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The road to a common framework for the esports society through the lens of international law

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Abstract

Esports ('electronic sports' or 'competitive video games') have evolved into a lucrative economic sector for businesses. As a result, there has been a substantial rise in the number of esports players, particularly among the younger demographic, with some of them transitioning into professional esports players. These professional esports players presently accrue earnings through prize money awarded at esports competitions, receive financial and material support as part of player contracts and sponsorship agreements, and generate significant revenue through live streaming on online platforms. In this situation, there is no unified governing body for all esports stakeholders, resulting in a fragmented esports society. This fragmentation occurs because esports publishers hold exclusive rights to use their video games for esports competitions, as governed by intellectual property law, specifically copyright law. Consequently, esports publishers wield significant control over the esports society. Based on this understanding, the primary objective of this article is to explore how the esports society can create a common framework to protect common interests within the esports society. To address this, the article will investigate the following research questions: (1) How do sovereign states establish a common framework for the international society under the concept of state sovereignty?; (2) How do esports publishers exert dominance over the esports society through copyright law?; and (3) How can the esports society establish an international discussion forum to develop a common framework that accommodates all esports stakeholders?

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Keywords

State sovereignty, copyrights, esports publishers, exclusive rights, common framework, fragmentation

1. Introduction

Esports ('electronic sports' or 'competitive video games') have evolved into a lucrative economic sector for businesses.[2] As a result, there has been a substantial rise in the number of esports players, particularly among the younger demographic, with some of them transitioning into professional esports players.[3] These professional esports players presently accrue earnings through prize money awarded at esports competitions,[4] receive financial and material support as part of player contracts and sponsorship agreements,[5] and generate significant revenue through live streaming on platforms like Twitch.tv and YouTube.[6]

In this situation, it is crucial to highlight that there is no unified governing body for all esports stakeholders,[7] resulting in a fragmented esports society. This fragmentation occurs because esports publishers hold exclusive rights to use their video games for esports competitions, as governed by intellectual property law, specifically copyright law.[8] Consequently, esports publishers wield significant control over the esports society.[9]

Based on this understanding, the primary objective of this article is to explore how the esports society can create a common framework to protect common interests within the esports society. To address this, the article will investigate the following research questions: (1) How do

[2] Newzoo (2022); Wilson (2022); Tristão (2022).

[3] See, Deloitte (2022); Ludwig et al. (2021).

[4] Statista (2024).

[5] Herpy (2022); Lavelle and Faint (2021); Lavelle and Faint (2021a); For contracts with minor esports players, see Brabners (2021).

[6] Newzoo (2022), p. 35; Jungar (2016), p. 24-25.

[7] In this article, the term 'esports stakeholders' means all relevant actors within the esports industry.

[8] Shinohara (2023); Kelly et al. (2022), p. 152-158; Martinelli (2019), p. 501-502 and 513; Jacqueline Martinelli argued that "the best approach to developing a successful esports regulatory model is for the esports industry to adopt the FIFA model and follow Swiss law". However, she does not consider how the problems about the IP rights of esports publishers should be solved. Therefore, it can be considered that her argument is not justified. At the same time, she also claimed that the Court of Arbitration for Sports (CAS) "can be a great mechanism in reinforcing legitimacy in the esports industry" but the CAS has no experts on esports industry in its list of arbitrators so that I do not think that the CAS is an ideal place to reinforce legitimacy in the esports industry. See, Martinelli (2019), p. 519-520.

[9] This article will utilise the term 'esports society' to denote a concept encompassing all the communities revolving around esports titles. This is due to the fact that each esports title has forged its distinct community. For example, Call of Duty players have formed the Call of Duty community. In this context, this article will employ the term 'esports society' as a broader designation encompassing a multitude of esports communities based on different esports titles. Conversely, the term 'esports community' holds a narrower scope in comparison to 'esports society'.

sovereign states establish a common framework for the international society under the concept of state sovereignty?; (2) How do esports publishers exert dominance over the esports society through copyright law?; and (3) How can the esports society establish an international discussion forum to develop a common framework that accommodates all esports stakeholders?

