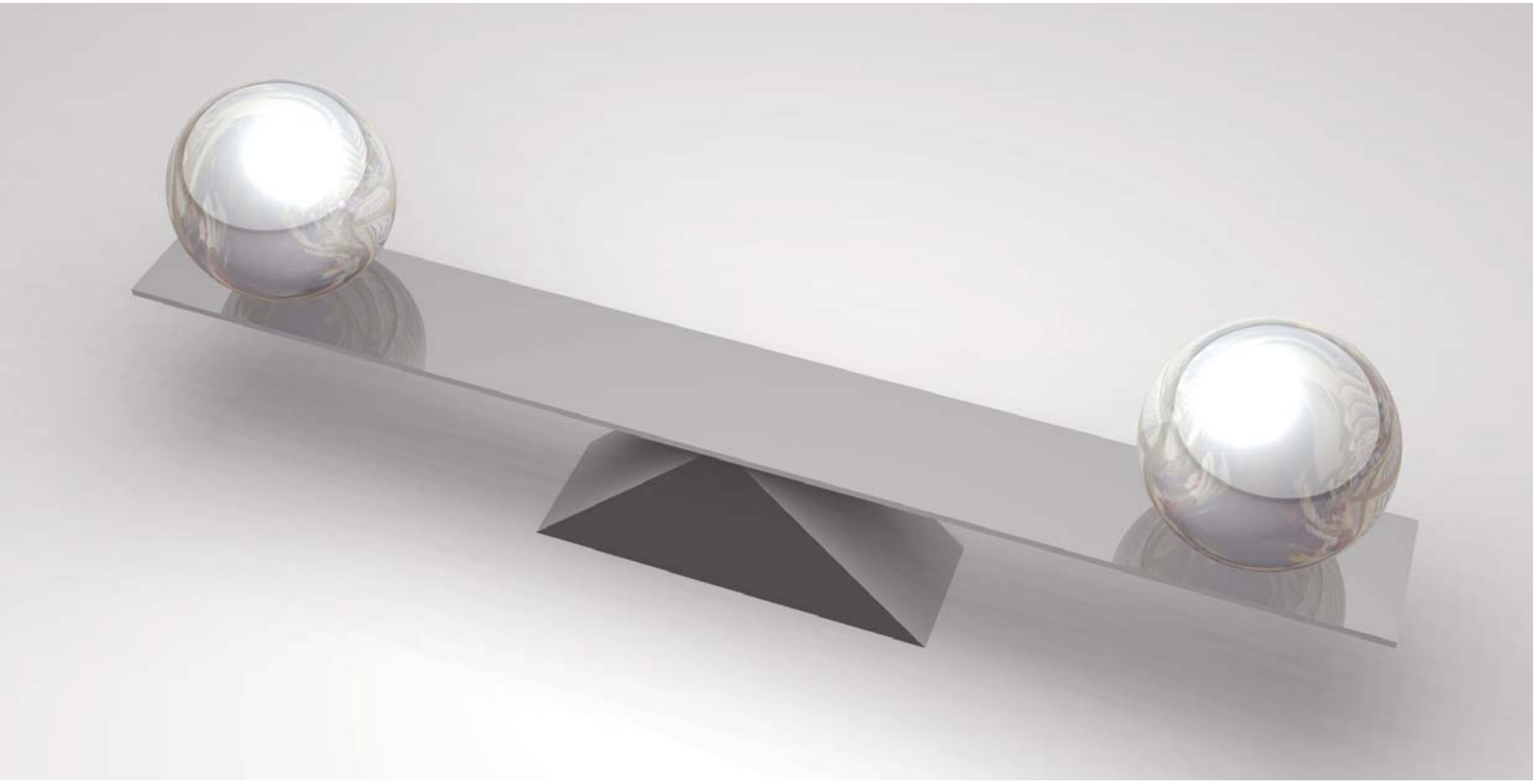

The legal and institutional framework of the Olympic Games

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Summary

1. Introduction

The Olympic Charter (OC) is today indubitably a legal text which, along with the International Olympic Committee (IOC) out of which it arose, has raised many legal and institutional issues, which are interesting from a theoretical, and particularly from a practical, point of view. In this text, we will try to focus on some of those issues.

2. The Olympic charter

From the early scarcity of rules to the Olympic Charter

In the Modern Era the regulation of the Games was not a priority for their founder, the French Baron, Pierre de Coubertin.

In fact, it was not until 1908, 14 years after the creation of the International Olympic Committee, that rules of procedure were drafted. This "IOC Yearbook" merely stated the basic principles above a list of IOC members' names, together with a summary of the rules covering the periodic organisation of the Games. Neither the manner in which cities would be chosen to hold the Games nor the criteria for deciding whether a given sport was to be admitted into the Olympic Programme, were included.

It is clear that the growth of the Games and of the IOC itself forced a transition from a utopian to a more pragmatic outlook, which was to see the progressive emergence of "Olympic Law", at the apex of which today sits the OC, the founding agreement or originating source of the Olympic legal order.

