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The politicisation of sport and the principle of political neutrality: a contradiction in terms?

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Abstract

Recent events have once again shone a spotlight on the principle of political neutrality invoked by many Sports Governing Bodies to justify their inaction in response to political issues in the world of sport. The war in Ukraine and the hosting of the FIFA World Cup in Qatar have tested the political neutrality of both FIFA and the IOC. The consequences of this stance have led to FIFA overlooking a number of human rights issues in Qatar and the IOC ignoring human rights concerns in host states, awarding Russia and China recent versions of the Winter Olympics. This article outlines the most salient examples of the politicization of sport, exposing the myth upon which the principle of political neutrality is based. The aim is to offer a clear understanding of the processes behind the politicization of sport, the attraction of sport to governments of all political hues, and its use in ‘sportswashing’ activities and ‘soft power’ acquisition. Such an analysis of sport politics provides a glimpse behind the veneer of apoliticality enshrined in the principle of political neutrality and hence a better basis for scholars of sports law to understand the politically sensitive cases arising in sport in the present day.

Keywords Politicization of sport · Principle of political neutrality · Government involvement in sport · Sport governing bodies

Sport has the power to change the world. It has the power to inspire, it has the power to unite people in a way that little else does...Sport can create hope, where once there was only despair. It is more powerful than governments in breaking down racial barriers. It laughs in the face of all types of discrimination.

(Nelson Mandela, Monaco, 2000)

1 Introduction

Recent, global events have once again shone a spotlight on the Principle of Political Neutrality invoked by many Sports Governing Bodies (SGBs) to justify their inaction in response to political issues in the world of sport. The war in Ukraine and the hosting of the FIFA World Cup in

Qatar have tested the political neutrality of two of the most powerful SGBs, FIFA (Federation Internationale de Football Association) and the IOC (International Olympic Committee). The consequences of this stance have led to FIFA overlooking a number of human rights issues in Qatar – with FIFA’s president actively defending the Qatari regime – and the IOC ignoring human rights concerns in host states, awarding Russia and China recent editions of the Winter Olympics.

The premise upon which the principle of political neutrality in sport is based belies the process of politicization of sport that reached its zenith in the 21st century. Sport, however, has *never* been free of politics: over 2000 years ago in classical antiquity the political roots of sport can be seen in the first versions of the Ancient Olympic Games in which city-states competed fiercely with one another and where an Olympic ‘truce’ was introduced to allow competitors to travel to the Games. During this period all hostilities and wars were¹ effectively postponed.² The link between

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¹ This paper is based on the keynote address given by Prof Grix at the International Sports Law Journal’s Conference on International Sports Law, 25 October 2022 at the Asser Institute, The Hague.

² Spivey (2005); Potter (2011).

‘sport’ and ‘war’ has a long history too, with much of our present-day use of training regimes traceable back to those used to prepare men for battle in Sparta. De Courbetin himself believed firmly that the superior physical fitness of the Prussians had ensured their victory over the French in the Franco-Prussian war of 1870 and this influenced both the Nazis’ and the communists’ fascination with sport and physical fitness to defend their country.³ The British writer, George Orwell, went so far as suggesting that sport was ‘war minus the shooting’ as early as 1945,⁴ and the intervening years have only served to politicize sport still further.

The purpose of this article is to outline the most salient examples that make up the politicization of sport in order to offer an understanding of how we have arrived at the position today where governments invest in sport to divert from human rights abuses, transnational sports organisations and SGBs seek to avoid their responsibilities as guardians of their sports, and individual athletes are forced to make political stands through sport, in the sporting arena or otherwise, to have their voices heard. We refute the notion that sport and politics can be kept separate and set out to show why Avery Brundage’s sentimental assumption that ‘sport...like music and the other fine arts, transcends politics’ is incorrect. Brundage goes on to state that: ‘We [the IOC] are concerned with sports, not politics and business’.⁵ In what follows, we show that sport *is* ‘politics and business’ combined.

To clarify: our argument is that the principal of political neutrality is often invoked by SGBs in cases where they wish to distance themselves from politics or political decisions. We agree with Belcastro (2023, p.110) who suggests that While their (the IOC and FIFA, authors) aims are apolitical, ranging from “promoting the values of Olympism in the world” (International Olympic Committee, 2022) to “govern[ing] football and to develop[ing] the game around the world” (*FIFA.com*, 2021), their control over sports and high-profile events make these organisations extremely powerful political actors.