To address these questions, first, this article will examine the fundamental principle of international law, *state sovereignty*, recognised as an exclusive right of independent states within the framework of international law.[10] This concept bears a resemblance to the 'copyrights' held by esports publishers in the esports society because, as previously discussed, where they have dominant power over the esports society. Under copyright law, establishing a shared framework to pursue collective objectives among all stakeholders within the esports society proves to be a challenging task.[11] In this context, it can be construed that esports publishers within the esports society occupy a role akin to that of independent states in the international society. Therefore, the perspective of 'state sovereignty' within international law can offer insights into how esports publishers can limit their exclusive rights in order to construct a common framework for safeguarding common interests within the esports society. Second, the article will provide an overview of the concept of *state sovereignty* guaranteed by international law and identify how independent states establish a common framework to achieve common goals within the international society. Furthermore, it will explain dominant power of esports publishers over the esports society under copyrights law. Third, it will finally consider how the esports society can achieve the ultimate goal to establish a discussion forum to develop a common framework for all esports stakeholders.

2. International society and sovereignty

The international society comprises states, each of which holds state sovereignty within the international legal system. This situation bears a certain resemblance to the esports society. Consequently, this section will provide a brief overview of the concept of 'state sovereignty'.

[10] Gaeta et al. (2020), p. 50-57.

[11] For instance, integrity issues in esports activity, notably concerning issues like doping, represent a significant concern within the realm of esports activities. Moreover, esports players often contend with toxic behaviours, including instances of sexual abuse, harassment, and discrimination rooted in factors such as sexism, racism, and other prohibited grounds.

Furthermore, the international society has progressively restricted the scope of 'state sovereignty' through international treaties, established through the free consents of independent states without resorting to threats or the use of force. Therefore, it will elaborate on how international treaties, agreed upon by sovereign states, have imposed limitations on state sovereignty. Additionally, it will explore the role of international discussion forum such as the United Nations (UN), in facilitating the creation of a common framework for the international society.

2.1. Exclusive rights of states under international law: Sovereignty

In 1648, the Peace of Westphalia laid the foundation for contemporary international law.[12] This is primarily because it gave rise to the fundamental principle of international law, commonly known as 'Westphalian sovereignty' or 'state sovereignty'.[13] Besson (2011) states that:

> *... the modern conception of sovereignty is usually said to date back to its official consecration in the Treaty of Westphalia in 1648 ... It was then that the principle of territorial delimitation of State authority and the principle of non-intervention were formally established.*[14]

In other words, this means that states can exercise their exclusive rights to govern their internal affairs without interference from other states, in line with the '*laissez-faire* philosophy', which asserts that "all states should be legally equal and free to pursue their own interests, regardless of any economic or social disparities".[15] Furthermore, it is important to note that no central authority exists in the international society. Thus, independent states are the main actors under international law.[16] Consequently, there exists a horizontal relationship between states within the international society.[17] Presently, the concept of 'sovereignty' is understood within the framework of 'substantive equality of states', necessitating that the international society takes into account the interests of weaker states to ensure a fair representation of their positions.[18]

[12] Gaeta et al. (2020), p. 20-30; Fassbender (2011), para 7 and paras 18-22; Hernández (2019), p. 5-6.
[13] Schrijver (1999), p. 66-69.
[14] Besson (2011), para 13.
[15] Gaeta et al. (2020), p. 28.
[16] Ibid, p. 4-6.
[17] Ibid.
[18] Besson (2011), paras 42-55.

In light of this historical context, it is essential to define the concept of 'sovereignty'. According to the Oxford Dictionary, it is defined as "complete power to govern a country".[19] However, Schrijver (1999) noted that: "Sovereignty is … a dynamic concept. It can have a different meaning in different historical periods although certain essential characteristic remain".[20] Therefore, it is crucial to acknowledge that the concept of 'sovereignty' lacks a universally shared definition within the realm of international law.[21]

However, Article 4 of the Montevideo Convention on the Rights and Duties of States[22] delineates the essence of state sovereignty. It states that:

> *States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.*

On this basis, states may exercise their exclusive rights over the territory (*territorial or jurisdictional sovereignty*)[23] without any intervention by other states (*principle of non-intervention*).[24] Furthermore, Gaeta et al. (2020) indicated that:

> *… every State is fully and equally sovereign or, in other words, that the rights and duties arising from sovereignty are the same for all States and, as a result, no State enjoys a hierarchical position with respect to other States*.[25]

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the UN Charter (referred to as the 'UN Friendly Relations Declaration')[26] specified these fundamental principles.[27] In this context, Gaeta et al. (2020) explained the limitation of 'sovereignty' in the following:

> *There are two main categories of limitations of the power of sovereign States in their own territory. One arises from the need to respect the sovereignty of other*

[19] Oxford Advanced Learner's Dictionary (9th edition).

[20] Schrijver (1999), p. 70; See also, Besson (2011), para 8.

[21] Falk (2004).

[22] Organization of American States (1933); Montevideo Convention on the Rights and Duties of States was adopted on 26 December 1933 and entered into force on 26 December 1934.

[23] Gaeta et al. (2019), p. 50-52.

[24] Ibid, p. 52-57; Besson (2019), p. 117-118; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgment of 27 June 1986, ICJ Report, paras 202-205.

[25] Gaeta et al. (2020), p. 52.

[26] UN General Assembly (1970); Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, A/RES/2625(XXV).

[27] Besson (2019), para 88; Keller (2021), paras 7-28.

> *States, in its many manifestations. A State may not exercise its sovereignty of other States, in its interfere with actions legally performed by, foreign States … The other broad category of limitations results from the requirement, under both treaties and customary international law, to protect certain common, or even better, community values (…).*[28]

On this basis, the 'sovereignty' can be restricted by international treaties and customary international law within the international legal framework.[29] The subsequent section will delve into an examination of how international treaties function to limit state sovereignty.[30]

2.2. Restriction of sovereignty by international treaties

First of all, international treaties may restrict the 'sovereignty' of states within the international society since states willingly subject themselves to such agreements through their consent. Article 2(1)(a) of the Vienna Convention on the Law and Treaties (VCLT)[31] stipulates that:

> *(a) "treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*.[32]

In light of this definition, Gaeta et al. (2020) stated that treaty making standard procedure is constituted by the following steps: (1) negotiations; and (2) adoption and authentication of the text.[33] According to Article 9 of the VCLT, the adoption of the treaty takes place (1) "by the consent of all the States participating in its drawing up" or (2) "by the vote of two thirds of the States present and voting, unless by the same majority they shall decide to apply a different

[28] Gaeta et al. (2020), p. 91.

[29] For instance, the right to war consists of a part of the state sovereignty but it was restricted by, firstly, the 1928 Kellogg-Briand Treaty and Article 2(4) of the UN Charter. Schrijver (1999), p. 72.

[30] In this sense, this article will not describe customary international law and peremptory norms (or jus cogens) applicable to the international society as a whole.

[31] United Nations (1969), vol. 1155, p. 331.

[32] More precisely, see Dörr and Kirsten (2018), p. 31-45.

[33] Gaeta et al. (2020), p. 207.

rule".[34] On this basis, states may create a legally-binding instrument in writing under their free consent (*pacta sunt servanda*) without any threat or use of force.[35]

Based on the above, states parties have agreed to create 'constituent instruments' (e.g. 'Statute', 'Charter' or 'Constitution') for the establishment of international organisations.[36] For instance, the UN Charter serves as a fundamental document in the international society, creating the UN and outlining common objectives for UN member states.[37] On this basis, the UN member states agree to restrict their 'sovereignty' to pursue these common goals of the UN set forth in Article 1 of the UN Charter.

