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# **OLYMPIC SINGULARITY – THE RISE OF A NEW BREED OF ACTOR IN INTERNATIONAL PEACE AND SECURITY?**

**PhD Thesis**

**University of Glasgow**

**Muriel Finnigan**

**Submitted in fulfilment of the degree of PhD**

**School of Law, University of Glasgow, June 2017**

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The Olympic Flame is the symbol of the Olympic Games, representing its enduring and eternal nature. It is a tribute to Prometheus's theft from the Greek Gods of fire, a gift that he gave to humanity. In ancient Greek literature this fire represented life and knowledge. This symbolism ensures informed illumination on the great potential that uniting sport and peace can bring.

## **AUTHOR'S DECLARATION**

"I declare that, except where explicit reference is made to the contribution of others, that this dissertation is the result of my own work and has not been submitted for any other degree at the University of Glasgow or any other institution."

Signature \_\_\_\_\_

Printed name \_\_\_\_\_

# ABSTRACT

The Olympic Movement has a constantly expanding mandate which has seen it venture into many fields other than simple staging of the Olympic Games. For example, it has extended its mandate into the equal representation of women in sport, but more importantly, this thesis examines its new mandate of building peace through sport, which is contained in the Olympic Charter's 2<sup>nd</sup> Fundamental Principle of Olympism. It has also indirectly influenced the production of the UNGA Olympic Truce Resolutions, by calling on the UN to revive the 'concept of *ekecheiria*'. However, the Olympic Truce Resolutions are frequently flouted, and more often than not, by the Host Nation itself, including the UK and the USA in recent years. This thesis examines a possible solution to this failing, which is the Olympic Truce Resolutions codification into a binding Treaty where states and the entire Movement are party to it.

This thesis recognises that there is the inherent problem in this, in that the Olympic Movement is not comprised of states. Its core actors are the International Olympic Committee, National Olympic Committees, and International Sporting Federations (and to a lesser extent OCOGs). Hence this thesis submits the novel concept of Olympic Singularity, eight unusual features that amplify the EU doctrine of the specificity of sport on the Olympic playing field. These eight cumulative features unite to allow the Movement to be co-signatories to the Truce Treaty, alongside states. It also enables the Movement to govern the Truce Treaty and any sanctions thereof. Again, this is because of the features of Olympic Singularity, the most notable of which is that the Movement is unusual because of its universal singular webbed framework which necessitates its consideration as a single powerful organ capable of action on the international stage equivalent to states. Olympic Singularity justifies the Movement's special treatment before law, in the form of an atypical international law subject, in that it unites independent actors into one organ, enabling them to have capacity on a par with those reserved to states and international governmental organisations. This would only take the form of governing and sanctioning a Truce Treaty. This thesis examines precedent for this in that the ancient Olympic Games were governed by a single state who dispensed real sanctions for the breach of *ekecheiria*. It also examines in a case study, South Africa which shows that the end of apartheid was assisted by the UN and the Movement uniting and using sport by way of a binding international Treaty, ICAAS 1985. Hence the capacity of the state system was required alongside the recognition of all involved that it was a Treaty.

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Canadian Charter of Rights and Freedoms in the Constitution Act 1982

### **France**

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### **South Africa**

Prohibition of Mixed Marriages Act 1949

Group Areas Act 1950

Immorality Act 1950

Population Registration Act 1950

Suppression of Communism Act 1950

Bantu Authorities Act 1951

Reservation of Separate Amenities Act 1953

Bantu Education Act 1953

## **Switzerland**

Federal Code on Private International Law 1987

Article 190

Federal Constitution of the Swiss Confederation 1999

Swiss Civil Code 1907 (as updated 2014)

Article 52

Article 56

Article 60

Article 61

Federal Council Decree, 5<sup>th</sup> December 2008

## **USA**

California Civil Code s51 - Unruh Civil Rights Act 1959

United States Code Sec 220505(c)(2) - Amateur Sports Act 1978  
S375(a)

## LIST OF ABBREVIATIONS

|              |   |
|--------------|---|
| AAM          | Anti-Apartheid Movement   |
| AIOWF        | The Association of International Olympic Winter Sports Federations                        |
| ANC          | African National Congress   |
| ANOCA        | Association of National Olympic Committees of Africa                                      |
| AoA          | Articles of Association   |
| Appeal       | Solemn Appeal   |
| ASOIF        | The Association of Summer Olympic International Federations                               |
| BOA          | British Olympic Association   |
| BWF          | British Weightlifting Federation  |
| CAS          | Court of Arbitration for Sport  |
| Charter      | Olympic Charter   |
| CJEU         | Court of Justice of the European Union  |
| Commonwealth | Commonwealth of Nations   |
| CONI         | Comitato Olimpico Nazionale Italiano  |
| CPIL         | Swiss Federal Code on Private International Law 1987                                      |
| DPINGO       | UN Department of Public Information – Non-Governmental Organisations                      |
| ECOSOC       | United Nation's Economic and Social Council   |
| EU           | European Union  |
| Executive    | Executive Board of the IOC  |
| FASA         | South African Football Association  |
| FIFA         | Federation Internationale de Football Association   |
| FOC          | French National Olympic and Sports Committee  |
| FRY          | Federal Republic of Yugoslavia  |
| GA           | United Nation's General Assembly  |
| Games        | Olympic Games   |
| GANEFO       | Games of the Newly Emerging Forces  |
| Host         | Host City   |
| HRH          | His/Her Royal Highness  |
| HSH          | His/Her Supreme Highness  |
| ICAAS        | International Convention Against Apartheid in Sports 1985                                 |
| ICC          | International Criminal Court  |
| ICJ          | International Court of Justice  |
| ICRC         | International Committee of the Red Cross  |
| ICSPCA       | International Convention on the Suppression and Punishment of the Crime of Apartheid 1973 |
| IFRC         | International Federation of Red Cross and Red Crescent Societies                          |
| IGO          | International Governmental Organisation   |
| ILO          | International Labour Organisation   |
| INGO         | International Non-Governmental Organisation   |
| INOCSA       | Interim National Olympic Committee of South Africa  |
| IO           | International Organisation  |
| IOA          | International Olympic Academy   |
| IOC          | International Olympic Committee   |
| IOTC         | International Olympic Truce Centre  |

|                    |  |
|--------------------|--|
| IOTF               | International Olympic Truce Federation                           |
| IPU                | International Parliamentary Union                                |
| ISF                | International Sporting Federation                                |
| ISL                | International Sports Law   |
| ITF                | International Tennis Federation                                  |
| ITUC               | International Trade Union Confederation                          |
| KOC                | Korean Olympic Committee   |
| LAOCOG             | Los Angeles Olympic Games Organising Committee                   |
| Movement           | Olympic Movement   |
| NOC                | National Olympic Committee                                       |
| NOCSA              | National Olympic Committee of South Africa                       |
| NRCS               | National Red Cross and Red Crescent Societies                    |
| NSF                | National Sporting Federation                                     |
| NZ                 | New Zealand  |
| OCOG               | Olympic Games Organising Committee                               |
| <i>personality</i> | International legal personality                                  |
| RC Movement        | Red Cross Movement   |
| SA                 | South Africa   |
| SASA               | South African Sports Association                                 |
| SASF               | South African Soccer Federation                                  |
| SANROC             | South African Non-Racial Olympic Committee                       |
| SAOCGA             | South African Olympic and Commonwealth Games Association         |
| SAAWBF             | South African Weightlifting and Body-Building Federation         |
| SC                 | United Nation's Security Council                                 |
| SCSA               | Supreme Council for Sport in Africa                              |
| SFAA               | San Francisco Arts and Athletics                                 |
| SLC                | Salt Lake City   |
| TFEU               | Treaty on the Functioning of the European Union                  |
| TIYC               | Transvaal Indian Youth Congress                                  |
| TOP                | The Olympic Partners   |
| Truce              | Olympic Truce  |
| UDHR               | Universal Declaration of Human Rights 1948                       |
| UEFA               | Union of European Football Associations                          |
| UK                 | United Kingdom   |
| UN                 | United Nations   |
| UNDPI              | UN Department of Public Information                              |
| UNESCO             | United Nations Educational, Scientific and Cultural Organisation |
| UNICS              | United Nations Information Centres                               |
| UNOSDP             | UN Office on Sport for Development and Peace                     |
| USA                | United States of America   |
| USOC               | United States Olympic Committee                                  |
| USSR               | Union of Soviet Socialist Republics                              |
| VANOC              | Vancouver Olympic Games Organising Committee                     |
| VAT                | Value Added Tax  |
| Village            | Olympic Village  |
| WADA               | World Anti-Doping Agency   |
| WADC               | World Anti-Doping Code   |
| WIPO               | World Intellectual Property Organisation                         |

# CHAPTER ONE

## Introduction

### 1.1 Supposition of Thesis

A literal interpretation of the Olympic Charter (Charter) suggests that the Olympic Movement (Movement) is a hierarchical pyramid with the International Olympic Committee (IOC) at the apex.<sup>1</sup> That it governs the other entities of the Movement: the International Sporting Federations (ISFs), the National Olympic Committees (NOCs) and the Organising Committees (OCOGs). However, this thesis aims to demonstrate that this pyramid framework is only partially correct. Instead this thesis will build on the commentary that the Movement is to an extent hierarchical, but instead of a pyramid, it is a web of national and international symbiotic actors, with the IOC at its pivotal centre.<sup>2</sup>

The supposition of a web framework is, however, only the foundation upon which this thesis is built. Namely that the individual Movement's actors that comprise this web, *in certain circumstances*, cannot be separated from each other. The web of Movement actors together have a sufficient amount of international legal recognition, international personality (*personality*), accountability and capacity for action that require their conception as a single Olympic Movement placed in the jurisdiction of international law with regard to peace and security. Specifically, this is with regard to enforcing and sanctioning the Olympic Truce (Truce) in a newly codified Truce Treaty. It uses as precedent other atypical subjects of international law, such as the International Committee of the Red Cross (ICRC), to justify the Movement's propulsion to the international system.

### 1.2 Research Questions and Methodology

This singular collective grouping of the Movement, begs two general research question(s). Firstly, *why should the Olympic Movement be viewed as one legal entity?* And secondly, *why in the weighty field of international peace and security?*

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<sup>1</sup> Rule 1.1, Charter, which states that the Movement is under the IOC's "supreme authority and leadership", Charter, IOC, 2<sup>nd</sup> August 2015.

<sup>2</sup> Foster, Ken, 'Is There a Global Sports Law?' (2005) Vol 2(1) Entertainment and Sports Law Journal 1-18.



The thesis proposes that the answer to the first question of ‘*why should the Movement be viewed as one entity?*’, lies in a new concept, ‘Olympic Singularity’. This new concept of Olympic Singularity is developed in this thesis. The thesis submits that Olympic Singularity arises from eight factors that demonstrate that the Movement is a unusual organisation, unlike any other International Non-Governmental Organisation (INGO).<sup>3</sup> That it is more akin an atypical subject of international law, like the Holy See, the Sovereign Order of Malta or the ICRC, and as such, should have status as an international law subject, limited *personality* and a focused mandate with regard to a Truce Treaty.

The Movement must be viewed as a singular organisation here, as it is only by so viewing it, that it possesses the features justifying its special treatment under international law. It needs the independence and law-making power of the ISFs, the universalism of the NOCs, their and the OCOGs state links and the recognitions given to the IOC. Each body has only one or more of the features that justify the existence of other atypical subjects, such as the ICRC.<sup>4</sup> As they cannot be separated from each other, this leads to the idea of the Movement as a state-linked web.

This Olympic Singularity is also in part the answer to the second research question of ‘*why in the field of international peace and security?*’ This singular Movement, resting on the concept of Olympic Singularity, is the right actor to successfully affect this field. The Movement has a proven record of success in peace and security, such as contributing to the end of South African apartheid.<sup>5</sup> This thesis will examine whether the Movement’s success here is because it operates on a multitude of different levels, sub-state and yet internationally. It can command the attention of world leaders and individuals. Furthermore, this thesis shows in its comparison to the ICRC, that a self-designated mandate in international peace and security can lead to special treatment and recognitions under international law. Whilst other fields may open up to the Movement in the future, they are beyond this thesis. This study uses the ICRC as precedent - where a peace and security mandate justified widening the subjects of international law, which were then recognised as such and further extended by the Geneva Conventions (GCs).<sup>6</sup>

This thesis also answers the second research question of ‘*why peace and security?*’ by offering new solutions to the age old problem of how to enforce international peace and

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<sup>3</sup> With the potential exception of the International Committee of the Red Cross (ICRC).

<sup>4</sup> Universality and its mandate being the primary reasons for its special treatment.

<sup>5</sup> Discussed in Chapter 7.

<sup>6</sup> The Geneva Conventions 1949 and their Additional Protocols 1977.

security. This thesis proposes two solutions to this second research question. Firstly, that the non-binding UN General Assembly (UNGA) Olympic Truce Resolutions be considered binding by their codification into an international Treaty, with states and a singular Movement as signatories.<sup>7</sup> Secondly, that the singular Movement, as the UN's agent, be able to sanction NOCs and Hosts for their state's breach of this Treaty, as was the case with the ancient Games.<sup>8</sup> This thesis will therefore also examine the extent to which the Movement links and infiltrates the international state system. This in turn leads back to the features of Olympic Singularity – such as the specificity of the Movement's institutions and web framework. Olympic Singularity is therefore both the cause and the effect and can answer both general research questions.

As far as methodology is concerned, this thesis uses three methodological approaches to prove that the Movement should be treated as a singular organisation able to govern and sanction a Truce Treaty: a black letter/literal interpretation of sources; a comparative approach; and a historical approach.

It uses a black letter interpretation of various legal sources analysing them for their literal or intended meaning. It does this with regard to the Charter in Chapters 2 - 4, the Olympic Truce in Chapter 5 and the ancient Truce in Chapter 6.

Chapter 6 uses a historical, and somewhat comparative approach, to demonstrate that the successes of the ancient Truce - *ekecheiria* - are attributable to its status as international law, promulgated by a state, with real and dispensed sanctions.

This thesis adopts a comparative approach in Chapter 7 by using the case study of South Africa and apartheid to investigate whether the collective Movement has the greatest impact on international peace and security when it has direct involvement and ownership of a situation.

### 1.3 Terminology

This thesis uses many terms, both existing and novel, and as such this section will introduce those that are accepted and those that are submitted.

#### 1.3.1 Overview of the Olympic Movement

This thesis focuses on and builds on several assumptions with regard to the Movement's framework, hence a brief overview of the (web) framework is necessary here. The 'Olympic

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<sup>7</sup> Discussed in Chapter 5.

<sup>8</sup> Discussed in Chapter 6.

Movement’ is a term frequently referred to in the Charter, which is itself a constitution, a statutory document of the IOC and an embodiment of the Movement’s basic rights and obligations.<sup>9</sup> However, the Movement is not a legally recognised entity in its own right, despite having these aforementioned rights and obligations. Instead, it is simply an umbrella term used to group together, for ease of taxonomy, a variety of different legally recognised actors, whose collective primary function is the *facilitation* of staging the Olympic Games (Games).

