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SPORTING BOYCOTTS: LEGAL INTERVENTION IN THE SPORTING ARENA

By Bandini Chhichhia

“I don’t want to play with you anymore!” an athlete screeches across the field with silent moral indignation. This typical kindergarten psychology has steeped into the human gene over the years. But what if such statements were made in the realm of international sport where national and international sporting codes, domestic legal systems, national policies, individual athlete contracts all militate against such symbolic acts of idealism? Many have found the answer in sporting boycotts.

Sports and politics have had an incorrigible affair for centuries, where movements in one have undoubtedly yielded movement in the other and sporting boycotts have been perennially used against nations whose human rights records are abysmal as a manifestation of both collective ideals and national policy. A classic example of such theatrics is the Olympic movement. The present enquiry is why have sporting boycotts been employed? Are they utilitarian or effective? Are they legal? And if their use cannot be prohibited how should this interrelationship be governed both at a national and international level to strike a balance between the autonomy of a sport, an athlete’s civil liberties and ultimately sovereign sporting teams. The task is not easy.

My paper sought to examine the complex legal issues raised by sporting boycotts particularly in the absence of any clear legislative authority by analysing the decision of *Finnigan v NZFRU* [1985] 2 NZLR 19. The case touches upon legal standing, justiciability and ultimately the remedies being sought in a common law system. At the heart of the decision is judicial review of a fundamentally private decision. The paper further explores the potential legal consequences of sporting boycotts in an Australian setting focusing particularly on legal actions instigated by “disrepute clauses” of private athlete contracts. Once again what is the justiciability of decisions made by sporting tribunals? Are courts the new vanguards of individual athlete morality, bastions of civil rights or the place of last resort when political decisions remain unanswered?

The paper also examined the legitimacy under international law given the global face of sport today touching upon individual international sporting codes, the Olympic Charter and international human rights law. The ultimate question that begs to be answered is: how and when should law intervene in sport when the fundamental enquiry is political?

SPORTING BOYCOTTS: LEGAL INTERVENTION IN THE SPORTING ARENA

INTRODUCTION

Sporting boycotts or put simply a declaration by a team or player to another that “I don’t want to play with you anymore!” – This indignation may be reminiscent of kindergarten playground tactics, but what happens when playground psychology seeps into the arena of mass international sport. Sporting boycotts have at times been the weapon of choice for a nation (or a particular group) signalling disapproval or taking action against regimes or political systems of which they do not approve. However this raises deeper questions such as: are boycotts merely an ineffective novelty, a mere case of symbolic posturing or something more? Are they preferable to economic warfare through sanctions? And if so, when are they justified?

Without delving into the labyrinth of literature in this area, this paper aims to investigate the legal dimensions of the issue. More specifically, it examines interrelationships between sporting tribunals, the courts and ultimately the players themselves. However, I have attempted to integrate politic arguments where they shed light on the underlying themes. I will begin with a case study of an important New Zealand case.

INTERVENTION OF THE LAW – *Finnigan v NZFRU*¹: A case study

Background

The 1960s to the late 1980s were years of political turmoil. For many nations, especially those belonging to the Commonwealth of Nations, the issue of sporting contacts with South Africa loomed large. South Africa’s inhumane apartheid regime extended its policies of racial segregation to sport and the selection of its international sporting teams. Events in New Zealand in the 1970s provide a useful starting point to open discussion of sporting boycotts due to that nation’s close rugby ties with South Africa.² By early 1970s two legal attempts had been made by individuals to prevent an All Blacks tour to South Africa. One used the writ “ne exeat regno”³ and another immigration law.⁴ Not surprisingly both were unsuccessful.⁵ However in 1976, the *International Declaration against Apartheid in Sport* was passed⁶ and the *Gleneagles Agreement* was signed by the Commonwealth of Nations in 1977.⁷

In reality, the latter was a toothless instrument, which merely “urged” member nations to discontinue sporting links with South Africa without any domestic legislative changes. In Australia

¹ [1985] 2 NZLR 19 (No 1); 181 (No 2); 190 (No 3)

² For an illuminating discussion on the similarities of the white male rugby elite of both countries see, Nauright, J., “Like fleas on a dog: emerging national and international conflict over New Zealand rugby ties with South Africa 1965-74,” (1993) *Sporting Traditions* at 54-77

³ *Parsons v Burk*[1971] NZLR 244

⁴ *Ashby v Minister of Immigration* [1981] 1 NZLR 222

⁵ For an Irish example see Power, V., “Injunction an rugby tours: the Irish experience,” (1985) *New Zealand Law Journal* at 220

⁶ Resolution of the UN Department of Political and Security Council Affairs Centre against Apartheid, cited in Stillman, G., “The Sporting Life,” (1981) *Volume 13 Melbourne University Law Review* at 264

⁷ Nauright, J., “Like fleas on a dog: emerging national and international conflict over New Zealand rugby ties with South Africa 1965-74,” (1985) *Sporting Traditions* at 54-77

the Whitlam government took a laudable stance of translating the *Gleneagles Agreement* into national policy for the next 15 years.⁸ In New Zealand a round of heated parliamentary debate yielded nothing more than a lukewarm statement from the Labour Party that ultimately left the decision to be made by the New Zealand Rugby Football Union (“NZRFU”). The NZRFU decided to tour South Africa in 1985.⁹ Public sentiment against apartheid gained momentum and the trilogy of *Finnigan* cases were a judicial time-bomb waiting to happen. Two members of the NZRFU (as players of minor clubs) brought an action against NZRFU’s decision to allow the All Blacks tour of 1985. Interesting enough, the plaintiff’s initial claim was not all that important (an attempt to gain a legal foothold) but the crux of their claim involved judicial review of an administrative action.¹⁰

The legal issues¹¹

The first issue was concerning judicial standing of the plaintiffs, that is, did Finnigan and Recordon as members of NZRFU, a voluntary association, have locus standi to challenge the validity of the NZRFU’s decision. The question was answered in the negative at first instance but overruled in the Court of Appeal.¹² Central to the judgment were Justice Cooke’s remarks concerning private organizations. He stated:

While technically a private and voluntary sporting organization, the Rugby Union is in relation to this decision, in a position of major national importance ... In truth the case has some analogy with public law issues. This is not to be pressed too far {emphasis added}. We are simply saying that it falls into a special area where, in the New Zealand context, a sharp boundary between public and private law cannot realistically be drawn.¹³

Implicit in the His Honour’s reasoning is the public interest argument, which seemed to be the touchstone marking the Judiciary’s intervention in essentially private administrative decisions. The Court was however perceptive in not treating the decision as an exercise of statutory power since this would entail subjecting the NZRFU to civil public law remedies.¹⁴ Some commentators regarded this unorthodox approach as a “radical leap of faith.”¹⁵

The second issue in the High Court¹⁶ was the plaintiffs’ application for an interim injunction since the action would not have proceeded before the scheduled All Blacks tour. Casey J found the threshold test satisfied such that there was a “strong prima facie case”¹⁷ that the decision to tour would not “promote, foster and develop the game of rugby in New Zealand.”¹⁸ However, contradicting Cooke J’s strong dicta on this subject, he decided that the Rugby Union must in fact exercise the degree of care applicable to statutory bodies in making their decisions and NZRFU should have acted *both* honestly and reasonably. The final ‘balance of convenience’ test was also found in the plaintiffs’ favour. Once again the public interest argument pervaded both parties’

