



## **FREEDOM OF ASSOCIATION AND**

# **THE LEGITIMACY OF GLOBAL SPORTS LAW**

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### **Preamble**

- I. The **World Players Association** (World Players) exists to champion the dignity of the player and the humanity of sport.
- II. World Players has a three-part goal in the pursuit of this vision. First, the human rights of everyone involved in the delivery of sport must be protected, respected and, where needed, upheld. Second, the same must be true for the players. Third, the impact of sport must be positive, including in sporting, economic, environmental and cultural terms.<sup>1</sup>
- III. World Players is the leading voice of organised players in the governance of global sport. It brings together 85,000 players across professional sport through more than 100 affiliated player associations based in over 60 countries. This voice has been built over more than a century at the national, regional and international levels by players and their player associations exercising their internationally recognised human right to freedom of association.<sup>2</sup>
- IV. By working closely with their members, leading player associations have developed into highly influential, professional and sophisticated organisations which provide wide ranging support to players both as athletes and people. Contrary to certain beliefs strongly held among some who govern and administer sport, player associations have been instrumental in shaping sporting, economic, environmental and cultural outcomes which have been profoundly positive for sport and its key stakeholders. These include transformed sporting economies, the protection and enhancement of the essence and integrity of sport, and the building of rewarding playing career paths which maximise the personal character, development, health and wellbeing of players. Enlightened sports have embraced the opportunity to work in partnership with players through their player associations to deliver these outcomes.

- V. However, much of global sport continues to resist the opportunity to work with player associations. As a result, in global sport today, there are two systems of work. As one of these exists only by institutionally preventing or restricting the right of players to freedom of association including by forcing them to individually consent to the unilaterally imposed requirements of SGBs, it is causing harm to sport, players, and, as a governing system of law and work, lacks legitimacy.

## I. GLOBAL SPORT AND GLOBAL SPORTS LAW

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1. Global sport proclaims powerful and universal ideals including human rights. At the same time, it seeks to govern itself in a special way through a values system committed to the neutrality, autonomy and specificity of sport. Through a combination of power in the sports market and the twin legal forces of specific enabling legislation and compulsory arbitration, global sport has established a dominant position in its dealings with its major stakeholders, including players.<sup>3</sup>
2. For the purposes of this policy, global sport consists of the Olympic Movement, the three main constituents of which are the International Olympic Committee (IOC), the International Sports Federations (IFs) and the National Olympic Committees (NOCs).<sup>4</sup> It also encompasses global sports law – with its component parts known variously as *lex sportiva* and ‘Olympic law’ – which is, in effect, law made by and imposed at the behest of Sports Governing Bodies (SGBs).
3. *Lex sportiva* and ‘Olympic law’ are not sourced in international law. “Global sports law is an autonomous legal system, having immunity from national legal systems...Under this global law paradigm, *lex sportiva* constitutes a separate and self-regulating legal order not subject to review by state authorities”<sup>5</sup> that has the “propensity...to displace national laws.”<sup>6</sup> Due to the supporting nature of Swiss arbitration law, *lex sportiva* is “a ‘specific global law without the state’...which is not the product of a global democracy but of a messy, invisible, political process involving a plurality of actors representing a conflicting set of interests.”<sup>7</sup> ‘Olympic law’ cannot be considered “international law [which] is usually created as a result of...nation-states entering into treaties with each other, or with transnational organisations, *for the benefit of all.*”<sup>8</sup>

## II. GLOBAL SPORT, INTERNATIONALLY RECOGNISED HUMAN RIGHTS AND FREEDOM OF ASSOCIATION

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1. SGBs such as the IOC and IFs have a responsibility to respect human rights recognised by international law. The framework for doing so exists under the *United Nations Guiding*

*Principles on Business and Human Rights* (UNGPs),<sup>9</sup> the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines),<sup>10</sup> and the International Labour Organization (ILO) *Tripartite Declaration on Principles Concerning Multinational Enterprises and Social Policy* (MNE Declaration).<sup>11</sup>

2. The responsibility “is a global standard of expected conduct for all business enterprises wherever they operate,” exists “independently of States’ abilities and/or willingness to fulfil their own human rights obligations,” and “exists over and above compliance with national laws and regulations protecting human rights.”<sup>12</sup>
3. The responsibility refers to, at a minimum, those expressed in *The International Bill of Human Rights*,<sup>13</sup> the *International Labour Organization’s Declaration on Fundamental Principles and Rights at Work and Its Follow-Up*,<sup>14</sup> and additional international standards pertaining to vulnerable groups,<sup>15</sup> including the *United Nations Convention on the Rights of the Child*.<sup>16</sup> The responsibility, therefore, extends to freedom of association.<sup>17</sup>
4. Importantly, “[t]he universal nature of these rights and freedoms is beyond question.” The “international community must treat human rights globally in a fair and equal manner,” on the same footing and emphasis.<sup>18</sup>
5. The responsibility of SGBs to respect internationally recognised human rights including the right to freedom of association unquestionably extends to those who sit at the heart of sport – the players. To this end:
  - (a) the framework for doing so is set out under the *World Player Rights Policy*,<sup>19</sup>
  - (b) the most pertinent substantive rights of players to be respected are articulated in the *Universal Declaration of Player Rights*,<sup>20</sup> and
  - (c) SGBs must, together with leagues, clubs, employers and other actors, take proactive steps to promote a player’s long term personal growth as well as sporting excellence and maximise his or her mental health, physical health and social wellbeing in accordance with the *World Player Development Wellbeing, Transition and Retirement Standard*.<sup>21</sup>