The paper unfolds as follows: first, a discussion of the unique characteristics of sport enables us to understand why it lends itself to fulfilling political ends and why governments are attracted to its malleability; second, the paper turns to three key examples of the politicization of sport, including why governments invest in sport and how they justify it, the political nature of the Olympics and the specific role of sports mega-events in the politics of sport. These examples

draw on the core concepts of ‘soft power’ and ‘sportswashing’ to indicate the politicization of sport for non-sporting aims and goals. Third, the paper turns to key examples of interest to scholars of sports law: the *forced transplant*⁶ of laws by SGBs into host countries’ legal systems in order to hold major sports events, and recent cases where SGBs have invoked the principle of political neutrality in sport during political crises. FIFA’s actively political stance in relation to the Qatar World Cup deserves special mention, as their actions and decisions were overtly political, contravening the principle of political neutrality spectacularly. The article finishes by summarising the nature of the relationship between sport and politics and how this impacts the manner in which we discuss, interpret and make sense of political incidents in the world of sport going forward.

1.1 Why is sport political?

Sport is a unique, universal cultural phenomenon that has the ability to ‘bind’ large groups of people together, often transcending class, race, gender, and political boundaries (albeit temporarily). It is emotive and has the quality of eliciting national sentiment, national pride and the so-called ‘feelgood factor’, the latter not dissimilar to the sentiment created through Royal Weddings.⁷ James Riordan’s summary of the power of sport— and its universalist nature - is hard to beat. He suggests that:

It [sport] extends and unites wider sections of the population than probably any other social activity. It is easily understood and enjoyed, cutting across social, economic, educational, ethnic, religious and language barriers. It permits some emotional release (reasonably) safely, it can be relatively cheap and it is easily adapted to support educational, health and social-welfare objectives.⁸

While Riordan’s quote touches on some of the reasons why sport is so popular throughout the world, some commentators even consider that the devotion to sport— especially from the side of fans— has become similar to, and even a replacement for, religion.⁹ People are ‘worshipped’ (sports stars / religious idols), events take place in specific arenas (mega stadiums / churches and cathedrals) and stars and clubs command a ‘following’ from devoted fans (in the way that particular religions do). It is certainly true that many fans of football clubs in Europe act as if they were following a

³ Guttman (2004).

⁴ Orwell (1945).

⁵ IOC (1968), p.10.

⁶ For a detailed analysis of this concept see James and Osborn 2016, 2024a), ch.2.

⁷ Giulianotti (2015); Grix et al. (2021).

⁸ Riordan (2002).

⁹ Coakley (2007).

religion, moulding their lives around weekend games offering unconditional support to their teams. The cross-cutting nature of sport—touching on issues of gender, local, regional and national identity, ideology, ethnicity, economics, socio-economic status, a variety of policy domains (health, education and so on)—ensures that it cannot remain apolitical.

Elite sport has attracted the interest of governments across the world especially due to its ability to elicit a sense of national pride through sporting achievement. This is tied to ‘binding’ a country together around a socially constructed ‘national identity’¹⁰ through a ‘national narrative’,¹¹ that is, a nation’s story of its origins, development and milestones, including sporting images and moments often captured on film. For governments, sport is a (relatively) cheap and malleable resource; for citizens it offers an ‘in-group’ feeling of collective belonging. However, while sport plays a major part in ‘nation’ building and a nation’s identity, and ‘nations’ compete against ‘nations’ in representative matches on the sports field, politics is ever-present. Can a ‘national’ team simply be equated to a ‘nation’? The Japanese Rugby team, for example, feted by the host’s press in the 2019 Rugby World Cup in Japan, did not resemble the largely homogeneous make-up of the Japanese population,¹² and Great Britain’s Olympic success in the last 10 years has been achieved by teams made up of a majority of athletes from higher socio-economic backgrounds.¹³

1.2 Key factors in the politicization of sport

While sport has always been political, a number of factors have exacerbated the process. One key factor has been the unintentional influence of Germany, which has resulted in heavy government involvement in sports mega-events and elite sport, two of the key areas of investment today. Germany’s sporting past has played a central role in the development of modern sport and the instrumentalization of sport globally for political ends. The examples relevant for our discussion are first, the 1936 Olympic Games, the so-called ‘Hitler Olympics’, delivered by the first German dictatorship, which can be understood as the first sports mega-event that influenced subsequent hosting of the Olympics. Second, the politicization of elite sport in East Germany (mid-1960s–1989) which resulted in arguably the most successful sports system ever known and has acted as a blueprint for the highest achieving elite sport systems of today.¹⁴ Both of these examples—investment in elite sport and sports

mega-events—are central to an understanding of the politicization of sport today.