The term ‘Olympic Movement’ draws together three core actors under this umbrella, with the most ostensibly powerful actor as per the Charter, being the IOC.<sup>10</sup> Thus to refer to the IOC and the Movement synonymously is incorrect. The IOC is only a Games facilitator, with no direct involvement in their staging. Instead the IOC oversees and demarcates the business of the other Movement actors.<sup>11</sup> Rule 1.2 of the Charter extends the core of the Movement to the NOCs); the ISFs, reliant on its myriad of National Sporting Federations (NSFs).<sup>12</sup>

Rule 1.3 of the Charter also includes under the Movement umbrella, certain smaller actors who are directly responsible for staging the Games, such as the OCOGs.<sup>13</sup> Rule 1.3 also includes in the Movement, other external public and private actors, such as national governmental authorities, individuals and independent commercial vehicles under the ‘catch-all’ category of “organisations and institutions” that “are recognised by the IOC”. They have also have a direct and temporary involvement in actually staging the Games. Therefore the Movement and the IOC avoid direct ownership of the risks of Games, which is born instead by other Movement actors.<sup>14</sup>

The component actors of the Movement therefore cover a variety of different purposes and functions. As such, they have varying legal recognitions and treatments (nationally and internationally) depending on the jurisdiction in which they are incorporated. Some are INGOs, such as the IOC, which also has special status as a Swiss association. Many ISFs are also INGOs and Swiss associations, but they do not possess the same full range of legal privileges, nationally and internationally, as the IOC. Some Movement actors are companies, such as the

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<sup>9</sup> Introduction, Charter, which also states it is a codification of Fundamental Principles. The Charter is the regulatory framework presiding over and guiding the Games and the Movement, contractually binding Movement actors (core and peripheral).

<sup>10</sup> Rule 1.1 and 1.2, Charter. The Movement can extend to the International Paralympic Committee, WADA, NSFs, teams, clubs, leagues, athletes, referees, coaches etc. Nafziger, James A. R, *The Handbook of International Sports Law* (EE Publishing Ltd 2013).

<sup>11</sup> Rule 1.1, Charter.

<sup>12</sup> Rule 1.2, Charter.

<sup>13</sup> Rule 1.3, Charter also includes in the Movement: individuals who compete in the Games; coaches; and referees, technicians etc. The OCOGs are not permanent Movement fixtures, they have a lifespan of around 10 years.

<sup>14</sup> The Host City (Host) contract is usually signed between the IOC, the Host and the host NOC, with the NOC contracting to undertake hosting and staging responsibilities.

British Olympic Association (BOA) - the UK's NOC. Others are government authorities representing the Host City and enter the Host City contract, such as the City of London. Chapters 2 - 4 will show the framework as a web rather than a pyramid.

### 1.3.2 Olympic Singularity

This thesis rests on the novel concept of Olympic Singularity that requires the Movement's singular and special treatment under international law. Olympic Singularity enables the Movement to be an international law subject with limited *personality* and therefore a significant and legitimate actor in international peace and security. It replicates some of the reasons that justify the existence of other atypical subjects of international law but properly defines them. Hence, *what is Olympic Singularity?* What is so special about the Movement that requires it to be treated as a special INGO actor under international law, capable of governing and sanctioning the Truce in the form of a Treaty?

Olympic Singularity unifies the Movement into one organisation and propels it into the field of international peace and security. It can be broken down into eight distinct factors, many of which affect each other and are cumulative to justify the Movement's specificity before the law. Each in itself may not be sufficient to justify the Movement's atypical status and *personality*, but together they necessitate it.

Firstly, the Movement is an unusual organisation because it is a web rather than a pyramid. It is not a pyramid because the IOC is not the all-powerful actor as suggested in Rule 1 of the Charter. Each individual actor, core or peripheral, within the Movement wields significant power and can act as a check on the power of the others, meaning that despite the IOC being at the centre, they are all important and significant. It is therefore the way that the Movement links various different actors together that is singular, and not simply that it is a web. There are many international organisations where a checks and balance occurs, including the UN and EU. However, with the Movement, the separation of powers is of independent powers, yet these powers are actually not entirely distinct of each other. It operates nationally and internationally, enabling it to be an international actor unlike any other.<sup>15</sup> Therefore, the Movement can only be viewed as a web, where the webbing holding it together is the Charter – which all the Movement actors have agreed to be bound by. Indeed, the EU doctrine of the specificity of sport accepts as a reason for sport's exemption from the law, its unique structure. This thesis argues that this specificity of framework is amplified in an Olympic setting. It draws

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<sup>15</sup> With the exception of the ICRC, the precedent on which this thesis builds.

on and extends this EU doctrine. If sport's unique structure can justify its independence and autonomy for the law, it is conceivable that its bodies have partial subject status and *personality*, limited to its purposes, which include peaceful Games staging.

The second factor of Olympic Singularity follows on from this. This unusual Movement web is made even more unusual by its universality. The Movement's universality encompasses the stretch and reach of its actors across the globe, the size and reception of the Games themselves, and the commercialism attached thereto.<sup>16</sup> Taking the aforementioned factors in turn, the Movement has visibility in all states across the world, comprising 206 NOCs and scores of ISFs. The Games are bigger than any other event, with some of the most numerous audiences both at home and in attendance. They also have revenue streams to rival the world's largest companies despite being not-for-profit. The Games together with the Movement have a truly international character, that when combined with its unusual framework, has meant that the sum (the Movement) is greater than its parts (the individual actors). This enables the Movement to engage in aiding all types of peace and security conflicts. Other fields and organisations may draw from a myriad of national and international actors, achieving a certain amount of webbed universality, such as the individual ISFs, but they lack the full reach of the Movement and its other Singular features.

The third factor that makes the Movement special is that all of its actors share the same purpose: facilitation of staging the Games whilst guided by the humanitarian principles of Olympism.<sup>17</sup> It is this purpose that draws all Olympic actors together. Despite the Movement's actors having other purposes out-with the Olympiad cycle, and the IOC broadening its mandate into other fields, they come together under the Olympic umbrella to stage the Games every four years.<sup>18</sup>

The fourth and fifth factors of Olympic Singularity build on these first three aspects and are themselves inter-linked. The fourth aspect asserts that the IOC has been incorrectly taxonomised as a regular INGO and not as an atypical subject of international law with limited *personality*.<sup>19</sup> Olympic Singularity asserts that when its first three aspects are considered (its universal unusual web framework with a shared purpose) the Movement is an extraordinary INGO - an atypical subject of international law with limited *personality*, akin the Holy See,

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<sup>16</sup> Akin the Red Cross Movement's (RC Movement) universality that is a factor in it possessing atypical subject status and limited *personality*.

<sup>17</sup> Again likening it to the RC Movement which shares with the Movement, a humanitarian goal.

<sup>18</sup> Other purposes extend to gender equality, anti-doping and the 8th factor of Olympic Singularity - the promotion of peace through sport.

<sup>19</sup> This thesis will examine international law subjects in Chapter 3 but not *personality* to a substantial degree as this is beyond this thesis's scope.

Sovereign Order of Malta, or more likely, the ICRC. It is an INGO unlike almost all others, the ICRC aside. The reason(s) for the Movement being atypical leads into the fifth aspect of Olympic Singularity - the Movement (and in particular the IOC) receives almost unprecedented extraordinary treatments and recognitions by a variety of national and international actors. For example, the IOC has many legal and fiscal privileges under Swiss law, and it also has observer status at the UNGA granted in 2009 by way of Resolution 64/3.<sup>20</sup> Whilst other organs have special Swiss status, they do not possess it to the extent that the IOC has, and of course, many others have observer status. Therefore, each special treatment is in and of itself not necessarily unique, but it is the combination of the many special treatments, that combine to form Olympic Singularity. As the ICRC is its closest corollary this thesis argues for similar recognition of the Movement as the ICRC under international law.

The sixth and seventh factors of Olympic Singularity can again be grouped together. The sixth factor is that the Charter continually refers to the concept of the Movement, despite deliberately not attaching legal meaning to it – it was intended to only be a grouping of Olympic actors. Hence the Charter has unintentionally created a term which when combined with the other facets of Olympic Singularity, necessitate consideration of the Movement as a single entity with special powers regarding the Truce.

The seventh factor of Olympic Singularity is that the Movement is unlike any other organisation (and a potential atypical international law subject) because the sporting and Olympic systems have created legal dualism: a system of rules that are synonymous with international sub-state law. This thesis accepts the argument that these rules are law at the national and international level with the doctrine of the specificity of sport being recognised under EU law.<sup>21</sup> Whilst these laws are not only applied at the Games, and the specificity of sport may be jurisdictionally confined to the EU, the establishment of the Court of Arbitration for Sport (CAS) initially under the Movement's auspices, has meant that these 'laws' are inextricably woven into the Movement's fabric.<sup>22</sup>

The specificity of sport itself details the reasons why sport requires special treatment. Some of these reasons are similar to the factors of Olympic Singularity. However, this thesis goes further than this European doctrine, by amplifying the specificity of sport in the Olympic arena, and breaks the reasons for its special treatment down accurately and in more detail. This thesis also focuses Olympic Singularity for a single purpose: that of allowing the Movement to

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<sup>20</sup> UNGA Resolution A/RES/64/3, 22<sup>nd</sup> October 2009.

<sup>21</sup> This thesis is not arguing for global sports law *per se* as this is beyond its scope.

<sup>22</sup> Although CAS is a tribunal (not a court) that parties voluntarily submit to.

have governorship and sanctioning capacity of a Truce Treaty, rather than for general treatment under law, as is the case with the EU doctrine.

The eighth feature of the Movement necessitating viewing it as one organ entitled to elevated privileges and responsibilities is the mandate that it has created for itself, out-with its primary function of staging the Games. It has claimed ownership in weighty fields aside Game staging. This is similar to the ICRC and the Red Cross Movement's self-designated humanitarian mandate that was later recognised by the GCs. It has done this in its Charter where it codified the Fundamental Principles of Olympism which bind all Movement actors alike, core or peripheral, through their consent to the OC. The Fundamental Principles are philosophical themes that help guide the Movement in everything from Game staging to its other actions. The 2<sup>nd</sup> Fundamental Principle has laid down for the Movement a mandate in peace-building through sport, as it states that:-

“the goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity”.

Promotion of peace through sport is an unprecedented mandate for a sports INGO. This therefore shows the Movement's commitment and ambitions in this field. Whilst staking a claim in this field is not enough to be considered a legitimate, serious actor therein, such an attitude ignores what is currently happening – that the Movement is involved already in this field. Self-given mandates were sufficient for the ICRC, although later recognised by the GCs, endowing it with a special mandate and consequential status and *personality* under international law. Thereby opening the door here for the Movement.

One way the Movement achieves its ‘peace through sport’ mandate is by instigating and supporting the call for the UNGA Olympic Truce Resolution. As with all UNGA Resolutions, the Truce Resolutions are non-binding directions to UN Member States, and are therefore international. Furthermore, the Movement has established a precedent of involving itself in situations deemed by the UN Security Council (UNSC) to affect international peace and security. The Movement banned the South African NOC for replicating its government's policies of apartheid at the Games. There are many ways in which the Movement could achieve peace through sport at a multitude of levels, and it is fulfilling this mandate through grass roots community projects *and* at the international state level. As the Movement is attempting to affect international peace and security, it and its mandate, when combined with the other features of Olympic singularity, demand attention and governance by international law. This thesis therefore submits that the answer is by way of the three-pronged aforementioned solution: a

singular Movement in control of a Truce Treaty with sanctioning capacity. This solution infers some limited *personality* and atypical subject status although not necessarily mandatorily so.

Existing attention has focused on a level one interpretation of the IOC as an INGO, and accepts existing assumptions about their form and capabilities. According to which, the IOC and the other Movement actors cannot directly make international peace and security laws. They can only instigate and carry out grass roots level projects to promote peaceful societies, and act as a complainer at the international level to those that do – states and IGOs. Hence the Movement can only legitimately fulfil its 2<sup>nd</sup> Fundamental Principle of ‘promoting’ peaceful societies via these two means. However, it is this thesis’s final contention of Olympic Singularity that the Movement must be viewed as one singular international law subject, specifically when framed against this 2<sup>nd</sup> Fundamental Principle mandate. This would enable it to re-take ownership of the Truce, by way of A Treaty and sanction any breaches.

Therefore, this thesis submits that this new singular Movement is not like other INGOs (with the exception of the ICRC) or even other international law subjects - in terms of its recognition, *personality*, accountability and capability of making peace and security laws. Hence the Movement requires unique treatment by the international community due to Olympic Singularity, consideration of which, has until now, remained uncharted and shall be undertaken by this thesis. Not only is such a study long over-due, but it is wholly necessary to clarify the muddled waters left by the specificity of sport and lacklustre approach of the UN with regard to the Truce Resolutions.

## 1.4 Structure

This thesis will answer the two general research questions and demonstrate the aforementioned eight suppositions of Olympic Singularity, by way of six core Chapters and a conclusion. The six Chapters will be split into two parts.

Part I addresses the first general research question of “*why should the Movement be viewed as one entity?*” and the first seven aforementioned factors of Olympic Singularity. It does this by way of three Chapters.

Chapter 2 examines the first three linked factors of Olympic Singularity that the Movement has: a web framework; universality; and a shared purpose of staging the Games. Some of these factors are extensive and others are concise, obvious and brief. This Chapter will examine what the Movement’s framework to determine whether it is a pyramid or a web. It will comprise an institutional overview of the Movement. It will discover who the Movement’s



various actors are - their functions, purposes, powers, and status. It will also consider the interplay and power check that each of the Movement's actors place on each other. Whether the IOC is supreme and all powerful over these other Movement actors as Rule 1.1 of the Charter suggests. This Rule states that the Movement is "[U]nder the supreme authority and leadership of the IOC."

Chapter 2 will examine the reach of this Movement framework, whether its web framework makes it universal, being the 2<sup>nd</sup> factor of Olympic singularity. It will then examine briefly whether all of these actors share a single purpose of staging the Games and Olympism, despite the myriad of other purposes and roles that they fulfil.

Chapter 3 will then ask whether the IOC, the supreme authority of the Movement as per the Charter, is a regular INGO or international law subject. Has it been correctly taxonomised? It will do this by applying the UN INGO checklist to the Movement. Chapter 3 will therefore determine whether the IOC is like other INGOs, i.e. a 'regular INGO'. Thereafter it will examine other atypical subjects of international law to determine whether it can be considered one, with attaching rights, duties, mandates and recognitions, but with regard to a Truce Treaty. Thereby addressing the fourth aspect of Olympic Singularity.

Chapter 4 will continue examining whether all the Movement's actors are typical examples of their type. It will examine their other features to discover whether this makes them irregular INGOs or organisations and thereby justifying their collective sum's special treatment under international law. It will do this by taking the IOC, the NOCs and the ISFs in turn. It will focus on the rights, recognitions, and treatments they receive under law from the international community, the fifth aspect to Olympic Singularity. These can vary depending on the legal system in which they are incorporated. This study has already been done in the Charter, case law, statute law and in academic writing. They therefore think that they have correctly understood these actors in terms of their legal rights and treatments. One of the special treatments that the Movement receives is that the rules it creates are potentially regarded as 'law'. The Movement's potential to create laws and create a system of legal dualism will be accepted here (as this is a separate field of debate). It will be extended upon to discover whether this is a factor that can be offered as a precedent for a Truce Treaty.

Chapter 4 will therefore consider whether this assessment is correct at both the Movement's core actor and cumulative level.<sup>23</sup> If something new has been created at the core actor level, such as a unique IOC, this bolsters the argument for the creation of a new, singular,

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<sup>23</sup> Albeit this creation may have been unintentional.

collective Movement that is an atypical international law subject. If the Movement's actors are unusual then this reasoning can be extended to the macro level. Albeit if the core Movement actors are not unusual examples of their type, this does not preclude the overall Movement being singular and unusual. Olympic Singularity produces a unique, collective Movement separate to and resting on reasons other than the specificity of its component actors. Consequently, this examination will again reinforce the Movement's singular web framework over that of a pyramid.

