Beiträge zum Sportrecht

Band 42

Lex Sportiva

Edited by

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Duncker & Humblot · Berlin

Due to the difficulty of confirming in a few lines the degree of autonomy of the *lex sportiva* in relation to the legal orders likely to restrict its effectiveness[46], only a few main "trends" concerning the relationship between the transnational sporting legal order and the national, international and European Union legal orders will be mentioned.

Insofar as the international sporting bodies have internal legal statutes, they are, by nature, subject to the legal order of their headquarters. This being so, the liberalism of Western democracies permits the self-regulation of the associations, as long as they do not come up against the public order of the states concerned. Even in this last scenario, with regard to the multiplicity of sovereignties, the transnational standard deprived of effects in a given territory is likely to continue to be applied in the rest of the world. What is more, the increasingly widespread recognition of the CAS by sporting bodies is having the mechanical effect of dispensing with the state judge, and often, even of dispensing with the application of the states' laws. The recognition by the states of the World Anti-Doping Code through the 2005 UNESCO Convention against doping is also helping to ensure that the sporting bodies' anti-doping standards are applied, without the states' laws presenting an obstacle any longer.

The issue of doping aside, inter-state solidarity is too weak in the sporting field for the international legal order to be able to channel, or even just effectively rival, the *lex sportiva*. At European Union level, on the other hand, the autonomy of the *lex sportiva* is likely to be affected as soon as its standards have an economic scope, which is increasingly the case as a result of the commodification and professionalization of sport since the Samaranch era. This is because the integration of twenty-seven states into a single legal order has effectively permitted the transnational standard to be countered. The loss of autonomy is only limited, however, by the recognition of sport's peculiarities by European Union law.[47]

IV. Conclusion

The concept of transnational sports law therefore offers a suitable theoretical framework for the analysis of the system of relations forged between the sporting legal order and the "public" legal orders – the sole obstacles to the unlimited development of the *lex sportiva*.

[46] For a more in-depth examination of this question, see *F. Latty*, La lex sportiva – Recherche sur le droit transnational, op. cit. (fn. 9), pp. 415 et seq.

[47] See *S. Weatherill*, Fairness, Openness and the Specific Nature of Sport: Does the Lisbon Treaty Change EU Sports Law?, International Sports Law Journal 2010, pp. 311–325.

States and the Olympic Movement

The Twin Face of a Legal Subordination: The Portuguese Case

By Alexandre Miguel Mestre

I. "Olympic Law" in the Olympic Games of the Antiquity 121

II. "Olympic Law" in the Olympic Games of the Modern Era: From an Early Paucity of Rules to the Olympic Charter 123

III. The Subordination of State Law to the "Lex Olympica" 128

1. The States' Acceptance of the Primacy of the *Lex Olympica* 128
2. The Incorporation or Assimilation of the *Lex Olympica* under State Law: The Portuguese Case 131

IV. The Subordination of the Olympic Movement to State Law: The Portuguese Case 137

V. Conclusions 142

I. "Olympic Law" in the Olympic Games of the Antiquity

The Olympic Games of Antiquity, the origins of which go back to 776 BC, were organised and played out in the Sanctuary of Olympia in Greece, and were governed by a very strict set of rules.

Heracles is credited with having created the rules of the Olympic Games of Antiquity; the first aim of these was to ensure equality of opportunity between all competing athletes. The "canons" or "Fundamental Laws of Olympia" were broken down into three categories: "Olympic Laws", "Olympic Regulations", and "Competition Rules". The "Olympic Laws", which were at the apex of the hierarchy of rules, were engraved on bronze tablets, and were deposited at the permanent seat of the Olympic Senate, the *Buleuterion*. Immediately beneath these, in hierarchical terms, were the "Olympic Regulations". These contained rules governing the specific application of the "Olympic Laws". Finally, there were detailed rules governing the organisation and execution of each trial or competition, each of which was specific to its field. These "Fundamental Laws of Olympia" represented the birth of one type of "Olympic law".

All athletes were required to comply strictly with the obligatory equal preliminary training regime in Olympia, both individually and together. This took place for six weeks before the beginning of the Games, when all the athletes trained together. Even the athletes' diets had to be identical.

All athletes submitted to the verdict of the referees, the *hellanodikes*, an expression which – in Greek – means "judges of the Greeks". These arbiters had a period of ten months in which to prepare themselves thoroughly for the event. They did this by studying the applicable rules which, as Herodotus tells us, had been inherited from Egyptian sages. As well as this technical preparation, there was also spiritual preparation.[1] During the first phase of the Olympic Games, these hellanodikes were chosen from among the rich families of Elis, but from 580 BC onwards they were chosen by drawing lots. One hellanodike was selected from each city.

The guiding principle in the definition of offences and their corresponding penalties was the criterion, referred to above, of "equality of opportunity". The penalties, which were ranked in order of the severity of the offending conduct, were of four distinct kinds: political, economic, sporting and corporal. The logic behind them was, essentially, that there should be severe penalties for anyone who treated victory as being more important than abiding by the rules.

The institution known as *Ekecheiria* provides another example of the importance placed on abiding by rules and on the symbol of unity (referred to above) in the Olympic Games of Antiquity. This was introduced in 776 BC, and was a concept which was equivalent to an armistice (abstaining from the use of arms) rather than, as is sometimes asserted, peace, although it did convey a desire for peace and cessation of hostilities, and so, in practice, amounted to a proclamation of peace.

This truce consisted of a formal proclamation of the inviolability of the regions in which the religious festivals and sporting competitions took place. As applied to the Olympic Games, it sought to ensure the safety of those who participated in them: athletes, officials and spectators.[2]

This truce was, in fact, always respected, because anyone who violated it was "severely punished"[3], thus helping to reinforce the idea that the Games succeeded in enforcing strict compliance with principles and rules.

[1] *Various authors*, Tudo sobre Jogos Olímpicos, Atenas 1896 – Pequim 2008, 2007, p. 7.

[2] *Pescante*, La Trêve Olympique, in: Sport Europe, Revue Officielle des COE, n. 62, Year XIII, 2002, 38.

[3] *Various authors*, Tudo sobre Jogos Olímpicos, Atenas 1896 – Pequim 2008, 2007, p. 6.

