athletic organizations want something to take issue with, let it be the fact that more than fifty years after Muhammad Ali forfeited his boxing title to stand against racism, we still need to call attention to these same human-rights violations today.¹⁴²

136. Telegraph Sport, *Anton Ferdinand Refuses Handshake with John Terry or Ashley Cole ahead of QPR v Chelsea at Loftus Road*, TELEGRAPH (Sept. 15, 2012, 3:38 PM), <http://www.telegraph.co.uk/sport/football/teams/queens-park-rangers/9545204/Anton-Ferdinand-refuses-handshake-with-John-Terry-or-Ashley-Cole-ahead-of-QPR-v-Chelsea-at-Loftus-Road.html> [<https://perma.cc/LU8R-42VY>].

137. Kareem Abdul-Jabbar, *Abdul-Jabbar: Insulting Colin Kaepernick Says More About Our Patriotism than His*, WASHPOST (Aug. 30, 2016), http://www.washingtonpost.com/posteverything/wp/2016/08/30/insulting-colin-kaepernick-says-more-about-our-patriotism-than-his/?utm_term=.b68866d5de1b [<http://perma.cc/S5H9-92H2>].

138. Molly Geary, *St. Louis Police Officers Angered by Rams’ ‘Hands Up, Don’t Shoot’ Pose*, SPORTS ILLUSTRATED (Nov. 30, 2014), <http://www.si.com/nfl/2014/11/30/st-louis-rams-ferguson-protests> [<http://perma.cc/SC5D-XGSE>].

139. Steve Wyche, *Colin Kaepernick Explains Why He Sat During National Anthem*, NFL (Aug. 27, 2016, 10:04 AM), <http://www.nfl.com/news/story/0ap3000000691077/article/colin-kaepernick-explains-why-he-sat-during-national-anthem> [<https://perma.cc/Q22A-ZU6M>].

140. United Nations Office on Sport for Development and Peace, *Achieving the Objectives of the United Nations through Sport*, U.N. 1, 4 (Aug. 2011), http://www.un.org/sport/sites/www.un.org.sport/files/ckfiles/files/Achieving%20the%20Objectives%20of%20the%20UN%20through%20Sport_Sep_2011_small.pdf [<http://perma.cc/7GMG-JWXY>].

141. G.A. Res. 70/4, ¶ 4 (Nov. 13, 2015).

142. Kareem Abdul-Jabbar, *Abdul-Jabbar: Insulting Colin Kaepernick Says More About Our Patriotism than His*, WASHPOST (Aug. 30, 2016), http://www.washingtonpost.com/posteverything/wp/2016/08/30/insulting-colin-kaepernick-says-more-about-our-patriotism-than-his/?utm_term=.b68866d5de1b [<http://perma.cc/S5H9-92H2>].