States of all political hues invest in sport, either through long-term investment in elite sport systems (including athletes), through the hosting of sports mega-events, or a combination of both of these strategies. A number of states also invest in foreign sports teams, sponsorship, domestic major sports events and athletes in an attempt to burnish their nation’s image or diversify their state’s investment portfolio. Saudi Arabia and Qatar lead the field in investments in sport and are often accused of ‘sportswashing’,¹⁵ that is, attempting to burnish their national image that has been tainted by human rights abuses through involvement with, and investment in, sport.¹⁶

The rationale for regular government investment in elite sport can be summed up in the so-called ‘virtuous cycle’ of sport. This outlines a commonsensical and justificatory discourse used by national governments for making such an investment.

That is, states seek to invest in either developing elite sport performance, hosting a one-off SME or both (elite sport system/SMEs). Wealthier states tend to host multiple events *and* excel at elite sport; poorer states tend to invest in one-off sports spectacles.

1.3 The political nature of the Olympics

Discussions about the Olympic Games are often couched in well-intentioned but unrealistic and mythical discourses of an amateur, peaceful sporting event away from politics and economics.¹⁷ Indeed, it was not until the 1991 version of the Olympic Charter that the prohibition on the participation of professional athletes was fully removed.¹⁸ Even now, restrictions on athletes’ ability to monetise their participation in the Olympic Games persist under Rule 40 of the Olympic Charter.¹⁹

Pierre de Coubertin, commonly acknowledged as the founder of the modern Olympics, would be hard pressed to recognize what has become of the modern event, however. He had envisaged bringing the youth of the world together to inculcate young people with the values of internationalism through sporting endeavor. These values, now defined in the Fundamental Principles of Olympism at the beginning of the Olympic Charter,²⁰ are well-intentioned, admirable,

¹⁰ Breuille (2017).

¹¹ Hall (1992).

¹² BBC (2020).

¹³ The Telegraph (2012).

¹⁴ Grix (2017).

¹⁵ Michaelson (2023).

¹⁶ For a discussion of ‘sportswashing’ see: Amnesty international; Grix et al. (2023); Boykoff (2022); Ettinger (2023).

¹⁷ Brundage, IOC (1968) and IOC (2019), p.11.

¹⁸ IOC (1991).

¹⁹ IOC (2023). For a detailed analysis of the evolution of Rule 40 of the Olympic Charter, see James and Osborn (2024a) ch.3.

²⁰ IOC (2023).

life-affirming and out-of-step with what the event has actually become. The Olympic motto, for example, ‘expresses the aspirations of the Olympic Movement’. Yet, ‘faster, higher, stronger– and now, “together”’ cannot disguise the fact that the event is *the* most quintessentially political sporting event the world has ever known. This is evidenced in a number of ways: first, the Olympic Games represent an exemplar of *laissez faire* economics, the ideology of which allows for tax breaks for multi-national sponsors, forbids the use of the Olympic symbols and name, and provides a boon to (usually transnational) business in each city in which it is hosted.²¹ Second, the whole debate about which facilities to build, who will benefit from them, how much ought to be spent and so on, is at its heart; that is, a contestation around resources, the very essence of politics. Third, the events themselves offer hosts the chance to politically showcase their ideologies through the Olympic opening ceremonies where ‘national narratives’ seek to recalibrate how nations are viewed abroad.²²

Those who ask difficult questions about the Games– for example, whether the vast resources states continue to allocate to the building of new stadia and urban ‘regeneration’ projects despite the lack of evidence for post-event ‘legacies’ would be better invested elsewhere– are often grouped along with anti-Olympic protesters and looked upon as pessimistic cynics or simply moaners seeking to spoil the fun. Yet, clearly, the Olympics, more than any other sporting event, are turning into a business-fair driven by a mixture of political and economic calculations. While the motives for hosting sports mega-events may differ slightly across different regime types, the Olympics themselves and the signaling effects of the opening and closing ceremonies have become over-blown, extravagant and often unnecessary affairs.²³ Beijing’s opening ceremony, for example, is said to have cost around \$100 million, money that could have been directed to those in need in China.