As time progressed over tens of centuries and 300 sessions of Olympic Games, the Olympic Games of Antiquity were, without a doubt, not only an unparalleled sporting and educational event, but also a model of the primacy of Law, of the need for competitions and settled societies to have structure governed by principles and rules enacted by organised bodies in the name of Justice.

The Olympic Games of Antiquity were abolished by an Edict of Ambrosio, Bishop of Milan in 393, but, fortunately, this was not enough to extinguish their great legacy.

II. "Olympic Law" in the Olympic Games of the Modern Era: From an Early Paucity of Rules to the Olympic Charter

Rather surprisingly, in the entire rich heritage of the Games, which were successfully revived by Pierre de Coubertin, there was no "Olympic law". Indeed, the founder of the Olympic Games of the modern era was actually opposed to a proliferation of rules, and, on this point, held as follows: "The more regulations we adopt, the more we are fettered. Let us allow the Olympic organisations some flexibility."[4]

As regards the controversial issue of amateurism, Pierre de Coubertin even called attention to the fact that most countries had introduced "complicated legislation, full of compromises and contradictions"[5].

This explains why the International Olympic Committee (IOC) was not created until 1908, and why, for 14 years, that body operated with very little by way of regulation and internal organisation, and with only a scant framework of rules for dealing with important issues such as organising and staging the Games.

The legal scholar who, without a doubt, contributed most, to both the study and practical application of "Olympic law", Kéba Mbaye[6], stated that "those who run the Olympics have always wished to free themselves from the political influence of states, but have never managed to find an effective legal frame-

[4] *Berlioux*, The International Olympic Committee, in: Report of the Tenth Session of the IOA at Olympia, 1970, p. 2.

[5] Quoted by *Marivoet*, Ética do Desporto – Princípios, Práticas e Conflitos – Análise Sociológica do caso Português durante o Estado Democrático do Século XX. Doctoral Thesis, May 2007, copy provided by the author, p. 44.

[6] *Mbaye*, La nature juridique du CIO, in: Collomb (ed.), Sport, droit et relations internacionales, 1988, p. 69.

work that would allow them to clearly differentiate between the formulae employed by the IOC and the legal reality by which it was governed".

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 as a sub-heading of the "Statutes of the IOC" in 1924. The term was then dropped for more than 20 years, only reappearing in the "Olympic Rules" that were in force from 1946 to 1955, again as a sub-heading.

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

Angel Ivanov[7] drew attention to the vague and confused nature of the successive alterations, which often brought rules into being that were mutually incompatible, and also gave rise to difficulties as regards numbering; this criticism was echoed by comments on the rather imprecise, ambiguous and vague character of the Olympic Charter made by J. F. Brisson[8] and by Fernando Xarepe Silveiro[9], in Portugal.

Christoph Vedder[10] makes similar points with respect to legislation, referring to the fact that, for a considerable period of time, this took the form of discursive texts which lacked clarity and consistency, a matter which was aggravated by the fact that the alterations were confined to incidental technical issues that were unrelated to the overall structural content.

Cazorla Prieto[11] points out problems regarding structure, the lack of legal content in some of the rules, and certain lacunae that created many problems in relation to interpretation. This leads to the conclusion that the Olympic Charter amounted to a real *legal conglomeration*, a criticism, which helps us to understand why Bruno Simma[12] emphasises the "very complicated" character of the Olympic Charter.

[7] *Ivanov*, On the Olympic Charter of the International Olympic Committee, in: Solakov (ed.), Topical problems of the International Olympic Movement, 1982, p. 75.

[8] *Brisson*, L'enjeu olympique, 1981, p. 135.

[9] *Silveiro*, O Empréstimo Internacional de Futebolistas Profissionais, in: Rei/Silveiro/Graça, Estudos de Direito Desportivo, 2002, p. 118.

[10] *Vedder*, The International Olympic Committee: An Advanced Non-Governmental Organization and the International Law, German Yearbook of International Law, vol. 27, 1984, p. 253–258.

[11] *Prieto*, Derecho del Deporte, 1991, p. 109.

[12] *Simma*, The Court of Arbitration for Sport, in: Blackshaw/Siekmann/Soek (eds.), The Court of Arbitration for Sport 1984–2004, 2006, p. 22.

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 different models before arriving at the current formulation for the codification of the Olympic Charter.

For example, in 1967 the so-called "Olympic Rules" were contained in four separate documents: (1.) Fundamental Principles, IOC, NOC, Olympic Games, Olympic Protocol; (2.) Code of Eligibility; (3.) General Information; and (4.) Information for cities that wish to host the Olympic Games.

Then, just nine years later in 1976, the same "Olympic Rules" appeared in a new format: (1.) Rules; (2.) Bye-laws; (3.) Instructions (which included the conditions applying to candidate cities to organise the Olympic Games); (4.) Regional Games; and (5.) Olympic Awards. In 1978, in the document that was finally entitled Olympic Charter, the legal framework was set out in a single text, which was organised as follows: (1.) Rules; (2.) Bye-laws; (3.) Instructions; (4.) Organisation of the Olympic Games; (5.) Committees of the IOC; and (6.) Olympic Rewards. Thus, the Olympic Charter emerged as the principal "locus"[13] of the IOC rules.

Despite this unifying logic, the Olympic Charter still had texts annexed to it in 1982, 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 Olympic Charter was, indeed, a slow and gradual process.

The version of the Olympic Charter currently in force was approved on July 8, 2011, and henceforth all references made to the *Lex maxima* of Olympism will be in relation to this version.[14]

The form and purpose of the Olympic Charter are immediately apparent in its introduction: "[The] Olympic Charter 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 Olympic Games."

From the introduction, and on reading the entire text of the Olympic Charter, it is apparent that the legislator's intent is to create a kind of "scripture" or codex of Olympism by means of a fine normative filter and a methodical structuring of the organisation of the Olympic Movement.[15]

[13] *Latty*, La lex sportiva: Recherche sur le droit transnacional, 2007, p. 169.

[14] The translation is, thus, a free translation.

[15] *Karaquillo*, Le droit du sport, 2nd edition, 1997, p. 8.

