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Nonaggressive Sanctions in the International Sports Arena

by James A.R. Nafziger*

I. INTRODUCTION

Olympia glitters and overshadows every other contest.¹

Today's observer of the Olympic Games might reverse Pindar's lines: all other contests—military, political and economic—seem to overshadow Olympia. Within the international sports arena, some of the glitter is of rather tarnished gold, some of the shadow ominous. The Olympic Games blend cultural ideals and political-economic realities.

Rule 9 of the Olympic Charter provides that the Olympic Games "are contests between individuals and teams, and not between countries,"² but the Olympic motto—"faster, higher, stronger"³—rings in the ears of athletes and political leaders alike. Still, the interlocking rings of the Olympic flag and symbol remind one of the peaceful and fraternal values which keep the Olympic torch alive in the human conscience.

As sports and political arenas merge, connections between sports and political sanctions emerge. Thus, international sports competition functions partly as a nonaggressive sanction. Although its cathartic capacity to diminish aggressive impulses may be doubtful,⁴ international competition nevertheless offers a highly visible alternative in the global living room.

Politics can, however, defeat an athlete. The history of international sports competition is replete with political threats and these threats will probably persist.⁵ The Canadian denial of visas to Taiwanese entrants in

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¹ Pindar, quoted in Economides, *Olympic Games: A Return to Olympia*, 1 HELLENIC REV. INT'L REL. 168 (1980).

² Olympic Charter (1983).

³ *Id.* at Rule 6, translated from "Citius, Altius, Fortius."

⁴ Lüschen, *Cooperation, Association, and Contest*, 14 J. CONFLICT RESOLUTION 21 (1970); Heinilä, *Notes on the Inter-Group Conflicts in International Sport*, 1 INT'L REV. SPORTS SOC. 31 (1966).

⁵ Nafziger & Strenk, *The Political Uses and Abuses of Sports*, 10 CONN. L. REV. 259,

the Montreal Games and the U.S.-led boycott of the Moscow Games are only the latest instances of geopolitical threats to athletes.

Given such threats, one must distinguish between the use and abuse of sports competition as a nonaggressive sanction. To clarify this distinction, it is useful to identify six political uses of international sports competition: international cooperation, national ideology and propaganda, official prestige, diplomatic recognition and nonrecognition, protest, and conflict.⁶ Of these, only diplomatic nonrecognition and conflict are clearly improper uses of sports competition, although variations on the other uses may constitute unfriendly acts. By far the greatest controversy surrounds the use of sports as protest in the form of official embargoes and boycotts. These activities constitute the principal threat to athletes and pose important legal questions.

II. THE LAW

A. *The General Rules of Retorsion and Reprisal*

Under what circumstances, then, are nonaggressive sanctions against sports competition illegal? Examples of illegal conduct are the use of sports as a pretext for conflict or for engaging in measures of coercion under Article 2(4) of the United Nations Charter,⁷ and the diplomatic use of power over sports competition to confirm diplomatic nonrecognition in violation of governing rules. Canada's refusal to issue visas to members of the Taiwanese Olympic team in 1976 is a salient example of such a violation.⁸ The most important issues relate, however, to the use of sport for official protest. Embargoes on competitors and boycotts on competition are the typical vehicles of protest.

Embargoes and boycotts are at least unfriendly acts. If, however, they are within a legally protected range of retaliatory sanctions, embargoes and boycotts may be acceptable measures of retorsion. To be acceptable, they must not violate Article 2(4) of the United Nations Charter, must conform to state practice and must obey general principles of law. For example, trade embargoes that do not violate the GATT, treaties of establishment, or other international law are generally regarded as acceptable measures of retorsion.⁹

260-61, *passim* (1978).

⁶ *Id.* at 261, 280-89.

⁷ "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." U.N. CHARTER art. 2, para. 4.

⁸ Nafziger & Strenk, *supra* note 5, at 281-83.

⁹ A retorsion is defined as "an unfriendly act or acts whereby one State answers *objectionable* (though not necessarily illegal) conduct of another State in a retaliatory manner."