The Olympics has had a profound impact on states, their sports policies, and their systems of sport. They have also been the driving force behind sports funding by governments seeking to finish higher up on the Olympic medal table for decades.²⁴ The long-term impact of a focus on *specific* Olympic sports, for example, is bound to skew sport development in such states and it will have economic implications for other sports and physical activity initiatives.²⁵

The Olympics are big business. The hard-hitting, straight-talking Helen Lenskyj speaks of the ‘Olympic industry’,

refusing to engage with the inclusive IOC terms ‘Olympic family’ or ‘Olympism’. Lenskyj criticises the IOC for its claim to be ‘the moral authority for world sport’ and the ‘supreme authority’ over the staging of the Olympics. She points to the extraordinary examples of the IOC effectively conferring political recognition on states (for example, East Germany and more recently, Taiwan), despite having no diplomatic status to speak of. The ‘Olympic industry’ is evident in the ‘neo-liberalisation’ of the Games in general and in the shift from a ‘peoples’ sporting festival’ to ‘a state choreographed, commercially driven, internationally controlled, media mega-event’.²⁶ It would appear difficult to reconcile the original underlying values of Olympism– that is, an emphasis on peace and the educational and moral value of taking part in sport– with the over-commercialization of the Games today.

1.4 The role of sports mega-events in the politics of sport

The passage of time has done little to dampen the enthusiasm for elite sport success and hosting one-off, massive sports festivals. On the contrary, every type of state (democratic, ‘emerging’, autocratic, dictatorship, illiberal) has hosted or has sought to host either the FIFA World Cup or the summer and/or winter Olympics. Hosting a successful sports mega-event is increasingly acknowledged to be a highly visible and potentially positive signal to other countries in an effort to obtain ‘soft power’.²⁷ The etymology of ‘sport’, derived as it is from the French *desporter*, that is, ‘to divert’, still holds true today in terms of sport spectacles: if major events at the Colosseum in Roman times were designed to appease the masses and turn attention away from politics and war, then modern sports mega-events serve a similar purpose. Equally, states have sought to use sports mega-events to burnish their image– with Nazi Germany seen as one of the very first to attempt to ‘sportswash’ its image.²⁸ The negative Nazi past was the reason why Germany once again used a sports mega-event to try and alter its national image abroad– this time successfully in 2006 through the FIFA World Cup.²⁹

²¹ Pound (2021); James and Osborn (2024a), ch.4.

²² Elsborg (2022), Kramareva and Grix (2022).

²³ Flyvbjerg et al. (2021).

²⁴ Ironically De Coubertin was outspoken against ranking countries on an Olympic ‘medal table’ as early as 1920, Guttman (2004).

²⁵ See Grix (2009); Grix and Widdop (2023).

²⁶ Sugden and Tomlinson (2012), p.243.

²⁷ Nye (1990); Van Ham (2001).

²⁸ Boykoff (2022).

²⁹ Grix (2012).

2 The IOC and the forced creation of Olympic laws

As the largest of the SMEs have become increasingly aware of their commercial power and political influence, they have taken an increasingly innovative approach to exploiting and protecting the commercial and intellectual property rights associated with each iteration of the event.³⁰ The IOC's commercial protectionism has become the paradigm approach to which other event organisers aspire, though few SGBs have the necessary leverage to see their legislative demands become law. This protectionism takes place through a very specific process: the forced transplantation of legal norms and laws from outside of the SME's host jurisdiction that results in the creation of new, usually event-specific, national law.³¹

Rule 15(1) of the Olympic Charter defines the IOC as 'an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council.'³² As a private non-state actor, the IOC has no direct law-making powers. However, over the last 30 years, the IOC has developed for itself an indirect law-making capability through the requirements that are imposed on host states by the Olympic Host Contract. These legal guarantees require the host state to amend existing laws, or to introduce new laws, to protect the commercial rights of the IOC, the local organising committee of each edition of the Olympic Games, and their official sponsors and commercial partners. This distinct category of law, Olympic law, is created in a cyclical manner through a series of forced legal transplantations.³³

First, the IOC creates its own internal legal norms, a *lex Olympica*.³⁴ This requires the protection of specific commercial rights, for example the word mark 'Games Year' (for example, Paris 2024), and the criminalisation of specific activities, including in particular ambush marketing.³⁵ Secondly, the IOC forces the host state to create new laws, or amend existing ones, to transplant its *lex Olympica* into the Olympic law that is required to be applicable in the host jurisdiction. Thirdly, the lessons learned from the operation of the Olympic law at the Games are transplanted back from the host jurisdiction back to the IOC to create a revised and updated set of legal norms that creates new *lex Olympica*.