### III. TWO SYSTEMS OF WORK

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1. SGBs including the IOC and many IFs emphasise their “autonomy”,<sup>22</sup> and in doing so rely on their entitlement to exercise the right to freedom of association. Yet, the power of such autonomy is exercised to impose a system of work on many players in global sport which institutionally prevents or restricts players from exercising their right to freedom of association and, in a number of other material respects, fails to uphold the duty of SGBs to respect the internationally recognised human rights of players.
2. Other SGBs, including Fédération Internationale de Football Association (FIFA), while emphasising their autonomy,<sup>23</sup> expressly commit to respecting the internationally

recognised human rights of players,<sup>24</sup> acknowledge their right to freedom of association,<sup>25</sup> and the importance of engagement with player associations to prevent, mitigate and address harm.<sup>26</sup>

3. The result is the existence of two systems of work. Which system a player works under profoundly affects the enjoyment of his or her economic, social, cultural, civil and political rights, as well as his or her personal development and wellbeing.
4. As shown in **Table 1**, each system of work is determined by four key characteristics:

**Table 1 – Two Systems of Work in Global Sport**

	<b>System I: Where freedom of association is recognised and exists</b>	<b>System II: Where freedom of association is prevented or restricted</b>
<b>1. Definition of the rights of players</b>	<ul style="list-style-type: none"> <li>• Recognition of the internationally recognised human rights of players.</li> </ul>	<ul style="list-style-type: none"> <li>• The rights and responsibilities of players are defined by the SGB, and subjected to the rules and regulations of the SGB.<sup>27</sup></li> </ul>
<b>2. Legal status of the player.</b>	<ul style="list-style-type: none"> <li>• Employees / workers protected by employment and labour law.</li> <li>• Employment relationship.</li> </ul>	<ul style="list-style-type: none"> <li>• Determined by the regulations and contracts imposed by SGBs. Enforced through mandatory arbitration by the Court of Arbitration for Sport (CAS).</li> <li>• Regulatory relationship.</li> </ul>
<b>3. Player representation.</b>	<ul style="list-style-type: none"> <li>• Have the legal right to organise and collectively bargain.</li> <li>• Employment relationship governed by a collective bargaining agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• Regulated by the SGB – e.g. the IOC Athletes' Commission and the World Anti-Doping Agency (WADA) Athlete Committee.</li> <li>• Regulatory relationship.</li> </ul>
<b>4. The legal status of SGBs.</b>	Cartels subject to competition and anti-trust law, including in relation to their dealings with players.	Notions of the autonomy and specificity of sport are pervasive, and have significant political and legal recognition and implications.

#### **IV. RECONCILING THE TWO SYSTEMS OF WORK**

1. Which of the two systems of work prevails in a sport is not determined by factors often cited by some who govern and administer global sport, including whether:

- (a) the sport is part of the Olympic Movement;
  - (b) the “European model of sport” applies;<sup>28</sup>
  - (c) the sport is conducted on a profit or not-for-profit basis; or
  - (d) the players are employees or independent contractors.
2. Which of the two systems of work prevails is principally determined by whether the right of players to freedom of association is recognised and exists, or whether it is prevented or restricted.
  3. Provided the regulation of players by SGBs starts with recognition of their duty to respect and fulfil the internationally recognised human rights of players – including to freedom of association – both systems can be reconciled.<sup>29</sup> This is essential if global sports law is to be legitimate.
  4. Where the regulation of players by SGBs fails to respect, intrudes upon or purports to prevail over the internationally recognised human rights of players, it is not possible to reconcile both systems of work. In these circumstances, global sports law lacks legitimacy.

## V. THE LEGITIMACY OF GLOBAL SPORTS LAW

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1. SGBs have too commonly failed to respect and fulfil the fundamental human rights of players whose careers and livelihoods depend on sport’s legal framework and system of justice. The precarious position of the player at law and at work has been exacerbated by the development by SGBs of a global sports law which lacks legitimacy. The lack of legitimacy is rooted in a number of factors including:
  - (a) the lack of involvement of the people bound by the law in the making of it – the players;
  - (b) the ongoing violation of the rights of players (especially vulnerable players who are, naturally, the ones most in need of the protection of the law); and
  - (c) the law’s lack of compliance with internationally recognised human rights.
2. By being shared with key stakeholders and affected groups including freely represented players, global sports law can enjoy a level of legitimacy presently lacking with *lex sportiva* and ‘Olympic law’.<sup>30</sup>
3. Emerging global systems of private law are not unique to sport. “[P]rivate actors – including corporations, civil society, the media, and individuals – separately and together can create a system of rule-making and rule-enforcement that may be more effective than public lawmaking standing alone.”<sup>31</sup>
4. Unlike public law, it is not based on the monopolistic power to make and enforce behavioural rules.<sup>32</sup> Unlike *lex sportiva*, it does not depend on mandatory arbitration

enforced through a lack of consent which is now indisputable. Unlike 'Olympic law', it is not imposed at the behest of a private entity seeking to exert its commercial interests.