In the author's view, it is increasingly the case that legislators act with a mind to the practical consequences of the legislation they enact. Thus, the laws that they enact are increasingly focused on the requirements of those who have the job of interpreting and applying the Olympic Charter, as can be surmised from the three-pronged approach which is currently employed: In addition to the *Fundamental Principles*, which can be viewed as an ideological declaration or a teleological interpretation of the Olympic Charter (in the sense of guidelines for those who consider themselves part of the Olympic Movement), the text of the Olympic Charter includes a body of legislation composed of 61 *Rules*, to which are added 27 *Bye-laws*, which function as glosses on, and annotations of, those Rules which the legislator thinks likely to pose the main difficulties of interpretation or which appear to be more concise.

In the introduction, the scope of the Olympic Charter is also set forth, by referring to the *three main purposes* which, in essence, the Olympic Charter aims to serve:

"a) The Olympic Charter, as a basic instrument of a constitutional nature, sets forth and recalls the Fundamental Principles and essential values of Olympism.

b) The Olympic Charter also serves as statutes for the International Olympic Committee.

c) In addition, the Olympic Charter defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement, namely the International Olympic Committee, the International Federations and the National Olympic Committees, as well as the Organising Committees for the Olympic Games, all of which are required to comply with the Olympic Charter."

Upon reading and interpreting these three purposes, we begin to detect parallels between the Olympic Charter and the regulatory instruments with which we are more familiar.

Aim a) permits us to come to the conclusion that the Olympic Charter is similar to a constitution in its conception because it is the basic fundamental document of the Olympic Movement, 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 the universe of sport that is subject to it. We may also identify other similarities with a constitution: (1) The Olympic Charter is of a foundational or constitutive character; (2) the Olympic Charter establishes a set of principles and fundamental values which govern a particular type of organisation; in this case, the organisation of sport worldwide; (3) the Olympic Charter aims to give a stable and durable quality to the governing regime by making amendments to the Olympic Charter an exceptional occurrence that would require a qualified majority of two-thirds; and (4) the Olympic Charter combines a programmatic discourse with imperative rules.

Aim b) provides that the Olympic Charter, as the document governing the internal organisation of the IOC, constitutes or encompasses the Statutes of the IOC.[16]

Finally – aim c) – due to the fact that the Olympic Charter defines the rights and obligations of the main constituents of the Olympic Movement, it resembles a contract.

In relation to its content, the Olympic Charter is a composite legal text in which general principles sit side by side with more technical rules. These include coercive rules along with simple standards of behaviour. The Olympic Charter 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, an example of which is the concept of "ownership" of the Olympic Games.

The Olympic Charter contains executive, legislative and judicial powers.

Insofar as executive powers are concerned, the procedure employed in order to choose a city to host the Games is the most noteworthy. The following is the full text of the third Bye-law of Rule 33 of the Olympic Charter, entitled "Election of the host city":

"1. The election of any host city is the prerogative of the Session.

2. The IOC Executive Board determines the procedure to be followed until the election by the Session takes place. Save in exceptional circumstances, such election takes place seven years before the celebration of the Olympic Games.

3. The National Government of the country of any applicant city must submit to the IOC a legally binding instrument by which the said government undertakes and guarantees that the country and its public authorities will comply with and respect the Olympic Charter.

4. The election of the host city takes place in a country having no candidate city for the organisation of the Olympic Games concerned."

Insofar as legislative powers are concerned, it is instructive to examine the power to amend the text of the Olympic Charter itself, as set out in Rule 18 (3.), under the heading "The Session":

"The quorum required for a Session is half the total membership of the IOC plus one. Decisions of the Session are taken by a majority of the votes cast; however, a majori-

[16] According to Carvalho, "[the] IOC therefore has its legal basis in the provisions of the Olympic charter, a sort of basic law or statute of the organisation (...) the most important document for the Olympic movement". See *Carvalho*, O contributo das organizações nacionais e internacionais na promoção da ética desportiva e do fair-play. A importância da educação para a ética – o Olimpismo, in: Carvalho/Brazão de Carvalho/Silva, O Desporto e o Direito, prevenir, disciplinar, punir, 2001, p. 31 and 22.

ty of two-thirds of the votes cast is required for any amendment of the Fundamental Principles of Olympism, or of the Olympic Charter.

Finally, the Olympic Charter contains judicial powers, as is clearly demonstrated 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 Olympic Charter, the World Anti-Doping Code or any other regulation, as the case may be".

III. The Subordination of State Law to the "Lex Olympica"

1. The States' Acceptance of the Primacy of the *Lex Olympica*

According to Paulo Otero, "[one] sign of the *'destatification' of the law is the existence of 'specific or special legal regimes'* originating with" non-governmental organisational structures, international and independent of the state, such as canon law, "which articulates a separate legal regime for the Catholic Church, or sports law, *originating with various organisations such as the IOC*"[17] (emphasis added by author). A similar suggestion comes from Jónatas E. M. Machado, for whom "sporting institutions such as IOC, FIFA and UEFA are a source of authentic legal regimes, which detract from states' jurisdiction"[18].

As far as Olympism is concerned, there is no doubt that state law has, in recent times, been submitting to the *Lex olympica.*

The fundamental question is why the Olympic Charter, "in the eyes of" the IOC, as well as of the whole Olympic Movement, amounts to a fully-fledged international treaty, when, in reality, it is not one. This conclusion is supported by the fact that the IOC was not founded by an international convention, and that its members are not representatives of governments.[19]

[17] *Otero,* Lições de Introdução ao Estudo do Direito, I° vol., 2.° tomo, 1999, p. 28–30.

[18] *Machado,* Direito Internacional – Do Paradigma Clássico ao Pós-11 de Setembro, 2003, p. 202.

[19] 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 Olympic Charter a document in the nature of an international treaty. This judgment concerns the private legal status of TOROC, which resulted in the abandonment of proceedings that the European Commission had brought against Italy in 2003, when it had classified the TOROC as a public law entity and had allegedly infringed Article 11 of Directive (EC) 50/92, during the construction of bobsleigh and ski slopes. See *Bertone/Degiorgis,* Il libro nero delle olimpiadi di Torino 2006, 2004, p. 303.

While it may be suggested that, if the Olympic Charter lays claim to and attains a universal legal nature, this is not a consequence of its legal nature, but arises, rather, by virtue of a moral authority; an extra-legal element – that is, the social, economic and sporting magnitude of the Olympic Games. This is exactly where the basis for the external authority of the Olympic Charter lies: in the affiliation of, or voluntary recognition by, those who submit to it. These are comprised of a diverse community of individuals, groups and organisations of all kinds: states, NOCs, International Federations (IFs) and others.