⁸ Hickie, T., “A Sense of Union,” (Sydney: Caringbah Publishing, 1998) ch13 at 204

⁹ New Zealand Parliamentary Debates, Vol 462, 28 March 1985: 4036-59

¹⁰ The plaintiffs were alleging breach of Rule 2(a) of NZRFU’s rules: namely “To control, promote, foster and develop the game of amateur Rugby Union Football throughout New Zealand” (emphasis added)

¹¹ In the interest of brevity all three cases will be discussed simultaneously

¹² *Finnigan* [1985] 2 NZLR 159 (No 1) per Davidson CJ

¹³ *Finnigan* [1985] 2 NZLR 181 (No 2) at 189

¹⁴ Baragwanath D QC, “The Tour” (1985) 221 New Zealand Law Journal at 226

¹⁵ Bowman M R, “Standing to challenge the Tour” (1985) 387 AULR at 390

¹⁶ *Finnigan* [1985] 2 NZLR 190 (No 3) at 199

¹⁷ *Ibid* at 201 applying the legal principles applicable to interlocutory injunctions in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396

¹⁸ *Id*

individual circumstances.

It is not hard to see why some have regarded the decision as legally unpalatable.¹⁹ But for the ordinary New Zealander this was a high water mark case which reflected public sentiment of 1985. It is a classic case where Courts had to grapple with politically volatile issues in the absence of Parliamentary guidance. Whether the latter had eschewed from its responsibilities in fear of an electoral backlash or whether it was in the name of freedom of private organisations,²⁰ the fact that the Judiciary had to step up and address an issue of national importance was admirable. Undoubtedly there remain concerns that we do not necessarily want to condone judge-inspired morality where personal value judgements might substitute entrenched legal principles. But one only has to spend a few hours in any local court to realise that this perceived shroud of impartiality is not as impenetrable as one would like to believe. Concerns should be directed to the procedural aspect of interlocutory injunctions where time restraints mandate one party being denied a fair evidential balance. This could potentially lead to exercise of pre-emptive justice where judges would make decisions without hearing full evidence in a case. A second form of tactical exploitation lies where the plaintiff is aware that a positive outcome in the interim hearing would in fact determine the substantive action.²¹

Heroes closer to home

The tumultuous emotion of apartheid did not evade Australia. Earlier, in 1971, the South African Springbok Rugby tour was deeply controversial and divisive. It sparked violent protests around the country involving people from diverse backgrounds, and in Queensland, the premier, declared a state of emergency.²² In 1969, the Wallaby tour of South Africa had opened the eyes of players to the racist nature of South Africa and had a profound effect on at least six of them. They realized that any attempt to separate politics from sport is truly naïve.²³ Hence, when the 1971 tour of Australia was announced, seven former Australian players, led by Sydney University's Tony Abrahams and Jim Boyce, declared their opposition to the tour and five of them who were still playing advised that they were not available to play against a team selected on the basis of race. Footballers turned into idealists.²⁴ This gave the issue of cutting sporting links with South Africa national prominence. What most people don't realise is the bravado these young men showed in relinquishing the "highest accolades"²⁵ of a sportsman (representing his country at an International level) to stand up for their ideals. Against the backdrop of stifling conservatism that couched politics under the banner of sportsmanship, these "heroes"²⁶ will be remembered for their great deeds both on and off the sporting field.²⁷

LEGAL ISSUES

¹⁹ See note 15, at 224 and 227

²⁰ For an excellent discussion of the socio-political context of Apartheid in New Zealand see Richards T, *Dancing on our bones: New Zealand, South Africa, Rugby and racism* (Wellington: Bridget Williams Books, 1999) at 300

²¹ This is what in fact happened, as after the injunction was granted both parties withdrew their cases without prejudice to costs

²² [<http://www.ausport.gov.au/fulltext/2001/sportsf/s320787.htm>]

²³ For a detailed account of this tour see, Hickie T, *A sense of Union* (Sydney: Caringbah Publishing: 1998) at 175-189

²⁴ These players were Paul Darveniza, Terry Forman, Barry McDonald and James Roxburgh from Sydney University and Bruce Taafe, a Sydney University student playing with Gordon. In addition, former Sydney University players and Wallabies, Tony Abrahams and Jim Boyce led various opposition to the tour.

²⁵ Note 25, at 193

²⁶ Quote by Meredith Burgmann, in the documentary *Political Football* (ABC) written and directed by James Middleton

²⁷ President Nelson Mandela himself honored these anti-Apartheid Wallabies in NSW Parliament house in June 2001 [<http://www.ausport.gov.au/fulltext/2001/sportsf/s320787.htm>]

After the mid-1980s, the phenomenon of growing professionalism infiltrated Australian sport. Hence it becomes imperative to re-examine the legal issues in this new light because as sport evolved into a huge entertainment industry, the legal relationships between the parties became more sophisticated. Large sums of money were now at stake and those involved zealously protected their interests; anyone that might tarnish the beatific image of sport faced the wrath of disciplinary tribunals. Sporting associations' constitutions (or codes of behaviour) and player contracts saw the emergence of 'disrepute clauses',²⁸ innovative catch-all provisions which were inherently vague and ill-defined, seeking to ensnare those forms of prohibited conduct not addressed by existing codified rules.²⁹ The all-encompassing ambit of these so called 'disrepute clauses' is of great concern as they could be subjugated to snuff-out forms of positive dissent within an organisation. As a conjectural moot point, the remainder of the paper will discuss the current state of the law with respect to the fact scenario discussed above, that is, what would be the ramifications today if the Wallabies decided to boycott a tour to another country (let's say US due to its interference in the Middle East!).

Justiciability

It is very likely that such an action today would in fact be covered by these 'disrepute clauses',³⁰ invoking disciplinary action by respective sporting tribunals. In the early 1970s the dissenting Wallabies had been denounced by the patriotic clubmen who ran Rugby Union at the time as "a disgrace to their country!"³¹ The question then becomes: Would courts interfere to displace such decisions? Would we have our Australian equivalent of *Finnigan*?³² The upshot of professionalism has been that the Courts have stopped regarding sporting issues as no-man's land.³³ A popular circumvention to the doctrine of *Cameron v Hogan*³⁴ has been the use of the restraint of trade argument enunciated in *Buckley v Tutty*:³⁵ now aggrieved parties can seek judicial review of administrative decisions if the decision adversely affects a person's livelihood (most of the times it will, as sanctions are usually in the form of suspensions or bans). Alternatively, cases are often argued on contractual principles.³⁶ If parallels are to be drawn with the dicta in *Finnigan*,³⁷ then any discretion of an administrative tribunal is similar to that of statutory bodies. Lord Denning encapsulated its restraint in *Breen v A.E.U.*:

"...they [domestic bodies] have the power to make or mar a man by their decisions. Often their rules are framed so as to give them discretion. They claim that this discretion is unfettered with which the courts have no right to interfere. They claim too much ... if there is a contract then it is an implied

²⁸ Common examples are: "behave in a way to bring the sport into disrepute," "engage in any act prejudicial to the interests of competition or the interest of sport generally" and "...conduct unbecoming to their status and which might harm the game" as cited in Kosla M., "Disciplined for 'bringing a sport into disrepute'-A framework for judicial review" (2001) 25 (20) Melbourne University Law Review, at 654-79