Embargoes and boycotts may even be acceptable as reprisal measures against illegal acts of another state. To be considered acceptable, they must be reasonable. The three conditions enunciated in the *Naulilaa Incident Arbitration*¹⁰ best define the legitimate application of reprisals. These conditions are: (a) that the State against which reprisals are taken must have itself violated international law; (b) that prior to the reprisal measure, the initiating State must have attempted without success to obtain redress from the other State for the consequences of its illegal conduct; and (c) that the reprisals should not be excessive, that is, the reprisals should be necessary and not out of proportion with the act which motivated them. Thus, boycotts or embargoes may be acceptable as reprisals

after an unsatisfied demand to an act contrary to international law on the part of the offending state. They have the effect of suspending momentarily in the relations of the two states the observance of this or that rule of international law. They are limited by the experience of humanity and the rules of good faith, applicable in the relations of state with state. They would be illegal if a previous act contrary to international law had not furnished the reason for them. They aim to impose on the offending state reparation for the offense or the return to legality in avoidance of new offenses.¹¹

It is no accident, therefore, that states tend to justify self-help measures in terms of reparation, deterrence, or both. For example, in the rather garbled aftermath of the United States' decision to compel a boycott by the United States Olympic Committee of the Moscow Games,¹² the Carter Administration argued principles of diplomatic protection of nationals, deterrence and retribution. The President first justified the boycott on the grounds of a presumed danger to United States athletes and spectators,¹³ and, later on the grounds of deterring future aggression and sending the Soviets a "a signal of world outrage."¹⁴ The Secretary of State, however, viewed the boycott as retribution for the Soviet violation of what he thought was a principle against contemporaneous involvement by a sovereign host in open warfare.¹⁵

J. STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT* 288 (1959).

¹⁰ Portugal v. Germany, [1928] 2 U.N.R.I.A.A. 1012 (1949).

¹¹ *Id.* at 1017.

¹² See Nafziger, *Diplomatic Fun and the Games: A Commentary on the United States Boycott of the 1980 Summer Olympics*, 17 WILLAMETTE L. REV. 67 (1980). Throughout the remainder of this article, for simplicity's sake, the terms "embargo" and "boycott" will be used interchangeably.

¹³ 80 DEP'T ST. BULL., Jan. 1980, at Special-B.

¹⁴ 80 DEP'T ST. BULL., Mar. 1980, at 51.

¹⁵ *Id.* at 50. The following dialogue took place at a presidential news conference February 13, 1980:

B. *The Olympic Legal Framework*

To appraise the validity of sports embargoes and boycotts, it is essential to go beyond the customary law governing retaliation by examining the special regime of international sports law. The Olympic Charter best evidences international custom pertaining to sports competition, Olympic or not. The Rules of the Charter are administered by a "supreme authority,"¹⁶ the International Olympic Committee (IOC). The IOC is a body corporate by international law having juridical status and perpetual succession.¹⁷ Although a nongovernmental organization,¹⁸ the IOC plays a role on behalf of the global community analogous to the International Committee of the Red Cross in implementing humanitarian stipulations

Q. You have said that the Soviets have to be made to pay a price for invading Afghanistan, and your counsel has said that our boycott of the Olympics is not intended to be punitive. How do you explain the seeming difference between these two positions?

A. We have no desire to use the Olympics to punish, except the Soviets attach a major degree of importance to the holding of the Olympics in the Soviet Union. In their own propaganda material, they claim that the willingness of the International Olympic Committee to let the games be held in Moscow is an endorsement of the foreign policy and the peace-loving nature of the Soviet Union.

To me it's unconscionable for any nation to send athletes to the capital of a national under the aegis of the Olympics when that nation—that host nation—is actively involved in the invasion of and the subjugation of innocent people. And so, for that reason, I don't believe that we are at all obligated to send our athletes to Moscow.

And I would like to repeat, if the Soviet Union does not withdraw its troops from Afghanistan by the 20th of this month, then neither I nor the American people nor the Congress will support the sending of an Olympic team to Moscow this summer.

