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FEATURED ARTICLE
11/07



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The legal basis of the Olympic Charter

The Olympic Charter is a legal text combining general principles with technical rules governing the organisation of the Olympic Games. Alexandre Mestre, a sports lawyer with PLMJ and a member of the board of directors of the Portuguese Olympic Academy, discusses how a document issued by a Swiss private corporation has assumed the attributes of an international treaty.

If it is true that, in Sport, there is no event more universal than the Olympic Games, it is no less true that, in Sports Law, there is no text more universal than the Olympic Charter.

The existence of rules was already fundamental to the Olympic Games in ancient times, whether to establish who could take part in or be present at the Games, or in order to govern the conduct of training and the technical details of the competitions. The Olympic Truce already included the idea that, at least during the Games, it is the Olympic rules and principles, whether written or unwritten, which must prevail.

The rules governing the Olympic Games in the Modern Era were not however a priority for Baron Pierre de Coubertin, so that, it is only in 1908, i.e. 14 years after the creation of the International Olympic Committee (IOC) that internal regulations were drafted: the 'IOC Directory'. Moreover, they merely established basic principles regarding the appointment of members of the IOC and the periodic organisation of the Games. The Directory made no provision concerning the selection of organising cities or the criteria applicable to the inclusion of a particular sport in the Olympic Programme.

The growth of the Olympic Games and of the IOC itself compelled an evolution from utopia to pragmatism, with the gradual emergence of so-called Olympic Law, the apex of which was to be occupied by the Olympic Charter, the founding text and fundamental source of the law of the IOC. This was already the position in 1924, although the Olympic Charter was then scattered between various texts. It was only in 1978 that the Olympic Charter was compiled in a specific document.

The concept and scope of the Olympic Charter is clear from its introduction, which states that its purpose is '(...) the codification of the Fundamental Principles of Olympism, Rules and Bye-Laws adopted by the International Olympic Committee (IOC). It governs the organisation, action and operation of the Olympic Movement and sets forth the conditions for the celebration of the Olympic Games.'

The functions of the Olympic Charter are essentially threefold:

- it is the fundamental basic document of the Olympic Movement, with a legal status, which approximates that of a constitution;
- it defines the rights and obligations of the component parts of the Olympic Movement, with a legal status which is similar to a contract; and
- it is the founding document of the IOC (i.e. its byelaws governing its internal organisation - composition; membership rules; governing bodies, etc.).

As far as its structure is concerned, the Olympic Charter, in force as from 1 September 2004, currently amounts to 61 rules - the substantive provisions. These 61 Rules are to be read in conjunction with 31 byelaws, which explain or annotate those rules which may give rise to difficulties or which are particularly terse.

So far as the content is concerned, the Olympic Charter is a heterogeneous legal text, which combines general principles with more technical rules and enshrines both coercive rules and mere standards of conduct. The Olympic Charter is both comprehensive and complex and it enshrines executive powers (e.g. the procedure for the selection of a Games organising city); legislative powers (e.g. the requirements for the alteration of the rules) and judicial powers (e.g.

the disciplinary mechanisms with regard to breaches of the Charter, the rules and the byelaws). The Olympic Charter has been carefully drafted, and pays great attention to detail - nothing escapes its scope, not even the Games Protocol. It is also noteworthy that, notwithstanding some rigidity in its amendment procedures, the content of the Olympic Charter is dynamic and has evolved over time, e.g. the removal of the amateur status requirement and the addition of subject matters, such as the environment and 'governance'.

It is the force and transcendence of the Olympic Charter over the entire sporting universe (and more) which we wish to stress in this text. It is indeed amazing that a document issued by a Swiss private corporation has assumed all the features of an international treaty!

The Olympic Charter is a universal text, not because of its legal nature but, rather, because of an extra legal aspect - its moral authority, based on the social, economic and sporting significance of the Olympic Games. The Olympic Charter is binding because it is voluntarily accepted, or recognised, by those to whom it is addressed, which comprise a wide-ranging community: private individuals, organisations of various types and others (e.g. States and international sporting federations).

This moral authority alone explains why a Californian court expressed reservations when upholding a state law in relation to the Olympic Charter (1984), or the fact that the EU Council of Ministers adopted legislation '(...) taking the obligations arising from the Olympic Charter into consideration' (2003), or the fact that, in Turkey, the 'Olympic Law' transposes the Olympic Charter into internal Turkish law, or the

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fact that the basic laws of sport in force in countries such as Portugal, Spain or France, transpose the rules regarding the protection of the Olympic symbols, which are enshrined in the Charter. Even more noteworthy is the fact that States are formally subject to the primacy of the *Lex Olympica* and to the *ius stipulandi* of the IOC, when bidding for the organisation of the Olympic Games.

In this regard, two important decisions of the Court of Arbitration for Sport in Lausanne (which is also under the auspices of the IOC), are particularly striking. They provide that the Olympic Charter '(...) is hierarchically the supreme corpus of rules, which governs the activities of the IOC'¹, in which its rules operate as a 'true reference standard, which can only be derogated from by more restrictive provisions'². The byelaws of international sporting federations or the World Anti Doping Code are good practical examples of this principle.

It follows from all of the above that the Olympic Charter is an atypical legal instrument, but is also unique, powerful, universal and inspiring, all which can also be said of the Olympic Games.

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1. The Beckie Scott judgment, 2003.
2. The Nabokov judgment, 2002.

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