It is only by taking this context into account that one can understand why a court in California took the precaution of expressly enforcing state law against the Olympic Charter in 1984, or help to justify the fact that Turkey – an example which, as far as the author is aware, is unique – incorporates the entire Olympic Charter in its national legal system by means of its "Law on the Olympics".

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 Olympic Games.

Under the heading "Election of the host city", Rule 33 (3.) of the Olympic Charter stipulates:

> "The National Government of the country of any applicant city must submit to the IOC a legally binding instrument by which the said government undertakes and guarantees that the country and its public authorities will comply with and respect the Olympic Charter."

Thus, the Olympic Charter requires that the government of the country in which the candidate host city is located accepts the Olympic Charter rules formally and unilaterally without any reciprocal commitment – that is, it must accept the Olympic Charter as valid and applicable within its territory.

We could say that this is a type of submission to the *ius stipulandi* of the IOC by which the government in question expressly acknowledges and respects the autonomy of "Olympic law" and – effectively and impliedly – "delegates" government sporting functions to the IOC, without having involvement in the IOC, or, indeed, any relationship with it at all, other than one of subordination (it is certainly not one of equals).

If one considers the genesis of what is now Rule 33 (3.) of the Olympic Charter, one may note that the legislator's aim was, effectively, to compel states to subject themselves to the primacy of "Olympic law" over national state legislation. Pierre de Coubertin clearly signalled as much to the USA, which was a candidate for the Games of 1924 and 1928, so that they would not

confuse the IOC with Congress, and even Adolf Hitler was forced to submit to this primacy when the Games were held in Berlin in 1936.[20]

One may even conclude, in concurrence with Alexandra Pessanha[21], that states cede independence and sovereignty: "[The] International Olympic Committee and its Olympic Charter constitute the highest expression of an aspiration on the part of the sports movement to independence from the state. In a general way, the provisions of that charter are based on the idea of sovereignty of the Olympic Movement and of international sport, to which idea the international sporting federations are also attached, being inspired and constituted on an identical basis." It is within this context that Dimitrios P. Panagiotopoulos[22] identifies the existence of a *sui generis* legal order, of which IFs are part, and which prevails over other legal orders.

Consequently, one can hardly avoid questioning whether this type of concession, or – more specifically – such unilateral acts of submission by states to the primacy of the Olympic Charter, do, in fact, have legal effects.

In other words: What is the legal value of the commitment of a state to comply with the Olympic Charter – an issue which is not devoid of complexity – in the first place? Once the organisation of the Games has been awarded to a particular city, the state of which the host city is part may no longer intervene, as it is not in any way a party to the "host city contract", nor does it establish any new legal relationship with the IOC.

This being so, it is *a priori* difficult not to yield to the temptation to regard this submission as a political gesture rather than a legal act, and to consider that it is, at the most, debatable whether there is any binding aspect to this submission.

[20] In a very recent work, Hilton relates that the (then) President of the IOC, Balet Latour, warned the German OGOC that the Olympic rules should be respected, even if they were contrary to recent orders approved in Germany. Similarly, the logic impressed on Hitler by the IOC was as follows: "If you do not agree with our rules, do not organise the Games. You must understand that it is we who adopt the rules and not you." Hilton even argues that the Summer and Winter Olympic Games held in Germany during Hitler's period as Chancellor (1933–1945) were the only examples of Hitler submitting to the orders of others. See *Hilton*, Hitler's Olympics: The 1936 Berlin Olympic Games, 2008, p. 16–17.

[21] *Pessanha*, As federações desportivas. Contributo para o estudo do ordenamento jurídico desportivo, 2002, p. 32.

[22] *Panagiotopoulos*, Lex sportiva: Sport Institutions and Rules of Law, in: International Sports Law Review Pandektis, vol. 5:3, 2004, p. 325.

Fernando Xarepe Silveiro[23] throws open the debate on this issue, illustrating it as follows:

> "[I]n the documents submitted by Paris and Albertville as candidates for the organisation of the 1992 Olympic Games, it was emphasised that the President of the Republic had made a declaration giving assurances that, while the Games were in progress, Olympic law would be the only applicable law, which, in practice, meant that, in the event of any conflict, it would prevail over French law. *Although the legal validity of such a written pronouncement may be questioned*, the very fact that it was made testifies to the real power that sport wields, and how much states and their representatives are ready to sacrifice." (emphasis added by author)

According to the decision of the International Court of Justice in the Nuclear Tests case[24], acts of this kind are legally effective. This judgment recognised that unilateral declarations made by governments fall into the category of acts capable of creating legal obligations, and that, once the maker of the declaration has publicly expressed a willingness to carry out the terms of the declaration, it must then act accordingly, even though this was expressed outside of the context of international negotiations.

Another argument which must not be overlooked is that the recognition by states of the IOC and the requirement to comply with the Olympic Charter arise from an international practice which has its roots in customary law.[25]

2. The Incorporation or Assimilation of the *Lex Olympica* under State Law: The Portuguese Case

(a) The Portuguese State recognised in its fundamental laws the "prerogatives and powers" of the Olympic Committee of Portugal which arise from the Olympic Charter.

If there were any doubts regarding the position of the Portuguese State in relation to the provisions of the Olympic Charter, they were assuaged in 1990 when the Portuguese Government made express reference to the Olympic Charta in no. 1 of Article 28 of the Basic Law of the Sports System[26], in its ac-

[23] *Silveiro*, O Empréstimo Internacional de Futebolistas Profissionais, Estudos de Direito Desportivo, 2002, p. 116.

[24] Judgment of 20.12.1974, ICJ Reports, 1974, p. 267, § 43.

[25] This recognition through custom also extends to "parties" (other than states) involved, including the Holy See. Margarit recalls that Pope Paul VI referred to the IOC as the highest authority best qualified for dialogue in sport, and so recognised it as an interlocutor. See *Margarit*, Las relaciones entre la Santa Sede y el Comité Olímpico Internacional, Bachelor's Degree Thesis directed by Prof. Dr. D. Vicente Prieto, Università Pontifica della Santa Croce – Faculty of Canon Law, 2001, p. 35.