80 DEP'T ST. BULL., Mar. 1980, at Special-D.

¹⁶ Olympic Charter, *supra* note 2, at Rule 4. Rule 23 of the Olympic Charter provides, also, that "[t]he IOC is the final authority on all questions concerning the Olympic Games and the Olympic movement."

¹⁷ Olympic Charter, *supra* note 2, at Rule 11.

¹⁸ "The IOC was created by the Congress of Paris of 23rd June, 1894; it was entrusted with the control and development of the modern Olympic Games.

"It is a body corporate by international law having juridical status and perpetual succession. Its headquarters are in Switzerland. It is not formed for profit. . . ." Olympic Charter, *supra* note 2, at Rule 11.

"The IOC is a permanent organization. It selects such persons as it considers qualified to be members, provided that they speak French or English and are citizens of and reside in a country which possesses an NOC recognized by the IOC. The IOC welcomes them into membership with a brief ceremony during which they accept the required obligations and responsibilities.

"There shall be only one member in any country except in the largest and most active countries in the Olympic movement, and in those where the Olympic Games have been held, where they may be a maximum of two.

"Members of the IOC are representatives of the IOC in their countries and not their delegates to the IOC. They may not accept from governments or from any organizations or individuals instructions which shall in any way bind them or interfere with the independence of their vote. . . ." Olympic Charter, *supra* note 2, at Rule 12.

in time of war or other emergency.

The Olympic Charter provides that "[e]very person or organization that plays any part whatsoever in the Olympic movement shall accept the supreme authority of the IOC and shall be bound by its Rules and submit to its jurisdiction."¹⁹ Although the Olympic Movement, being nongovernmental, cannot in itself compel state obedience, its rules best evidence custom. For example, a 1977 Belgian court decision, confirming the position of the French courts, the Council of Europe, and the High Court of Justice of the European Communities, ruled that the international rules of sport supersede conflicting national policies and laws.²⁰ The Second Conference of European Sports Ministers adopted a resolution that explicitly confirmed the authority of the Olympic Charter.²¹ Furthermore, leading publicists have established the authority of the Olympic Rules in the international sports arena.²²

C. *The Substantive Rules of International Sports Law*

The principal safeguards against unwarranted intrusion by governments into the sports arena are found in Rules 3, 9, and 24. Rule 3, one of the cornerstones of international sports law, provides that "[n]o discrimination . . . is allowed against any country or person on grounds of race, religion, or *politics*."²³ Rule 9 states that "[t]he Games are contests between individuals and teams and not between countries."²⁴ Rule 24 obligates National Olympic Committees (NOCs) to be autonomous, to resist all political pressures, and to enforce the rules and Bye-laws of the IOC.²⁵ Further, Rule 24 provides that "NOCs shall be the sole authorities responsible for the representation of their respective countries at the Olympic Games. . . ."²⁶ Bye-law 8 to Rule 24 defines the term "representation" to cover the decision to participate.²⁷ Violations of the rules, such as yielding to political pressures, expose NOCs to penalties.²⁸ Thus, governmental intrusion into these rules of custom is abusive.

¹⁹ Olympic Charter, *supra* note 2, at Rule 4.

²⁰ See Bondoux, *Law and Sport*, 1978 OLYMPIC REV. 494, at 501-02; Garrigues, *The Impact of Community Law on Physical and Sports Activities*, 1979 OLYMPIC REV. 345.

²¹ Resolution adopted by the Second Conference of European Ministers Responsible for Sport, London, April 4-7, 1978, reprinted in 1978 OLYMPIC REV., at 391. For further background, see Howell, *Governmental Responsibilities in Sport*, 1978 OLYMPIC REV., at 209.

²² Silance, *Interaction of the Rules in Sports Law and the Laws and Treaties Made by Public Authorities*, 1977 OLYMPIC REV., at 619, 622, 627.

²³ Olympic Charter, *supra* note 2, at Rule 3 (emphasis added).

²⁴ *Id.* at Rule 9.

²⁵ *Id.* at Rule 24.

²⁶ *Id.* at Rule 24(B).

²⁷ *Id.* at Bye-law 8 to Rule 24.

²⁸ *Id.* at Rule 25.