In 1924, the term "Charter" was used for the first time, although its force was diluted in other texts. Drawn up at the Paris Congress in 1914, and approved in 1921, after the 1920 Antwerp Games, the "Charter of the Olympic Games" was included in 1924 as a sub-heading of the "Statutes of the IOC". This terminology was then dropped for more than 20 years, only reappearing, again as a sub-heading, in the "Olympic Rules" that were in force from 1946 to 1955.

There was never really any detectable logical coherence in the way the Olympic rules were drawn up, and the constant modifications that ensued gave rise to much academic criticism.

ANGEL IVANOV (1) drew attention to the vague and confused nature of the successive alterations, which often brought into being rules that were mutually incompatible and also occasioned numbering difficulties; this criticism was echoed by comments on the rather imprecise, ambiguous and vague character of the OC made by J. F. BRISSON (2) and by Fernando XAREPE SILVEIRO, in Portugal (3).

CHRISTOPHER VEDDER (4), makes similar points with respect to legislation, insofar as this, for a long time, took the form of discursive texts lacking in clarity and consistency, aggravated by the fact that the alterations were confined to incidental technical issues unrelated to the overall structural content.

CAZORLA PRIETO (5) points out problems of structure, the lack of legal content in some of the rules, and certain lacunae that created many interpretation problems. This meant that the OC amounted to a real legal conglomeration, a criticism, which helps us to understand why BRUNO SIMMA (6) emphasises the very complicated character of the OC.

Concurring with the criticisms of these authors, let us address the issue of the systematisation or organisation of the rules. We can see, at a glance, that the IOC needed to try out different models before arriving at the current formulation for codifying the OC.

For example, in 1967, the so-called “Olympic Rules” were divided between four separate documents: (i) Fundamental Principles; International Olympic Committee (IOC); National Olympic Committees (NOC); Olympic Games (OG); Olympic Protocol; (ii) Code of Eligibility; (iii) General Information; and (iv) Information for cities that wish to host the Olympi Games (OG).

Then, in 1976, just nine years later, the same “Olympic Rules” had another format: (i) Rules; (ii) Bye-laws; (ii) Instructions (which included the conditions applying to candidate cities to organise the OG; (iii) Regional Games and (iv) Olympic Awards. In 1978, in the document finally entitled OC, the legal framework was contained in a single text, organised as follows: (i) Rules;

(ii) Bye-laws; (iii) Instructions; (iv) Organisation of the OG; (v) Committees of the IOC; and (vi) Olympic Rewards. The OC thus emerged as the principal locus of the IOC rules.

Despite this unifying logic, in 1982, the OC still had annexed to it texts such as "Standard constitution of a NOC", "List of members belonging to, or who have belonged, to the IOC since it was founded" and "Standard contract for purchase of television rights to the Games". The completion and simplification of the OC was indeed a slow and gradual process.

The Olympic Charter in force

The edition of the OC currently in force was approved in 8 July 2011, and henceforth all references we shall make to the Lex maxima of Olympism will be to this version.

In the Introduction to the OC its form and purpose is immediately made apparent: the OC is the codification of the Fundamental Principles of Olympism, Rules and Bye-laws adopted by the IOC. It governs the organisation, action and operation of the Olympic Movement and sets forth the conditions for the celebration of the OG.

From this introduction and a reading of the entire text of the OC we can suggest that the legislator's intent is to create a kind of "scripture" or Codex of Olympism, something done through a fine normative filter and through a methodical structuring of the organisation of the OM (7).

In our view, the legislators have increasingly been developing a healthy practical sense, which is clearly focused on the requirements of those who have to interpret and apply the OC, as can be surmised from the trilogy currently adopted: in addition to the General Principles, which can be viewed as an ideological declaration or teleological interpretation of the OC - in the nature of guidelines for those who consider themselves part of the OM - the text of the OC includes a body of legislation composed of 61 rules, to which are added 27 Bye-laws, which function as glosses and annotations of those Rules, which the legislator thinks likely to pose the main difficulties of interpretation or which appear to be more laconic.

In the Introduction, the scope of the OC is also set forth, by referring to the three main purposes which, in essence, the OC aims to serve: (a) A basic instrument of a constitutional nature, which governs and recalls the Fundamental Principles and essential values of Olympism; (b) The statutes for the IOC; (c) The definition of the main reciprocal rights and obligations of the three main constituents of the OM, namely the IOC, IF and the NOC, as well as the Organising Committees for the Olympic Games (OCOG).

Reading and interpreting these three purposes lead us to detect parallels between the OC and the regulatory instruments with which we are more familiar.

Paragraph (a) referred to above allows us to say that the OC is similar to a Constitution in its conception, because it is the basic fundamental document of the OM, the raison d'être of which is to act as a governing framework for the other rules (lex superior, lex maxima or "fundamental rule"), which, in a complex and complete form, assumes a transcendent authority over in the universe of sport that is subject to it. We may, also identify other similarities with a Constitution: (i) The OC is of a foundational or constitutive character; (ii) The OC establishes a set of principles and fundamental values, which govern a particular type of organisation, in this case the organisation of sport worldwide; (iii) The OC aims to give a stable and durable quality to the governing regime, by making amendments of the OC an exceptional occurrence that requires a two-thirds qualified majority; and (iv) The OC combines a programmatic discourse with imperative rules.