Finally, the cycle is completed by the next host enacting Olympic laws that transplant into its own national law the updated IOC norms, or *lex Olympica*.

Perhaps the most high profile *forced transplants* are seen in the requirements of the Olympic Host Contract to ensure that specific legislation is in place to protect the commercial and intellectual property rights of the IOC and each specific edition of the Olympic Games. Since Sydney 2000, the IOC has required of each host that legislation is enacted to protect the Games from ambush marketing. This requirement has resulted in the iterative development of an increasingly sophisticated framework of protections that each host has offered. To date, Olympic hosts have been required to enact legislation that:

- Criminalises any ambush marketing that makes an unauthorised commercial association with the Olympics, including prohibiting the use of certain words, numbers and phrases that are most commonly associated with the Games;
- Requires that the environs of each Olympic venue, each event route, and the routes to and from major transport hubs to the Olympic venues are free from any advertising that makes an unauthorised commercial link with the Games, or undermines the marketing campaigns of official sponsors;
- Changes the processes by which street trading is managed and licensed;
- Criminalises the unauthorised resale of tickets to any Olympic event, commonly known as ticket touting or ticket scalping.³⁶

Further laws are required to provide tax free status to the 'Olympic Family' or members of the Olympic Industry, and to ensure the free flow of official Olympic traffic. Finally, though action has not yet been taken to enforce it, the Olympic host is required by Rule 33 to adhere to the Olympic Charter, including to the Fundamental Principles of Olympism.

These contractual requirements of hosting the Olympic Games are clear evidence of intervention in the host legal system for the commercial benefit of the IOC, the local organising committee and their sponsors, or the coalition of beneficiaries. Interference with a country's law-making capabilities is clearly a political act. The requirement of creating new laws for the benefit of the Olympic Industry demonstrates overtly the interplay between sport and politics throughout the lifecycle of a SME.

³⁰ Pound (2021) and Neirotti (2021).

³¹ James and Osborn (2024a) ch.2.

³² IOC (2023).

³³ James and Osborn (2024b).

³⁴ Latty (2001); James and Osborn (2024a), ch.2.

³⁵ Ambush marketing is a highly contested term. For an overview of its meanings from a legal perspective see Nufer (2013) and Burton and Chadwick (2018).

³⁶ James and Osborn (2011) and (2016).

2.1 Political ‘neutrality’ of transnational sports organisations (FIFA and Qatar WC)

2.1.1 FIFA and the Qatar world cup

If ever an example of the mix of sport and politics were needed, FIFA’s Qatar World Cup would be hard to beat. We argue that Qatar is unprecedented and unique in the sense of the scale of criticism directed towards the tiny Gulf state, which was only recently made independent (1971) and is the richest per capita in the world. FIFA’s response to the criticism is also unique. What makes this SME different is the manner of its selection (some 12 years before it was due to host and beating off such power-houses as the US), the penetrative media scrutiny of its human rights abuses, including the treatment of migrant workers who built the seven new football stadiums, the geo-political region in which the event took place and the ‘clash of civilisations’ between the ‘Western’ world and the first Arab and Muslim nation to host the FIFA World Cup. The cost of the event is different too; the Qataris have spent over \$200 billion, more than the last 21 versions of the event put together by some estimates.³⁷

The FIFA president, Gianni Infantino, set out at a press conference his unorthodox view effectively defending the Qatari regime and suggesting that the ‘West’ and ‘Europe’ had no right to criticize Qatar as they had perpetrated a number of human rights violations themselves in the past ‘3000 years’.³⁸ This form of moral relativism has been enabled by two complex processes at work that add to the uniqueness of this World Cup. Both of these processes are not directly attributable to sport. First, there has been a major shift in the global political culture and the manner in which it is debated; second, the dominant nature of global capitalism means that a wide variety of ideologically opposed regimes are ever more dependent upon each other’s reserves (for example, the West’s dependence on middle-Eastern gas and oil).

A political culture consists of widely held beliefs and attitudes of what makes up, gives order to and underpins our understanding of political institutions and systems. This also encompasses the behaviour of politicians and what they say and do. We propose that the fracturing of our political culture—through half-truths, deceit, duplicity and lies (for example, Donald Trump’s ‘stolen’ election claim)³⁹—has prized open a space for moral relativism that makes rational debate much more difficult. It also exacerbates a ‘them’ and ‘us’ mentality leading to black and white depictions

of others’ culture. Thus, FIFA was vehemently defending Qatar as host against a barrage of critical press.