Chapter 4 will also demonstrate the 6<sup>th</sup> component of Olympic Singularity. It will examine whether the frequent references to the Movement in the Charter and extraneously have given rise, unintentionally, to a real actor under law.

Part II addresses the second general research question of "*why should the Movement be viewed as a single collective organ in the field of international peace and security?*" This is also the final aspect of Olympic Singularity that necessitates the Movement's serious consideration as a singular entity under international law. That is, its ability to form laws and influence international peace and security. It will do this by way of three core Chapters.

Chapter 5 shows that the Movement is already involved in peace and security by way of the Truce, which goes somewhat towards explaining the relevancy of the second general research question.<sup>24</sup> It will explain what the Truce is in terms of the UNGA's Resolutions, and how the Truce has been revived. This Chapter asks to what extent the Movement and the UN were involved in its revival and whether the IOC required the assistance of an IGO (the UN) for it to take effect. It charts the evolution of the IOC's Appeal for the Olympic Truce on 21<sup>st</sup> July 1992, to the first Olympic Truce Resolution (48/11) on 25<sup>th</sup> October 1993 to its most recent incarnations.<sup>25</sup> It will also demonstrate whether codification of the Truce into a Treaty is a viable solution.

Chapter 5 also discovers whether there are any breaches of the Truce Resolutions and consequently, the Charter's 2<sup>nd</sup> Fundamental Principle, and if so, why. For example, are the Truce Resolutions considered optional? This is a recurring problem that the UN faces in enforcing its GA Resolutions and even its harder SC Resolutions and international law generally, although is beyond the scope of this thesis.

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<sup>24</sup> Akin the ICRC before the GCs.

<sup>25</sup> Appeal for the Olympic Truce - A document in support of the appeal was signed by the IOC Executive Board (Executive), the Presidents and Secretaries General of the Association of Summer Olympic International Federations (ASOIF), the Association of International Olympic Winter Sports Federations (AIOWF), Association of National Olympic Committees of Africa (ANOCA) and representatives of the 169 NOCs participating in the Barcelona Games, dated 21<sup>st</sup> July 1992. See also, Resolution A/RES/48/11, 25<sup>th</sup> October 1993.

Chapter 6 uses a historical methodological approach to address both research questions. It compares the ancient Games and Truce of *ekecheiria* to the modern Games, Movement and Truce. It examines the reasons for observance of *ekecheiria* in order to determine whether any lessons can be learned and applied to the modern Truce. It ascertains whether *ekecheiria* was international law created by states (if these concepts even existed in the ancient world), and whether this was why it was observed. Hence this Chapter asks whether singular state control by Elis of a binding international Treaty with appropriate real sanctions was why *ekecheiria* succeeded.

Chapter 7 uses a comparative and historical methodological approach on the case study of South Africa. It tackles the second general research question of ‘*why peace*’ by giving the example of a historic precedent of when the Movement involved itself successfully in peace and security. Thus this thesis operates from the assumption that sport, and Olympic sport, helped to end of apartheid. What this Chapter examines, is the extent of the Movement’s involvement and the reasons for the end of apartheid. The Movement’s involvement shall be compared to that of the UN, and other individuals, states and actors, as well as to the circumstances of the day. Hence why was sport successful in helping to end apartheid? A situation that the SC deemed to affect international peace and security. If this Chapter can discover the reasons for the end of apartheid, then these can be replicated for the modern Movement and Truce. For example, if the Movement helped to end apartheid because of its collective web working together with the power to sanction, this will help demonstrate the necessity of viewing it as a single organ capable of internationally sanctioning when it deals with peace and security.

Chapter 8 provides a conclusion gathering the research findings and submits proposals for recognising and strengthening the Movement as a single collective organisation when it deals with peace and security – specifically the Truce. It will show what is required of the Truce by way of a Treaty and what sanctions will be needed to enable its effectiveness.

## **PART I**

### **INSTITUTIONAL OVERVIEW OF THE OLYMPIC MOVEMENT**

*Why should the Olympic Movement be viewed as one entity?*

## CHAPTER TWO

### Is the Olympic Movement a web or a pyramid?

#### 2.1 Introduction

Chapter Two will discuss the first three aspects of Olympic Singularity that justify the Movement being an atypical subject of international law having a quasi-*personality*: that the Movement is: a web; that it is universal; and that it has a shared purpose of Games staging. The substantial part of this Chapter will focus on the first aspect of Olympic Singularity and ask whether the Movement has the framework of a web or a pyramid? The Movement's framework is relevant and important because its regularity or irregularity can add to the notion of Olympic Singularity, and thus prove in the affirmative the first research question: '*should the Movement be viewed as one entity?*' An Olympic web rather than a pyramid is significant because a pyramid would infer that the IOC is the supreme Olympic body, but on its own, it does not possess sufficient features that other atypical subjects of international law possess. Only when the whole Movement is viewed as one, are sufficient atypical features checked off, as Chapters 3 and 4 will discover. From a legal perspective it is also necessary to treat the Movement as one entity. As Chapter 4 will discover the Movement uses its pyramid and murky current framework to avoid legal suit, side-stepping its obligations, but also potential rights it could have (such as governing a Truce Treaty).

Thus it will start by swiftly detailing the different individual actors of the Olympic Movement: the IOC; the NOCs; and the ISFs. Each of these will be discussed in terms of their roles, powers and compositions to discover where they sit within the Movement, and thus whether it is a pyramid or web - the first aspect to Olympic Singularity. This part will ask whether the IOC is the dominant and most powerful branch, albeit the majority of its individual legal features will be discussed in Chapters 3 and 4. It will then ask what powers do the NOCs and ISFs possess and are any of them more dominant than the IOC's? The ability of these two actors to keep the IOC in check will also be examined.

Each of these will also be looked at in terms of how universal they are - the second aspect to Olympic Singularity. Can they each or collectively be considered international with presence around the world? The initial examination of their roles will also show whether they

share the same purpose of Games staging or whether they have any other important or competing roles - the third aspect to Olympic Singularity).

## 2.2 The Composition of the Olympic Movement

As Rule 1 of the Charter says, the Movement is comprised of an extensive array of actors. However, its core actors are: the IOC; the NOCs; the ISFs; and the OCOGs. In order to progress with this thesis, these actors require introduction. This Chapter, by introducing and explaining each Movement actor in turn, will weigh up their powers, rights and duties. It will also compare their interactions, with one another and external actors. This will answer the question of whether the Movement is a web or a pyramid. And consequently, whether the framework is unique or not contributing towards a justification of an atypical subject status with limited *personality*.

## 2.3 International Olympic Committee

### 2.3.1 History of the International Olympic Committee

Pierre de Coubertin is credited with the foundation of the modern Movement and the IOC. As Secretary-General of the French Sports Association, Coubertin invited an elite circle of 14 of his friends from around the world, to what later became known as, the Congress for the Renewal of the Games at the Sorbonne University, Paris June 1894.<sup>1</sup> The Congress unanimously adopted a Resolution that would revive the Games with the first Olympiad occurring two years later in Athens 1896. After the Congress, the IOC for the Games was consequently established by this elite group of 15.<sup>2</sup>

### 2.3.2 Role of the IOC

The IOC in Coubertin's day was geared towards and more involved in, staging the Games.<sup>3</sup> However, this is not the case for the IOC today – it is not as involved in Games staging as it was. This initially appears to hamper the IOC's contribution to the third aspect to Olympic

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<sup>1</sup> Chappelet, Jean-Loup, and Kubler-Mabbott, Brenda, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge, 2008). See also, 'IOC, The Olympic Congress 1894' <[www.olympic.org/paris-1894-olympic-congress](http://www.olympic.org/paris-1894-olympic-congress)> accessed 1 October 2015. Coubertin would later become IOC President. Coubertin invited representatives from France, Belgium, the UK, Ireland, Greece, Italy, Russia, Spain, Sweden and the USA.

<sup>2</sup> Chappelet, n. 1. Many out of these 15 were aristocrats or future Nobel Prize winners. Many claim that the IOC is still elitist as it is the 'most exclusive club in the world', Ettinger, David J., 'The Legal Status of the International Olympic Committee' (1992) Volume 4 Pace International Law Review 97.

<sup>3</sup> Chappelet even says this is its principal task, Chappelet, n. 1.

Singularity - the shared purpose of staging the Games. However, although the IOC is not directly responsible for staging the Games, it contracts with NOCs and a Host authority, for them, and the OCOGs, to do so on its behalf.<sup>4</sup> Hence it delegates this role to them.<sup>5</sup> So the IOC has the shared purpose of “ensur[ing] the regular celebration of the Games”.<sup>6</sup> Yet it is the OCOG’s primary purpose to stage them.

Nowadays, the IOC has a more dominant role, that of governance. It is the body that adopts the Charter, the IOC’s constituent document and the Movement’s statute.<sup>7</sup> It is therefore the body that has the capability of such adoption. Hence the IOC has many extensive rights and obligations enshrined in its OC. Many of which suggest it is the dominant and most powerful Movement actor, suggesting it is at the top of a pyramid – which hinders the first aspect of Olympic Singularity – the web framework.

This is reaffirmed when viewed in light of other Charter provisions. For example, the Charter states that the IOC “governs the organisation, action and operation of the [entire] Movement”.<sup>8</sup> The 3<sup>rd</sup> Fundamental Principle reaffirms this, as it states;

“The 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”.<sup>9</sup>

Rule 1.1 also calls the IOC the “supreme authority and leader[ship]”.<sup>10</sup> And Rule 1.4 says the IOC is the supreme decision-maker:

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<sup>4</sup> Rule 35, Charter entrusts organising the Games to the “NOC of the country of the Host as well as to the Host City itself.” The contracts (Host City and those on construction, transportation, security and customs) are formed with various public and private actors. The IOC also bears no financial responsibility for Games staging - neither the Host nor the relevant NOC can pursue the IOC for financial relief. Ettinger, n. 2, See also Chappelet, n. 1.

<sup>5</sup> IOC delegation seems sensible as work is on-going for up to four Games at any one time, making it too big a task for the IOC alone. The IOC simply monitors and receives OCOG update reports, Chappelet, n. 1.

<sup>6</sup> Rule 2.3, Charter. The IOC’s theoretical and practical role in Game staging is limited to Host election by absolute majority vote at the Session. See also Rule 18.2.4, “to elect the Host of the Games”. The NOC shall be responsible for the establishment, for that purpose, of an ...OCOG which ... reports directly to the IOC Executive.”

<sup>7</sup> The Charter is “adopted by the IOC”, *Introduction*, Charter.

<sup>8</sup> *Introduction*, Charter.

<sup>9</sup> This is reiterated in Rule 1.2, Charter. The promotion of Olympism could also be considered one of the IOC’s foremost aims, for example, “The mission of the IOC is to promote Olympism throughout the world....” (Rule 2, Charter). Olympism is an obscure concept found in the Charter’s Fundamental Principles of Olympism and was a neology of Coubertin’s who wrote extensively on its philosophies. (Chappelet, n. 1). It is a philosophy linked to education that guides the IOC in its practices.

<sup>10</sup> “Under the supreme authority and leadership of the IOC, the Movement encompasses organisations, athletes and other persons who agree to be guided by the Charter. The goal of the Movement is to contribute to building a peaceful and better world by educating youth through sport practised in accordance with Olympism and its values”, Rule 1.1, Charter.

“Any person or organisation belonging in any capacity whatsoever to the Movement is bound by the provisions of the Charter and shall abide by the decisions of the IOC.”

The 7<sup>th</sup> Fundamental Principle designates the IOC as the body who recognises other bodies within the Movement, as it states:

“belonging to the Movement requires.... recognition by the IOC.”

This IOC role in recognising NOCs and ISFs is significant as it could suggest the IOC is at the top of a regulatory pyramid with these actors beneath it.<sup>11</sup>

However, it is the opposite - it further exemplifies the Movement’s web framework. This is because these actors, particularly the ISFs often check the IOC’s power and often refuse to submit to the IOC’s or CAS’s authority.<sup>12</sup> They consider themselves autonomous institutions with their own rules.<sup>13</sup> Foster even says that it is they (and presumably not the IOC) that control and govern international sport.<sup>14</sup> Even at the Olympics and CAS, they observe ISF rules and sports laws. This autonomy and potential to legislate could, in turn, trump the IOC and its recognition card.<sup>15</sup> Furthermore, Chapter 7 shows that ISFs can influence the IOC by forcing it to expel South Africa’s apartheid practicing NOC. Hence ISFs check the IOC’s supreme autonomy, especially with regard to the creation of legal norms and their refusal to be entirely subservient to the IOC. This perhaps explains why Chappelet claims that these bodies are now afforded a degree of leverage by the IOC when it comes to decision making.<sup>16</sup>

The IOC can also recognise NOCs, and currently recognises more NOCs (206 with the addition of Kosovo not yet a UN member) than the UN does states (193 plus the non-member permanent observer states of the Holy See and Palestine).<sup>17</sup> Hence IOC-NOC recognition is more than just permitting athletes to attend the Games. It gives the IOC significant power on the international legal stage. Particularly when it comes to new or potentially emerging states, such as Kosovo or Palestine - they seek international law recognition via their NOC’s

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<sup>11</sup> The IOC may “grant formal recognition to the constituent actors of the Movement” (Rule 3.1 and Rule 18.2.8, Charter), which may be full, provisional or withdrawn. IOC recognition is desirable as it often comes with subsidies. It recognises only one ISF per sport (currently 35 official sport ISFs (28 summer and 7 winter) and 34 unofficial ISFs (sports not on the programme but may be or have been)), Chappelet, n.1.

<sup>12</sup> Chappelet, n.1.

<sup>13</sup> Which this thesis has accepted constitutes global sports law and the debate on its existence as a separate body of law from existing principles, is beyond this thesis.

<sup>14</sup> Foster, Ken, ‘Is There a Global Sports Law?’ (2005) Vol 2(1) Entertainment and Sports Law Journal 1-18.

<sup>15</sup> Foster, n. 14. See also Beloff, Michael J, ‘Is there a Lex Sportiva?’ (2005) Volume 3 August I.S.L.R. 49-60.

<sup>16</sup> Chappelet, n.1.

<sup>17</sup> It grants NOC status to additional entities such as overseas dependent territories like the British Virgin Islands. IOC, NOCs, <[www.olympic.org/ioc-governance-national-olympic-committees](http://www.olympic.org/ioc-governance-national-olympic-committees)> accessed 15<sup>th</sup> July 2015.



recognition. NOC recognition can be considered a political and legal statement, lending credence to the NOC's state to be so considered under international law.

However, in practice, the IOC only recognises one NOC per "state" leading many to claim it is simply rubber stamping, diminishing the IOC's international power. However, occasionally more than one NOC per state is recognised, for example China, the Netherlands, the USA, the UK and NZ all have more than one NOC making their recognition more than rote.<sup>18</sup> Whilst generally the IOC recognises NOCs from the same state entities as the UN, there are exceptions.

Furthermore, IOC recognition is not always certain or rote. It has occasionally been refused to NOCs, such as to the Gibraltar Olympic Committee (GOC).<sup>19</sup> The GOC were refused IOC recognition because the UK already had an NOC and it was thought that one of its overseas territories did not need its own NOC. The IOC also determined that the GOC did not fulfil the recognition criteria. However, the GOC claimed that the recognition criteria had been retrospectively changed to deliberately exclude them, and thus went against the IOC's general policy of inclusion.<sup>20</sup>

Nevertheless, the IOC is the governor, supreme authority, leader, decision-maker and recogniser of the Movement.<sup>21</sup> It is the main primary and superior Olympic organ from which the bestowing of responsibilities and duties arises.<sup>22</sup> It undertakes and generates the majority of the Movement's work.<sup>23</sup> It delegates work and roles to other Movement entities, in line with the OC.