Paragraph (b) referred to above provides that the OC, as the document governing the internal organisation of the IOC, constitutes or encompasses the Statutes of the IOC.

Finally, in defining the rights and obligations of the main constituents of the OM, the OC resembles a contract.

In relation to its content, the OC is a composite legal text in which general principles sit side by side with more technical rules, which include coercive rules along with simple standards of behaviour. The OC also combines rules typical of Public Law – such as those relating to the

exclusive competence to represent a country – with rules typical of relations between private parties – it sets out the concept of "ownership" of the OG.

The OC embraces executive, legislative and judicial powers.

So far as executive powers are concerned, the procedure for choosing a city to host the Games is the most noteworthy (See Bye-law to Rule 33(3) of the OC, - Election of the host city – Execution of Host City Contract).

So far as legislative powers as concerned, we refer to the power to amend the text of the OC itself, as set out in Rule 18(3), under the heading Session.

Finally, the OC embodies judicial powers, as is clearly shown by Rule 59, under the heading Measures and Sanctions, which confers powers on IOC bodies – the Session and the Executive Board – and on the Disciplinary Commission, to which the Executive Board may delegate powers, to punish violations of the OC, the World Anti-Doping Code or of any other regulation, as the case may be.

In fact, despite everything that we have mentioned above, i.e. even though the OC is the fundamental statement of the Olympic Movement (OM) and is expressed in principles, which aim at a universal legal value, it is, nevertheless a document approved by the IOC, which is, in turn, a corporate body under Swiss private law.

The IOC may obviously and legitimately adopt its own rules, but this originating right does not derive from any higher order rule that confers such legitimacy, and so it is logical to query the form and legal basis upon which the IOC was able to set up the OC, and impose its terms on all those who voluntarily form part of the OM, and so come under its authority.

The fundamental question is why the OC, "in the eyes of" the IOC as well as of the whole OM, amounts to a fully-fledged international treaty, when in reality it is not one. In order to reach this conclusion, it suffices to observe that the IOC was not founded by an international convention and that its members are not representatives of governments (8).

It will be said that if the OC claims and attains a universal legal nature, this is not a result of its legal nature, but arises rather by virtue of a moral authority, of an extra-legal element, that is, the social, economic and sporting magnitude of the OG. This is exactly where basis of the external authority of the OC lies: in affiliation or voluntary recognition by those who submit to it, who make up a diverse community of individuals, groups and organisations of all kinds, be they states, NOC, International Federations (IF) or others.

Only this context can explain how, on 7 April 1978, the Second Conference of European Sports Ministers could have approved a resolution, which expressly recognised the authority of the OC (12) or how, in 2003, the EU Council of Ministers should have adopted legislation "(...) bearing in mind the obligations arising from the Olympic Charter" (9).

Similarly, only the moral authority of the OC helps us understand why a Court in California took the precaution of expressly enforcing the state law as against the OC in 1984, or help to justify the fact that in Turkey - an example that, as far as one is aware, is unique in the world - the "Olympic law" incorporates the entire OC in its national legal system.

The same may be said of the formal submission of states to the primacy of "Olympic Law" and the ius stipulandi of (i.e. their legal subservience to) the IOC when they apply to organise the OG.

Still in this regard, some important rulings of the Court of Arbitration for Sport (CAS) in Lausanne should be noted. In the ruling in COA & B. Scott/IOC (10), the OC was defined as hierarchically the supreme body of rules, which govern the activities of the IOC, which operate as a genuine frame of reference, although the CAS has not ceased to recognise that certain sources of secondary legislation, such as the World Anti-Doping Code, may derogate from the OC, if they involve lex specialis (11).

For its part, in its ruling in Nabokov et ROC, RIH/IIHF (12), where the issue under consideration was the reconciliation of the Ice Hockey IF rules with those of the OC, the CAS clarified that the OC can only be derogated from by federation rules if these are more restrictive than the OC. That a federation rule may not contradict the OC was in turn emphasised by the CAS in its

rulings in Mayer et al (13) and Baumann/IOC, NOC of Germany and IAAF (14) (ad hoc Sitting at the Sydney OG).

There is therefore a general acceptance of the legal primacy of the OC, not because it has any actual entrenched force, but rather by virtue of custom (15) and the transcendent socio-economic quality the OG possess, an acceptance which, in BERMEJO VERA's view (16), creates barriers to outside interference, even when this is legitimate, when it proceeds from fully democratic authorities.

3. The International Olympic Committee

The International Olympic Committee as the most relevant constituent of the Olympic Movement

According to the Third Fundamental Principle of Olympism set out in the OC, [t]he Olympic Movement is the concerted, organised, universal and permanent action, carried out under the supreme authority of the IOC, of all individuals and entities who are inspired by the values of Olympism. It covers the five continents. It reaches its peak with the bringing together of the world's athletes at the great sports festival, the Olympic Games. Its symbol is five interlaced rings.

The Seventh of these Principles categorically states that [b]elonging to the Olympic Movement requires compliance with the Olympic Charter and recognition by the IOC.