In this context, international human rights treaties (e.g. the International Covenant on Civil and Political Rights (ICCPR)[38] and International Covenant on Economic, Social and Cultural Rights (ICESCR)[39] require states to respect, protect and fulfil fundamental human rights.[40] In this sense, consent to restricting their exclusive rights to safeguard shared interests, specifically the protection of fundamental human rights within the international society.[41]

Besides, the international society has established normative instruments, such as 'Declarations', which have played a crucial role in clarifying the fundamental principles of international law that apply to the international society.[42] It is worth noting, however, that these instruments lack legally binding force. For instance, the Universal Declaration of Human Rights (UDHR) is a non-binding instrument, yet it establishes a universal standard for the current international society.[43] Paragraph 6 of the Preamble of the UDHR states that:

> *Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.*

[34] See also, Article 10 of the VCLT.
[35] Article 26 of the VCLT.
[36] Besson (2019), p. 159; Akande (2014), p. 256-260.
[37] Articles 1 and 2 of the UN Charter.
[38] UN General Assembly (1966), vol. 999, p. 171.
[39] Ibid, vol. 993, p. 3.
[40] Kälin and Künzli (2019), p. 87-106; Mégret (2018), p. 97-99.
[41] Donnelly (2014), p. 228-230.
[42] See, Kälin and Künzli (2019), p. 12-13.
[43] UN General Assembly (1948), 217 A (III).

On this basis, the UN member states agreed to ensure fundamental rights and freedoms as a common goal of the international society when they joined the UN.[44] Consequently, state sovereignty is no longer an absolute and exclusive entitlement within contemporary international law and can thus be restricted by the free consent of states through international treaties, without the use of force or threat.[45]

In the light of the above, states consent to restrict the scope of the state sovereignty to pursue common interests of the international society. In doing so, the discussion forum at the international level may serve a vital function in identifying these common interests. Consequently, the following section will explore how international organisations contribute to shaping a common framework for the international society.

2.3. The creation of a common framework for the international society through international organisations

Based on the previous sections, the principle of 'sovereignty' is a fundamental principle of international law. It has been recognised as 'exclusive right' of states to decide their internal affairs without any intervention by other states. However, this exclusive right can only be constrained when states voluntarily agree to limit their exclusive rights through international treaties and customary international law. In this context, states can engage in negotiations with other states to establish legally binding regulations among them or to identify common interests within the international society. Nonetheless, if a state opposes customary international law (under the persistent objector rule)[46] or chooses not to sign and ratify international treaties, these regulations cannot oblige the concerned state.

In light of this understanding, how can states codify international treaties or identify customary international law within the current international society? In this regard, an establishment of international organisation, especially the UN, has dramatically changed the law-making and

[44] See also, Preamble of the UN Charter: "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED… to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…".

[45] Case of the S.S. "Lotus" (Fr. V Turk), Judgement of 7 September 1927, PCIJ, Series A. No. 10. p. 18. According to *Lotus* case, "International law governs relations between independent States. The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims."

[46] Gaeta et al. (2020), p. 188-189.

norm-creating processes under international legal system.[47] This is primarily due to the crucial role they play in offering states an international platform for discussions, allowing them to identify common interests within the international society.

Article 2(a) of the Draft Articles on the Responsibility of International Organisations states that:

> *"international organization" means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities*.[48]

On this basis, international organisations must be established by international treaties, or any other means accepted by international law. This could entail the limitation of state sovereignty to accomplish shared goals among member states within these international organisations.[49] Nevertheless, it is vital to note that international organisations can only operate within the bounds of the powers delegated to them by member states, as outlined in their constituent instruments. This principle is commonly referred to as the principle of 'speciality'.[50]

In light of this context, this subsection will draw upon an example of an international organisation, particularly the United Nations General Assembly (UNGA). The UNGA stands out as the only organ composed of all member states,[51] each of which holds equal voting rights to endorse resolutions put forth by the UNGA.[52] While the resolutions adopted by the UNGA

[47] Akande (2014), p. 249, pointed out the functions of the international organisations as follow: "Within their diverse fields of operation, international organizations perform a number of functions. These include: - Providing a forum for identifying and deliberating upon matters of common interests. – Providing a forum for developing rules on matters of common interest. – Acting as vehicles for taking action on international or transnational problems. – Providing mechanism for promoting, monitoring, and supervising compliance by States and non-State actors with agreed rules and policies as well as for gathering information regarding the conditions in and practices of States and non-State actors. – Providing a forum for the resolution of international disputes."

[48] International Law Commission (2011), A/66/10, para 87.