This and the Charter suggest that the Movement is a pyramid, with the IOC at the apex. This thesis's submission of it as a web seems tenuous, as there appears no way to check the IOC's unlimited power.<sup>24</sup> Yet the Charter has envisaged a limit on the IOC's powers, in turn

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<sup>18</sup> Each having:- China, Hong Kong and Chinese Taipei; Netherlands and Aruba; USA, Puerto Rico, Virgin Islands, Guam, American Samoa; UK, Bermuda, British Virgin Islands, Cayman Islands; NZ and the Cook Islands. *Ibid.* See also Chappelet, n.1.

<sup>19</sup> Beloff, Michael J., 'The Specificity of Sport – rhetoric or reality?' (2012) 4 International Sports Law Review 97-107.

<sup>20</sup> The GOC lost its case for IOC recognition in the Swiss courts. *Ibid.* See also Beloff, n. 19.

<sup>21</sup> It is also the ultimate decision maker in appeals: "The authority of last resort on any question concerning the Games rests with the IOC" (Rule 58, Charter).

<sup>22</sup> Via the Charter.

<sup>23</sup> Rule 2, Charter sets the IOC 16 further tasks to 'support and encourage' or 'take action.' Six relate to the IOC's supreme regulatory function, such as:- encouraging and supporting good governance in sport; encouraging and supporting the organisation, development and co-ordination of sport and sports competitions; strengthening the unity and independence of the Movement and sporting autonomy; leading the fight against doping and corruption; and opposing political or commercial abuse of sport.

<sup>24</sup> All it would need do is withdraw a dissenting body's recognition.

this promoting the concept of an Olympic web. For example, the Movement is meant to have three core actors:

“The Charter defines the main reciprocal rights and obligations of the three main constituents of the Movement, namely the IOC, the ISFs and the NOCs, as well as the OCOGs, all of which are required to comply with the OC.”<sup>25</sup>

These two other actors (the ISFs and the NOCs) are significant players within the Movement. Yet, some would say their power and authority is limited, to their own areas. Furthermore, their piecemeal composition inevitably makes them weaker than the IOC. However, this thesis asserts that it is their piecemeal nature that is their strength. Their numbers are legion and they are independent of the IOC. They are incorporated under their own statutes (albeit they must observe the Charter) and are geographically spread. This Chapter’s sections on ISFs and NOCs will show that this pyramid is incorrect. Yes, the IOC is a powerful actor, but it is a hub within a web, around which appear the other Movement actors – all linked together. They must all co-operate. Each can able wield significant power should they so choose.

### 2.3.3 IOC Structure

The IOC is split into two ‘houses’: the Executive Board (Executive) and the Session. The Executive is the IOC’s executive and primary decision-maker and it can make quick decisions due to its regular meetings (four annually).<sup>26</sup> It appears from the Charter that the Executive is the IOC’s powerhouse and primary institution, as it decides the Session’s agenda with ultimate authority over it.<sup>27</sup> The Executive comprises 15 members: the IOC President acts as Chair; 4 Vice-Presidents; and 10 elected from the Session’s membership,<sup>28</sup> and are usually the Chairs of the Athletes’ Commission, and the heads of associations of ISFs (ASOIF) or NOCs (ANOCA).<sup>29</sup> The latter category has been accused of promoting their agendas and

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<sup>25</sup> Introduction, c), Charter. Rule 1.3, Charter states that “The three main constituents of the Movement are the IOC, the ISFs and the NOCs.” Bearing in mind the Charter was adopted by the IOC.

<sup>26</sup> Chappelet, n.1. The Executive “assumes the general overall responsibility for the administration of the IOC and the management of its affairs” (Rule 19.3, Charter). It also takes all IOC decisions that are legally binding with all powers that are not attributed to the Session (Rule 19.3.10, Charter).

<sup>27</sup> Rule 19.3.7, Charter.

<sup>28</sup> Unless provision has been made for an Extraordinary Session, Rule 18, Charter.

<sup>29</sup> Chappelet, n.1. The IOC now also has 28 Commissions under its auspices: Ethics; Women in Sport; Olympic Solidarity; Legal Affairs; Marketing; and Co-ordination Commissions for upcoming Games. See also IOC Commissions, Revised in 2015, [www.olympic.org/Documents/Commissions\\_PDFfiles/All\\_Commissions/2015\\_IOC\\_Commissions.pdf](http://www.olympic.org/Documents/Commissions_PDFfiles/All_Commissions/2015_IOC_Commissions.pdf)> accessed 2<sup>nd</sup> September 2015.

protecting their organisation's influence which shows the web framework as the requisite impartiality and independence of an Executive member is blurred.<sup>30</sup>

The Executive is better placed to make decisions than the more pedestrian, annual Session – the IOC's plenary body akin a general assembly.<sup>31</sup> Despite the aforementioned Executive powers, the Session is still a powerful body keeping the Executive in check.<sup>32</sup> It is the Session that can adopt or amend Charter rules, meaning it ultimately forms Olympic 'law',<sup>33</sup> it also elects Hosts and IOC members. Yet these electoral roles are done in tandem with the Executive.<sup>34</sup> Both branches work together albeit the Executive appears the more dominant.

#### 2.3.4 A Voluntary Association of Individuals

The IOC is a voluntary association of 115 individual members who hold office for eight years. Members represent and promote the IOC's interests and Olympism in their respective states and worldwide.<sup>35</sup> They are IOC spokespersons who promote the Charter's Fundamental Principles.<sup>36</sup> They do not represent their states at the IOC and are not their state's delegates.<sup>37</sup> They are to be independent of their governments.<sup>38</sup> IOC members swear an oath reaffirming

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<sup>30</sup> Chappelet, n.1.

<sup>31</sup> An ordinary Session must occur annually to deal with IOC business, such as a Host election (Rule 33.4 and 18.2.4, Charter). See also Chappelet, n.1.

<sup>32</sup> Chappelet, n.1.

<sup>33</sup> Rule 18.2.1, Charter. However, the Executive can comment on the viability of any proposed amendment (Rule 19.3.4, Charter).

<sup>34</sup> The Executive can recommend IOC members to the Session (Rule 19.3.5, Charter) and the procedure for Host election (Rule 19.3.6, Charter) but the Session elects both. (Rules 18.2.4, 18.2.2, 18.2.9 and 18.2.3 respectively).

<sup>35</sup> Rule 16.1.4, Charter, "Members of the IOC represent and promote the interests of the IOC and of the Movement in their countries". This is obvious from 'of' and not 'at' the IOC, Mestre, Alexandre Miguel, *The Law of the Olympic Games* (Asser Press, 2009).

<sup>36</sup> Mestre, n. 35. See also Chappelet, n 1.

<sup>37</sup> IOC members are not paid but receive expenses, such as rooms at the Lausanne Palace Hotel for the President (\$400,000 in 2004), to \$3,000 worth of expenses for Executive members and \$1,400 for general members per meeting, Ibid.

<sup>38</sup> They are not to "accept from governments, organisations or other parties, any mandate or instructions liable to interfere with the freedom of their action and vote" (Rule 16.1.5, Charter). Mestre claims non-politicisation stems to Coubertin: if IOC members were direct (or indirect) representatives of their states then this would lead to governments promoting (national) agendas at the Games, and politicise the IOC. Although Coubertin supported a necessary functioning level of politicism within the Movement. It was actually Brundage (IOC President 27 years after Coubertin) who was opposed to their politicisation. These Rules would require redrafting to accept the necessary politicisation of the Movement and Games and culpability of NOCs for their state's actions in peace and security. Ibid.

this.<sup>39</sup> However, they do not have to be wholly independent of governments as they may be influenced as long as it does not interfere with their Olympic duties.<sup>40</sup>

Membership may be categorised as: independent; and those whose memberships exists and lasts for the duration of another office they hold.<sup>41</sup> It is this second category that generates claims that they may not be fulfilling their required function of representing the IOC at their own organisation. Instead, they may be promoting personal agendas, rather than the IOC's. For example, if a person is appointed to the IOC as International Association of Athletics Federations' (IAAF) President, they may attend Lausanne meetings with their IAAF hat and not their IOC hat. This may impede the IOC's impartiality and independence.<sup>42</sup> Nevertheless as both NOCs and ISFs have 'seats at the IOC table', this promotes the idea of an Olympic web.

Many still claim that the IOC is elite or under-representative, as it was in Coubertin's day, which hampers its universality – the second aspect to Olympic Singularity. Ettinger claims that nepotism was rife and members nominated successors based on personal connections.<sup>43</sup> Nevertheless, accusations of under representation of women,<sup>44</sup> non-Europeans<sup>45</sup> and young persons,<sup>46</sup> have somewhat been remedied and thus the IOC can be considered 'more universal' now. This is because the IOC instigated compositional reforms in 1999 following the Host election scandal.<sup>47</sup> Now in addition to more women and an age limit of 70 years old, many new

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<sup>39</sup> The oath requires them to "promote in all circumstances the interests of the IOC and ... the Movement" and to keep themselves "free from any political or commercial influence and from any racial or religious consideration". Rule 16.1.3, Charter.

<sup>40</sup> This was an issue in the SLC Host election scandal - it suggests gift giving is not *per se* unethical, but only the resultant election sway. The SLC OCOG bribed an IOC official to elect it as Host by paying his daughter's tuition, rent and expenses totalling nearly \$110,000. Evidence of gift-giving, flying 70 of the 100 IOC members to SLC, and outright bribes was also found. Boyes, Simon, 'The International Olympic Committee and Bribery Scandal' (1999) Volume 2(2) S.L.B. 14. See also Shephard, Alicia C., Any Olympian Scandal, April 1999 AJR.

<sup>41</sup> Although there is always potential for re-election (Rule 16.1.1, Charter). The IOC members who hold other offices are ISF Presidents, NOC Presidents or those from the Athletes commission. Each of these has a maximum of 15 (Rule 16.1.1, Charter) and overall, the 'linked' category must not exceed 40, or 70 for independent members, Chappelet, n. 1. See also, Mestre, n. 35.

<sup>42</sup> The IOC is "to oppose any political or commercial abuse of sport and athletes", which likely includes intra-organisational disputes (Rule 2.10, Charter). See also Chappelet, n.1.

<sup>43</sup> Ettinger, n.2.

<sup>44</sup> Chappelet identified 12 female members at his writing in 2004, although now there are 26, Chappelet, n.1. See also, IOC Members <[www.olympic.org/ioc-members-list](http://www.olympic.org/ioc-members-list)> accessed 1<sup>st</sup> October 2015.

<sup>45</sup> Nafziger discusses the unfairness of the IOC's European dominance, as 46 were European and only 1 out of the 10 Presidents was not European (Avery Brundage was American, but still shows the Anglo-European dominance at the IOC). Europeans also dominate CAS and ISF lead roles (ranging from 40-80%), and as Hosts (summer or winter Games) (over 60%, and now is just under this figure following Rio 2016 Games, 2018 Pyeongchang and 2022 Beijing). Nafziger, James A. R., *The Handbook of International Sports Law* (EE Publishing Ltd 2013).

<sup>46</sup> There were claims of age bias, as the average age was 61, many are now 30 – 40 years old, Chappelet, n. 1. See also, IOC Members <[www.olympic.org/ioc-members-list](http://www.olympic.org/ioc-members-list)> accessed 1<sup>st</sup> October 2015.

<sup>47</sup> It was discovered that IOC members had behaved inappropriately by rigging Host elections for: SLC 2002, Nagano 1998, Sydney 2000 and Atlanta 1996. Five IOC members were expelled/resigned with more sanctioned. The IOC (upon media and sponsor pressure), established the Ethics Commission and a Code of Ethics in 1999.

members are ex-athletes. The IOC has also created the linked category of membership to ISFs and NOCs and no more life members have been added, preventing constant re-election and twenty year Presidencies.<sup>48</sup> The IOC would therefore assert that its membership is no longer as elite. Yet IOC membership is largely European drawing from: royalty;<sup>49</sup> law and academic professionals;<sup>50</sup> public officials or ex-politicians;<sup>51</sup> journalists;<sup>52</sup> influential business-people;<sup>53</sup> and with the vast majority being (ex-)athletes or sports administrators.<sup>54</sup>

### 2.3.5 IOC Universalism

The second aspect of Olympic Singularity is that the Movement is universal. This universality is (one reason) why the Movement should be a single webbed organ. Hence, is the IOC a universal actor within the Movement?

There are 115 IOC members and yet 206 NOCs and 193 states.<sup>55</sup> Mestre calls this a large gulf of non-inclusion hindering IOC universalism.<sup>56</sup> Even if all 115 IOC members had 115 different nationalities, many states would still lack an IOC representative. The political neutrality of IOC members does not circumvent this – there is still not an IOC ambassador in many states.

This is compounded by there actually being only 72 different nationalities of IOC members.<sup>57</sup> Certain states, such as the UK and Switzerland, have four each.<sup>58</sup> Consequently the IOC is not fully represented in many states and non-state territories with NOCs. Large countries that perform well at the Games have the most IOC members. If lack of IOC representation

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Some claim the Commission lacks independence as it is an IOC subsidiary - up to 4 out of the 9 Commission members are IOC members, selected by the IOC President (and the Executive) on their reputation. The Commission reports to the IOC's Executive who ultimately decide on any recommendations. Chappelet, n. 1.

<sup>48</sup> For example, Brundage's term spanned 1952-1972. Chappelet, n.1. Life members were co-opted before 1966 and an 80 years' age limit was imposed for those elected before 1999, Byelaw 2.6.1, Rule 16, Charter.

<sup>49</sup> There are 10 royals (9% of the IOC):- HRH the Princess Royal, HSH the Sovereign Prince Albert II, HSH the Princess Nora of Liechtenstein, Sheikh Ahmad Al-Fahad Al-Sabah, HRH the Grand Duke of Luxembourg, HH Sheikh Tamim Bin Hamad Al-Thani, HRH Prince Tunku Imran, HRH Prince Feisal Al Hussein, Baron Pierre-Olivier Beckers-Vieujant and , IOC Members, n. 45.

<sup>50</sup> Patrick Bauman, Thomas Bach, Denis Oswald, Anita DeFrantz and Craig Reedie. Academics are:- Mario Pescante, Nat Indrapana and Dr Ugur Erdener. IOC Members, n. 45.

<sup>51</sup> Camel Eurlings, Ser Miang Ng and Vitaly Omimor. Ibid.

<sup>52</sup> Alex Gilady and Austin Sealy, Ibid.

<sup>53</sup> Lydia Nesquera, Gerardo Werthein, Bernardo Rajsman, Juan Antonio Samaranch, Kun-Hee Lee, Gerard Heiberg, Richard Carrion, Willi Lujan, Ivan Dubois and Ching Wu, *ibid*.

<sup>54</sup> Ettinger, n. 2.

<sup>55</sup> UNGA <[www.un.org/en/ga/](http://www.un.org/en/ga/)> see also <[www.olympic.org/the-ioc](http://www.olympic.org/the-ioc)> accessed 19<sup>th</sup> September 2016.

<sup>56</sup> Mestre, n. 35.

<sup>57</sup> IOC Members, n. 46.

<sup>58</sup> Some IOC members' nationalities link to NOCs and not sovereign states, such as Chinese Taipei, Hong Kong China and Puerto Rico.

means poor Game performance, this can only exacerbate it.<sup>59</sup> The Games and IOC would feature political powers, western and east-Asian states. It would be their social-legal and political norms that would steer the Movement. This inhibits the ability of the IOC, as a stand-alone actor to be universal. However, as it links up within the wider Movement, this is refuted.