²⁹ Kosla M., "Disciplined for 'bringing a sport into disrepute'-A framework for judicial review" (2001) 25 (20) Melbourne University Law Review, at 654-79

³⁰ Ibid, at 654

³¹ Smith A, "Sports Factor" ABC Radio June 2001 < <http://www.abc.net.au/rn/talks/8.30/sportsf/stories/s444361.htm>>

³² [1985] 2 NZLR 19 (No 1); 181 (No 2); 190 (No 3)

³³ Classic statement in *Balfour v Balfour* was "sport is a domain into which the King's writ does not seek to run and to which his officers do not seek to be admitted"[1919] 2 KB 571 at 579

³⁵ (1934) 51 CLR 358, High Court stated that courts should abstain from interfering in decisions of voluntary associations 'except to enforce or establish some right of a proprietary nature', at 370

³⁵ (1971) 125 CLR 353, 374-5 per Barwick CJ, McTiernan, Windeyer, Owen and Gibbs JJ; see generally Kelly GM, "Sport and the law: an Australian perspective"(North Ryde: Law Book Co, 1987) at 53-62

³⁶ *Old Melbournians Football Club v Victorian Amateur Football Association* [2001] VSC 34 (Unreported, Byrne J, 23 February 2001) [19]

³⁷ [1985] 2 NZLR 19 (No 1); 181 (No 2); 190 (No 3)

term that the discretion should be exercised fairly.”³⁸

Beloff suggests that materiality should be determined based on the objects set out in the body’s memorandum of articles or constitution.³⁹ Thus any decision must accord with the body’s *raison d’etre*.

Decisions of sporting tribunals: Procedural or merits review?

Kosla suggests a framework, which should be used to construe the review of decisions based on disrepute clauses.⁴⁰ He regards the “no evidence”⁴¹ principle as the strongest defence against such decisions. A cursory review of similar tests developed in the context of public administrative decisions, indicates that the touchstone is ultimately “reasonableness” in the *Wednesbury*⁴² sense. Although a useful starting point, this does not necessarily alleviate our dilemma that different decision makers would reach very different conclusions as to the reasonableness of politically charged issues (which are naturally discordant). The courts have reiterated that they will not intervene in any internal dispute regarding the correctness of a decision made by a disciplinary tribunal.⁴³ How can this view be reconciled with the proposition that:

Where the criterion of misconduct is so imprecise and its application so much a matter of impression, that different decision-makers...might reach differing conclusions. A court is entitled to substitute its own opinion for that of the tribunal only if the tribunal’s decision is so aberrant that it cannot be classed as rational.⁴⁴

Drawing from existing case law, the two tenets of *Kosla*’s framework are public exposure and whether the conduct was detrimental to the sport itself transcending the athlete’s personal interests. The first refers to an athlete’s duty not to indulge in conduct damaging to the sport whereby “its general context the conduct is of that quality that causes injury to the game by being known to the public.”⁴⁵ The second is primarily aimed at actions of athletes both on and off-field which lead to public ridicule of that sport.⁴⁶ The juxtaposition this creates is that this two-limbed test would readily be satisfied if the actions of the Wallabies were applied to it. Their conduct was intended to enter the public domain through various protests, media interviews and rallies⁴⁷ and if the pervading view of the administrators of the day was accepted, then they would have been deemed to denigrate the reputation of rugby. This brings us round a full circle. Others have argued that decisions made for political reasons are *ultra vires* to the sporting body’s objects and should invite

³⁸ [1971] 2 QB 175 at 190

³⁹ *Beloff M*, “Pitch, pool, rink...courts: judicial review in the sporting world” (1989) 95 Public Law Journal, Spring at 106

⁴⁰ See *abe*, note 30

⁴¹ The principle is analogous to the jury test: the question is not whether there is no evidence *per se*, but there is none that ought reasonably to satisfy the jury that the fact sought to be proved is established cited in *Naxakis v Western General Hospital* (1999) 197 CLR 269, 282 per McHugh J

⁴² [1948] 1 KB 223, at 230 cited in cases where decisions were regarded as “perverse,” “no probative evidence” and “irrational”

⁴³ *Williams* [1998] 2 VR 546 at 557, per Tadgell JA

⁴⁴ *Ibid*, at 559 per Tadgell JA

⁴⁵ *Chappell v TCN Channel Nine Pty Ltd* (1988) 14 NSWLR 153 at 166 per Hunt J

⁴⁶ It is beyond the scope of this paper to discuss instances of such behavior but a good example would be John Hopoate’s placing his finger into the anus of three opposing footballers- ‘*It may not be good and clean but it’s all entertainment, and that’s the way it is,*’ The Sydney Morning Herald, 30 March 2001, at 38

⁴⁷ See Chapter 13 “Agitation and Honours” in Hickie T, “A sense of Union” (Sydney: Caringbah Publishing, 1998) at 191-207

judicial review.⁴⁸ The issue remains unresolved until Courts decide how to deal with politically contentious issues in the sporting arena. An examination of past case law implies that they the Judiciary may have intentionally refrained from bringing “public policy” into the debate. This paper submits that sooner or later the sacrificial cow will have to be slaughtered in the absence of explicit sporting policies espoused by national or international sporting organisations.

Ancillary issues: Defamation, Incitement and Trade Practices law

If dissent in contentious issues is highly vocal and is published, it could give rise to a defamatory action being brought against the mavericks by a sporting organisation. Here courts would need to balance an individual’s right to freedom against a sport’s right to reputation. Given the changes to NSW defamation laws in 2005⁴⁹ the defence of honest opinion has become more onerous as it is conditional upon the published material being reasonable in the circumstances,⁵⁰ reversing the onus onto the defendant to justify his or her allegations. Once again how this “reasonableness” is to be determined for politically inflammatory material is far from clear.

Another interesting diversion is the impact of new NSW sedition laws on misconduct on and off-field. Disciplinary tribunals have disapproved of conduct that ‘incites crowd violence’⁵¹ and causes ‘friction and division in the sport.’⁵² Would taking a public stance (such as holding anti-apartheid placards at rugby matches) in a sporting event suffice for the purposes of the new sedition laws.⁵³ Logic suggests that it would. Finally, to conclude the discussion on applicable legal issues, would sporting boycotts be classified as “collective boycotts”⁵⁴ for the purposes of section 4 (d) of Trade Practice Act? The recent trend of treating sports as an enterprise would again suggest that such an action is not implausible.⁵⁵

INTERNATIONAL OUTLOOK

Given the extent of globalisation in sports today, any debate would be perfunctory without reviewing the role of international governing bodies and the role of the Olympic movement.

Historical Moments – Olympic Boycotts

Year	Games	Nation (s)	Issue (s)
1936	Berlin	Ireland	Dispute between newly Independent Ireland and IOC over jurisdiction of its Olympic Committee
1956	Melbourne	China Egypt Iraq Lebanon Spain	IOC recognition of Taiwan Israel's invasion of the Sinai Peninsula Israel's invasion of the Sinai Peninsula Israel's invasion of the Sinai Peninsula Soviet invasion of Hungary.