5. Instead, "[m]ultinational corporations may have authority and power as never before to legislate, but legislation is not made in a vacuum. *Authority must be shared*. Authority is shared with other emerging powers: the great institutions of civil society and the great institutions of information diffusion."<sup>33</sup>
6. The challenge and opportunity for SGBs is to act to legitimize global sports law by embedding the fundamental human rights of the players. The UNGPs provide the framework for doing so. The realistic outcome is a global sports law that proactively protects, respects and upholds internationally recognised human rights and which is enforceable through a properly designed grievance mechanism. Sport can be a genuine force for good by setting a global benchmark for the respect and fulfilment of human rights by business.

**Adopted:**

**World Players Association**

Brendan Schwab

Executive Director

Wednesday 20 June 2018

Liverpool, England

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## Notes:

- <sup>1</sup> The three-part goal of World Players embraces all athletes as well as players in professional team sports, and this policy is to be interpreted accordingly.
- <sup>2</sup> UDHR, Article 20.1, ICESCR, Articles 8 and 22, ILO FD, ILO C87 and ILO C98.
- <sup>3</sup> Schwab, B. “Celebrate Humanity.”
- <sup>4</sup> *Olympic Charter*, , p. 15.
- <sup>5</sup> Vaitiekunas, A. (2014), *The Court of Arbitration for Sport: Law Making and the Question of Independence*, STÄMPFLI VERLAG, p. 49.
- <sup>6</sup> Mitten, M and Opie, H., “*Sports Law*”: *Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 TUL. L. REV. 269 (2010), p. 274.
- <sup>7</sup> Duval, A., *The FIFA Regulations on the Status and Transfer of Players: Trans-national Law Making in the Shadow of Bosman*, *Asser Research Paper 2016-06*, p. 4, ASSER INSTITUTE, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2760263](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2760263)
- <sup>8</sup> James, M. and Osborn, G., *The Olympics, Transnational Law and Legal Transplants: The International Olympic Committee, Ambush Marketing and Ticket Touting*, *Legal Studies*, Vol. 36 No. 1 2016, THE SOCIETY OF LEGAL SCHOLARS, 93 – 110, p. 94 (emphasis added).
- <sup>9</sup> UNGPs.
- <sup>10</sup> OECD Guidelines.
- <sup>11</sup> MNE Declaration.
- <sup>12</sup> UNGPs, p. 13.
- <sup>13</sup> IBHR, pp. 1 – 41.
- <sup>14</sup> ILO FD.
- <sup>15</sup> UNGPs, pp. 13 – 14.
- <sup>16</sup> UNCRC.
- <sup>17</sup> UDHR, Article 24.4; ICCPR, Article 22; ICESCR, Article 8.1; ILO FD; ILO C87; ILO C98.
- <sup>18</sup> Vienna Declaration, pp. 2 – 3.
- <sup>19</sup> Refer Policy / Statement / Resolution 5.
- <sup>20</sup> Refer Policy / Statement / Resolution 8.
- <sup>21</sup> Refer Policy / Statement / Resolution 7.
- <sup>22</sup> *Olympic Charter*, p. 11.
- <sup>23</sup> *FIFA Statutes*, Articles 15(c) and 23(c).
- <sup>24</sup> *FIFA Statutes*, Article 3, and *FIFA Human Rights Policy*, paragraph 5, p. 7.
- <sup>25</sup> *FIFA Activity Update on Human Rights*, p. 2.
- <sup>26</sup> *FIFA Activity Update on Human Rights*, p. 16.
- <sup>27</sup> IOC ARR.D.
- <sup>28</sup> INSIDE THE GAMES, *Bach calls on NOCs to work with Governments to defend European sports model from "serious threat" of commercial enterprises* (9 Nov. 2018)

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<https://www.insidethegames.biz/articles/1072030/bach-calls-on-nocs-to-work-with-governments-to-defend-european-sports-model-from-serious-threat-of-commercial-enterprises>

<sup>29</sup> See, for example, FIFA RSTP, Article 22.

<sup>30</sup> Schwab, B. "*When We Know Better, We Do Better.*", p. 44.

<sup>31</sup> Quinn, P. *Sponsoring Corruption*, 32 MD. J. INT'L L. 221 (2017), p. 226  
<http://digitalcommons.law.umaryland.edu/mjil/vol32/iss1/9>

<sup>32</sup> Backer, L. *Economic Globalization and the Rise of Efficient Systems of Global Private Lawmaking: Wal-Mart as Global Legislator*, 39(4) UNIVERSITY OF CONNECTICUT LAW REVIEW (2007), p. 31 – 32.

<sup>33</sup> *Id.*, p. 32 (emphasis added).