Nevertheless, the Games themselves are unrivalled which contributes to their universality. No other event can match it. FIFA's (Federation Internationale de Football Association) world cup (WC) might draw similar viewing figures but it pales beside the Games in terms of universalism. The WC separates male and female competition and coverage of the latter is on a drastically smaller scale. FIFA has undergone recent corruption scandals meaning it is 15 years behind the IOC in terms of transparency, and the rule of law. The WC only has one event whereas the Games include many different sports with a multitude of winners. Teams must qualify for the WC final, which is capped in their number.

Therefore, the Games and the Movement are universal, potentially only rivalled by the UN and ICRC and GCs. This universality requires its special consideration as an atypical subject with *personality*.

## 2.4 National Olympic Committees

### 2.4.1 History

Historically NOCs were non-permanent foreign correspondents of the IOC that were established in advance of every Games.<sup>60</sup> However, in 1921 Coubertin called for their permanence to further advance the Movement's goals.<sup>61</sup>

### 2.4.2 Role and Rights of NOCs

#### 2.4.2.1 *Promotion of Olympism and the Movement*

NOCs have several roles that vary in importance, sphere and their resultant obligations.<sup>62</sup> The most obvious one – sending teams to the Games is discussed below. Whereas their overall mission is to:-

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<sup>59</sup> However, many small power-lacking countries do well at the Games: Kazakhstan won 7 gold medals and Iran and Jamaica won 4 a piece, occupying 12<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> position on the London Games' medal table of 2012. BBC Medals Table London 2012, <[www.bbc.co.uk/sport/olympics/2012/medals/countries](http://www.bbc.co.uk/sport/olympics/2012/medals/countries)> accessed 15<sup>th</sup> July 2015.

<sup>60</sup> Mestre, n. 35. See also Muller, Norbert, *Olympism: Selected Writings Pierre de Coubertin 1863-1937*, (IOC, 2000) p661.

<sup>61</sup> Mestre, n. 35.

<sup>62</sup> Rule 27, Charter.

“to develop, promote and protect the Movement in their respective countries in accordance with the Charter”<sup>63</sup>, and to “promote the Fundamental Principles and values of Olympism in their countries”.<sup>64</sup>

They are to promote and represent the Movement and Olympism within their home nations and be independent of governmental influence. NOCs do not represent their home states at the IOC, as it is often erroneously assumed.<sup>65</sup> This home representation makes them effective grassroots players.<sup>66</sup> It also supports the idea of the Movement as a universal web as it means that the Movement has representation in 206 jurisdictions.

NOC independence could exist in order for them to absorb the risks and responsibilities of co-hosting the Games, instead of the IOC. This is a major reason that the Movement should be viewed as a singular web, so that this cannot occur, to prevent the IOC from escaping commitments.

Rule 27.2 contains six further roles for NOCs, many of which show the Olympic web in which the NOC operates.<sup>67</sup> They must adopt and implement the World Anti-Doping Code (WADC) which links the Olympic web.<sup>68</sup> Furthermore, this Olympic web stretches into the state system here as WADC is legitimised by the UNESCO International Convention Against Doping in Sport in 2005, which requires state parties to comply with WADC’s principles.<sup>69</sup> Furthermore, NOCs have the onerous task of ensuring Charter observance within their countries, giving them a judicial role over the other Movement branches, again demonstrating

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<sup>63</sup> Rule 27.1, Charter.

<sup>64</sup> Rule 27.2.1, Charter.

<sup>65</sup> Therefore, the IOC is not composed of or a confederation of NOCs. NOCs only appear at the IOC via their association’s Presidents having membership, e.g., ANOCA, although they are under the larger Movement umbrella, Chapelet, n. 1. See also Mestre, n. 35.

<sup>66</sup> Mestre, n.35.

<sup>67</sup> NOCs are:- “2.3 to encourage the development of high performance sport as well as sport for all; 2.4 to help in the training of sports administrators ... and ensur[e] that such courses contribute to the propagation of the Fundamental Principles of Olympism; 2.5 to take action against any form of discrimination and violence in sport; ... 2.7 to encourage and support measures relating to the medical care and health of athletes”, Rule 27.2, Charter.

<sup>68</sup> Rule 27.2.6, Charter. Rule 43 of the Charter makes the WADC ‘mandatory’ for the whole Movement. Although most NOCs (and ISFs) only adopt pertinent WADC clauses.

<sup>69</sup> However, the WADC is not an integral part of the Convention and it only creates binding obligations for its State Parties, Nafziger, n. 45. This leads Siekman to conclude that the WADC must still be enforced by national courts or CAS. For example, there are 182 state parties to the 2005 Convention (came into force in 2007). The Convention built on years of UNESCO (UN Education, Scientific and Cultural Organisation) initiatives, such as the framework for national /transnational sport of the UNESCO International Charter of Physical Education and Sport 1978 now the International Charter of Physical Education, Physical Activity and Sport 2015 and UNESCO Resolutions calling on states to enforce “non-discrimination, fair play, non-violence, and the rejection of harmful substances”, Siekman, Robert C. R., ‘Introduction to International and European Sports Law: Capita Selecta’ (Springer, 2012). See also (UNESCO Res. 1/20, Universality of the Olympic Games, Records of the Gen. Conf., 25<sup>th</sup> Sess., 1989).

<[www.unesco.org/eri/la/convention.asp?KO=31037&language=E](http://www.unesco.org/eri/la/convention.asp?KO=31037&language=E)> accessed 1<sup>st</sup> November 2015.

the web.<sup>70</sup> If NOCs are to enforce Charter observance, then their national courts or CAS must enforce the OC. Which again shows the Olympic framework with CAS and a linking to the state system.

Alongside these functions NOCs have many corresponding rights which demonstrate the Olympics' web framework. They have the sole authority for suggesting Hosts but they must work with national authorities and lobby at the IOC for election.<sup>71</sup> Furthermore, as mentioned in section 2.3.2 above, the IOC is strict about NOC recognition which controls who can use Olympic intellectual property.<sup>72</sup> IOC recognition can always be revoked, for example, the Executive will revoke if something within the NOC or its associated territory threatens the Movement.<sup>73</sup> This is a definitive linking of the NOC to governmental responsibility/liability, which shall now be discussed further, and illustrates vast international Olympic web.<sup>74</sup>

#### *2.4.2.2 Sending Teams to the Olympic Games*

NOCs may have another, more central function: that of sending teams to the. This role is contained in Rule 27.3 and states that:

“NOCs have the exclusive authority for the representation of their respective countries at the Games .... in addition, each NOC is obliged to participate in the Games ... by sending athletes.”<sup>75</sup>

The second part of this Rule is clear – NOCs must send teams to the Games.

#### *2.4.2.3 Compromising political independence*

NOCs represent their ‘countries’ at the Games as specified by the Charter.<sup>76</sup> NOCs bring the state political system to the Games – a definite hitching of the Olympic web to the

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<sup>70</sup> Rule 27.2.2, Charter. This NOC role is in addition to the IOC Executive's duty to ensure Charter compliance, Rule 19.3.1, Charter.

<sup>71</sup> Rule 27.4, Charter.

<sup>72</sup> Rules 27.7.1 and 27.7.4, Charter respectively. The IOC frequently raises domestic court claims regarding its intellectual property, hence domestic courts recognised these rights.

<sup>73</sup> See Chapter 7, South Africa.

<sup>74</sup> Rule 27.9, Charter states that “... the IOC Executive may ... for the protection of the Movement ... suspen[d] or withdraw... recognition from such NOC if the constitution, law or other regulations in force in the country concerned, or any act by any governmental or other body causes the activity of the NOC ... to be hampered. The IOC Executive shall offer such NOC an opportunity to be heard before any such decision is taken.”

<sup>75</sup> This was an issue at London 2012 as high profile athletes were excluded by their NOC, for example, the BOA did not select world Taekwondo number 1 Aaron Cook for the men's -80kg category. <[www.bbc.co.uk/sport/taekwondo/32330617](http://www.bbc.co.uk/sport/taekwondo/32330617)> accessed 15<sup>th</sup> November 2015. This is on recommendations given by NSFs.

<sup>76</sup> 27.2.1 and 27.3, Charter. Or the Movement and Olympism in their own countries, Rule 27.1, Charter.



international state system.<sup>77</sup> They are the sporting manifestations of their states, backed and condoned by government institutions. NOCs are often government subsidised, enabling many developing world NOCs to exist as the funds they receive from Olympic Solidarity would not be enough.<sup>78</sup> This independence from governments does not always exist in practice.

Consequently, Charter references to ‘countries’ compromises NOC (and the Movement’s) political independence. NOCs, and the whole Movement, are meant to be impartial and independent of governments.<sup>79</sup>

Olympic Solidarity gives NOCs funds to prevent them relying on governmental aid.<sup>80</sup> And again this shows the web that links the Movement together.

#### *2.4.2.4 Potential Waiver of Political Independence*

However, the Charter recognises that at times there may be a compromise of NOC’s political independence:-

“NOCs may cooperate with governmental bodies, with which they shall achieve harmonious relations. However, they shall not associate themselves with any activity which would be in contradiction with the OC. The NOCs may also cooperate with non-governmental bodies.”<sup>81</sup>

A literal interpretation of this is that NOCs may be politically compromised and lack independence, as long as Charter principles are not compromised. Hence, NOC autonomy is balanced against such necessary cooperation.

#### *2.4.2.5 Why permit Political dependency?*

The only feasible justifications for the Charter’s use of ‘countries’ and the Charter’s recognition that NOC’s may have to work with governments, is that the Charter refers to a geographical or ‘sporting’ country, rather than a political one. The former could offer a new definition of country drawing on the specificity of sport. Beloff notes that ‘sporting nationality’ differs to legal or political nationality, and has long existed.<sup>82</sup> Sporting bodies and competitions

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<sup>77</sup> There are a number of issues here such as when NOCs do not correspond to political boundaries and where states have more than one NOC.

<sup>78</sup> Chappelet, n. 1.

<sup>79</sup> “NOCs must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal, religious or economic pressures which may prevent them from complying with the Charter”, Rule 27.6. See also Chappelet, n. 1.

<sup>80</sup> The IOC helps NOCs via Olympic Solidarity and its various departments, Rule 27.2.8, Charter. See also Chappelet, n. 1.

<sup>81</sup> Rule 27.5, Charter. See also Mestre, n. 35.

<sup>82</sup> And is an example of sport’s specificity, Beloff, n. 19.

“do not align with conventional political or geographical boundaries”.<sup>83</sup> This was the British court’s view in *Reel v Holder* (1981), where a sporting “country”, was not necessarily linked to a national or sovereign state.<sup>84</sup> Instead, a sporting country refers to the area over which an NSF relates.<sup>85</sup> This meant that Taiwan’s 1956 affiliation to the IAAF was valid alongside mainland China’s 1954 admission.<sup>86</sup> To Beloff, a ‘country’, may have different legal-political and sporting meanings.<sup>87</sup> Political recognition via NOCs may be sought which shows that NOCs are politicised and lack independence.

If sporting countries differ to legal-political ones, then they are defined by NOCs, ISFs and NSFs, differing from sport to sport, with a lack of unity and cohesion. This can leave NOCs unclear as to who and what they actually represent. Their jurisdictions could differ depending on the sport. However, Byelaw 2.1 to Rules 27 and 28 somewhat clarifies matters here. This states that NOCs “constitute, organise and lead their respective delegations at the Games”. NOCs can therefore organise and choose their delegation (rather than state).

#### 2.4.3 Composition and Universalism of NOCs

The composition of NOCs is relevant. If they share commonalities across different jurisdictions, this can show that the Movement is a singular webbed organ and reinforce NOC universalism, the second aspect of Olympic Singularity.

NOCs vary greatly from country to country in their form, permanence and status. The Charter does not prescribe their form – leaving this up to the individual NOC.<sup>88</sup> This room for manoeuvre is necessary as NOCs are constituted under their own domestic legal systems which vary and recognise different entities.<sup>89</sup> This makes harmonisation difficult and could potentially weaken the Movement’s web framework.

However, the Charter does attempt to harmonise their order – if not their composition.<sup>90</sup> They do share commonalities which strengthens their universalism and the idea of an Olympic web. For example, NOCs must include certain key players that exist within their territory: IOC

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<sup>83</sup> Beloff, n. 15.

<sup>84</sup> [1981] W.L.R. 1126. See also Beloff, n. 15.

<sup>85</sup> This interpretation was in-line with the IAAF’s rules, *ibid*.

<sup>86</sup> This was despite the IAAF’s contradictory rule on having only one affiliate for each “country”. Jurisdiction was limited to the political boundaries of the country that they represent. They are of course disputing “country” hence it is not necessarily contradictory. This decision was the reason that the IAAF moved their headquarters to Monaco. Beloff, n. *ibid*.

<sup>87</sup> Beloff, n. 19.

<sup>88</sup> Rule 28, Charter deals with NOC composition, “whatever their composition”. See also Mestre, n. 35.

<sup>89</sup> Mestre, n. 35.

<sup>90</sup> *Ibid*.

members; heads of NSFs; and any athlete IOC representatives.<sup>91</sup> Hence the same individuals appear in NOCs, ISFs/NSFs and the IOC, yet presumably remembering to be independent and apolitical.

Mestre details the different types of NOCs that exist. Some are created by statute backed and endorsed by governments and legislatures, giving them specific statuses and roles.<sup>92</sup> This links the ‘Olympic web’ to the international state system. Legislative recognition of NOCs means they cannot be considered independent of their states. For example, the US’s NOC (USOC) was created by the Amateur Sports Act and it must report to the US government.<sup>93</sup> This Act states that sport has an international structure with the Charter at the peak of the pyramid, and that it ranks above ISF rules and regulations and regional bodies.<sup>94</sup> Whilst this suggests an Olympic pyramid (rather than a web), it says that it is the Charter that is at the peak, and not the IOC (although the IOC drafts this). This therefore could actually promote the idea of an Olympic web, as the Charter could be the webbing linking the Movement together.<sup>95</sup>

The French National Olympic and Sports Committee (FOC) has a public service mission, although it is an association governed by private law.<sup>96</sup> French law requires its statutes be approved by the French Council of State.<sup>97</sup> This is in line with the French juridification of sport where the *Loi du Sport* creates a sporting regulatory framework.<sup>98</sup> Hence the Olympic web has linked up to the state system in France.

The Italian NOC (CONI) is a confederation of NSFs which give it a unique personality. It is recognised under public law, although it is a non-governmental/ public economic body.<sup>99</sup> CONI is kept under review by the Italian government but it does not need their approval to act. Its hybrid nature means CONI has a dual function: it has a “fiduciary relationship with the IOC”, but it “is also the public body that over-see the entire organisation and regulation of Italian sport.”<sup>100</sup> Hence CONI shows a clear linking of the Olympic web to the state here. NOCs like CONI cannot be viewed as independent of the bodies that found or review them.

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<sup>91</sup> Rule 28.1.1.3, Charter. Rule 28.2.2, Charter lists other groups that may be included, such as heads of other NSFs not on the Olympic programme and heads of other sports groups.

<sup>92</sup> Mestre, n. 35. See also Chappelet, n. 1.

<sup>93</sup> It must provide the two Houses and the President with a quadrennial activity report despite it receiving little public funding, Mestre, n. 35.

<sup>94</sup> Mestre, n. 35. See also Beloff, n. 15. It also discusses the definition of amateur in the US, Nafziger, n. 45.