[26] Law no. 1/90 of 13th January.

knowledgment of the mandatory impact of the OC on the POC in the following manner:

"The Portuguese Olympic Committee is granted the prerogatives and powers that arise *from the International Olympic Charter*, i.e. the power to organise the Portuguese team in the Olympic Games and the power to authorise the holding of sports events for Olympic purposes." (emphasis added by author)

This official legal recognition by the Portuguese State of the submission of the POC to the Olympic Charter was retained in subsequent Portuguese basic sports legislation: specifically, in no. 1 of Article 25 of the 2004 Basic Law of Sport[27], and in no. 1 of Article 12 of the current 2007 Basic Law of Physical Activity and Sport[28], in the following terms:

"The Olympic Committee of Portugal is a non-profit association with a legal personality which is governed by its bylaws and regulations *in accordance with the law and the principles and rules in the International Olympic Charter*." (emphasis added by author)

In this regard, the position adopted by one Portuguese court in 2007 is noteworthy to the extent that, notwithstanding the legal provisions referred to above, the Olympic Charter binds the Portuguese Olympic Committee but not the Portuguese State, as it is not part of the Portuguese legal system in accordance with, and for the purposes of, Article 8 of the Constitution of the Portuguese Republic.[29]

[27] Law no. 30/2004 of 21st July

[28] Law no. 5/2007 of 16th January.

[29] Cf. the judgment of the Lisbon Court of Appeal of 29th November 2007, Comité Olímpico de Portugal v. Fórum Olímpico de Portugal: "The fact is, however, that although the International Olympic Charter is binding on the claimant (cf. Article 25 of the Basic Law of Sport), it does not bind the Portuguese State, as, contrary to the position adopted by the claimant, it is not an integral part of the Portuguese legal system, in accordance with and for the purposes of Article 8, no. 1 of the Constitution of the Portuguese Republic, and cannot, therefore, be the legal basis of the claims made by the claimant, as we shall seek to demonstrate. (...) Accordingly, given the positions adopted by the constitutional law experts cited, it is more than evident that the International Olympic Charter cannot be considered to be general or common international law. The International Olympic Charter cannot even be considered to be an integral part of the Portuguese legal system, pursuant to the provisions of the other sections of Art. 8 of the Constitution (which have not been invoked by the appellant), because (i) it is not an international convention properly ratified or approved by the Portuguese State; (ii) it is not a series of legal provisions issued by the proper organs of the international organisations of which Portugal is a member, and (iii) it is not a case of provisions of treaties that govern the European Union, or of legal provisions enacted by its institutions, in the exercise of their corresponding powers. The appellant's assertion that the International Olympic Charter is an integral part of the Portuguese legal system is, therefore, baseless. Accordingly, in instances where Article 25, no. 1 of the Basic Law of Sport provides that the appellant's activity must comply, inter alia, with the provisions of the International Olympic Charter, this does not mean that the Portuguese State is bound by the said provisions (as there would be no constitutional basis for this)."

(b) The Portuguese State *altered rules regarding protocol* by means of an official circular because of a change in the conduct of the International Olympic Committee.

On 20th August 1947, the Directorate General of Sport, the supreme body in the structure of the public administration of sports, issued the following circular:

"*As the International Committee has removed the salute known as the Olympic salute from its ceremonial protocols* – which salute had been adopted as the Portuguese form of salute used by sportsmen and women before any competition – *His Excellency the Under-Secretary of State of National Education has agreed that the said salute should cease to be used in Portugal,* as it has lost its previous significance, and that sportsmen and women shall, henceforth, stand to attention when saluting official entities or the public. This is the matter that I am required to duly inform you of." (emphasis added by author)

(c) The Portuguese State enacted legislative provisions with the intention of protecting the "rights to Olympic properties" enshrined in the Olympic Charter.

The legal protection of the so-called "Olympic properties" is set out in in Rules 7 to 14 of the Olympic Charter. The "properties" referred to are the Olympic symbol, the Olympic flag, the Olympic motto, the Olympic anthem, identifications (including, but not limited to, "Olympic Games" and "Games of the Olympiad"), designations, emblems, the Olympic flame and torch. This is provided by no. 4 of Rule 7, which adds:

"All rights with regard to any Olympic Property and all rights regarding the use thereof are vested solely in the IOC."

This legal protection is one of the major concerns of the Olympic Movement and dates back to the birth of the *Lex olympica.*

This explains why, as early as 13th December 1949, the Directorate General of Physical Education, Sport and School Health made legal provision for this matter:

"His Excellency the Under-Secretary of State of National Education issued the following order on the 7th of December this year: Recognition of the exclusive right of the Portuguese Olympic Committee to use the Olympic motto, creed and emblem."

In 1958, the Government enacted legislation in relation to these matters in response to the wishes of the IOC in the form of Decree no. 41 784 of 6th August 1958 of the Directorate General for Physical Education, Sport and School Health:

"The International Olympic Committee wishes to see a convention adopted in all countries which support the Olympic Ideal by limiting the use of the Olympic motto, anthem and emblems to the National Olympic Committees."

Two decades later, the Government sought to improve the legislation already passed and, it should be noted, did so. Once again, this was on the basis of the

wishes of the IOC and, therefore, of the POC. In order to do this, it produced a draft law which was attached to the official letter sent by the Head of the Cabinet of Secretary of State for Youth and Sport to the Director General of Sport, dated 26th June 1979. The said official letter contained an express statement of the reasons for this legislative initiative:

> "Draft Decree
>
> *In order to comply with the wishes of the International Olympic Committee, which are justified*, i.e. that a convention be established which grants exclusivity in the use of the Olympic motto, creed and emblems to the national Olympic committees in all countries that support the Olympic Ideal, the Portuguese Olympic Committee has been granted the exclusive rights with regard to the Olympic motto, creed and emblem by an order of the Ministry of National Education dated 7th December 1949, published in the Government Gazette, 2nd Series, on the 17th of the said month that year. The said entitlement was subsequently included in the text of Decree no. 41.784, of 6th August 1958 (…)." (emphasis added by author)

Only in 1982 was new legislation introduced, i.e. Decree-Law no. 1/82, of 4th January, which is still in force, and which introduced the rules intended to protect the Olympic symbols. The first sentence of the first paragraph of the preamble to this Decree-Law clearly reflects that the impulse for this item of legislation came from the IOC:

> *"The International Olympic Committee and the Portuguese Olympic Committee have, for many years*, sought to introduce measures that prohibit the generalised use of the Olympic symbols in order to prevent them being degraded by indiscriminate use and to reserve them for activities strictly related to the Olympic movement.
>
> This desire was reflected among us in an order of the then Minister for National Education dated 7th December 1949, and subsequently by Decree-Law no. 41 784, of 6th August 1958, which asserted the exclusive right of the Portuguese Olympic Committee to use the Olympic symbols in Portugal. However a need to define the content of the said right in greater detail and to penalise violations thereof has been identified. Neither of these aspects are dealt with in the said Decree-Law.
>
> This Decree-Law seeks to implement this objective in order to contribute to the prestige of the Olympic movement by preventing uses of its symbols that distort its message of human fraternity.
>
> Accordingly, uses which violate the said exclusive right are prohibited and penalties are introduced in order to render the said prohibition effective." (emphasis added by author)

In this regard, it should be noted that the Portuguese basic laws of sport, which are laws of a fundamental nature (i.e. they must be passed by at least 2 out of 3 of the deputies in office), have also asserted the rights and obligations of the POC regarding these matters, and have required ordinary legislation that develops the principles enshrined in these basic laws.

Thus, Article 28 (2) and (3) of the 1990 Basic Law of the Sports System provided as follows:

> "2. Only the Portuguese Olympic Committee shall be entitled to use the Olympic symbols in Portugal.
>
> 3. Special regulations shall ensure the protection of the rights referred to in the preceding provisions, and shall define the specific state aid to be granted in this context, and the way in which the various private and public sector organisations active in the area of sport shall interact within the ambit of preparation for and participation in the Olympic Games."

Article 25 (4) and (5) of the 2004 Basic Law of Sport retained these provisions in practically identical terms.

Finally, in 2007, the Basic Law of Physical Activity and Sport – which is the basic law currently in force – provides in Article 12 (4):

> "In accordance with the law, only the Olympic Committee of Portugal is entitled to use the Olympic symbols in Portugal."

(d) The Portuguese State legislated with regard to *doping*, in accordance with the provisions of the International Olympic Charter regarding doping in sport.

In 1997, a decree-law was passed, which has since been repealed, i.e. Decree-Law no. 183/97, of 26th July, regarding the "fight against doping in sport".

The preamble of this decree-law is yet another example of the way in which the Portuguese legislature has felt the need to approve new legislation as a result of advances in the *Lex olympica*:

> "Six years after the publication of Decree-Law no. 105/90, of 23rd March, *it has become necessary to introduce legislation regarding the fight against doping in sport because recent international developments in this area. An example of this is:*
>
> *The International Olympic Charter of Doping in Sport*
>
> *(…)*
>
> *The purpose of this legislation is to tailor the Portuguese legislation so that it meets current international recommendations* by providing the Portuguese sports system with more effective legal tools in the fight against and prevention of doping in sport." (emphasis added by author)

It is an interesting exercise to consider some of the provisions of this decree-law in order to understand the way in which the Portuguese legislature refers to public and private international sports law, which, in the latter case, is legislated for by the IOC:

"Article 2

Definitions

For the purposes of this Decree-Law:

a) Doping is the administration to sportspersons, or the use by them, of pharmacological classes of substances, or methods *that appear in the lists approved by the proper national and international sports organisations*

(...)

The lists referred to in this article shall be organised in accordance with the lists created within the ambit of international conventions relating to doping in sport of which the IOC is, or becomes, a member, or, in the absence thereof, in accordance with the most restrictive lists established by the *International Olympic Committee*, or by the corresponding international federations." (emphasis added by author)

Also of interest is the chain of legal subordination which was created when the Portuguese Government introduced legislation that requires Portuguese sports federations to bring their anti-doping regulations into line with the directives of the IOC:

"Article 9

Federation regulations

1. *The sports federations shall adapt their anti-doping control regulations*, which establish the rules governing the said control within the ambit of the respective sports, so as to comply with:

(...)

c) *the rules and guidelines issued annually by the International Olympic Committee*, and by the corresponding international sports federations." (emphasis added by author)

Finally, the influence of the IOC with regard to government requirements in the area of penalties and sanctions is also emphasised:

"3. In imposing penalties on sportspersons and other parties involved in sports, the sports federations shall take all mitigating and aggravating circumstances into consideration, in accordance with the recommendations of the International Olympic Committee, or the corresponding international federations." (emphasis added by author)

(e) The Portuguese State defined its *sports policy* in legislative terms, according to the "Olympic cycles".

The Olympic cycle is referred to in various items of legislation. In no. 3 of Article 3 of the Basic Law of the Sports System, the "Integrated Sports Development Programme" coincides with the "Olympic cycle", i.e. the said programme remains in force for a four-year period, which is based on the period of the Olympiad (four years).

Article 50 of the Legal Framework Governing Sports Federations – Decree-Law no. 248-B/2008 of 31st December – fixes the duration of terms of office of members of the decision-making bodies of sports federations with public utility status at four years so that the term of office coincides with the Olympic cycle.

Even the legislation in the Azores and Madeira Autonomous Regions makes the same provision. In the Azores, it is stipulated in paragraph d) of no. 2 of Article 47 Regional Legislative Decree no.14/2005/A – which introduced the legal framework governing the provision of support to the sports associations movement – that one of the powers of the Azores Council for High Performance Competition is "to give its opinion regarding the sports deemed to be a priority for each Olympic cycle". Article 52, no. 1 of the decree provides that "the priority sports in terms of investment in the search for excellence shall be determined for each Olympic cycle by means of a resolution of the Regional Government upon consultation with the CAAC".

Regional Legislative Decree no. 4/2007/M, of 15.02.2007, which introduced the foundations of the sports system of the Madeira Autonomous Region, and introduced the first amendment to Regional Legislative Decree no. 12/2005/M – a decree which approves the legal framework governing the grant of financial subsidies to associations in the Region – commences in items 6 and 12 of the preamble by referring to "the selection [from Madeira] which has been capable of being present at all Olympic Games held since Seoul (1988)," and to "the revolution that has occurred within the Olympic movement in terms of the participation of professional sportspersons". This explains the approach adopted in no. 1 of Article 14 entitled "Planning": "[The] regional government shall approve a strategic sports development plan for each Olympic cycle." Finally, Article 59 provides that "[the] sports atlas shall be prepared and published by the public sports administration at the end of each Olympic cycle".