As to its composition and general organisation, Rule 1(1) of the OC informs us that, [u]nder the supreme authority of the International Olympic Committee, the Olympic Movement encompasses organisations, athletes and other persons who agree to be guided by the Olympic Charter. The goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth through sport practised in accordance with Olympism and its values.

From the rules and principles cited it is possible to infer, as does J. L. CHAPPELET (17), that the OM comes close to being a true Olympic System, and one of great organisational originality, to

be understood, as F. LATTY (18) puts it, as a set of structures that, under the aegis of the IOC, combine on a permanent or temporary basis to promote the development of the OG.

The provisions of the OC give special and systematic treatment and devote much space to the three most important constituents or pillars of the OM, incorporating their mission, role, their legal nature and the forms of co-operation between them.

Rule 1(2) of the OC provides that [t]he three main constituents of the OM are the IOC, the International Federations (IF) and the National Olympic Committees (OC). Undoubtedly the IOC is the most relevant of those constituents so that we shall devote it a special attention.

Mission and Role of the International Olympic Committee

The “International Committee for the Olympic Games”, soon to be renamed as the IOC, was created by a decision of the International Athletics Congress in 1894, which re-established the OG, i.e. set up the Games of the Modern Era. This is a clear signal that its mission went far beyond just putting on the Games, i.e. what was created was on-going and of unlimited duration, with merely the appearance of transience.

In Pierre de Coubertin's manuscripts, which date from 1899, but were only printed in 1908, include the first IOC Statute, which states its Aim as: The IOC, to which the Paris Congress entrusted the task of promoting the development of the OG that were formally re-established on 24 June 1894, should: 1. ensure the regular celebration of the Games; 2. make the celebration ever more excellent, worthy of their glorious past and the high ideals which inspired those who revived them; 3. facilitate or organise all the events, and generally take all measures to set modern athletics onto a desirable path.

Currently, in accordance with the provisions at the beginning of Rule 2 of the OC, the mission of the IOC is to promote Olympism throughout the world and to lead the OM.

The role of the IOC is huge, covering a broad and ambitious range of areas of intervention.

By Rule 2(1) the IOC must [e]ncourage and support the promotion of ethics and god governance in sport as well as education of youth through sport and to dedicate its efforts to ensuring that, in sport, the spirit of fair play prevails and violence is banned.

While nothing is mentioned as to any descending order of priority in the various paragraphs of Rule 2 of the OC, it does not seem to be insignificant that the first paragraph does not deal directly with the organisation and mounting of the Games, but with issues of ethics - ethics in their broadest sense, as applied to sports, and as related to their own rules and to sports competitions, in the form of what is known as sportsmanship - as well as the education of young people through sport.

Basically, in our view, the legislators seem to have expressed a desire to show that the first concern of the IOC is much broader than the organisation and mounting of a sporting event, however important that may be. It seems clear that the legislature intended that the IOC's main role should be as guardian and promoter of dissemination and respect for the ideals, principles and values that ought to guide a human being through the vicissitudes of life. Sport in general and the OG in particular, are to be the arena for an altruistic and philanthropic mission focused above all on the dissemination and teaching of Olympic ideals. To quote the rules, it is at the service of or through sport that the IOC must undertake its principal role.

It also seems significant that Rule 2(2) extends the role of the IOC throughout sport and all sports competitions, and is not confined to the OG. It states that the IOC shall [e]ncourage and support the organisation, development and co-ordination of sport and sports competitions.

Not until we arrive at Rule 2(3) is it stated that the IOC shall [e]nsure the regular celebration of the OG. Indeed, the expression OG only appears twice more in this Rule: in paragraph 13 which states that the IOC shall [e]ncourage and support a responsible concern for environmental issues, to promote sustainable development in sport and to require that the OG are held accordingly; and in paragraph 14 which provides that it shall [p]romote a positive legacy from the OG to the host cities and host countries.

But even in these two paragraphs it is clear that the main concern is ethical: environmental ethics in the one case and the issue of an ethical legacy in the other. Ethics also figure prominently in paragraph 8, by which the IOC must [l]ead the fight against doping in sport.

As mentioned above, education is also one of the IOC's top priorities. This becomes even clearer after reading paragraphs 15 and 16, by virtue of which, respectively, the IOC, shall [e]ncourage and support initiatives blending sport with culture and education and [e]ncourage and support the activities of the International Olympic Academy ("IOA") and other institutions, which dedicate themselves to Olympic education.

The promotion of equality, within and beyond the OM, and peace, highlight the IOC's humanitarian aspect: (i) in paragraph 4 the IOC shall cooperate with the competent public or private organisations and authorities in the endeavour to place sport at the service of humanity and thereby to promote peace; (ii) in paragraph 6 the IOC must act against any form of discrimination affecting the OM; (iii) paragraph 7 gives priority to the fight against discrimination on the grounds of sex and provides that the IOC shall encourage and support the promotion of women in sport at all levels and in all structures with a view to implementing the principle of equality of men and women; and (iv) in paragraph 12 the IOC is to encourage and support the development of sport for all.

Of course, athletes do not escape the attention of the IOC. Paragraphs 9, 10 and 11 provide that it shall (i) encourage and support measures protecting the health of athletes; (ii) oppose any political or commercial abuse of sport and athletes; (ii) encourage and support the efforts of sports organisations and public authorities to provide for the social and professional future of athletes. Again, ethical concerns are at the forefront.