<sup>95</sup> The Spanish Olympic Committee is also governed by legal rules (although not statute created), Mestre, n. 35.

<sup>96</sup> Mestre, n. 35.

<sup>97</sup> Ibid.

<sup>98</sup> James, Mark, 2<sup>nd</sup> edition *Sports Law* (Palgrave Macmillan, 2013).

<sup>99</sup> Mestre, n. 35.

<sup>100</sup> Ibid.

Mestre notes these types of NOCs contrast to the majority of countries whose laws are silent on NOCs. This does not necessarily make them more independent or divided from their states - as most NOCs still depend on state given operating funds.<sup>101</sup> Although some are completely independent of their public authorities.<sup>102</sup> For example, the BOA is a private company limited by guarantee with the same obligations as every other private UK company limited by guarantee.<sup>103</sup> UK legislation is silent on the BOA in line with how our legislature, government and judiciary treat sport.<sup>104</sup> Thus the BOA is independent of all UK government bodies and offices.<sup>105</sup>

Some NOCs are more subsumed into their state than others, despite their supposed independence. Yet in reality the two are often not separate, and no more so than when NOCs enter Host agreements with governmental authorities and when OCOGs are considered.<sup>106</sup> Therefore they should have a measure of this atypical status recognised by having limited *personality*. The introduction of CAS means that the whole Olympic system (IOCs, NOCs, N/ISFs, CAS, and OCOGs) are collectively linked up to states.

## 2.5 International Sporting Federations

ISFs are the third core actor of the Movement and are groupings of NSFs. Their examination could help prove that the Movement is one large universal web that exists to stage the Games. Within this web, ISFs are particularly powerful and multi-faceted.

### 2.5.1 Role

Within the Movement, ISF's primary roles are to be responsible for their sport at the Games: its rules, their enforcement and their sport's development.<sup>107</sup> Out-with the Movement,

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<sup>101</sup> Especially in the developing world, Mestre, n. 35. See also Chappelet, n. 1.

<sup>102</sup> Mestre, n.35.

<sup>103</sup> Such as annual filing requirements, director's duties, founding documents (Memorandum and Articles of Association). This type of company is commonly used in the UK in sporting and charitable fields as members have their liability limited by a guarantee and not by shares.

<sup>104</sup> There is no UK Act of Parliament regulating sport or creating sports law, Beloff, n. 19.

<sup>105</sup> Although it was formed in the House of Commons in 1905, BOA Memorandum of Association <[www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/62/62wef02.htm](http://www.publications.parliament.uk/pa/ld200708/ldselect/ldcom/62/62wef02.htm)> accessed 22<sup>nd</sup> November 2015.

<sup>106</sup> OCOGs are quasi-public bodies.

<sup>107</sup> The mission and role of the ISFs within the Movement are: "1.1 to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application; 1.2 to ensure the development of their sports throughout the world; 1.3 to contribute to the achievement of the goals set out in the Charter, in particular by way of the spread of Olympism and Olympic education; 1.4 to support the IOC in the review of candidatures for organising the Games for their respective sports; 1.5 to assume the responsibility for the control and direction of their sports at the Games; 1.6 for other international multisport competitions held under the patronage of the IOC, ISFs can assume...responsibility for the control and direction

they govern, administer, manage, develop and promote their sport internationally.<sup>108</sup> ISF entry to the Movement, like NOC entry, is dependent on IOC recognition as:-

“the IOC may recognise as ISFs INGOs administering one or several sports at world level and encompassing organisations administering such sports at national level. The statutes, practice and activities of the ISFs ... must be in conformity with the Charter ... and ... WADC. Subject to the foregoing, each ISF maintains its independence and autonomy in the administration of its sport.”<sup>109</sup>

This is remarkable for three reasons. Firstly, the IOC is the body that bestows recognition on ISFs should they wish to have their sport at the Games. Whilst the IOC is again the gate-keeper suggesting it is all-powerful in a pyramid framework, this perception diminishes as ISFs ‘own’ their sport at the Games. IOC authority wanes when viewed against that of ISFs. With the shared purpose of the Games, ISFs link to the IOC. Secondly, the ISFs are yet another Movement body that must promote Olympism and act in accordance with the Olympic spirit.<sup>110</sup> As all Movement bodies must promote this – this role unifies them, suggesting the Movement is a singular actor.

Thirdly, they are conglomerations of NSFs, and specifically labelled as INGOs.<sup>111</sup> ISFs recognise NSFs and impose rules on them, ensuring their universal and uniform application.<sup>112</sup> Therefore they inherently have an informal degree of international recognition that should be formalised within the Movement. ISFs as part of the Movement, strengthen the Olympic Singularity notion of Olympic universalism - they contain an NSF in most states - which in turn reinforces the web framework.<sup>113</sup>

As ISF’s rules/laws seep into ‘foreign’ legal systems, despite an ISF being incorporated within one state, this gives them an international law-making role.<sup>114</sup> Leading some to assert

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of their sports; ...1.8 to encourage and support measures relating to the medical care and health of athletes” , Rule 26.1, Charter.

<sup>108</sup> Dudognon, Charles, ‘The Standard International Sporting Federation: an Association under Swiss Law, with its Headquarters in Lausanne’ (2014) Volume 2 I.S.L.R. 50-56.

<sup>109</sup> Rule 25, Charter. See also Mestre, n. 35.

<sup>110</sup> See also, Rule 261.3 and Rule 26.1.1, Charter.

<sup>111</sup> Notwithstanding that IOC recognition will assist in conferring this. NSFs have double recognition: from their ISFs; and their NOC, Mestre, n. 35. Chappelet, n. 1.

<sup>112</sup> Rules 26.1.1.1 and 26.1.1.2, Charter gives ISFs the ability ‘to establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application; and to ensure the development of their sports throughout the world’. See also Mestre, n. 35.

<sup>113</sup> Most ISFs are not-for-profit despite this not being a Charter requirement, Mestre, n.35. This is unsurprising as although competitions may bring economic benefits, this is subsidiary to ISF’s social objectives, Dudognon, n. 108.

<sup>114</sup> Dudognon, n.108.

that they should have *personality* especially for the UN relations as a gap exists between their function and their legal personality.<sup>115</sup> ISF universalism and their law-making role (and the Movement's), demonstrates their special nature and necessity to have atypical subject status and personality under international law.

#### 2.5.1.1 ISFs and Law-Making

Any assertions that ISFs make law, opens up a debate which is beyond this thesis.<sup>116</sup> Much academic attention has already been given to whether ISFs make a new substantive area of law based on the unique characteristics of sport (its specificity), or simply transnationally apply and enforce their rules, using existing national, European and international laws, to sport.<sup>117</sup>

If ISFs do create new law from their legislation, cases and tribunals (especially CAS) then it would have five features. Firstly, such 'law' is transnational. ISFs apply it to their various NSFs, crossing many state boundaries. Secondly, it is autonomous. It is created by ISFs only for those within its governance. ISFs thereby attempt to circumvent national courts and legislation for sporting disputes. Instead they force use of their internal institutions or CAS. This implies ISFs (and their rules) are out-with or immune to national laws.<sup>118</sup> This is the third feature of 'ISF sport law': that it is global law without a state.<sup>119</sup> Fourthly, it justifies this as the parties contractually consented to such rules, making it a private contractual legal order.<sup>120</sup> Finally, it has developed from transnational legal norms into unique universal legal principles. This potential legal pluralism shows the extent to which ISFs desire to maintain autonomy in their field. ISFs as private international bodies (INGOs) may be able to create law, and not just the state.<sup>121</sup> A worthy precedent for a singular Movement claim ownership and enforcement for a Truce Treaty.

ISFs are almost unique amongst INGOs in asserting that they create laws.<sup>122</sup> The IAAF even stated that their rules were supreme in the 1992 US case of *Reynolds v Athletics Congress*

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<sup>115</sup> *Ibid.*

<sup>116</sup> If ISFs do create law, this could rival the IOC's authoritative position, suggesting the framework is an Olympic web. However, if ISFs create law, then so does the IOC with its Charter. ISFs also argue that law-making is reserved for superior ISFs, including the IOC, and is reinforced by their international nature, Foster, n. 14.

<sup>117</sup> E.g. in delict and property. Foster, n.14. See also Beloff, n. 19.

<sup>118</sup> *Ibid.*

<sup>119</sup> Such contracts normally regulate the individual athlete or team and their relationship with their NSF/ISF, Foster, n. 14.

<sup>120</sup> Siekman, n. 69.

<sup>121</sup> Due to the specificity of sport, James, n. 102. See also, Wax, Andreas, Public International Sports Law, A Forgotten Discipline? The International Sports Law Journal Vol 3 – 4, 2010.

<sup>122</sup> Foster, n.14.

of the USA Inc. (1991).<sup>123</sup> Here, a rule banned alleged dopers from US Olympic Team try-outs, excluding Reynolds was excluded and sought to challenge this.<sup>124</sup> The court ruled he was allowed to try-out as potential irreparable harm outweighed the other considerations. If Reynolds qualified, his eligibility would be reviewed then. Here the courts applied US law. However, this does not mean that ISFs do not create law. The court avoided such a determination here. They would make such a decision if Reynolds qualified – a neat side step. Therefore, there is still the potential that ISFs (like the IAAF), can create laws that rank higher than domestic laws, as asserted here.

The British courts take a firmer stance regarding ISFs and potential law-making.<sup>125</sup> They do not recognise NSFs/ISFs as having governmental or quasi-governmental status, nor any law-making functions implying legal sovereignty or immunity from the law.<sup>126</sup> In *Cooke v Football Association* (1972) a football player wished to leave an Irish club for an English club.<sup>127</sup> However the rules of FIFA, the Irish Football Association (IFA) and the Football Association (FA), prevented this.<sup>128</sup> The courts held that FIFA would need to change its rules as otherwise it meant enforcing a contract in restraint of trade. *Cooke* shows that English courts will enforce national law on NSFs and ISFs instead of their internal rules. However, this case was from 1972 before the EU doctrine of specificity of sport. Nevertheless, following *Bosman*, it would likely still be decided in the same way.<sup>129</sup>

However, in another British case, *Reel v Holder*, the Court upheld ISF rules regarding the definition of a sporting country.<sup>130</sup> At first this seems to contravene *Cooke*, by saying that ISFs rules are supreme to domestic laws. However, Lord Denning stated that the court's task was to interpret IAAF rules and to ignore issues of sovereignty and international law.

These cases show that there is no definitive position by the courts on supremacy of ISF generated rules. They seek to avoid such determinations with a variety of excuses and

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<sup>123</sup> *Reynolds v Athletics Congress of the USA Inc.*, 1991 W.L. 179760 (SD Ohio) vacated 935 F2d 270. They added that "courts create a lot of problems for our anti-doping work, but we say we don't care". See also Foster, n. 14.

<sup>124</sup> The IAAF and the Athletics Congress of the USA had such a rule.

<sup>125</sup> A. Wise and B. Meyer, *International Sports Law and Business* (Volume 3 Kuwer Law International, 1998) 1478. See also Foster, n. 14.

<sup>126</sup> Foster, n. 14. See also Wise and B. Meyer, n. 125.

<sup>127</sup> *Cooke v Football Association* CLY 516 1 January 1972 See also Foster, n. 14.

<sup>128</sup> They required him to have a clearance certificate whilst he was still under contract, *ibid*.

<sup>129</sup> *Union des Associations Europeennes de Football (UEFA) v Bosman* (C-415/93) ECJ 15 December 1995, [1996] 1 C.M.L.R. 645. Bosman sued his club, the NSF and UEFA for restraint of trade due to their levying of a transfer fee. The ECJ held that Article 48 (Treaty of Rome) applied to NSFs/ISFs (and public bodies) if a contract of employment existed. Thus Bosman's transfer fee regarding his move from a Belgian to a French club after his contract's expiry was invalid as it prevented free movement of players. The court also used the same principle to declare invalid the practice of limiting the number of other Member State's nationals playing in certain matches.

<sup>130</sup> *Reel v Holder* (1981), n. 84. See also Foster, n. 14.

loopholes. This thesis approaches this debate with an equally un-definitive but balanced view recognising it is beyond its scope. It accepts that precedent has established that agreements have created rules that parties observe transnationally.<sup>131</sup> It also accepts that there may be a *lex sportiva* (sports law) in certain circumstances regarding certain rules.<sup>132</sup> This thesis focuses on the effect - which is the same whether or not the rules are law. In effect, ISFs have created rules that are observed, giving the Movement a precedent for ensuring observance of laws that it can apply to a Truce/Treaty and of being a significant international player within the Movement. This in turn categorically refutes the idea of a pyramid framework, and shows conclusively the inter-linking web.

### 2.5.2 – Jurisdiction

ISFs incorporate in different jurisdictions around the world. However most incorporate in only a few jurisdictions with the majority of Olympic recognised sports choosing Switzerland.<sup>133</sup> Incorporation in the UK is the closest second, with only four ISFs on the Olympic programme choosing it.<sup>134</sup>

As mentioned with regard to the IOC, Switzerland gives many geographical, political and legal advantages of incorporation to ISFs to attract them. However, it does not afford ISFs as many rights or recognitions as the IOC, despite the clamouring of certain ISFs for equal treatment.<sup>135</sup> Swiss authorities must rank ISFs below the IOC supporting this thesis's submission that the IOC is at the centre of the web.<sup>136</sup>

As well as its political neutrality and stability, Switzerland hosts the IOC's and CAS. Many ISFs will seek to curry their favour and recognition by close incorporation.<sup>137</sup> Existing sporting bodies attract yet more ISFs.<sup>138</sup> Within Switzerland the majority of ISFs register in Lausanne or its surrounding canton. Dudognon notes a deliberate policy of hospitality by the Swiss authorities towards ISFs with Lausanne attempting to consolidate its status as 'Olympic

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<sup>131</sup> Beloff, n. 15.

<sup>132</sup> Beloff, n. 19.

<sup>133</sup> 22 ISFs incorporate in Switzerland.

<sup>134</sup> The ISFs for Tennis, Sailing, Squash and Curling are incorporated in the UK; Biathlon and Bobsleigh are in Austria; shooting and the luge in Germany; and pentathlon and athletics in Monaco. IOC, ISFs, Mission <[www.olympic.org/content/the-ioc/governance/international-federations/](http://www.olympic.org/content/the-ioc/governance/international-federations/)> accessed 20<sup>th</sup> November 2015. Nevertheless, the USA has 5 non-Olympic programme ISFs. See also Dudognon, n. 112.

<sup>135</sup> Such as FIFA, Chappelet, n. 1.

<sup>136</sup> It cannot support them as a pyramid because of their international spread.

<sup>137</sup> Alongside the presence of a number of other bodies involved in global sports, such as:- continental federations (UEFA); groups of ISFs (ASOIF); and the House of International Sport (a private limited company founded in 2006 giving equal shareholdings to Lausanne, Vaud and the IOC AND granting its followers (12 Olympic recognised ISFs, regional branches of other ISFs and various sports co.'s) several advantages). Dudognon, n. 108.

<sup>138</sup> *Ibid.*



capital'.<sup>139</sup> A look at the benefits offered to ISFs by Switzerland will show the linking of the whole Olympic web as one, and its hitching to the state system.

#### 2.5.2.1 *Taxation Benefits*

Dudognon asserts that due to the sheer volume of ISFs incorporating in Switzerland, the overwhelmingly predominant reasons for its selection, must be economic and legal.