This manifested itself in two clear ways. First, FIFA refused to engage with a number of European and the US football associations that had asked for permission for their team captains to wear the OneLove armband.⁴⁰ This symbol of solidarity with the LGBTQ+ community and the victims of relationship abuse,⁴¹ which had been worn without censure during the World Cup Qualifying tournament, was prohibited by FIFA as homosexuality is illegal in Qatar. Relying on its kit regulations, FIFA required all captains to wear the official FIFA-sanctioned armbands under threat of on-field punishments, such as a booking, sending off or match bans, for anyone not complying. FIFA’s refusal to allow captains to wear the OneLove armband, despite its very public support of Pride events, was understood to be a clear sign of its support for Qatar. The importance of this unequivocal support is compounded by it necessitating that FIFA ignore both Article 3 of its own Statutes, which states that, ‘FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protection of these rights,’ and Article 4, which prohibits discrimination of any kind.⁴² Secondly, Infantino’s long monologue demonstrated clearly FIFA’s support for its hosts, and reinforced his earlier letter to the 32 competing nations that demanded it was now time to ‘focus on the football’ and ‘to let football take centre stage’ instead of allowing, ‘football to be dragged into every ideological or political battle that exists.’⁴³

The notion of ‘double standards’ by Qatar’s critics is at the nub of where global capitalism and a fractured political culture meet, as those highlighting the hypocrisy point to the West’s reliance upon and import of energy (thereby enriching Qatar further). This valid point is then taken further— as in Infantino’s condemnation— to argue that previous human rights abuses render current criticism hollow and appear as virtue-signalling by the West. At this stage we move beyond argument and towards a moral relativism that effectively closes down rational debate that would allow for a discussion of different cultural norms. Such techniques of ‘whataboutism’ have now seeped into our political culture and through to the heart of democratic states. This allows commentators to lament the existence of ‘sportswashing’— effectively attempting to sanitise malign practices and spruce up poor national images via massive investment in sports teams and event sponsorship— while happily allowing

³⁷ Financial Times (2022).

³⁸ CNN (2022a).

³⁹ Reuters (2022).

⁴⁰ James (2022).

⁴¹ Details of the OneLove Foundation are available at: <https://www.joinonelove.org/> (accessed 01/08/2023).

⁴² FIFA (2022).

⁴³ Harris (2022). This report includes a verbatim copy of the letter sent by Infantino to the 32 competing nations of the FIFA Qatar World Cup 2022.

Qatar's Investment Authority (QIA), their sovereign wealth fund, to buy up prime property portfolios. In the UK alone this is rumoured to be around £40 billion.⁴⁴

FIFA has long been at pains to declare itself 'politically neutral', especially after decades of allegations of corruption.⁴⁵ The World Cup in Qatar has shown the complete opposite to be true. Noteworthy about the Qatar World Cup is the fact that political activism by athletes, pundits and politicians continued after the sport had begun. In normal times, the politics stops as the sport starts. These, however, are not normal times, with the backdrop of a changing world order, war in the Ukraine and a fractured global political culture mentioned above.⁴⁶ Thus, shortly after the armband ban by FIFA, the German football team protested demonstratively by covering their mouths during the team photo before their match with Japan to signify their distaste at having their 'voice' taken away from them. During the game itself the German minister of the interior wore the banned armband, clearly visible, while she sat next to the FIFA president, Infantino.⁴⁷

The political neutrality of transnational sports organisations has been severely tested recently and especially at a time of a resurgence of political activism among athletes. Whereas a handful of well-known athletes in the past have been associated with political activism (the most famous cases remain: Muhammed Ali; Tommy Smith and John Carlos; Billy Jean King), more recent political acts have become much more widespread. In 2016, Colin Kaepernick and his San Francisco 49ers teammate Eric Reid started a trend when they knelt (or 'took the knee') during the playing of the US national anthem before football games to draw attention to the issues of racial inequality and police brutality.⁴⁸ This political gesture took off in 2020 after the murder of George Floyd by a policeman; this also sparked the start of the protest group 'Black Lives Matter'. At the Qatar World Cup in 2022, football teams were still 'taking the knee' among other acts of protest against the Qatari stance on homosexuality (see below).