The Rules are also jealous, as we have seen, of the OM's autonomy, in particular its independence of any external control. According to paragraph 5, the IOC must take action in order to strengthen the unity and to protect the independence of the OM.

The legal nature of the IOC

For many years, while the "Olympic Law" remained in force, the legal nature of the IOC was never defined (19), perhaps because the IOC has always been confronted with the contradiction between its legally recognised status as a private law association in and its current conduct as a particular type of public law organisation.

The "Olympic Rules" published in 1908 referred to the IOC as a *permanent* organisation but said nothing about its legal nature. This omission persisted for some years.

In 1920, the Lausanne City Council enquired into the legality of the IOC and the legitimacy of Pierre de Coubertin's signature on the document, which established the headquarters of the IOC in Lausanne, as this had not been ratified in any way by the IOC Session.

A lawyer consulted by the Lausanne City Council opined, on first considering the matter that the IOC could not be regarded as an association in Swiss law, and so could not be considered a corporate person with capacity to enter into contracts. He accordingly suggested the statutes be reviewed. After a second examination, the lawyer deemed it prudent to require that the IOC be entered in the Lausanne Commercial Registry, with express mention of the persons qualified to act in its name and to represent it.

Pierre de Coubertin reacted negatively, as he wished to prevent the IOC being treated as a mere association in Swiss law, obliged to register as if it were *any common High Street business*. Pierre de Coubertin aspired to the IOC being placed on an equal footing with international organisations like the (then) League of Nations. (20)

The ambiguity as to the legal nature of the IOC persisted for several decades until the need to clarify the situation finally became unavoidable. In 1974 a commission was appointed with the task of studying this issue in depth, with two guiding principles, one positive – the interest that the IOC and its members and staff might have in the legal personality of the IOC being recognised - and the other negative - without prejudice to the fact that the legitimacy of the IOC to sue and be sued IOC had up to that point been recognised, it was feared that others

might come forward to pursue the IOC in the courts, either to claim rights based on contract or statute or else to denigrate the image of the IOC.

In October 1974, at the 75th Session of the IOC in Vienna, a definition of the legal nature of the IOC was finally approved and embodied in the then Rule 11(2) of the OC, defining the IOC as *(…) an association in international law with a legal personality, of unlimited duration and with its registered office in Switzerland*. Therefore, the IOC was defined as an entity governed by international law, with its own legal status, and independent of national laws.

This wording created the risk of a misconception that the IOC had international legal personality, which was strengthened given: (i) The OC's authority over states; (ii) The enormous range of contracts concluded between the IOC, specialised UN agencies and even states; (iii) the IOC's capacity to present claims against international organisations. (21)

The rule therefore had to be reviewed to remove the confusion. Accordingly, several years later, in 1991, the (then) Rule 19 of the OC attempted a clearer statement by defining the IOC as (…) *an international non-governmental non-profit organisation, constituted as an association with legal personality, recognised by a decree of the Swiss Federal Council dated 17 September 1981.*

In the current version of the OC, Rule 15(1) is practically the same, albeit updated: *The IOC is an international non-governmental not-for-profit organisation, of unlimited duration, in the form of an association with the status of a legal person, recognised by the Swiss Federal Council in accordance with an agreement entered into on 1 November 2000.*

It seems to us that the OC has, since 1991, stated the true legal nature of the IOC.

Above all, the IOC is an organisation with an international character – not to be confused with an international organisation, in the legal sense of the term (22) – this can be explained not only by the many nationalities of its members (23) and of the constituents of the OM, but also by its international vocation as expressed in terms almost of a public service mission within the international legal order, by way of humanist and ethical missions, established in partnership

with, or with the permission and recognition of states, and intergovernmental organisations. Indeed, the Swiss Federal Council itself recognises that the activities undertaken by the IOC have a *worldwide dimension* and emphasises both the *universal role* of the IOC in the context of international relations and its *renown* throughout the world.

Secondly, the IOC is a Non-Governmental Organisation. It could not be defined otherwise, in our view, because, as we have seen, the OC - adopted and modified by an IOC body, the Session - is the constitutive document of the IOC, which is thus not founded on any international or intergovernmental agreement, treaty or convention. Moreover, the logic of the IOC is based squarely on its independence of government intervention and never in its history has it sought consultative status at the United Nations (UN), although the possibility has been tabled (24) and the IOC fulfils the requirements for such status (25), precisely because of its wish to remain completely autonomous vis-à-vis international governmental organisations.

Another important feature of the IOC's legal status is the fact that it has legal personality within Swiss law, conferred by Article 56 of the Swiss Federal Constitution, which guarantees freedom of association, and by Articles 52 and 60 of the Swiss Civil Code, which respectively make provision regarding legal personality and associations. As its registered office and place of operation is in Lausanne, Switzerland, it is governed in accordance with the domestic law of the Swiss state and so derives its rights and obligations under that law.