⁴⁸ Beloff M, “Pitch, pool, rink...courts: judicial review in the sporting world” (1989) 95 Public Law Journal, Spring at 106

⁴⁹ *Defamation Act* (2005) NSW <http://www.austlii.edu.au/au/legis/nsw/consol_act/da200599/>

⁵⁰ *Ibid*, section 31

⁵¹ “Salute costs striker \$2000 fine” *The Age (Melbourne)* 24 May 2001, Sport 5

⁵² “Knights to face seven charges,” *The Age (Melbourne)* 16 May 2001, Sport 1

⁵³ <<http://www.gtcentre.unsw.edu.au/publications/terrorism.asp>>

⁵⁴ Pengilley, W., “Collective boycotts under the Australian Trade Practices Act: What our policy makers have failed to understand and what the Dawson Committee should do about it,” (2002) 10 (16) *Competition & Consumer Law Journal* at 58

⁵⁵ See line of *South Sydney* cases through the various domestic courts: (2000) 177 ALR 611; [2000] FCA 1541), (2001) 181 ALR 188 and [2003] HCA 45 (13 August 2003)

		Switzerland Netherlands	Soviet invasion of Hungary. Soviet invasion of Hungary.
1960	Rome	China	IOC recognition of Taiwan
1964	Tokyo	China	IOC recognition of Taiwan
1968	Mexico City	China	IOC recognition of Taiwan
1972	Munich	China	IOC recognition of Taiwan
1976	Montreal	24 Nations (see appendix) China	New Zealand had played banned-South Africa at Rugby and IOC refused to exclude it from the Games IOC Recognition of Taiwan
1980	Moscow	China 64 nations (see appendix)	IOC Recognition of Taiwan USA led this boycott over Soviet union's invasion of Afghanistan
1984	Los Angeles	Afghanistan Bulgaria Cuba Czechoslovakia East Germany Ethiopia Hungary Laos Mongolia North Korea Poland Soviet Union Vietnam Yemen	Soviet Union led counter boycott (all listed nations)
1988	Seoul	Albania* Cuba Ethiopia Nicaragua North Korea Seychelles* *denotes that the reason for boycott is not known for	In support of North Korea In support of North Korea Dispute with South Korea over proposed joint hosting of some events

		certain.	
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Role of International Law: IOC and IF's

The legality of sporting boycotts at the international level is dubious and its use and acceptance has been fragmented. *Nafziger* submits that boycotts although inherently unfriendly acts fall within a legally protected range of retaliatory sanctions under the law of retorsion.⁵⁶ Hence the resort to self-help measures by states is justified under the principles “of deterrence, reparation of both.”⁵⁷ The Olympic movement on the other hand has been a strong advocate of maintaining the autonomy of sport from any political pressures. *Rule 3* of the Olympic Charter articulates that,

“[n]o discrimination in the Games is allowed against any country or person on grounds of race, religion or *politics*” also “[t]he Games are contests between individuals and teams and not between countries”⁵⁸

Observing the theatrics of the past Century (classic case being the 1936 Berlin games!) any attempt to demarcate the spheres of politics and sports seems artificial. An overlapping body of governance is also found in the rules of affiliated sporting organisations (International Federations and National Olympic Committees). For example *Article (2) (4.1-4.5)* of FIFA provides that,

“... there shall be no discrimination against a country or an individual for reasons of race, religion or politics”⁵⁹

How then have sporting boycotts been marketed so successfully? The answer lies within international human rights jurisprudence.

International human rights law and the United Nations:

Apartheid and official racism contravene fundamental human right principles.⁶⁰ The anti-apartheid movement in the last half of the 20th Century led to a number of initiatives in the United Nations General Assembly some more vehemently enforced than others.⁶¹ It led to a frenzy of blacklisting and publicising member organisations and even individual athletes in the hope that they would be disqualified from further international competition.⁶² It is this extended cascade approach to boycotting that poses the greatest risk to individual and sovereign liberties. *Nafziger* contends that the “competence of UN to ostracize individuals, even in the name of human rights is questionable.”⁶³

In finality, sporting boycotts can be levelled against nations whose human rights record is abysmal, as a manifestation of collective ideals and national policy. More frequently they have been used to implement geopolitical strategies, which have simply left a bad taste and dampened the Olympic glitterati for decades.⁶⁴

⁵⁶ Nafziger J., “Chapter VII: Boycotts” in “International Sports law” (New York: Transnational Publishers, 1988), at 102

⁵⁷ Ibid, at 104

⁵⁸ Rule 9, Olympic Charter as cited in Note 58, at 105

⁵⁹ See above, note 58 at 107

⁶⁰ Universal Declaration of Human Rights, Dec. 10, 1948, G.A Res 217A (III)

⁶¹ E.g. International Convention on the Elimination of all forms of racial discrimination, see generally Note 58, at 80-90

⁶² See above, Note 58 at 84

⁶³ Ibid, a classic case was the expulsion of British, nee South African runner Zola Budd for a year for fraternizing with South African athletes

⁶⁴ Id, at 118-9

Open Issues

There are a few areas beyond the scope of this paper which deserve recognition. An interesting hypothesis is what happens when international sporting authorities ban a national team of a particular sport because of the actions of another team from the same nation. Shouldn't principles of 'just deserts' and proportionality be invoked?⁶⁵ Sporting boycotts have been couched under the umbrella of human rights ever so often, a precise relationship between the two needs to be defined. Finally, there is scant evidence on the impact of sporting boycotts on affected nations particularly the athletes which have the most to lose from these militated efforts.

CONCLUSION

Having established that sport and politics are inextricably linked, this essay sought to elucidate the different areas of law that sporting boycotts touch upon, both at a national and international level. The contradictions within the law are multifarious especially with respect to enforcement of an athletes' service contract and preserving their civil liberties. Judicial positivism in the area has been commendable often leading to better practices within the administrative branches of a sport. However, a specific ruling on politics would be useful. In light of the past practice of most countries, some forms of sporting boycotts have and no doubt will continue to be used. Probing further, one might show scepticism as to whether sport should be made a proxy for a country's national policies. Ultimately who owns the game? The athletes, the administrators or the nation's power brokers? Does the tenacity of personal ideals blind us to the effect that we justify our means to achieve the desired end?

Appendix

1976 Montreal Games Boycotting Nations

Algeria	Guyana	Sri Lanka
Cameroon*	Iraq	Sudan
Central African Republic	Kenya	Swaziland
Chad	Libya	Taiwan
Congo	Malawi	Tanzania
Egypt*	Mali	Togo
Ethiopia	Morocco*	Tunisia*
The Gambia	Niger	Uganda
Ghana	Nigeria	Upper Volta (Burkina Faso)
		Zambia

* Nations that are classified as competing nations because their athletes competed prior to the delegations being withdrawn mid-way through the first week of the games

1980 Moscow Olympics Boycotting Nations

Albania	Egypt	Mauritania	Thailand
Antigua	El Salvador	Mauritius	Togo
Argentina	Fiji	Monaco	Tunisia
Bahamas	Gabon	Morocco	Turkey

⁶⁵ See generally the ratio of *Wheeler v Leicester City Council* [1985] AC 1054 where the House of Lords held that it was unreasonable and unfair to punish someone for the alleged misconduct of another