[49] Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion of 8 July 1996, ICJ Report, para 19.

[50] Gaeta et al. (2020), p. 145-147; Besson (2019), p. 44; With respect to the implied power of international organisations, the International Court of Justice (ICJ) noted that "Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication.as being essential to the performance of its duties." However, international organisations cannot act *ultra vires* and, thus, deciding whether they possess implied power depends on the interpretation of the constituent instruments. See Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, ICJ Reports 1949, p. 182.

[51] Article 9 of the UN Charter.

[52] Article 18 of the UN Charter.

lack legally binding effect, they serve a vital role in identifying normative principles that apply to the international society.[53] Through this example, this article will illustrate how international discussion forums contribute to shaping a common framework for the international society.

First of all, the UN was established on 24 October 1945, under the framework of the UN Charter, which serves as the foundational document for the organisation.[54] According to Articles 1 of the UN Charter, the purposes of the UN are to (1) maintain international peace and security, (2) develop friendly relations among nationals based on respect for the principle of equal rights and self-determination of peoples, (3) achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character; and (4) be a centre for harmonizing the actions of nations in the attainment of these common ends. To realise these objectives, UN member states are obliged to act in accordance with Article 2 of the UN Charter.

Based on this understanding, what is the composition of the UN? In this context, Article 7(1) of the UN Charter specifies that:

> *There are established as principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.*[55]

Among these organs, the General Assembly and the Security Council have held significant roles in the development of international documents with relevance to the international society.[56] Within this framework, this article will concentrate on elucidating the structure of the UNGA.

The UNGA comprises all the member states of the UN.[57] Article 10 of the UN Charter stipulates that:

> *The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12,*

[53] Shaw (2014), p. 881.
[54] United Nations (1945); Adopted on 26 June 1945 and entered into force on 24 October 1945.
[55] See also, Akande (2014), p. 274-276.
[56] Gaeta et al. (2020), p. 315-317.
[57] Article 9(1) of the UN Charter.

> *may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.*

To adopt these recommendations, UN member states hold equal voting rights, as outlined in Article 18(1) of the UN Charter. The UN General Assembly can reach a decision with a two-thirds majority of the members who are present and voting.[58]

In light of the foregoing, it is important note that recommendations or resolutions issued by the UNGA do not carry legal binding force for UN member states.[59] Nevertheless, they have been acknowledged as normative principles within the international society. In this context, the UNGA has been instrumental in establishing a shared standard for achieving the objectives outlined in Article 1 of the UN Charter. However, it is worth highlighting that an international forum for negotiations among states holds significance in shaping a common standard for the international society.

In short, the UNGA serves as a prime example of how an international discussion forum plays a pivotal role in establishing norms applicable to the international society. Resolutions adopted by the UNGA may lack legal binding effect over UN member states, but they contribute to delineating a common normative framework for advancing the international society's progress towards the shared objectives outlined in Article 1 of the UN Charter.

3. Esports society and copyrights

In addition to the previous section, esports publishers exert significant influence over the esports community through the copyrights they hold for their video games. This segment will elucidate the substantial power of esports publishers within the esports society under copyright law. Additionally, it will address the question of how constraints can be placed on the copyrights of esports publishers.

[58] Article 18(2) of the UN Charter.

[59] Besson (2019), p. 188-90; Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion of 25 February 2019, ICJ Report, paras 150-160.

3.1. Exclusive rights of esports publishers under intellectual property law

The owners of competitive video games hold the exclusive rights to utilise their creations without external interference, as established by copyright law.[60] Intellectual property rights are specified within the confines of national legislation (known as '*numerus clausus*'). In this regard, Cherpillod (2021) states that "there are no other intellectual property rights than those provided and organised by various intellectual property laws".[61] Consequently, copyright law predefines the extent to which esports publishers can exercise their exclusive rights over video games within each esports community established by different esports titles.