None of the above prevents the IOC's legal personality being viewed at the same time in the light of Articles 1 and 2 of the "European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations", adopted by the Council of Europe (26), the criteria of which seem to be fully satisfied by the IOC: (i) it has a non-profit-making aim of international utility; (ii) it has been established by an instrument governed by the internal law of a Party - in this case Switzerland; (iii) it carries on its activities with effect in at least two States; (iv) it has its statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party - in this case Switzerland; (v) the IOC's legal personality and capacity are recognised as of right in the other parties signatory to the Convention.

Prominent in Rule 15(1) of the OC is a reference to the recognition accorded to the IOC by the Swiss Federal Council.

In support of what has been said about the legal status of the IOC, there seems to be no doubt of the fact that the legal recognition of the IOC and the privileges granted to it, having been conferred unilaterally by the Swiss Federal Council, which reinforces the conclusion that the IOC is not a *subject of public international law* (27) (28).

The IOC Members

We have had already mentioned that, at the time of its creation, the IOC had a notable absence of procedures, protocols, standards and conventions.

We may now add that in the beginning the IOC had a small organisational structure, with very little complexity, and only 14 members. The decisions were taken by a very small group of people who discharged different responsibilities, such as drafting letters, producing reports and drafting minutes of meetings. This was a period when the IOC had sole power to take decisions on technical matters concerning sports events in the Olympic programme.

Today the opposite is true, as can immediately be appreciated on reading and interpreting Rule 16 of the OC, which deals with the membership of the IOC, in the areas of eligibility, recruitment, election, appointment and status.

Two points are worthy of mention here: (i) The IOC is not a confederation of NOCs, its members being individuals, numbering not more than 115, elected for a term of eight years and who may be re-elected *for one or several further terms*; (ii) IOC members represent and promote the interests of the IOC and of the OM in their countries and within the organisations to which they belong and which are part of the OM.

Let us begin with who the members are and how they are elected.

Firstly, we should re-emphasise the fact that the IOC does not have NOC as its members, but 115 individuals. It is thus a model that differs substantially from IF, whose members are the

national federations. And, secondly, it is a model arranged so that the supreme body has substantially fewer members than the number of countries or nationalities represented at the OG.

Secondly, it should be noted that since the reform carried out in 2002, the 115 members are spread among four distinct categories: 70 members of the IOC designated by the IOC for eight years, 15 presidents of IF nominated by members of the IOC for the period of office of the presidency of the IF, 15 Presidents of NOC appointed by IOC members for the period of the presidency of the NOC, and 15 athletes' representatives, elected by former athletes in the Summer and Winter OG.

Apart from this proportionality in the representation of members, it should be noted that only the representatives of the athletes are elected, and the other members, 87% of the total, are appointed by the IOC.

This state of affairs already seems to show the beginnings of a change of philosophy of the IOC. In any case, the fact that the IOC continues, predominantly, to appoint its members by co-option means that the attitude persists that if new members are required or an existing one is to be replaced, it is the other members who are to take this decision. To put it another way: existing members admit other members, according to their own criteria and unchallenged discretion, which means that the admission of members is an arbitrary procedure based on privilege and elitism (29).

This method can be a hindrance to the regeneration of the IOC, but it is rooted in Pierre de Coubertin's conviction of the advantages of guaranteeing a certain permanence to membership of the IOC, for which reason he always defended its system of *self-recruitment*.

The method employed is essentially co-option, and although the Session elects the members it is an election based on a proposal, prepared and presented by the IOC Executive Board, which cannot subsequently be modified.

In this context, although formally the method is based on a democratic structure, in which the Session elects, the truth is that the structure does not run from the base to the top of the pyramid, but rather the reverse: in practice, the structure is hierarchical and top-down, concentrating the power to name the vast majority of members in the IOC Executive Board, without major constituents of the OM such as IF, IF Associations or NOC Associations having any power to propose a candidate (30).

Let us now look at how the OC defines the role of each member of the IOC.

The OC states that members of the IOC represent and promote the interests of the IOC and of the OM in their countries and within the organisations belonging to the OM of which they are part and are not, therefore, delegates of their country or NOC to the IOC.

It also provides that members of the IOC are representatives *of* and not *at* the IOC, and act as a kind of spokesperson or ambassador for the IOC in their countries, and not the reverse, that is, the system is one of "inverse representation".

Once again, the logic goes back to Pierre de Coubertin, who created a system designed to prevent or at least to mitigate government interference, which would have been possible if the IOC members were direct or indirect representatives of national governments. Pierre de Coubertin believed that allowing countries to choose their own representatives on the IOC would be fatal to the IOC, as this would lead to political, nationalist or corporate interference in IOC decisions.

Still today, this logic is followed: the focus is on the man, his personality, and his (always subjective) qualities, whatever his country of origin (36).

4. Conclusion

The above considerations tried to analyse a relevant part of the legal and institutional issues that arise from the OM in general and the OG in particular – firstly the Olympic Charter, as the basic fundamental document of the OM, and secondly the IOC, as the main constituent of the OM.