Bahrain	The Gambia	Netherlands Antilles	United States
Bangladesh	Ghana	Niger	U.S. Virgin Islands
Barbados	Haiti	Norway	Upper Volta (Burkina Faso)
Belize	Honduras	Pakistan	Uruguay
Bermuda	Hong Kong	Panama	West Germany
Bolivia	Indonesia	Paraguay	Zaire (DRC)
Canada	Iran	Philippines	Thailand
Cayman islands	Israel	Saudi Arabia	Togo
Central African Republic	Ivory Coast	Singapore	Tunisia
Chad	Japan	Somalia	Turkey
Chile	Kenya	South Korea	United States
China	Liberia	Sudan	U.S. Virgin
Egypt	Liechtenstein	Suriname	West Germany
El Salvador	Malawi	Swaziland	Zaire (DRC)
Fiji	Malaysia	Taiwan	Upper Volta (Burkina Faso)

Source: IOC, *Olympic Games Official Reports 1936-1984*

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INTRODUCTION

Sporting boycotts or put simply a declaration by a team or player to another that “I don’t want to play with you anymore!” – This indignation may be reminiscent of kindergarten playground tactics, but what happens when playground psychology seeps into the arena of mass international sport. Sporting boycotts have at times been the weapon of choice for a nation (or a particular group) signalling disapproval or taking action against regimes or political systems of which they do not approve. However this raises deeper questions such as: are boycotts merely an ineffective novelty, a mere case of symbolic posturing or something more? Are they preferable to economic warfare through sanctions? And if so, when are they justified?

Without delving into the labyrinth of literature in this area, this paper aims to investigate the legal

dimensions of the issue. More specifically, it examines interrelationships between sporting tribunals, the courts and ultimately the players themselves. However, I have attempted to integrate politic arguments where they shed light on the underlying themes. I will begin with a case study of an important New Zealand case.

INTERVENTION OF THE LAW – *Finnigan v NZFRU*⁶⁶: A case study

Background

The 1960s to the late 1980s were years of political turmoil. For many nations, especially those belonging to the Commonwealth of Nations, the issue of sporting contacts with South Africa loomed large. South Africa's inhumane apartheid regime extended its policies of racial segregation to sport and the selection of its international sporting teams. Events in New Zealand in the 1970s provide a useful starting point to open discussion of sporting boycotts due to that nation's close rugby ties with South Africa.⁶⁷ By early 1970s two legal attempts had been made by individuals to prevent an All Blacks tour to South Africa. One used the writ "ne exeat regno"⁶⁸ and another immigration law.⁶⁹ Not surprisingly both were unsuccessful.⁷⁰ However in 1976, the *International Declaration against Apartheid in Sport* was passed⁷¹ and the *Gleneagles Agreement* was signed by the Commonwealth of Nations in 1977.⁷²

In reality, the latter was a toothless instrument which merely "urged" member nations to discontinue sporting links with South Africa without any domestic legislative changes. In Australia the Whitlam government took a laudable stance of translating the *Gleneagles Agreement* into national policy for the next 15 years.⁷³ In New Zealand a round of heated parliamentary debate yielded nothing more than a lukewarm statement from the Labour Party that ultimately left the decision to be made by the New Zealand Rugby Football Union ("NZRFU"). The NZFRU decided to tour South Africa in 1985.⁷⁴ Public sentiment against apartheid gained momentum and the trilogy of *Finnigan* cases were a judicial time-bomb waiting to happen. Two members of the NZRFU (as players of minor clubs) brought an action against NZRFU's decision to allow the All Blacks tour of 1985. Interesting enough, the plaintiff's initial claim was not all that important (an attempt to gain a legal foothold) but the crux of their claim involved judicial review of an administrative action.⁷⁵

The legal issues⁷⁶

⁶⁶ [1985] 2 NZLR 19 (No 1); 181 (No 2); 190 (No 3)

⁶⁷ For an illuminating discussion on the similarities of the white male rugby elite of both countries see, Nauright, J., "Like fleas on a dog: emerging national and international conflict over New Zealand rugby ties with South Africa 1965-74," (1993) *Sporting Traditions* at 54-77

⁶⁸ *Parsons v Burk*[1971] NZLR 244

⁶⁹ *Ashby v Minister of Immigration* [1981] 1 NZLR 222

⁷⁰ For an Irish example see Power, V., "Injunction an rugby tours: the Irish experience," (1985) *New Zealand Law Journal* at 220

⁷¹ Resolution of the UN Department of Political and Security Council Affairs Centre against Apartheid, cited in Stillman, G., "The Sporting Life," (1981) Volume 13 *Melbourne University Law Review* at 264

⁷² Nauright, J., "Like fleas on a dog: emerging national and international conflict over New Zealand rugby ties with South Africa 1965-74," (1985) *Sporting Traditions* at 54-77

⁷³ Hickie, T., "A Sense of Union," (Sydney: Caringbah Publishing, 1998) ch13 at 204

⁷⁴ *New Zealand Parliamentary Debates*, Vol 462, 28 March 1985: 4036-59

⁷⁵ The plaintiffs were alleging breach of Rule 2(a) of NZRFU's rules: namely "To control, promote, foster and develop the game of amateur Rugby Union Football throughout New Zealand" (emphasis added)

⁷⁶ In the interest of brevity all three cases will be discussed simultaneously

The first issue was concerning judicial standing of the plaintiffs, that is, did Finnigan and Recordon as members of NZRFU, a voluntary association, have locus standi to challenge the validity of the NZFRU's decision. The question was answered in the negative at first instance but overruled in the Court of Appeal.⁷⁷ Central to the judgment were Justice Cooke's remarks concerning private organizations. He stated:

While technically a private and voluntary sporting organization, the Rugby Union is in relation to this decision, in a position of major national importance ... In truth the case has some analogy with public law issues. This is not to be pressed too far {emphasis added}. We are simply saying that it falls into a special area where, in the New Zealand context, a sharp boundary between public and private law cannot realistically be drawn.⁷⁸

Implicit in the His Honour's reasoning is the public interest argument, which seemed to be the touchstone marking the Judiciary's intervention in essentially private administrative decisions. The Court was however perceptive in not treating the decision as an exercise of statutory power since this would entail subjecting the NZFRU to civil public law remedies.⁷⁹ Some commentators regarded this unorthodox approach as a "radical leap of faith."⁸⁰

The second issue in the High Court⁸¹ was the plaintiffs' application for an interim injunction since the action would not have proceeded before the scheduled All Blacks tour. Casey J found the threshold test satisfied such that there was a "strong prima facie case"⁸² that the decision to tour would not "promote, foster and develop the game of rugby in New Zealand."⁸³ However, contradicting Cooke J's strong dicta on this subject, he decided that the Rugby Union must in fact exercise the degree of care applicable to statutory bodies in making their decisions and NZFRU should have acted *both* honestly and reasonably. The final 'balance of convenience' test was also found in the plaintiffs' favour. Once again the public interest argument pervaded both parties' individual circumstances.