The Swiss Federal Council passed a Decree in 2008 that unified the different tax exemption provisions amongst the different Cantons.<sup>140</sup> Swiss national law now exempts legal entities such as ISFs from direct Federal taxation if they have a public service goal. An advantageous tax provision. Later in the same month, the Decree was expanded by a circular to the Canton Tax authorities specifying who would qualify for exemption, and this specifically included IOC recognised ISFs (as international confederations) but not Swiss NSFs or regional federations.<sup>141</sup> This leads Dudognon to surmise that IOC recognition of ISFs has legal consequences beyond the sporting, and reaffirms the web where all the actors link up together and then to the Swiss authorities.

#### 2.5.2.2 *Legal Benefits*

Switzerland also draws ISFs by offering them a desirable business vehicle: the association. These are similar to the voluntary associations recognised in the UK.<sup>142</sup> Article 60 of the Swiss Civil Code makes their formation easy – they do not have to give much specificity for their internal structure and have a flexible framework. Article 60 states that:-

“1) Associations with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association (AoA). 2) The AoA must be done in writing and indicate the objects..., its resources and its organisation.”

This requires associations to have written AoA that clearly indicate their objects (purpose) and once this exists, the association legally exists. They only require a minimum of two people to establish AoA between them and appoint directors and auditors.<sup>143</sup> There is no

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<sup>139</sup> It has a further 4 ISFs, *ibid.*

<sup>140</sup> Swiss Federal Council Decree passed 5<sup>th</sup> December 2008.

<sup>141</sup> Dudognon, n. 108.

<sup>142</sup> *Ibid.*

<sup>143</sup> Johnson, Chris, 'Vereins: The new structure for global firms' (7 March 2013) *The American Lawyer*.

need for registration (and payment of a fee) in the commercial register unless it conducts “commercial operation(s)”.<sup>144</sup> Consequently associations can include Not For Profit Organisations and (I)NGOs, political parties, Trade Unions and ISFs such as FIFA.<sup>145</sup>

As ISFs must use the vehicles available to them in the state they choose for incorporation, the existence of the association in Switzerland is attractive to ISFs. Again Swiss law seems to be particularly welcoming.<sup>146</sup> Despite the international nature of ISFs, they and their founding documents are governed by Swiss law with potential recourse to the Swiss courts. This may dispel their ‘internationality’ but does link the Olympic web to the state web in Switzerland.

### *2.5.2.3 Problems of Swiss Incorporation*

As the majority of ISFs are headquartered in Switzerland this could be seen to hinder their universalism, their international status, and the web-framework, three aspects upon which Olympic Singularity rests. That they are not truly international. However, when it is remembered that ISFs are considered conglomerations of NSFs, this is put to rest.

What is not so easily dismissed is that a glut of Swiss incorporated ISFs means that Swiss influence increases. It is their laws that are uplifted by ISFs across the world and over the Movement, which compromises ISF autonomy and independence. The Swiss Federal Supreme Court can even annul CAS rulings on limited grounds.<sup>147</sup> This is striking for two reasons. Firstly, it means that the Swiss Federal Court can overrule CAS, the supreme judicial authority of the Movement and consequently, Olympic decision making. And secondly, the choice of national jurisdiction for ISFs is important as it promulgates that state’s national laws potentially over CAS and the Movement, which in this case is Switzerland. Nevertheless, whether CAS is used or Swiss-courts-using-CAS-principles, this still shows that the Olympic web reaches widely and is definitively linked to at least one state’s legal system: Switzerland.

Furthermore, Dudognon notes that whilst the applicable law to ISF disputes is Swiss, the Swiss courts are eschewed in favour of CAS. Yet in reality CAS applies either the

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<sup>144</sup> Article 61 of the Swiss Civil Code adds that such associations may enter the commercial register.

<sup>145</sup> Hasselback, Drew ‘More on the Swiss Verein system’ The Financial Post (16 November 2010).

<sup>146</sup> Dudognon, n. 108. See also Hasselback, n. 145.

<sup>147</sup> The Swiss Federal Supreme Court set aside CAS judgments for incompatibility with Swiss public procedural policy, April 13, 2010 (4A 490/2009), and for being contrary to material public policy, within the meaning of Art.190 al. 2 lit. e LDIP. See also Article 190 of the Swiss Federal Code on International Private Law of 18<sup>th</sup> December 1987 (CPIL), where awards can be annulled due to: improper Tribunal appointments or constitution; jurisdictional errors; decisions beyond the claim; failure to decide a matter; a lack of due process; awards incompatible with public policy. See also Dudognon, n. 108.

appropriate ISF rules, or national laws if the parties have not agreed to the application of different laws, meaning that Swiss influence wanes here as rules are applied first.<sup>148</sup>

#### 2.5.2.4 International Incorporation

Switzerland's offering of the significantly unregulated association is attractive to ISFs. Although many other state's national laws may be more onerous for ISF incorporation, they may carry other advantages in lieu of this.<sup>149</sup> Hence a brief look at other state's attitudes towards ISFs can show that they, and consequently the Movement, are welcomed into the international world.

France has beneficial laws regarding articles of association for sporting bodies (ISFs), they also offer 'associations'.<sup>150</sup> Compared to Swiss associations, French ones only require one person but that it must be not-for-profit. They may only have separate legal personality if they publish certain personal information.<sup>151</sup> Some founders may object to this and hence the association remains without legal personality.<sup>152</sup> Nevertheless, both France and Switzerland legally welcome ISFs, thus there is a definite linking of the sporting Olympic system to nation states here.<sup>153</sup>

After Switzerland, the UK is the most popular choice for Olympic ISFs to incorporate in. Only two ISFs incorporated on the UK's mainland, being sailing in Southampton,<sup>154</sup> and curling in Perth.<sup>155</sup> The remainder 'British' ISFs favour the Bahamas,<sup>156</sup> the British Virgin Islands<sup>157</sup> and the Isle of Man - each will have its own taxation requirements and law.<sup>158</sup> Thus this shows a definite linking of the Olympic to the state system here, especially as many of these overseas territories have their own NOC.

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<sup>148</sup> As required by Rule 58, CAS Code. See also Dudognon, n. 108.

<sup>149</sup> Dudognon, n. 108.

<sup>150</sup> The July 1<sup>st</sup> 1901 Decree and its implementing August 4<sup>th</sup> 1901 *Decree, Le décret d'application pris pour l'exécution de la loi*. See also Dudognon, n. 108. Article 1 states that: "An association is an agreement by which one or more persons bring together, in a permanent manner, their knowledge or their activities for a non-profit purpose..."

<sup>151</sup> Article 2, *ibid*.

<sup>152</sup> *Ibid*. Article 2 states that "Associations ...may be freely formed without authorisation or prior declaration, but they may only obtain a legal identity if they conform to .... Article 5." Which states that "Every association that wants ... legal qualification ... must be published by its founders. It shall make known the title and the object of the association, the registered offices ... and the names... of those... responsible of its administration", *French Law of 1<sup>st</sup> July 1901*.

<sup>153</sup> Although it remains an unpopular choice.

<sup>154</sup> ISAF. See also Dudognon, n. 108.

<sup>155</sup> ISFs often maintain a presence or office in Lausanne, such as curling, Dudognon, n. 108.

<sup>156</sup> International Tennis Federation (ITF) <[www.itftennis.com/home.aspx](http://www.itftennis.com/home.aspx)> accessed 20<sup>th</sup> November 2015.

<sup>157</sup> Cricket, Sailing, Squash, and Tennis.

<sup>158</sup> World Squash Federation is on the Isle of Man, <[www.worldsquash.org/](http://www.worldsquash.org/)> accessed 20<sup>th</sup> November 2015.

The majority of British incorporated ISFs favour ‘private companies limited by guarantee’, rather than voluntary or unincorporated association.<sup>159</sup> British associations are not as liberally construed as Swiss or French ones as they offer members no protection against personal liability of debts. Instead, a company limited by guarantee protects ISFs with the corporate veil and limited liability. Guarantors need only ‘invest’ a small amount of capital and have corresponding liability.<sup>160</sup> Hence the main legal benefits of ISFs incorporating in the UK are limited liability (although this is not exclusive to the UK) and maintaining cultural links to the country with which the sport has a form of historical affiliation.

Historical links help explain why the ISF for taekwondo remains in the Republic of Korea and why badminton is incorporated in Malaysia due to its far eastern popularity.<sup>161</sup> However, this does not explain why the ISFs for athletics and the modern pentathlon are incorporated under Monegasque law.<sup>162</sup> Monaco, similar to Switzerland, offers beneficial tax and association provisions that ISFs take advantage of with the IAAF officially moving its headquarters there in 1993. This leads Dudognon to surmise that the primary motivating reason for ISFs in selecting Switzerland is economic rather than legal; nevertheless, the result of Swiss generosity is the promulgation of its laws within the Olympic system. Hence at the least, the Olympic system links to Switzerland, if not globally. And whilst the Swiss predominance diminishes the idea of ISF universalism, it does show that the ISFs are linked as one to the IOC and hence must be thought of as a singular entity.

## 2.6 - Conclusion

The Movement comprises a variety of different core actors: the IOC; the NOCs; and the ISFs. It is their shared purpose of staging the Games that brings them together under the Movement, therefore this is inherently part of Olympic Singularity. Only ISFs have a role out-with the Movement, existing for their own means. Although the Games are likely the highlight of their sporting calendar, with only a few sports having exceptions to this.<sup>163</sup> Therefore the

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<sup>159</sup> Such as cricket. Dudognon, n. 108. An unincorporated association is established by agreement amongst those with a view other than making a profit and often includes sports clubs. Individual members are personally responsible for its debts and contractual obligations. They require no registration and have no set-up fees. *Conservative and Unionist Central Office v Burrell* [1981] EWCA Civ 2.

<sup>160</sup> S3(3) and s5 of the Companies Act 2006.

<sup>161</sup> World Taekwondo Federation <[www.worldtaekwondofederation.net/](http://www.worldtaekwondofederation.net/)> and Badminton World Federation <<http://bwfbadminton.org/>> both accessed 18<sup>th</sup> November 2015.

<sup>162</sup> Under Monegasque Law No. 1.355. See also Dudognon, n.108.

<sup>163</sup> FIFA has the World Cup; the ITF has Wimbledon.

third aspect of Olympic Singularity is conclusively proven: these actors share the same purpose of staging the Games. This is despite the fact that not all of them are directly involved in this.

The fact that these actors come together for this shared purpose inherently makes the Movement a web: staging the Games and guided by the humanitarian principles of Olympism. The Games could not occur if one of the actors were missing, hence they are all important and necessary. However, within this the IOC has many reasons to think itself supreme, such as the frequent Charter references to it and the fact that it can delegate to and recognise NOCs and ISFs. However, the number of ISFs and NOCs and their reach across the world into 206 different territories and the tens of sports it covers is a necessary counter-balance to this claim which proves the third aspect of Olympic Singularity - universalism. Furthermore, ISFs and NOCs can also be considered to be part of the IOC reaffirming the web construct: heads of their associations are automatically members of the IOC. Therefore, to divide them is incorrect, albeit when they wear their IOC hat, they are meant to be independent of their NOC or ISF agendas.

Also in terms of their powers ISFs can weaken the IOC's authority as they govern their sport, setting the rules the sports observe at the Games. They (as well as the IOC) can be considered a significant law-maker. NOCs can also counteract this IOC authority as they are the ones, working with NSFs and ISFs that select teams that attend the Games. Hence they choose the highly visible actors and can wield influence this way.

It can be said that the Movement is a murky far-reaching web, whose shared purpose brings them together. Thus it must be considered a singular entity, which helps answer in the affirmative the first research question: Should the Movement be viewed as one entity. This will help to clarify the framework and to add credence to it being a powerful and unique actor able to step into the mantle of regulating the Truce and potential Treaty.

The next Chapter will demonstrate why viewing the movement as one web is necessary. It is only together that the Movement is strong enough or sufficiently akin other atypical actors, to justify its international propulsion. Each Olympic organ contains only part of the puzzle, or some of the features justifying an atypical status and quasi-*personality*: their shared purpose of Games staging backed by humanitarian Olympism; their universalism; and the web's attachment to the state system.

## **CHAPTER THREE**

### **Is the IOC a regular INGO or an atypical subject of international law?**

#### **3.1 Introduction**

Chapter Three focuses on the fourth aspect of Olympic Singularity – whether the IOC has been incorrectly taxonomised as a regular INGO by existing academic attention rather than an atypical international law subject, and by its own OC. This Chapter will examine whether the IOC’s special nature has created a new type of INGO akin the ICRC or other atypical subjects. It shall do this by examining the UN’s INGO checklist to see whether it fits neatly into the INGO box. It will determine whether the IOC is afforded extensive liberties, rights, recognitions and treatments by law, states and the international community. It will then examine current subjects of international law to determine whether the Movement can fit into any of the existing non-state categories.

If the IOC is something unexpected and unique, when this ‘singularity’ is added to Chapter Two’s findings of a singular universal Olympic web, credence is added to the two research questions of this thesis: that the Movement should be viewed as one singular and special entity; capable of governing the Truce and potential treaty. If the IOC is something ‘new and unique’ at the core level, then this reasoning can be extended to the macro level.

#### **3.2 The IOC as an INGO**

The Charter is the best place to start any examination of the IOC. Its Rule 15 appears initially, to determine the issue, as it states that:-<sup>1</sup>

“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.”

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<sup>1</sup> Introduction b), Charter also states that “The Charter also serves as statutes for the IOC”.

This Rule refers to two important legal attributes of the IOC. That it is an INGO and that it has ‘the status of a legal person’. It does not mention the status of the Movement generally nor that of the other core actors nor whether this personality is international or not.<sup>2</sup>

Consequently, this raises the issue of whether the IOC is a typical INGO or whether it is something beyond its existing confines encroaching on the categories of atypical subjects? It is submitted here that existing writers are erroneous in their swiftness to accept such easy taxonomy of the IOC’s as a regular INGO. By applying the UN’s INGO checklist tests it will be shown that the IOC greatly surpasses these so that a new entity has been created and thus proves the fourth aspect of Olympic Singularity. Thereafter, subjects of international law will be examined to discover whether sufficient similarities exist between them and the Movement to justify its inclusion there.

### 3.3 Application of INGO Criteria to the International Olympic Committee

The UN has laid down criteria for the establishment and recognition of (I)NGOs.<sup>3</sup> UN recognised INGOs may become UN observers, UN consultants or official UN partners. Furthermore, INGOs are increasingly being recognised as relevant international actors.<sup>4</sup>

The laying down of UN criteria means that the UN as an inter-governmental organisation (IGO) has control demarcating (I)NGOs. This reinforces the doctrine of state sovereignty and a state’s ability to create institutions and rules recognised under law or by international agreement.<sup>5</sup>

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<sup>2</sup> Chapter 2 showed they can regulate themselves within certain parameters due to variance of jurisdictions, this is beyond this Chapter’s scope.

<sup>3</sup> For their own purposes. These are laid down by The UN Department of Public Information NGOs (DPI NGOs) (DPI NGO, Membership <<http://outreach.un.org/ngorelations/membership/>> accessed 15<sup>th</sup> July 2015) and UN Economic and Social Council (Resolution 1996/31, 25<sup>th</sup> July 1996 E/RES/1996/31). Both UN agencies have slightly varying criteria but seven key ones are used here drawing from both sets. Recognition by one does not confer recognition by the other. Furthermore, UNDPI recognition carries fewer privileges than ECOSOC recognition (such as participation in UN intergovernmental meetings), UN Department of Economic and Social Affairs NGO Branch, Basic Facts About ECOSOC Status, <<http://csonet.org/?menu=100>> accessed 4<sup>th</sup> February 2016. Walter, Christian, ‘Subjects of International Law’ (2007) Max Planck Encyclopaedia of Public International Law. The most commonly accepted definition of an (I)NGO is “a private organisation that pursues activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development.” Operations Evaluation Department, NGOs and Civil Society Engagement in World Bank Supported Projects: Lessons from OED Evaluations, Lessons and Practice No. 18, 28<sup>th</sup> August 2002.