The Helsinki Accords,²⁹ whatever their authority today, articulate normative support for this rule structure. The Accords, signed by the Soviet Union, the United States, Canada, and all European countries except Albania, provide that: "In order to expand existing links and co-operation in the field of sport, the participating State will encourage contacts and exchanges of this kind, including sports meetings and competitions of all sorts, *on the basis of the established international rules, regulations and practice.*"³⁰ These rules are not simply technical "rules of the game," such as the length of the playing field; rather, they are the customary rules, largely defined by the Olympic Charter, of international sports relations.³¹

III. DISCUSSION

A state may impose a sports boycott either to restrict participation by its nationals in foreign competition or to restrict access by foreign athletes to competition on its territory. Whether the restriction attaches to the outflow or the inflow of athletes does not, however, determine its legitimacy under international law. The threshold question is the *purpose*, not the nature of the boycott.

States usually impose sports boycotts for one of two purposes: To combat apartheid and racial discrimination, or to implement geopolitical strategy, generally along the East-West axis. Sports boycotts for the first purpose are generally legitimate whereas boycotts for the second purpose may or may not be. Let us look at each of these categories.

A. *Boycotts to Combat Apartheid and Racial Discrimination*

Although Olympic Rule 3 prohibits discrimination against "any coun-

²⁹ Conference on Security and Cooperation in Europe, Final Act, Aug. 1, 1975, *reprinted in* 14 I.L.M. 1292 (1975) [hereinafter cited as CSCE]. For bibliographies of literature pertaining to the Accords, see DEP'T ST. NEWSLETTER (Oct. 1980), at 60; Granier, *Human Rights and the Helsinki Conference on Security and Cooperation in Europe: An Annotated Bibliography of United States Government Documents*, 13 VAND. J. TRANSNAT'L L. 529 (1980). The European signatories are: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, and Yugoslavia. Canada and the United States also signed the Accords. Even though the Accords technically are not legally binding, they provide at least a morally compelling, comprehensive expression of norms to guide the behavior of the signatory states.

³⁰ CSCE, *supra* note 29, at 1315.

³¹ The qualifying adjective "international" in a code or agreement such as the Helsinki Accords is properly construed to refer to the relations among nations at the more or less governmental level.

try or person on grounds of . . . politics,"³² discrimination by states against South African athletes, for example, may be legitimate as a retaliatory measure against discrimination by the South African government on the basis of race, which is likewise proscribed by Rule 3. What must be shown is not just a general pattern of discrimination by the state whose nationals are targeted by the boycott, but specific discrimination in the training, team selection and integration of amateur athletes. This is not apt to be a troublesome refinement. Somewhat more troublesome is the distinction drawn by Rule 9, providing that the Games are "contests between individuals and teams and not between countries."³³ Broadly interpreted, any sports sanction is abusive whose purpose is to contest another state or its policies. More narrowly read, however, Rule 9 may be only advisory or, if operational, limited to the mode of physical competition within the sports arena.

In any event, the "soft" law of the Olympic Rules must be interpreted to conform to more general rules and principles. Most importantly, apartheid and official racism violate fundamental human rights. As a matter of *jus cogens*, those violations may conflict with peremptory norms of human rights, no derogation from which is permitted, at least by an international agreement formalizing competition by South African athletes in another country. Short of the *jus cogens* argument, the Universal Declaration of Human Rights,³⁴ the Advisory Opinion on Namibia,³⁵ and the norms of the International Convention on the Elimination of All Forms of Racial Discrimination³⁶ suffice to illegitimize official racism. The latter convention provides as follows:

Article 2(1):

- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations.
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

Article 3:

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature

³² Olympic Charter, *supra* note 2, at Rule 3.

³³ *Id.* at Rule 9.

³⁴ Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810, at 71 (1948).

³⁵ 1971 I.C.J. 16.