In this context, the exclusive rights of esports publishers, as safeguarded by copyright law, are established through national legislation. For instance the EU Copyright law,[62] also known as the InfoSoc Directive, outlines that copyright holders possess the exclusive right to authorise or prohibit reproduction (Article 2), communication to the public of works and the right to make them available to the public (Article 3), and distribution (Article 4).[63] Furthermore, in accordance with the US Copyright Act of 1976, copyright holders are granted five exclusive rights:

> *(1) the right to reproduce the work; (2) the right to distribute the work; (3) the right to prepare derivative works based on the original one; (4) the right to publicly perform the work; and (5) the right to publicly display, including the exclusive right to prepare and approve others to create copies of the existing work.*[64]

On the basis of this understanding, esports tournament and league organisers, along with esports federations, are required to use competitive video games to conduct esports competitions at both national and international levels. To achieve this, they must individually negotiate contracts with esports publishers to secure a license that permits them to use the video games. This is because they will publicly perform and display these competitive video games during the esports competitions, which are watched by esports spectators via live streaming or on large screens in arenas.

[60] Cherpillod (2021), p. 2.
[61] Ibid, p. 6.
[62] European Union (2021).
[63] Ibid.
[64] Jacobson (2021), p. 56.

In this context, it is worth noting that esports publishers may wield substantial influence over the esports communities through these licensing agreements. For instance, the esports society includes esports publishers (e.g. Riot Games, Epic Games, Valve, Capcom, Nintendo, Microsoft, Sony, Dandai Namco Entertainment, EA Sports), esports governing bodies (e.g. the International Esports Federation (IESF)[65] and Global Esports Federation (GEF)[66]), esports teams and organisations, esports tournament/league organisers (e.g. Electronic Sports League (ESL) FACEIT Groups, Epic Games, Valve Corporation and Riot Games etc.) and esports players, and so on.[67] However, these actors have no equal status in the esports society because esports publishers possess exclusive rights to use their video games over their esports communities. Consequently, they can dictate which parties are permitted to use their video games in official esports events and, as a result, can arrange esports competitions independently, without reliance on esports federations. Hence, it can be argued that esports publishers hold considerable power within the esports society.

In this scenario, it is improbable that esports publishers would voluntarily curtail their copyrights, as copyright protection for their video games serves as a safeguard for their corporate profits. However, there is an exceptional circumstance in the esports industry where esports publishers might choose to limit their copyrights through licensing agreements, thereby permitting esports tournament and league organisers, as well as esports federations, to partially use their products.[68] Consequently, within the framework of these license contracts, esports tournament and league organisers, as well as esports federations, can employ the video games in esports competitions.

In light of this understanding, the next subsection will explore the mechanisms through which esports publishers can, indeed, restrict their copyrights via license contracts.

[65] The IESF was established on 11 August 2008 in Busan, South Korea. Its purpose is to create a unified esports society at the international level and set up a global standard for the esports ecosystem. See official website, IESF (n.d.).

[66] The GEF was established on 16 December 2019 in Singapore. It is a different entity from the IESF. See official website, GEF (n.d.).

[67] Esports developers and publishers are often the same actors so that this article will use term ‘esports publishers’. In this regard, Tsubasa Shinohara has already explained in his presentation ‘Global Governance in International Esports Society?’ at the 11th Annual Conference of Cambridge International Law Journal. See, Cambridge Law Faculty (2022); See also Peng et al. (2020), p. 7; Scholz (2019), p. 49-58.

[68] Jacobson (2021), p. 39 and 55-67; Tseng (2020), p. 215-219; Simmons-Simmons (2019); ESA (2021), p. 30-31; Burk (2013), p. 1544-69; Mohandas (2020).

3.2. Restriction of 'Copyrights' by license contracts?

Given this context, how can esports publishers limit their 'copyrights'? In this context, esports publishers may enter into licensing agreements, which grant esports tournament and league organisers as well as esports federations, permission to conduct esports competitions using their copyrighted video games as official esports events. In this arrangement, the licensees, i.e., esports tournament and league organisers, are required to pay license fees to the licensors, i.e., esports publishers, for using the copyrighted video games, as permitted by the terms of the license agreements.[69] However, even in this scenario, esports publishers retain the authority to determine the conditions under which esports tournament and league organisers and esports federations can use their video games. Therefore, they maintain significant power within the esports society under copyright law.