It is not hard to see why some have regarded the decision as legally unpalatable.⁸⁴ But for the ordinary New Zealander this was a high water mark case which reflected public sentiment of 1985. It is a classic case where Courts had to grapple with politically volatile issues in the absence of Parliamentary guidance. Whether the latter had eschewed from its responsibilities in fear of an electoral backlash or whether it was in the name of freedom of private organisations,⁸⁵ the fact that the Judiciary had to step up and address an issue of national importance was admirable. Undoubtedly there remain concerns that we do not necessarily want to condone judge-inspired morality where personal value judgements might substitute entrenched legal principles. But one only has to spend a few hours in any local court to realise that this perceived shroud of impartiality is not as impenetrable as one would like to believe. Concerns should be directed to the procedural aspect of interlocutory injunctions where time restraints mandate one party being denied a fair evidential balance. This could potentially lead to exercise of pre-emptive justice where judges

⁷⁷ *Finnigan* [1985] 2 NZLR 159 (No 1) per Davidson CJ

⁷⁸ *Finnigan* [1985] 2 NZLR 181 (No 2) at 189

⁷⁹ Baragwanath D QC, "The Tour" (1985) 221 New Zealand Law Journal at 226

⁸⁰ Bowman M R, "Standing to challenge the Tour" (1985) 387 AULR at 390

⁸¹ *Finnigan* [1985] 2 NZLR 190 (No 3) at 199

⁸² *Ibid* at 201 applying the legal principles applicable to interlocutory injunctions in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396

⁸³ *Id*

⁸⁴ See note 15, at 224 and 227

⁸⁵ For an excellent discussion of the socio-political context of Apartheid in New Zealand see Richards T, *Dancing on our bones: New Zealand, South Africa, Rugby and racism* (Wellington: Bridget Williams Books, 1999) at 300

would make decisions without hearing full evidence in a case. A second form of tactical exploitation lies where the plaintiff is aware that a positive outcome in the interim hearing would in fact determine the substantive action.⁸⁶

Heroes closer to home

The tumultuous emotion of apartheid did not evade Australia. Earlier, in 1971, the South African Springbok Rugby tour was deeply controversial and divisive. It sparked violent protests around the country involving people from diverse backgrounds, and in Queensland, the premier, declared a state of emergency.⁸⁷ In 1969, the Wallaby tour of South Africa had opened the eyes of players to the racist nature of South Africa and had a profound effect on at least six of them. They realized that any attempt to separate politics from sport is truly naïve.⁸⁸ Hence, when the 1971 tour of Australia was announced, seven former Australian players, led by Sydney University's Tony Abrahams and Jim Boyce, declared their opposition to the tour and five of them who were still playing advised that they were not available to play against a team selected on the basis of race. Footballers turned into idealists.⁸⁹ This gave the issue of cutting sporting links with South Africa national prominence. What most people don't realise is the bravado these young men showed in relinquishing the "highest accolades"⁹⁰ of a sportsman (representing his country at an International level) to stand up for their ideals. Against the backdrop of stifling conservatism that couched politics under the banner of sportsmanship, these "heroes"⁹¹ will be remembered for their great deeds both on and off the sporting field.⁹²

LEGAL ISSUES

After the mid-1980s, the phenomenon of growing professionalism infiltrated Australian sport. Hence it becomes imperative to re-examine the legal issues in this new light because as sport evolved into a huge entertainment industry, the legal relationships between the parties became more sophisticated. Large sums of money were now at stake and those involved zealously protected their interests; anyone that might tarnish the beatific image of sport faced the wrath of disciplinary tribunals. Sporting associations' constitutions (or codes of behaviour) and player contracts saw the emergence of 'disrepute clauses',⁹³ innovative catch-all provisions which were inherently vague and ill-defined, seeking to ensnare those forms of prohibited conduct not addressed by existing codified rules.⁹⁴ The all-encompassing ambit of these so called 'disrepute clauses' is of great concern as they could be subjugated to snuff-out forms of positive dissent within an organisation. As a conjectural moot point, the remainder of the paper will discuss the

⁸⁶ This is what in fact happened, as after the injunction was granted both parties withdrew their cases without prejudice to costs

⁸⁷ [<http://www.ausport.gov.au/fulltext/2001/sportsf/s320787.htm>]

⁸⁸ For a detailed account of this tour see, Hickie T, *A sense of Union* (Sydney: Caringbah Publishing: 1998) at 175-189

⁸⁹ These players were Paul Darveniza, Terry Forman, Barry McDonald and James Roxburgh from Sydney University and Bruce Taafe, a Sydney University student playing with Gordon. In addition, former Sydney University players and Wallabies, Tony Abrahams and Jim Boyce led various opposition to the tour.

⁹⁰ Note 25, at 193

⁹¹ Quote by Meredith Burgmann, in the documentary *Political Football* (ABC) written and directed by James Middleton

⁹² President Nelson Mandela himself honored these anti-Apartheid Wallabies in NSW Parliament house in June 2001 [<http://www.ausport.gov.au/fulltext/2001/sportsf/s320787.htm>]

⁹³ Common examples are: "behave in a way to bring the sport into disrepute," "engage in any act prejudicial to the interests of competition or the interest of sport generally" and "...conduct unbecoming to their status and which might harm the game" as cited in Kosla M., "Disciplined for 'bringing a sport into disrepute'-A framework for judicial review" (2001) 25 (20) Melbourne University Law Review, at 654-79

⁹⁴ Kosla M., "Disciplined for 'bringing a sport into disrepute'-A framework for judicial review" (2001) 25 (20) Melbourne University Law Review, at 654-79

current state of the law with respect to the fact scenario discussed above, that is, what would be the ramifications today if the Wallabies decided to boycott a tour to another country (let's say US due to its interference in the Middle East!).

Justiciability

It is very likely that such an action today would in fact be covered by these 'disrepute clauses'⁹⁵ invoking disciplinary action by respective sporting tribunals. In the early 1970s the dissenting Wallabies had been denounced by the patriotic clubmen who ran Rugby Union at the time as "a disgrace to their country!"⁹⁶ The question then becomes: Would courts interfere to displace such decisions? Would we have our Australian equivalent of *Finnigan*?⁹⁷ The upshot of professionalism has been that the Courts have stopped regarding sporting issues as no-man's land.⁹⁸ A popular circumvention to the doctrine of *Cameron v Hogan*⁹⁹ has been the use of the restraint of trade argument enunciated in *Buckley v Tutty*:¹⁰⁰ now aggrieved parties can seek judicial review of administrative decisions if the decision adversely affects a person's livelihood (most of the times it will, as sanctions are usually in the form of suspensions or bans). Alternatively, cases are often argued on contractual principles.¹⁰¹ If parallels are to be drawn with the dicta in *Finnigan*,¹⁰² then any discretion of an administrative tribunal is similar to that of statutory bodies. Lord Denning encapsulated its restraint in *Breen v A.E.U.*:

"...they [domestic bodies] have the power to make or mar a man by their decisions. Often their rules are framed so as to give them discretion. They claim that this discretion is unfettered with which the courts have no right to interfere. They claim too much ... if there is a contract then it is an implied term that the discretion should be exercised fairly."¹⁰³

Beloff suggests that materiality should be determined based on the objects set out in the body's memorandum of articles or constitution.¹⁰⁴ Thus any decision must accord with the body's *raison d'être*.

Decisions of sporting tribunals: Procedural or merits review?