³⁶ International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter cited as Discrimination Convention].

in territories under their jurisdiction.³⁷

The Supervisory Committee established under that Convention explicitly interpreted Article 3 to impose on States Parties an affirmative duty to implement the condemnation of apartheid.³⁸ The general practice of states is of particular interest in evidencing *opinio juris*. As of 1981, 92 of the 107 States Parties had taken steps to prohibit South African sportsmen from entering their territories. Of the remaining 15 States, only eight have continued to allow South African athletes to compete in their territory.³⁹

The clear recommendation of the United Nations General Assembly Declaration against Apartheid in Sports is of particular significance to nonparties to the Convention.⁴⁰ The Declaration provides as follows: "States shall deny visas and/or entry to representatives of sports bodies, members of teams or individual sportsmen from any country practising apartheid."⁴¹ In the New Zealand case of *Ashby v. Minister of Immigration*,⁴² the plaintiffs asked the court to enjoin the defendant from granting temporary permits which would enable the Springboks, a South African rugby team, to enter the country for the purpose of competition with local teams. Their case rested on two grounds: that the Convention prevented the Minister of Immigration from issuing entry permits, and that the Minister at least should have explicitly taken the Convention into account, as he had failed to do. The court adopted the orthodox view of British Commonwealth countries; in the absence of an Act of Parliament, as here, a treaty does not become a part of municipal law. The court also expressed the opinion that the immigration authorities had properly exercised their discretion within the flexible language of the Convention. One Justice suggested, however, that the New Zealand government was constrained by the Gleneagles Agreement, a British Commonwealth measure against apartheid in sports.

Thus, even though it may be discretionary, a boycott to combat official racism seems valid. Indeed, states may have an obligation to prevent South African athletes from competing on their soil. Secondary boycotts, however, may be invalid.⁴³ Thus, it may be abusive for a State to boycott competition involving athletes from another State whose only involve-

³⁷ Discrimination Convention, *supra* note 36, at arts. 2(1) and 3. On the several injunctions against racism, see B. WESTON, R. FALK, & A. D'AMATO, INTERNATIONAL LAW AND WORLD ORDER 615-16 (1980).

³⁸ *Ashby v. Minister of Immigration*, [1981] 1 N.Z.L.R. 222, 227-28.

³⁹ *Id.* at 228.

⁴⁰ U.N. Monthly Chronicle, 32 U.N. GAOR at 122, G.A. Res. 105(m) (1978).

⁴¹ *Id.*

⁴² [1981] 1 N.Z.L.R. 222.

⁴³ Nafziger & Strenk, *supra* note 5, at 285-86.

ment was to allow its athletes to compete against South Africans.

B. *Boycotts to Implement Geopolitical Strategy*

Sports boycotts for geopolitical purposes are not protected by positive international law. They must therefore be analyzed on a case-by-case basis, according to the general principles governing reprisals. The argument that no sports boycott can be illegal has some merit. Sports boycotts are nonmilitary, yet they often send a clear and prominent signal. Sports boycotts avoid the sometimes inhumane effects of food and other trade embargoes, and are easy for governments to control.⁴⁴ Arguments to this effect must, however, presume that boycotts impose little harm on athletes. Unfortunately, national boycotts often harm athletes and their careers, are seldom effective and tend to harden diplomatic positions, while counterproductively generating boycott cycles.⁴⁵ In the sports arena, a "boycott, as a tool for bringing about political change, has been effective only in the case of small and relatively defenseless countries."⁴⁶ It must be remembered, also, that boycotts instituted for this purpose patently violate Rules 3, 9, and 24 of the Olympic Charter,⁴⁷ and at least the first three of four fundamental Principles of the Olympic Charter. According to those principles, found in Rule 1 of the Charter, any organization playing a part in the Olympic movement⁴⁸ must respect the "aims of the Olympic movement," as follows:

- to promote the development of those physical and moral qualities which are the basis of sport;
- to educate young people through sport in a spirit of better understanding between each other and of friendship, thereby helping to build a better and more peaceful world;
- to spread the Olympic principles throughout the world, thereby creating international goodwill;
- to bring together the athletes of the world in the great four-yearly sport festival, the Olympic Games.⁴⁹

Thus, sports boycotts are neither valid nor invalid *per se*. Some sports boycotts for geopolitical reasons do not respond to illegal acts, as for example, refusals to allow United States athletes to compete in Cuba. Retaliation by the use of such boycotts is illegal because they are not only unfriendly acts, but violations of customary sports law, as evidenced by

⁴⁴ Note, *This Sporting Life*, 13 MELBOURNE U.L. REV. 264 (1981).