In conclusion, it is evident that license contracts cannot be categorised as international treaties since these agreements are not forged between esports publishers but rather between esports publishers and esports/league organisers or esports federations. In other words, each esports publisher would need to establish bilateral or multilateral agreements to establish a shared regulatory framework for pursuing common goals. This concept is akin to an agreement among esports publishers that would enable them to restrict their copyrights under contract law, similar to international treaties among states in the realm of international law.

4. The establishment of discussion forum for the creation of common framework for all esports stakeholders

Based on the previous sections, the esports society lacks a unified governing body at the international level. To establish a shared framework for the esports society, there is a need to create a platform for discussion that includes all esports stakeholders. It is important to note that this institution emphasise that this institution should not be aimed at 'governing' the esports society but rather at serving as a discussion forum for all esports stakeholders, encompassing esports federations, esports organizations, esports publishers, esports tournament and league organisers, esports teams, and players. With this in mind, this section will explore how the

[69] Jacobson (2021), p. 57.

international esports society can go about establishing this international discussion forum for all esports stakeholders.

Section 1 of this article presented an overview of the role and organization of the UN system, with a particular focus on the UNGA. The UNGA lacks the authority to generate legally binding agreements for UN member states, but it has made substantial contributions to identifying the norms and principles of international law that apply to the international society. In the process of creating international instruments, each member state holds an equal voting right. The voting system serves as a basis for the legitimacy of UNGA resolutions in establishing international norms that are relevant to the international society.

Based on this, should the esports society establish a system similar to that of the UNGA? In this regard, it may not be suitable or practical. This is because the esports society comprises not only esports publishers who hold exclusive rights but also esports federations and esports tournament/league organisers. All these entities are integral esports stakeholders in the esports society and, therefore, they should have the opportunity to voice their interests at the same forum alongside esports publishers.

In such a scenario, how can the esports society establish a discussion forum that accommodates all esports stakeholders, considering the unique dynamics of the esports industry? To achieve this, the esports society must seek ‘consents’ or ‘agreements’ from esports publishers to establish a common regulatory framework. For example, the Entertainment Software Association (ESA) has jointly developed four universal esports principles with various representatives from the video game industry, which read as follows: (1) safety of well-being; (2) integrity and fair play; (3) respect and diversity; and (4) positive and enriching game play.[70] This demonstrates that certain esports publishers have actively participated in the creation of a common regulatory framework aimed at safeguarding the interests of esports players.

In light of the foregoing, this article proposes the following two recommendations concerning the creation of a discussion forum for the esports society:

[70] ESA (2019); Tseng (2020), p. 219-247.

1) The establishment of a discussion forum where all esports stakeholders can participate with equal status. This forum would play a pivotal role in identifying the fundamental principles applicable to the esports society; and
2) The discussion forum in which esports publishers can collectively determine how they restrict their copyrights to work towards common objectives within the esports society.

The aim of these forums is to provide a platform for all esports stakeholders to collectively address common issues within the esports society at the same table. This will enable the esports society to identify the shared interests of all esports stakeholders and empower esports publishers to take action in resolving significant challenges that arise in esports activities.[71]

5. Conclusion

This article aimed to explore how the esports society can establish a common framework for safeguarding common interests. To this end, esports publishers, owing to their video game copyrights, should enter into bilateral or multilateral agreements to institute a discussion forum within the esports society. This platform will incentivise all esports stakeholders to address issues prevalent in esports, such as toxic behaviours, doping, and discrimination, as they can collectively determine how to restrict their copyrights and identify pressing problems that the esports society must address.

As previously discussed, the esports society should establish two types of discussion forums: one for all esports stakeholders and another specifically for esports publishers, or instance, the ESA has already introduced Principles of Esports Engagement, applicable to the esports society. This article proposes that the esports society should create a similar instrument at the international level through a discussion forum that includes all esports stakeholders. In doing so, the esports society can regulate all esports stakeholders under a common regulatory framework.

[71] However, it is advisable to refrain from using the phrase "establishment of an organization for the esports society" as esports publishers typically seek to maintain autonomy and avoid external control. This phrase is not aligned with the prevailing practices within the esports industry.

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