IV. The Subordination of the Olympic Movement to State Law: The Portuguese Case

Once again, Portuguese legislation provides an example which, in this case, demonstrates that there is a subordination which is the opposite of that which we have already considered. Indeed, states such as Portugal frequently use legislative and administrative instruments as a source of "Olympic law" and, in this way, limit or control the activity of the Olympic movement.

(a) The Portuguese State acted by decree to place the POC under its "superintendence".

The year in which the POC is officially considered to have been created is 1909. In spite of this, and perhaps because of the fact that many considered the

POC to be merely transitory and merely a committee that existed for each Olympic Games, ten years later in 1919, Portugal decided to "create" the POC by means of a decree[30], and to make it subject to supervision by the state:

"As each country has a fundamental need to take close care of the physical education of its population, in view of the fact that this is an essential aspect of a perfect civilisation;

whereas the athletics event, the "Olympic Games", is the most important international sporting event and one of the most important manifestations of the vitality of nations;

whereas a systematic neglect of matters related to physical education has placed us in a state of delay which must be remedied urgently by recourse to new methods, to which the State cannot be indifferent;

whereas is it urgent to *create a sports organisation which is under the supervision of the State which guides the evolution of national sport effectively in order to augment and generalise physical culture, while also preparing teams representing Portugal, as selected via public competitions, for the International Olympic Games* (…)." (emphasis added by author)

(b) The Portuguese State, by means of legislation, *granted the POC a legal personality* for the purposes of granting it the power to carry out expropriations.

As the POC did not, at that time, have a legal personality, the Portuguese State granted it a legal personality *ope legis*[31] in 1925, in order to involve the POC in expropriations:

"Article 1

In addition to the expropriations referred to in Article 2 of the law of 26th July 1912, expropriations for the purposes of education, physical culture and practical involvement in sport, and also for the establishment of sports associations, the construction, improvement and extension of playing fields, stadiums, swimming pools and any other constructions for the purpose of the physical development of the Portuguese population, are deemed to be urgent and to involve public utility.

The land expropriated shall revert to the ownership and possession of the former proprietors if the organisations for which they were expropriated are dissolved or cease to exist.

Article 2

The Portuguese Olympic Committee is granted the power to carry out expropriations for the purposes referred to in the second part of the preceding article.

[30] Cf. Decree of 14th August 1919 of the Ministry of Public Education, General Directorate of Higher Education, General Inspectorate of School Health.

[31] Law no. 1.728 of 5th January 1925.

Article 3

The Government is authorised to cede any properties belonging to the State to sports clubs or associations that are recognised and designated by the Portuguese Olympic Committee, free of charge and temporarily, for the purposes referred to in Article 1. (…)

Article 4

Declarations of public utility made at the request of the Portuguese Olympic Committee, *which is hereby granted a legal personality for that purpose*, shall be processed in accordance with the provisions of § 2 of Article 5 of the Law of 26th July 1912." (emphasis added by author)

(c) The Portuguese State appointed members of the public to the POC by decree.

In 1925, the Portuguese State exerted its legislative influence by selecting the members of the POC[32]:

"I have decided, on the basis of a proposal made by the Minister of Public Education, to appoint the following members of the general public to be members of the Portuguese Olympic Committee, the objectives and resources of which will be fixed in a draft law to be submitted to Parliament in due course."

Similarly, in 1937[33], a list of the members of the POC was published in a decree, together with the following statement of reasons:

"In light of the international importance of the Olympic Games, and the Government attention that these events merit as a manifestation of sports activity in the context of national education;

in light of the advisability of giving the Portuguese Olympic Committee the official recognition that will increase its status, both in the international organisation of which it is part, and in Portugal, and the identical previous conduct of the state in relation to the said committee,

the Government of the Portuguese Republic, acting through the Minister of National Education, orders as follows:

1. That the Portuguese Olympic Committee, which is charged with the organisation of the Portuguese participation in the games of the 12th Modern Olympiad, be comprised of (…)."

In turn, organisational legislation from 1943 made the continued official recognition of the POC by the Government subject to the submission of a list of its members:

[32] Cf. Decree of 14th August 1919 of the Ministry of Public Education, General Directorate of Higher Education, General Inspectorate of School Health.

[33] Decree of the Secretary General of the Ministry of National Education of 21st April 1937.

"Article 9

In order to continue to enjoy the official recognition granted to it by the statutory instrument dated 21st April 1937, the Portuguese Olympic Committee shall submit a list of its members to the Ministry of National Education for its approval. (...)."

(d) The State entrusted the POC with the *responsibilities for Olympic preparation* by means of legislation.

It is important, once again, to refer to the basic laws of Portuguese sport in order to draw attention to the level of importance that the Portuguese State has attached to the matter of preparation for the Olympic Games by making this the primary function of the POC. [34]

Article 28, no. 1 of the Basic Law of the Sports System stipulates:

"The Portuguese Olympic Committee is granted the prerogatives and powers that arise from the International Olympic Charter, i.e. the power to organise the Portuguese national representation at the Olympic Games and the power to authorise the holding of sports events for Olympic purposes."

No. 2 of Article 28 of the Basic Law of Sport, in turn, provides as follows:

"The Olympic Committee of Portugal has the exclusive right to form, organise and manage the Portuguese delegation to the Olympic Games and in the multisport competitions sponsored by the International Olympic Committee by collaborating in the preparation and promotion thereof, and in the practice of the sports involved in the said competitions."

Finally, it is stated in Article 12 of the Basic Law of Physical Activities and Sport, which is entitled "The Olympic Committee of Portugal", in similar words:

"2. The Olympic Committee of Portugal has the exclusive right to form, organise and manage the Portuguese team at the Olympic Games and in the other sports competitions organised under the auspices of the International Olympic Committee, by collaborating in the preparation thereof, and by promoting active involvement in the sports represented at such events."