Kosla suggests a framework, which should be used to construe the review of decisions based on disrepute clauses.¹⁰⁵ He regards the "no evidence"¹⁰⁶ principle as the strongest defence against such decisions. A cursory review of similar tests developed in the context of public administrative

⁹⁵ Ibid, at 654

⁹⁶ Smith A, "Sports Factor" ABC Radio June 2001 < <http://www.abc.net.au/rn/talks/8.30/sportsf/stories/s444361.htm> >

⁹⁷ [1985] 2 NZLR 19 (No 1); 181 (No 2); 190 (No 3)

⁹⁸ Classic statement in *Balfour v Balfour* was "sport is a domain into which the King's writ does not seek to run and to which his officers do not seek to be admitted"[1919] 2 KB 571 at 579

⁹⁹ (1934) 51 CLR 358, High Court stated that courts should abstain from interfering in decisions of voluntary associations 'except to enforce or establish some right of a proprietary nature', at 370

¹⁰⁰ (1971) 125 CLR 353, 374-5 per Barwick CJ, McTiernan, Windeyer, Owen and Gibbs JJ; see generally Kelly GM, "Sport and the law: an Australian perspective"(1987) 53-62

¹⁰¹ *Old Melbournians Football Club v Victorian Amateur Football Association* [2001] VSC 34 (Unreported, Byrne J, 23 February 2001) [19]

¹⁰² [1985] 2 NZLR 19 (No 1); 181 (No 2); 190 (No 3)

¹⁰³ [1971] 2 QB 175 at 190

¹⁰⁴ Beloff M, "Pitch, pool, rink...courts: judicial review in the sporting world" (1989) 95 Public Law Journal, Spring at 106

¹⁰⁵ See above, note 30

¹⁰⁶ The principle is analogous to the jury test: the question is not whether there is no evidence per se, but there is none that ought reasonably to satisfy the jury that the fact sought to be proved is established cited in *Naxakis v Western General Hospital* (1999) 197 CLR 269, 282 per McHugh J

decisions, indicates that the touchstone is ultimately “reasonableness” in the *Wednesbury*¹⁰⁷ sense. Although a useful starting point, this does not necessarily alleviate our dilemma that different decision makers would reach very different conclusions as to the reasonableness of politically charged issues (which are naturally discordant). The courts have reiterated that they will not intervene in any internal dispute regarding the correctness of a decision made by a disciplinary tribunal.¹⁰⁸ How can this view be reconciled with the proposition that:

Where the criterion of misconduct is so imprecise and its application so much a matter of impression, that different decision-makers...might reach differing conclusions. A court is entitled to substitute its own opinion for that of the tribunal only if the tribunal’s decision is so aberrant that it cannot be classed as rational.¹⁰⁹

Drawing from existing case law, the two tenets of *Kosla*’s framework are public exposure and whether the conduct was detrimental to the sport itself transcending the athlete’s personal interests. The first refers to an athlete’s duty not to indulge in conduct damaging to the sport whereby “its general context the conduct is of that quality that causes injury to the game by being known to the public.”¹¹⁰ The second is primarily aimed at actions of athletes both of and off-field which lead to public ridicule of that sport.¹¹¹ The juxtaposition this creates is that this two-limbed test would readily be satisfied if the actions of the Wallabies were applied to it. Their conduct was intended to enter the public domain through various protests, media interviews and rallies¹¹² and if the pervading view of the administrators of the day was accepted, then they would have been deemed to denigrate the reputation of rugby. This brings us round a full circle. Others have argued that decisions made for political reasons are ultra vires to the sporting body’s objects and should invite judicial review.¹¹³ The issue remains unresolved until Courts decide how to deal with politically contentious issues in the sporting arena. An examination of past case law implies that they the Judiciary may have intentionally refrained from bringing “public policy” into the debate. This paper submits that sooner or later the sacrificial cow will have to be slaughtered in the absence of explicit sporting policies espoused by national or international sporting organisations.

Ancillary issues: Defamation, Incitement and Trade Practices law

If dissent in contentious issues is highly vocal and is published, it could give rise to a defamatory action being brought against the mavericks by a sporting organisation. Here courts would need to balance an individual’s right to freedom against a sport’s right to reputation. Given the changes to NSW defamation laws in 2005¹¹⁴ the defence of honest opinion has become more onerous as it is conditional upon the published material being reasonable in the circumstances,¹¹⁵ reversing the onus onto the defendant to justify his or her allegations. Once again how this “reasonableness” is to be determined for politically inflammatory material is far from clear.

¹⁰⁷ [1948] 1 KB 223, at 230 cited in cases where decisions were regarded as “perverse,” “no probative evidence” and “irrational”

¹⁰⁸ *Williams* [1998] 2 VR 546 at 557, per Tadgell JA

¹⁰⁹ *Ibid*, at 559 per Tadgell JA

¹¹⁰ *Chappell v TCN Channel Nine Pty Ltd* (1988) 14 NSWLR 153 at 166 per Hunt J

¹¹¹ It is beyond the scope of this paper to discuss instances of such behavior but a good example would be John Hopoate’s placing his finger into the anuses of three opposing footballers- ‘*It may not be good and clean but it’s all entertainment, and that’s the way it is,*’ *The Sydney Morning Herald*, 30 March 2001, at 38

¹¹² See Chapter 13 “Agitation and Honours” in Hickie T, “A sense of Union” (Sydney: Caringbah Publishing, 1998) at 191-207

¹¹³ Beloff M, “Pitch, pool, rink...courts: judicial review in the sporting world” (1989) 95 *Public Law Journal*, Spring at 106

¹¹⁴ *Defamation Act* (2005) NSW <http://www.austlii.edu.au/au/legis/nsw/consol_act/da200599/>

¹¹⁵ *Ibid*, section 31

Another interesting diversion is the impact of new NSW sedition laws on misconduct on and off-field. Disciplinary tribunals have disapproved of conduct that ‘incites crowd violence’¹¹⁶ and causes ‘friction and division in the sport.’¹¹⁷ Would taking a public stance (such as holding anti-apartheid placards at rugby matches) in a sporting event suffice for the purposes of the new sedition laws.¹¹⁸ Logic suggests that it would. Finally, to conclude the discussion on applicable legal issues, would sporting boycotts be classified as “collective boycotts”¹¹⁹ for the purposes of section 4 (d) of Trade Practice Act? The recent trend of treating sports as an enterprise would again suggest that such an action is not implausible.¹²⁰

INTERNATIONAL OUTLOOK

Given the extent of globalisation in sports today, any debate would be perfunctory without reviewing the role of international governing bodies and the role of the Olympic movement.