⁴⁵ Nafziger, *supra* note 12, at 72-73.

⁴⁶ Cheffers, *The Foolishness of Boycott and Exclusion in the Olympic Movement*, 1979 OLYMPIC REV. 512, at 513.

⁴⁷ See *supra* text accompanying notes 23-25.

⁴⁸ Olympic Charter, *supra* note 2, at Rule 4.

⁴⁹ *Id.* at Rule 1.

the rules and principles of the Olympic Charter.

Most sports boycotts do, however, seem to respond to illegal acts. Let us assume, at the second step in the legal appraisal of retaliation, that governments impose boycotts only after a demand for either termination of the illegal act by the other state or a request for a peaceful resolution of a bilateral dispute under Article 2(3) of the United Nations Charter.⁵⁰ Also, let us assume for purposes of argument, that a hypothetical boycott is necessary and not grossly disproportional. The boycott may still be invalid if its purpose is neither to deter nor to induce reparation from the offending state. Further, a boycott may be invalid if its purpose is unclear or if it offends human experience and good faith. Thus, for example, the United States compulsion of a private boycott by its athletes of the Moscow Games was unacceptable under international law because the purpose was equivocal, and may have simply been a bad faith effort to detract from the glitter and propaganda value of an adversary's hospitality and home advantage in the competitions between United States and Russian athletes.⁵¹ Similarly, boycotts of fully integrated South African teams, or of competition against individual black South African athletes, are at least suspect if the purpose is diplomatic rather than human rights-oriented. The rules of international sports law would thus permit lifting the human rights veil to invalidate unacceptable political claims articulated in terms of human rights.

On the other hand, unilateral suspension of Argentinian-British soccer competition at the 1982 World Cup, had it occurred, would have been acceptable in the context of the Falklands War between the two states. Examples are few because customary sports law has been *lex ferenda* only in recent years. Until recently, therefore, sports boycotts were ir-rebuttable under the *Lotus dictum*.⁵²

IV. A RECOMMENDATION: THE DRAFT DECLARATION RELATING TO THE PROTECTION OF THE OLYMPIC GAMES

In 1982 the IOC adopted a Draft Declaration relating to the protection of the Olympic Games,⁵³ for presentation to the United Nations General Assembly. Although the General Assembly has not yet reviewed the Declaration, it merits attention. If adopted eventually, the Declaration

⁵⁰ "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." U.N. CHARTER art. 2, para. 3.

⁵¹ See *supra* text accompanying notes 13-15.

⁵² "Restrictions upon the independence of States cannot . . . be presumed." The Case of the S.S. "Lotus" (France v. Turkey), 1927 P.C.I.J., ser. A, No. 10.

⁵³ 1982 OLYMPIC REV. 481-82, See *infra* Appendix to this article for the full text of the Declaration.

would confirm the rules and principles of international sports within the United Nations framework. The IOC opted for a declaration rather than a draft convention as "a much less complex and difficult procedure."⁵⁴ The clear intent was not only to constrain governments more strongly, but to establish the rules of the Olympic Charter as international law.⁵⁵ Of course, the IOC considered that it had to limit the Declaration's applicability to the Olympic Movement because other sports competitions are not universal.⁵⁶ However, that limitation may be deemed to be *pro forma*, without prejudice to more comprehensive, and realistic, applicability of the Declaration. The IOC selected the General Assembly rather than UNESCO or another specialized forum because it recognized that the subject matter of the Declaration is essentially political and not technical.⁵⁷

The Declaration is in two parts. The preamble concisely itemizes those Rules of the Olympic Charter with international political implications. "[T]he most critical element in the declaration"⁵⁸ is paragraph 7 in the first part, which expresses the desire to protect competition "from the adverse consequence of international tensions." The actual Declaration provides for: 1) recognition and protection by states of the Olympic Games, 2) freedom of access for athletes and officials to Olympic sites, 3) non-discrimination other than to further the aims of the Olympic Movement, and 4) respect by states for their National Olympic Committees.⁵⁹ Although the IOC somewhat ambiguously stated that the Declaration "is not *primarily* an anti-boycott proposal,"⁶⁰ the official explanation of the third paragraph of the Declaration is instructive. That paragraph and its official explanation read as follows:

3. *that* Member States shall refrain from an[y] discrimination by reason of race, religion or politics and from any action in relation to the Olympic Games for purposes other than furthering the aims of the Olympic Movement.⁶¹

⁵⁴ *Id.* at 482.