This constant recognition by the Government of the POC's role in the preparations for the Olympic Games, together with the recognition and stimulus by the public administration of the "autonomy of sports organisations in the development and operationalization of their missions", were at the root of an important step that was taken in 2005, by means of which the POC became "(...) solely responsible for the direction and management of the Olympic Preparation Programme". This step was possible only because the Portuguese State considered it to be useful and necessary. It took the form of a programme contract between the Portuguese Sports Institute and the POC.

[34] Cf. Article 28, no. 2 of Law no. 30/2004 of 21st July.

It should not, however, be assumed that this step put an end to legislative intervention by the Government in the area of Olympic preparation.[35] The following are some examples of such intervention:

- Decree-Law no. 272/2009, of 1st October, "established the specific measures necessary to support the development of high performance sport".
- By Order no. 10124/2010, of 9th June, the Secretary of State for Youth and Sport approved the "standard form contract to be signed by high-performance sportspersons", which permitted the POC to include "other clauses" in the said form "provided that the said clauses alter neither the letter or the spirit of the standard form clauses".
- In the exercise of the powers granted by the decree referred to in Decree-Law no. 272/2009, Statutory Instrument no. 325/2010, of 16th June was issued, which "defined the general criteria to be applied in order to classify certain sports competitions as 'high-level competitions' in order to include the high performance sportspersons who take part therein in level C". In this regard, it should be noted that the Government made a distinction in Articles 1 and 2 between the provisions applicable to sports included in the Olympic Programme and the provisions applicable to those that are not.
- By Order no. 13543/2010 of the Secretary of State for Youth and Sport, of 17th August, the Government entrusted the POC with direct management of the financial aid to be granted to the Portuguese Yachting Federation as a consequence of circumstances that did not involve the POC. The Portuguese Yachting Federation, due to the suspension of its sports public utility status by government decision, was unable to sign a programme contract with the POC. The solution settled upon by the Government in order to ensure that "preparations were not interrupted" was to instruct the POC "on the basis of the sum reserved for the Portuguese Yachting Federation with regard to the London 2012 Olympic project to support its activities, to manage the said financial aid directly in order to pay the grants directly to those coaches who train the sportspersons involved in the London 2012 Olympic Project", and also to "ensure the operationalization of the pre-

[35] In addition to the contractual tasks entrusted to the Portuguese Sports Institute, i. e. in the area of supervision of compliance by the POC with the provisions, there is one clause in the contract that clearly demonstrates that the Government never wanted to lose control of the situation. In this context, reference should be made to clause 11, which is entitled "Amendment of the Contract", pursuant to which: "This programme contract may be amended or revised by agreement between the parties, *on approval by the member of Government responsible for sport*" (emphasis added by author). Order no. 2045/2009 of 5th January 2009 of the Under Secretary of State for Youth and Sport makes it clear that the government area responsible for sport had considered the report on Peking 2008, and that this had led it to decide on the signing of an interim programme contract, inter alia.

paratory activities, competition and the inclusion of the sportspersons, coaches, managers and other sports persons involved". In light of the text of item 3 of the order – "inform the Olympic Committee of Portugal" – and the fact that the order makes no reference to any understanding or prior agreement with the POC, and even from the level of contention that was apparent, it appears that this was a case of the imposition of unilateral administrative regulations by the Government which went far beyond what had previously been agreed, and which required the POC to have additional prerogatives within the ambit of its superintendence, direction and management of the Olympic preparations programme. This presumption may, of course, be mistaken due to a lack of information or misunderstanding.

(e) By law, the State gave the POC responsibilities in the area of the *"registration" of Olympic athletes.*

The only Portuguese basic law of sport which made no provision regarding the awarding of responsibilities in the area of the registration of Olympic athletes to the POC was the Basic Law of the Sports System. The Basic Law of Sport and the Basic Law of Physical Activity and Sport made such provision in no. 3 of Article 28 and in no. 3 of Article 12, respectively, in the following terms:

"The Olympic Committee of Portugal shall keep an up-to-date record of Portuguese Olympic athletes."

(f) In the law and in an order, the State acknowledged the *"public interest" of a transnational event* organised by the POC in order to provide the POC with financial aid.

By Order no. 1601/2008 (dated 15th January) of the Secretary of State for Youth and Sport, the Portuguese Government recognised the "public interest" of the holding by the POC of the 2nd Lusophone Games in Portugal. It did so pursuant to no. 1 of Article 46 of the Basic Law of Physical Activity and Sport, which is entitled "Financial aid", and thus enabled the POC "(...) to benefit from aid or financial subsidies provided by the State (...)."

V. Conclusions

Several conclusions can be drawn from this. First, that the regulation of Olympism in general, and of the Olympic Games in particular, as set out in "Olympic law", is a paradigmatic case of legal pluralism, in which various legal systems co-exist and seek to cohabit, i.e. the law of a state, on the one hand, and the *Lex olympica,* on the other.

The major challenge lies not only in the need for mutual respect between the two systems, but, above all, in the finding of solutions that facilitate the easing of inevitable friction. These solutions should make it possible for systems that are frequently divergent to operate simultaneously in the same international and supranational context, and in the same country. This should be for the good of the Olympic Movement.

This cohabitation has only been possible so far because, on the one hand, states have frequently waived their primacy in favour of the *Lex olympica.* They have even agreed to be subordinated to it and have incorporated it in their own state law. On the other hand, it has been made possible by the fact that the primacy of the *Lex olympica* is not a fully developed reality, given the limits imposed by state law. This is true at both national and supranational level and Portuguese law is a good example of this.

There are therefore two sides to the subordination that exists between state law and the *Lex olympica.* It can, however, be concluded that one of these two legal systems does prevail: i.e. the subordination of state law to the *Lex olympica.* The fact is that the main concessions have been made by states, which have conceded much of their own autonomy in order to allow for the autonomy of sports organisations in their self-regulation. These are the main components of the Olympic Movement, the International Olympic Committee, the International Sports Federations and the National Olympic Committees.

It is also noteworthy that these concessions have not always had a legal basis. While recourse has sometimes been had to the derogatory mechanisms provided by law, the truth is that states have generally consented to a "destatification" of the Olympic legal framework contrary to the pure logic of the hierarchy of legal provisions. Only thus was it possible to create an environment in which the *Lex olympica* could be excluded, or exempted, from the application or, as the case may be, primacy of state law.