It must be concluded that today Law and the Olympic Games are necessary and totally inseparable realities. In fact, the survival of the OG depends largely on acknowledging and understanding something that is already inevitable or irrefutable: a solid body of Olympic rules to be interpreted with clarity and applied flexibly but mandatorily. In a framework of a legal pluralism, in which various legal systems co-exist and seek to cohabit – the national and supranational state legislation, on the one hand, and the *Lex Olympica*, on the other – the Olympic Charter, which embraces executive, legislative and judicial powers, assumes a transcendent authority and primacy, in a process of "destatification" of the Olympic legal framework contrary to the pure logic of hierarchy of legal provisions.

Obviously a solid body of Olympic rules implies strong and powerful institutions. This article tends to the conclusion that the IOC emerges as the most powerful institution of the OM.
With a status of a private law association under Swiss law – i.e. a non-governmental not-for profit Swiss organisation- , the IOC has, in practice, an international character and vocation, namely in its relationship with governments and international organizations; in their membership; or in its mission – with competences that range from ensuring the regular celebration of the OG to promoting and disseminating around the world Olympic ideals, principles, rules and values. Among other main concerns of the IOC, one can highlight the safeguard of ethics, environment and equality as well as the involvement on humanitarian actions.

Once again the Olympic Charter has a major role to play: It is the document that governs the internal organisation of the IOC, constituting or encompassing its Statutes, meaning, for instance, that the Olympic Charter is the "legal umbrella" of the three organs through which the IOC exercises its strong powers: the Session; the Executive Board and the President.

In sum, the legal and extra-legal power of the Olympic Charter and inherent power of the IOC are evident. That definitely requires a deep legal and institutional analysis and this article is a modest contribution for that challenging task.

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(1) "On the Olympic Charter of the International Olympic Committee", *Topical problems of the International Olympic Movement*, Sofia, Sofia Press, 1982, p. 75.

(2) *L'enjeu olympique,* Éditions Marcel Valta, Paris, 1981, p. 135.

(3) "O Empréstimo Internacional de Futebolistas Profissionais", *Estudos de Direito Desportivo*, Coimbra, Almedina, 2002, p. 118.

(4) "The International Olympic Committee: An Advanced Non-Governmental Organization and the International Law", *G.Y.B.I.L.*, Vol. 27, 1984, pp. 253-258.

(5) *Derecho del Deporte*, Madrid, Tecnos, p. 109.

(6) Various Authors, *The Court of Arbitration for Sport 1984-2004*, p. 22.

(7) Frank LATTY, *La lex sportiva: Recherche sur le droit transnacional*, Leiden-Boston, Martinus Nijhoff Publishers, p. 169.

(8) Nonetheless, a Court in the Region of Piedmont, by a judgment of 22.01.2004 on the role and actions of TOROC - the OGOC for the Turin Games in 2006 - called the OC a document in the nature of an international treaty. This judgment is about the private legal status of TOROC, which resulted in the abandonment of proceedings that the European Commission had brought against the Italian state in 2003, when it considered the TOROC was a public law entity, and had allegedly infringed Article 11 of Directive (EC) 50/92, during the construction of the bobsleigh and ski slopes, see Various Authors, *Il libro nero delle olimpiadi di Torino 2006*, Turin, Fratelli Frilli Editori, 2004, p. 303.

(9) Council Regulation (EC) No 1295/2003 of 15 July 2003 relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens, OJ L 183, of 22.07.2003, Recital 5.

(10) Judgment of 18.12.2003, CAS 2002/0/373, Rec. TAS III, p. 32, § 38.

(11) Another ruling to the same effect is the Judgment in *NOC & Others/ IOC*, de 18.12.2003, CAS 2002/O/372, not published, § 89.

(12) Judgment of 31 January 2002, Rec. TAS III, p. 503ff.

(13) Judgment of 20.03.2003, CAS 2002/a/389, 390, 391, 392 & 393, A., B., C., D. & E, Rec TAS III, p. 355, § 7.

(14) Judgment of 22.09.2000, Rec. TAS II, p. 637, § 12.

(15) "Cf. M. D. GAGAS, "Problèmes juridiques du mouvement olympique contemporain", *AIO-Trente sixième session 19 Juin-2 Juillet 1996*, Ancienne Olympie, IOC, 1998, p. 126.

(16) Quoted by Eduardo Gamero CASADO, *Las sanciones deportivas*, Barcelona, Ed. Bosch, 2003, p. 454.

(17) *Le Système olympique*, Presses Universitaires de Grenoble, 1991, p. 45.

(18) Frank LATTY, *La lex sportiva: recherche sur le droit transnacional*, Leiden-Boston, Martinus Nijhoff Publishers, p. 54.

(19) According to M. BERLIOUX, *[o]nly from the late 60s was the CIO seen as an association governed by Swiss law. Until then it was, legally speaking, a sort of ectoplasm, but it was content to be so, since it could thus do whatever it wanted without submitting to the diktat of an international or national jurisdiction*, *Revue Juridique et Ecónomique du Sport,* September 2001, no. 61, p. 31.

(20) V. C. GILLIÉRON, *Les relations de Lausanne et du Mouvement Olympique à l'époque de Pierre de Coubertin 1894-1939*, Lausanne, IOC, 1993, pp. 92-93.