Historical Moments – Olympic Boycotts

Year	Games	Nation (s)	Issue (s)
1936	Berlin	Ireland	Dispute between newly Independent Ireland and IOC over jurisdiction of its Olympic Committee
1956	Melbourne	China Egypt Iraq Lebanon Spain Switzerland Netherlands	IOC recognition of Taiwan Israel's invasion of the Sinai Peninsula Israel's invasion of the Sinai Peninsula Israel's invasion of the Sinai Peninsula Soviet invasion of Hungary. Soviet invasion of Hungary. Soviet invasion of Hungary.
1960	Rome	China	IOC recognition of Taiwan
1964	Tokyo	China	IOC recognition of Taiwan
1968	Mexico City	China	IOC recognition of Taiwan
1972	Munich	China	IOC recognition of Taiwan
1976	Montreal	24 Nations (see appendix)	New Zealand had played banned-South Africa at Rugby and IOC refused to exclude it from the Games

¹¹⁶ “Salute costs striker \$2000 fine” *The Age (Melbourne)* 24 May 2001, Sport 5

¹¹⁷ “Knights to face seven charges,” *The Age (Melbourne)* 16 May 2001, Sport 1

¹¹⁸ < <http://www.gtcentre.unsw.edu.au/publications/terrorism.asp>>

¹¹⁹ Pengilly, W., “Collective boycotts under the Australian Trade Practices Act: What our policy makers have failed to understand and what the Dawson Committee should do about it,” (2002) 10 (16) *Competition & Consumer Law Journal* at 58

¹²⁰ See line of *South Sydney* cases through the various domestic courts: (2000) 177 ALR 611; [2000] FCA 1541), (2001) 181 ALR 188 and [2003] HCA 45 (13 August 2003)

		China	IOC Recognition of Taiwan
1980	Moscow	China 64 nations (see appendix)	IOC Recognition of Taiwan USA led this boycott over Soviet union's invasion of Afghanistan
1984	Los Angeles	Afghanistan Bulgaria Cuba Czechoslovakia East Germany Ethiopia Hungary Laos Mongolia North Korea Poland Soviet Union Vietnam Yemen	Soviet Union led counter boycott (all listed nations)
1988	Seoul	Albania* Cuba Ethiopia Nicaragua North Korea Seychelles* *denotes that the reason for boycott is not known for certain.	In support of North Korea In support of North Korea Dispute with South Korea over proposed joint hosting of some events

Role of International Law: IOC and IF's

The legality of sporting boycotts at the international level is dubious and its use and acceptance has been fragmented. *Nafziger* submits that boycotts although inherently unfriendly acts fall within a legally protected range of retaliatory sanctions under the law of retorsion.¹²¹ Hence the resort to self-help measures by states is justified under the principles “of deterrence, reparation of both.”¹²²

The Olympic movement on the other hand has been a strong advocate of maintaining the autonomy of sport from any political pressures. *Rule 3* of the Olympic Charter articulates that,

“[n]o discrimination in the Games is allowed against any country or person on grounds of race, religion or *politics*” also “[t]he Games are contests between individuals and teams and not between countries”¹²³

¹²¹ Nafziger J., “Chapter VII: Boycotts” in “International Sports law” (New York: Transnational Publishers, 1988), at 102

¹²² *Ibid*, at 104

¹²³ Rule 9, Olympic Charter as cited in Note 58, at 105

Observing the theatrics of the past Century (classic case being the 1936 Berlin games!) any attempt to demarcate the spheres of politics and sports seems artificial. An overlapping body of governance is also found in the rules of affiliated sporting organisations (International Federations and National Olympic Committees). For example *Article (2) (4.1-4.5)* of FIFA provides that,

“... there shall be no discrimination against a country or an individual for reasons of race, religion or politics”¹²⁴

How then have sporting boycotts been marketed so successfully? The answer lies within international human rights jurisprudence.

International human rights law and the United Nations:

Apartheid and official racism contravene fundamental human right principles.¹²⁵ The anti-apartheid movement in the last half of the 20th Century led to a number of initiatives in the United Nations General Assembly some more vehemently enforced than others.¹²⁶ It led to a frenzy of blacklisting and publicising member organisations and even individual athletes in the hope that they would be disqualified from further international competition.¹²⁷ It is this extended cascade approach to boycotting that poses the greatest risk to individual and sovereign liberties. *Nafziger* contends that the “competence of UN to ostracize individuals, even in the name of human rights is questionable.”¹²⁸

In finality, sporting boycotts can be levelled against nations whose human rights record is abysmal, as a manifestation of collective ideals and national policy. More frequently they have been used to implement geopolitical strategies, which have simply left a bad taste and dampened the Olympic glitterati for decades.¹²⁹

Open Issues

There are a few areas beyond the scope of this paper which deserve recognition. An interesting hypothesis is what happens when international sporting authorities ban a national team of a particular sport because of the actions of another team from the same nation. Shouldn't principles of 'just deserts' and proportionality be invoked?¹³⁰ Sporting boycotts have been couched under the umbrella of human rights ever so often, a precise relationship between the two needs to be defined. Finally, there is scant evidence on the impact of sporting boycotts on affected nations particularly the athletes which have the most to lose from these militated efforts.

CONCLUSION

Having established that sport and politics are inextricably linked, this essay sought to elucidate the different areas of law that sporting boycotts touch upon, both at a national and international level. The contradictions within the law are multifarious especially with respect to enforcement of an athletes' service contract and preserving their civil liberties. Judicial positivism in the area has

¹²⁴ See above, note 58 at 107

¹²⁵ Universal Declaration of Human Rights, Dec. 10, 1948, G.A Res 217A (III)

¹²⁶ E.g. International Convention on the Elimination of all forms of racial discrimination, see generally Note 58, at 80-90

¹²⁷ See above, Note 58 at 84

¹²⁸ *Ibid*, a classic case was the expulsion of British, nee South African runner Zola Budd for a year for fraternizing with South African athletes

¹²⁹ *Id*, at 118-9

¹³⁰ See generally the ratio of *Wheeler v Leicester City Council*[1985] AC 1054 where the House of Lords held that it was unreasonable and unfair to punish someone for the alleged misconduct of another

been commendable often leading to better practices within the administrative branches of a sport. However, a specific ruling on politics would be useful. In light of the past practice of most countries, some forms of sporting boycotts have and no doubt will continue to be used. Probing further, one might show scepticism as to whether sport should be made a proxy for a country's national policies. Ultimately who owns the game? The athletes, the administrators or the nation's power brokers? Does the tenacity of personal ideals blind us to the effect that we justify our means to achieve the desired end?

Appendix

1976 Montreal Games Boycotting Nations

Algeria	Guyana	Sri Lanka
Cameroon*	Iraq	Sudan
Central African Republic	Kenya	Swaziland
Chad	Libya	Taiwan
Congo	Malawi	Tanzania
Egypt*	Mali	Togo
Ethiopia	Morocco*	Tunisia*
The Gambia	Niger	Uganda
Ghana	Nigeria	Upper Volta (Burkina Faso)
		Zambia

* Nations that are classified as competing nations because their athletes competed prior to the delegations being withdrawn mid-way through the first week of the games

1980 Moscow Olympics Boycotting Nations

Albania	Egypt	Mauritania	Thailand
Antigua	El Salvador	Mauritius	Togo
Argentina	Fiji	Monaco	Tunisia
Bahamas	Gabon	Morocco	Turkey
Bahrain	The Gambia	Netherlands Antilles	United States
Bangladesh	Ghana	Niger	U.S. Virgin Islands
Barbados	Haiti	Norway	Upper Volta (Burkina Faso)
Belize	Honduras	Pakistan	Uruguay
Bermuda	Hong Kong	Panama	West Germany
Bolivia	Indonesia	Paraguay	Zaire (DRC)
Canada	Iran	Philippines	Thailand
Cayman islands	Israel	Saudi Arabia	Togo
Central African Republic	Ivory Coast	Singapore	Tunisia
Chad	Japan	Somalia	Turkey
Chile	Kenya	South Korea	United States
China	Liberia	Sudan	U.S. Virgin
Egypt	Liechtenstein	Suriname	West Germany
El Salvador	Malawi	Swaziland	Zaire (DRC)
Fiji	Malaysia	Taiwan	Upper Volta (Burkina Faso)

Source: IOC, *Olympic Games Official Reports 1936-1984*