The guardians of Olympism, the IOC, have long sought to prevent any political activism at the Olympic Games. The fifth Fundamental Principle of Olympism states specifically that: 'Recognising that sport occurs within the framework of society, sports organisations within the Olympic Movement

shall apply political neutrality.'⁴⁹ Where athletes are concerned, athlete activism refers to individuals who are using their popularity and high profile to take a stand within debates on political or societal issues,⁵⁰ often in a culture that understands sport as free from political influence. The IOC's requirement of political neutrality is enforced specifically against athletes by the absolute prohibition found in Rule 50 of the Olympic Charter, which states that:

No kind of demonstration or political, religious or racial propaganda is permitted in any Olympic sites, venues or other areas.⁵¹

For Tokyo 2020 and Beijing 2022,⁵² a gloss was added to this absolute prohibition on athlete activism by the production of additional guidance to athletes.⁵³ The guidance allowed athletes to express themselves freely, providing that they did not engage in political demonstrations or the promotion of political propaganda. In an attempt to draw a very fine line between what was permitted and what was prohibited, the guidance stated that athletes were free to express themselves:

'On the field of play prior to the start of the competition (i.e. after leaving the "call room" (or similar area) or during the introduction of the individual athlete or team) provided that the expression (for example, gesture) is:

- (i) consistent with the Fundamental Principles of Olympism;
- (ii) not targeted, directly or indirectly, against people, countries, organisations and/or their dignity;
- (iii) not disruptive (by way of example only, the following expressions are considered disruptive: expressions during another athlete's or team's national anthem and/or introduction, as this may interfere with such other athlete's or team's concentration on and/or preparation for the competition; physical interference with the introduction of another athlete or team or the protocol itself (for example by unfurling a flag, a banner etc.); causing (or assuming the risk of causing) physical harm to persons or property, etc.); and
- (iv) not prohibited or otherwise limited by the rules of the relevant National Olympic Committee and/or the competition regulations of the relevant International Federation.'

⁴⁴ UK Government (2022).

⁴⁵ CNN (2022b).

⁴⁶ Grix et al. (2023).

⁴⁷ Grohman K (2022) 'Germany players cover mouths in team photo amid armband row' Reuters, 23 November, available at: <https://www.reuters.com/lifestyle/sports/germany-players-cover-mouths-team-photo-amid-armband-row-2022-11-23/> (accessed 08/09/2023).

⁴⁸ James and Osborn (2024a) ch.4.

⁴⁹ IOC (2023), emphasis added.

⁵⁰ Galily (2019).

⁵¹ IOC (2023).

⁵² For a detailed analysis of the application of Rule 50 at Tokyo 2020 and Beijing 2022, see James and Osborn (2024a) ch.4.

⁵³ IOC Athletes' Commission (2022).

In other words, provided that athletes did not engage in overt politicking, then support of social justice causes and messages in support of anti-discrimination initiatives was acceptable before the game took place.

Despite many athletes desire to engage in activism on behalf causes to which they would usually lend their support, many of which align with the IOC's own Fundamental Principles of Olympism, and in particular Principle 6's prohibition on all kinds of discrimination, Rule 50 continues to provide the IOC with an incredibly wide discretion to restrict athletes' freedom of expression.⁵⁴ This restrictive approach finds support both from some athletes,⁵⁵ with many sports fans showing an '... aversion to overt ideological content in sports'.⁵⁶

Although rarely used to punish athletes, Rule 50 enables the IOC, athletes' National Olympic Committees, and their sport's international federation to impose extremely wide-ranging sanctions on anyone exercising what in any other situation would be protected free expression, even where such expressions are considered to be objectionable by other groups. The following three examples demonstrate how Rule 50 can be used to both prohibit and protect acts of athlete activism.⁵⁷ First, Algerian judoka, Fethi Nourine, withdrew from his event at Tokyo 2020 to avoid the possibility of facing Israeli competitor Tohar Butbul in the second round of the competition. He had his Olympic accreditation revoked by the Algerian Olympic Committee and was subsequently suspended from all International Judo Federation sanctioned events for 10 years, as his conduct was contrary to the Federation's Statutes, its Code of Ethics, and Rule 50 of the Olympic Charter. The International Judo Federation described his conduct as being both discriminatory and overtly political.⁵⁸

Secondly, Russian gymnast Ivan Kuliak wore the pro-Russian 'Z' symbol on his singlet at the Fédération Internationale de Gymnastique (FIG) Apparatus World Cup in Doha in March, a week after Russia launched a full-scale invasion of Ukraine.⁵⁹ He was banned for 12 months for a political statement that was in breach of FIG Statutes, the FIG Code of Discipline, the FIG Code of Ethics and the FIG Code of

Conduct, with the punishment (upheld on appeal).⁶⁰ Such a statement would also be in breach of Rule 50, though once again would be protected political free speech if expressed in any other situation.