(21) A prime example of this took place at the 1992 Barcelona Games. On 30.05.1992, the UN Security Council adopted resolution 757 (1992) which, *inter alia*, excluded any athlete or team from the (then) Socialist Federal Republic of Yugoslavia (SFRY) from participation in international sporting events. Since the IOC is a corporate person of Swiss private law, and Switzerland is not even a member of the UN, the IOC was not bound by this resolution. However, at the request of the SFRY government, and to protect the athletes from something for which they themselves could not be blamed, the IOC made a submission to the Sanctions Committee of the UN Security Council, which was accepted. The Council supported the need to prevent the impression that participating athletes or teams were representing the SFRY. Consequently, the IOC, based on the (then) Rule 9 of the OC, that the OG are competitions between athletes and not between countries, proposed an independent team to include the athletes from Serbia, Montenegro, and Macedonia. On the other hand, the OECD did not recognise the international legal personality that the IOC tried to invoke when, following cases

of corruption that occurred during the Winter Games in Salt Lake City, it referred an application to be made subject to the application of the "Convention on Combating Bribery of Foreign Public Servants in International Business Transactions", signed in Paris on 17.12.1997, to the OECD Secretary-General.

(22) The IOC does not fulfil the three necessary and sufficient conditions to be considered an international organization, namely (i) consisting of states, and (iii) being constituted by a convention, and (iii) having legal autonomy vis-à-vis its members.

(23) Cf. Francesc-Xavier PONS, "El Comité Olímpico Internacional y los Juegos Olímpicos: algunas cuestiones de relevância juridico-internacional", *REDJ,* Vol. XLV (1993), 2, p. 289.

(24) In 1985, B. SIMMA and C. VEDDER submitted a plan to the President of the IOC, Juan Antonio SAMARANCH, entitled "Suggestions for Improving the Legal Position of the IOC as Regard to Its Relationship with States and Intergovernmental Bodies". Based on the idea that the IOC should seek consultative status with the UN, this plan was based primarily on four proposals: (i) Replace the unilateral declaration by which the government of the country whose city hosts the Games is responsible for complying with the OC with a bilateral agreement with the IOC, (ii) arrange for an international convention, a United Nations resolution, or another similar document for the "protection" of the OG, (iii) establish advisory relationships between the IOC and the UN Under Article 71 of the Charter of the United Nations ("UN Charter"). Also recommended was a close relationship with UNESCO. The IOC Executive Board feared any intensification of relations with the United Nations, and it did not accept the proposal in question. There was indeed a fear of putting the IOC, even if only occasionally, at the mercy of the will of governments, so the IOC chose a cautious collaboration, in a way that would not risk any loss of independence and not put it in a position inferior to that of States. As for UNESCO, given the similarity between the ambit of both bodies, the IOC has shown an open attitude towards closer relations.

(25) The IOC meets the requirements for benefiting from consultative status at the UN. Resolution 1996/31, adopted at the 49th Plenary Session of the Economic and Social Council of the United Nations, under Article 71 of the UN Charter, clarifies the criteria that must be met by NGOs wishing to benefit from similar consultative status and there is no doubt that the IOC meets them: (i) have a recognised headquarters and an administrative head - the IOC has headquarters in Lausanne and has a President; (ii) have a constitutive act adopted on democratic principles - the IOC has the OC, modified and approved democratically in the

Session; (iii) the policy of the NGOs in question must be decided by a conference, a meeting or some other representative body to which an executive body should be accountable - the IOC has the Session, as representative body, and the Executive Board; (iv) the NGO concerned must have representative bodies and also mechanisms to account to their members for the actions of these bodies, and members should exercise an effective authority over the direction and activities of NGOs and have a right to vote or another form of democratic and transparent decision-making - this is the case with the IOC; and (v) The main financial resources of the organisation should derive essentially from affiliation fees or from the constituent national bodies or from contributions from members of the organisation - The IOC was for a long time financed in this way, although currently the major financial resources come from the TV revenues from rights to broadcast the OG.

(26) Issued by the Council of Europe, this Convention, opened for signature in Strasbourg on 24 April 1986, is applicable to private associations such as foundations.

(27) On this point see Fernando XAREPE SILVEIRO, "O Empréstimo Internacional de Futebolistas Profissionais", *Estudos de Direito Desportivo*, Coimbra, Almedina, 2002, p. 121.

(28) According to Antonio RIGOZZI, *the privileged status that the IOC enjoys under Swiss law, particularly with regard to taxation (...) shows that this concession is not specific to sport, but is the consequence of the vulnerability of the nation state vis-à-vis the other players (individuals or legal persons) that operate on a transnational scale and can choose to establish themselves in (or enter transactions with) one state rather than another*, *L'arbitrage international en matiére de sport*, Basle, Helbing & Lichtenhan, 2005, p. 85.

(29) Frank LATTY, *La lex sportiva: recherche sur le droit transnational*, Leiden--Boston, Martinus Nijhoff Publishers, 2007, p. 189.

(30) *Idem*, p. 141.

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The legal and institutional framework of the Olympic Games

The Olympic Charter (OC) is today indubitably a legal text which, along with the International Olympic Committee (IOC) out of which it arose, has raised many legal and institutional issues, which are interesting from a theoretical, and particularly from a practical, point of view. In this lecture, the author will focus on some of those issues.

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