⁵⁵ *Id.*

⁵⁶ *Id.* at 483.

⁵⁷ *Id.* at 482.

⁵⁸ *Id.* at 484.

⁵⁹ *Id.* at 482.

⁶⁰ *Id.* (emphasis added).

⁶¹ *Id.* at 482; *see infra* Appendix.

Official Explanation
Declaration Three

This reinforces the anti-discrimination provision which the General Assembly has previously stated and prohibits the use of the Olympic Games for purposes other than those involved in the Olympic Movement.⁶²

V. CONCLUSION

International sports competition can function in several ways as a nonaggressive sanction. The use of sports for the purpose of official protest is controversial. Whether protest measures are valid depends upon a distinction between the use and abuse of sports as a nonaggressive sanction. The criteria for making this distinction under international law are the principles of retorsion and reprisal, and the rules and principles of customary sports law. The latter is largely defined in the Olympic Charter, which applied comprehensively to international sports competition, supplemented by such norms as those in the Helsinki Accords. The Draft Declaration relating to the Protection of the Olympic Games, if adopted by the United Nations, would confirm the international legal character of the Olympic rules.

As applied to nonaggressive sanctions against competitors and competitions, international norms seem to condone boycotts to combat apartheid and other forms of official racism. These norms however, require a more detailed case-by-case analysis when it comes to the geopolitical use of sports as a means of official protest. The international norms of sports competition would also permit lifting the human rights veil to invalidate unacceptable political claims articulated in terms of human rights.

⁶² *Id.* at 484.

*Appendix***The Draft Declaration Relating to the Protection of the Olympic Games**

1. *Taking note* of the spirit of the Olympic principles which govern the organization of the Olympic Games.
2. *Endorsing* the following aims of the Olympic Movement:
 - a) to promote the development of those physical and moral qualities which are the basis of sport;
 - b) to educate young people through sport in a spirit of better understanding between each other and of friendship, thereby helping to build a better and more peaceful world;
 - c) to spread the Olympic principles throughout the world, thereby creating international goodwill;
 - d) to bring together the athletes of the world in the great four-yearly sport festival, the Olympic Games.
3. *Noting* with satisfaction that consistent with other declarations of the General Assembly, the Olympic Movement prohibits discrimination on the grounds of race, religion or politics.
4. *Recalling* its belief that international sporting contacts based on the Olympic principles can play a positive role in promoting peace and the development of friendly relations among nations of the world.
5. *Desirous* of preserving the Olympic Games as a celebration of the aims and objectives of the Olympic Movement, to be organised and held in the best possible conditions and with the widest possible participation.
6. *Desirous also* of facilitating participating in the Olympic Games by athletes and officials from all National Olympic Committees recognised by the International Olympic Committee.
7. *Desirous also* of protecting the celebration of the Olympic Games from the possible adverse consequence of international tensions.
8. *Noting also* that selection of host cities for the Olympic Games by the International Olympic Committee is and should be based solely on the ability of such cities to organise the Olympic Games.

declares:

1. *that* Member States shall recognise and protect the celebration of the Olympic Games.
2. *that* free and unhindered access to Olympic sites and venues be granted to Olympic athletes and officials during the Olympic Games and a reasonable period prior to and immediately thereafter.
3. *that* Member States shall refrain from any discrimination by reason of race, religion or politics and from any action in relation to the Olympic Games for purposes other than furthering the aims of the

Olympic Movement.

4. *that* Member States shall respect the purpose and tasks of the National Olympic Committees in their territories recognised by the International Olympic Committee.