Thirdly, and in direct contrast to the punishment of Kuliak, at Beijing 2022 before the Russian invasion of Ukraine began, Ukrainian skeleton bobsledder, Vladyslav Heraskevych, briefly held up a sign that read, 'No war in Ukraine' printed on a Ukrainian flag. Although clearly a political statement aimed at Russia's (then) impending attack on Ukraine, an IOC spokesman stated later that, 'We have spoken with the athlete. This was a general call for peace. For the IOC the matter is closed.'⁶¹ Despite its clear meaning, this was not considered to be either a political demonstration or political propaganda that was in breach of Rule 50.

In all three cases, the athletes were exercising their right to free expression on political matters. Rule 50 is used by the IOC to promote and preserve its own ideal and interpretation of what constitutes both political neutrality and actions that are political, and therefore prohibited. The words and actions of each of these athletes were not unlawful, regardless of whether or not you agree with their political positions. In taking the overtly political stance of claiming to be an apolitical organisation, and restricting athletes' freedom of expression in ways that are potentially in breach of Article 10 of the European Convention on Human Rights,⁶² the IOC and its affiliated bodies are demonstrating that sport and politics are inherently intertwined.

3 Conclusion

This article has set out to show why the use of the principle of political neutrality by Sports Governing Bodies to avoid engaging with human rights issues and the questions raised through the hosting of sports mega-events by non-democratic regimes is based on a flawed understanding of the link between sport and politics. Further, this principle has been severely tested through the restrictive measures placed on athletes in regard to political activism. As we have shown, sport and politics have been intertwined since Ancient Greece, becoming even more inseparable during the 20th century. The end of the Cold War (1991) did not see the end

⁵⁴ Di Marco (2021), Shahlaei (2017).

⁵⁵ IOC Athletes' Commission (2020).

⁵⁶ Serazio and Thorson (2020).

⁵⁷ For a detailed analysis of the interpretation of Rule 50 at Tokyo 2020, see James (2024).

⁵⁸ International Judo Federation (2021) 'Fethi Nourine and Amar Benikhlef: Disciplinary Decision' available at <https://www.ijf.org/news/show/fethi-nourine-and-amar-benikhlef-disciplinary-decision> (accessed 01/08/2023).

⁵⁹ BBC (2022) 'Russian gymnast Ivan Kuliak investigated for wearing pro-war symbol on podium next to Ukrainian' 6 March, available at: <https://www.bbc.co.uk/sport/gymnastics/60641891> (accessed 01/08/2023).

⁶⁰ Figure (2022) 'Russian gymnast sanctioned with one year ban by the Disciplinary Commission' 17 May, available at: <https://www.gymnastics.sport/site/news/displaynews.php?urlNews=3505962> (accessed 01/08/2023).

⁶¹ Houston, M Twitter 11/02/2022, available at: https://twitter.com/mick_demarco/status/1492166238113759234?t=02C2eCiHZUFiAGnRe4uPzw&s=03 (accessed 01/08/2023).

⁶² For analyses of the legality of Rule 50 see Di Marco (2021); James and Osborn (2024a) ch.4, and Modi 2023.

of governments' use of sport for political means; on the contrary, the politicisation of sport has increased as states invest heavily in both elite sport for international prestige and in hosting one-off, expensive sports mega-events, usually with few of the expected 'legacy' benefits they are reasoned to reap.

Gianni Infantino, the FIFA president, sums up the attitude of many Sports Governing Bodies when he wrote in his letter to 32 teams participating in the World Cup in Qatar: "We know football does not live in a vacuum and we are equally aware that there are many challenges and difficulties of a political nature all around the world...", suggesting that FIFA should not be offering "...moral lessons to the rest of the world." That is, the principle of political neutrality is a useful 'get-out-of-jail-free' card that allows the Governing Body to avoid having to become involved in the 'messy' business of human rights abuses levelled at Qatar by Amnesty International and others.

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