<sup>4</sup> Walter, n. 3. But of course capacity for action is not *personality*.

<sup>5</sup> By themselves or through IGOs. Although IGOs may have different law-making capacity to their constituent states. Hence (I)NGOs such as the IOC/Movement may assume some of that law-making authority by way of this UN-INGO recognition. Although UN recognition cannot automatically attribute *personality*, Ettinger, David J., ‘The Legal Status of the International Olympic Committee’ (1992) Volume 4 Pace International Law Review 97. See also Walter, n. 3.

### 3.3.1 Support and Respect for UN Charter Principles

The first UN criterion for INGO conferment is that the organisation must support and respect UN Charter principles.<sup>6</sup> A literal interpretation of this could mean that actual UN Charter observance is not required, but simply that the (I)NGOs must only ‘support and respect’ UN Charter principles – which is a lower and less onerous obligation as INGOs must only commit to broad principles, rather than a Charter.<sup>7</sup> The IOC supports UN Charter principles as many of them are replicated or have a corollary in the Charter, specifically those on peace, security and the prevention of war and respect for human rights and equality. Albeit, the IOC uses a sports specific lens on these UN principles. For example, the UN Charter’s Preamble states that it has the aims of “liv[ing] together in peace... maint[aining] international peace and security”. The Charter views this through the sport lens in the 2<sup>nd</sup> Fundamental Principle by stating that:-

“the goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.”<sup>8</sup>

Consequently, it can be said that the Olympic and UN Charters aspire to fulfil similar aims and protect similar rights, meaning that the IOC has more than cleared the first (I)NGO hurdle, albeit it is not unusual in expressing such aims as many other INGOs support the UN’s Charter principles.

### 3.3.2 Recognised National or International Standing

The second requirement placed on organisations wishing to be considered (I)NGO’s by the UN is that they be ‘of recognised national or international standing.’<sup>9</sup> The IOC has extensive international standing due to the number of different NOCs that send teams to the Games and

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<sup>6</sup> DPI NGO, n. 3.

<sup>7</sup> This lower threshold could be because the organisations do not have the international legal capacity to sign the Charter, the way that state signatories do.

<sup>8</sup> The UN Charter Preamble asserts its determination to “reaffirm faith in fundamental human rights.... and to promote social progress and better standards of life.” The Charter in the 1<sup>st</sup> Fundamental Principle seeks to uphold similar human rights with “Olympism seek[ing] to create a way of life based on ... social responsibility and respect for universal fundamental ethical principles.” 4<sup>th</sup> Fundamental Principle of the Charter states that “The practice of sport is a human right ....without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.” And the 6<sup>th</sup> Fundamental Principle of the Charter states that the enjoyment of Charter rights and freedoms “shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”

<sup>9</sup> DPI NGO, n. 3. See also E/RES/1996/31.



the travelling nature of the Games themselves.<sup>10</sup> However these NOCs or the OCOGs that host the Games are separate to the IOC. But nevertheless the history and the membership composition of the IOC [as seen in section] fulfil this criterion. IOC members draw from 70 different states. Consequently, the IOC is internationally recognised and fulfils the second (I)NGO hurdle.

### 3.3.3 Not-for-profit and Tax Exempt

Thirdly, the UN requires that the organisation must only operate not-for-profit and have tax exemptions, being a two staged test.<sup>11</sup> The IOC appears to fulfil the first leg of this test as the Charter's Preamble states it is a "not-for-profit organisation". However, many critics would dispute this. The commercialism of the Games has blossomed since broadcasting rights were sold in the 1960s, and sponsorship deals were negotiated in the 1970s and 1980s, alongside IOC control over its intellectual property.<sup>12</sup> The IOC enters multi-million dollar broadcasting contracts enabling it to bring home revenue in the region of \$5 billion.<sup>13</sup> It also enters lucrative sponsorship contracts with The Olympic Partners (TOP) or.<sup>14</sup> This revenue enables it to be a serious player amongst the world's top revenue-generating companies, although prohibited from being so considered as it is not-for-profit.<sup>15</sup> Furthermore many would say that the reason for possessing intellectual property, is to make money and not simply to ensure the smooth running of the Games.<sup>16</sup> Furthermore, the IOC also has considerable investments.<sup>17</sup> This has

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<sup>10</sup> Despite NOCs not being IOC subsidiaries and that they may not equate to territorial states. Nevertheless, the IOC always has had international standing. Its initial membership spanned 10 states, now over 200. IOC, NOCs, <[www.olympic.org/ioc-governance-national-olympic-committees](http://www.olympic.org/ioc-governance-national-olympic-committees)> accessed 30<sup>th</sup> August 2015.

<sup>11</sup> DPI NGO, n. 3.

<sup>12</sup> Chappelet, Jean-Loup, and Kubler-Mabbott, Brenda, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge, 2008).

<sup>13</sup> For the years 2009-2012.

<sup>14</sup> TOP was founded in 1985 with 12 official sponsors, including Coca-Cola, MacDonald's and Samsung. Broadcasting contracts are with entities such as the European Broadcasting Union. Chappelet, n. 12. See also Olympic Movement, IOC Latest News, IOC Announces Bridgestone as Worldwide TOP Partner to 2024, 13<sup>th</sup> June 2014 <[www.olympic.org/news/ioc-announces-bridgestone-as-worldwide-top-partner-to-2024/23350](http://www.olympic.org/news/ioc-announces-bridgestone-as-worldwide-top-partner-to-2024/23350)> accessed 11<sup>th</sup> February 2016. See also IOC Factsheet - IOC Financial Summary Update July 2014 <[www.olympic.org/Documents/Reference\\_documents\\_Factsheets/IOC\\_Financial\\_Summary.pdf](http://www.olympic.org/Documents/Reference_documents_Factsheets/IOC_Financial_Summary.pdf)> accessed 4<sup>th</sup> February 2016.

<sup>15</sup> The Statistics Portal, The 100 Largest Companies in the World Ranked by Revenue in 2015 (US\$) <[www.statista.com/statistics/263265/top-companies-in-the-world-by-revenue/](http://www.statista.com/statistics/263265/top-companies-in-the-world-by-revenue/)> accessed 1<sup>st</sup> October 2015. See also Liyan, Chen, The World's Largest Companies 2015, 6<sup>th</sup> May 2015 Forbes <[www.forbes.com/sites/liyanchen/2015/05/06/the-worlds-largest-companies/](http://www.forbes.com/sites/liyanchen/2015/05/06/the-worlds-largest-companies/)> accessed 1<sup>st</sup> October 2015.

<sup>16</sup> Contained in Rule 7, Charter. E.g., ownership of 'Olympic' and trademarks of the Olympic Rings, Flag, Flame and Motto. Chappelet, n. 12.

<sup>17</sup> And that it transfers capital to the Olympic Foundation. Chappelet, n. 12.

led Chappelet to state that the IOC has a flourishing business, incongruous with the UN criteria of ‘not-for-profit’.<sup>18</sup>

However the IOC would respond that this revenue enables it to maintain one of its fundamental aims: being independent of governments and not relying on government subsidies.<sup>19</sup> Whilst it generates income, it is not profit. Income is re-invested. Meaning that it does fulfil this third UN (I)NGO criteria. Yet individuals do profit from the Olympics, such as IOC members and their families receiving money and gifts to sway Host selection, to suites at the Dorchester during the London 2012 Games.<sup>20</sup> This contrasts to Coubertin’s financial ruin and dying in ‘poverty’ due to his commitment to the Games. He sank all of his personal equity into the IOC and it was entirely financed by him in the early years.<sup>21</sup> The meeting of the first part of the UN’s third criteria is debateable.

The second part of this test is that the organisation be tax exempt.<sup>22</sup> This would be limited to the domestic jurisdiction of wherever the IOC operates in. As the IOC is incorporated under Swiss law with its headquarters in Lausanne, it is exempt by the Swiss authorities from direct taxation, albeit it must pay VAT.<sup>23</sup> The highest Swiss executive body, the Swiss Federal Council, decreed in 1981 that the IOC was to have special juridical benefits, rights and liberties under Swiss law reflecting its resultant desire to have the IOC operate from its territory due to the ‘benefit’ that Switzerland would thus receive.<sup>24</sup> Consequently the tax exemption and special status afforded to the IOC in Switzerland is deliberate and demonstrates this criterion’s fulfilment.<sup>25</sup>

### 3.3.4 Robust Decision-Making

The fourth requirement for (I)NGO status by the UN is that the organisation have statutes or byelaws governing their internal decision making and elections.<sup>26</sup> Rule 18 of the Charter, has transparent and detailed Session voting procedures, with a clear demarcation of

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<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> See n. 38, Chapter 2 on the SLC scandal.

<sup>21</sup> This was also the result of his bad investments unconnected to the Olympics. Chappelet, n. 12.

<sup>22</sup> DPI NGO, n. 3.

<sup>23</sup> Alongside the Foundations that it establishes in Switzerland. Chappelet, n. 12.

<sup>24</sup> Dated 17<sup>th</sup> September 1981. Ettinger, n. 5.

<sup>25</sup> They must also have audited annual financial statements published by a qualified independent accountant in US dollars, which the IOC has. Theirs Interim and Final Reports are publicly available, for example, ‘The IOC Final Report 2009-2012’, independently audited by Pricewaterhouse Cooper South Africa, <[www.olympic.org/Documents/IOC\\_Interim\\_and\\_Final\\_Reports/IOC\\_Report\\_2009-2012\\_Interactive\\_ENG\\_Sept13.pdf](http://www.olympic.org/Documents/IOC_Interim_and_Final_Reports/IOC_Report_2009-2012_Interactive_ENG_Sept13.pdf)> accessed 31<sup>st</sup> October 2015.

<sup>26</sup> Such as director or officer elections.

what business is to occur at the Session or at an Executive. For example, the Session passes motions on important IOC business such as Host<sup>27</sup> or membership selection,<sup>28</sup> on a majority basis, unless it otherwise requires a higher standard.<sup>29</sup> The Charter requires the Session to lay down the higher standard of a two thirds majority if it wishes to adopt or amend Charter Rules or Fundamental Principles.<sup>30</sup> However with low quorums and simple majorities some have attacked the IOC for being able to pass motions based on the support of small fractions, in an already elitist institution.<sup>31</sup> Although the IOC has voting procedures in place that appear transparent and accessible, they may not be fair or representative, meaning the IOC's fulfilment of this (I)NGO criteria is lessened.

### 3.2.5 UN Collaboration

The UN also requires potential (I)NGOs to have a 'satisfactory record' of collaboration with the UN and its departments, such as UN Information Centre (UNICS).<sup>32</sup> The IOC has had a long history of association and co-operation with UN agencies on several programmes where sport is used as a tool for development and peace.<sup>33</sup> For example, the IOC has been an ILO partner since 1922 and following its assumption into the UN system since its creation in 1945. The UN GA has also passed the Truce Resolution in advance of every Games since 1993. The relationship reached new heights in 2009 when the UN GA granted the IOC permanent observer status based on its philanthropic activities, its involvement in the promotion of peace, and its global health and education programmes.<sup>34</sup>

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<sup>27</sup> Voting is after an investigation/report by an IOC Commission, for example, the Evaluation Commission Reports to the Session preceding Host election, Rule 33.3.3.2, Charter. Each member has one vote exercisable only by themselves and not by proxy, Rule 18.4, Charter.

<sup>28</sup> Rule 18.5, Charter.

<sup>29</sup> Rule 18.3, Charter. In practice, a Host or IOC member could be elected on a small proportion of votes, reinforcing claims of IOC elitism and lack of due process. For example, if a quorum is half of the IOC membership plus one, this totals 54 individuals. A simple majority of 54 is 27 votes, around a quarter of the overall IOC membership, which is a relatively small proportion of the potential votes.

<sup>30</sup> Rule 18.3, Charter, which also lays down what constitutes a sufficient Session quorum (half the total membership of the IOC plus one).

<sup>31</sup> Boykoff, Julie, and Tomlinson, Alan, 'Olympian Arrogance' *The New York Times* (New York, 4 July 2012) <[www.nytimes.com/2012/07/05/opinion/no-medal-for-the-international-olympic-committee.html?\\_r=0](http://www.nytimes.com/2012/07/05/opinion/no-medal-for-the-international-olympic-committee.html?_r=0)> accessed 2<sup>nd</sup> July 2015.

<sup>32</sup> DPI NGO, n. 3.

<sup>33</sup> IOC President Bach stated that sport can change the world, but not alone, and that the Movement is willing and ready to make its contribution, in his speeches at the Sochi Winter Games 2014, Evans, Jason, IOC and UN Secretariat Agree Historic Deal to Work Together to Use Sport to Build a Better World, 28<sup>th</sup> April 2014, IOC Latest News <[www.olympic.org/news/ioc-and-un-secretariat-agree-historic-deal/230542](http://www.olympic.org/news/ioc-and-un-secretariat-agree-historic-deal/230542)> accessed 27<sup>th</sup> October 2015.

<sup>34</sup> A/RES/64/3, 22<sup>nd</sup> October 2009.

This paved the way for the signing of a Memorandum of Understanding between the IOC and the UN in April 2014, which broke new ground on several fronts. Ban Ki Moon noted that it is the first such agreement between them regarding sport for development and peace.<sup>35</sup> Both parties pointed out that this Memorandum ushered in a new level of collaboration on a variety of initiatives around the world, stemming from commitment at their highest levels to ‘contributing to a better and peaceful world through sport’.<sup>36</sup> Resolution 69/6 ‘welcomes’ this Memorandum and this time refers collectively to the whole Movement in achieving the Memorandum’s goals using sport as a tool for development and peace, rather than the IOC.<sup>37</sup> References to the IOC are limited to its factual undertakings that it has made on behalf of the Movement.<sup>38</sup> This contributes to the persuasive argument that the Movement is recognised as a singular legal entity under international law, albeit, it is facilitated by the IOC making commitments on its behalf.

The IOC extends its involvement in these collective programmes to NOCs, ISFs, OCOGs and individual athletes, i.e., the whole Movement. All Olympic entities are committed via the IOC, to working with UN Member States and UN departments and agencies.<sup>39</sup>

However, despite this collaboration, the IOC is still not one of ECOSOC’s 4000 odd active NGO consultants permissible under Article 71 of the UN Charter enabling them to participate in ECOSOC’s work.<sup>40</sup> This aside, the IOC and the UN have a close working relationship and history of collaboration.

### 3.2.6 Portfolio of Work and Sustained Future Activity

A further UN criterion for recognising (I)NGOs is that the organisation must have an established portfolio of work for at least 3 years, with the ability to show sustained future activity. The IOC easily meets this criterion in that it was created by the 1894 Congress and

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<sup>35</sup> Signed by IOC President, Thomas Bach and UN Secretary General, Ban Ki Moon. Evans, n. 33.

<sup>36</sup> And by “educating youth through sport” without any discrimination. It calls for sporting initiatives to advance social integration and economic development, by encouraging access to sport for all, quality physical education, youth and female empowerment, health, sustainable development and building peace, *ibid*.

<sup>37</sup> Resolution A/RES/69/6, 18<sup>th</sup> September 2013.

<sup>38</sup> For example, it “Welcom[es] the Memo of Understanding signed between the IOC and the UN ... in which a call was made to strengthen efforts around sport-based initiatives that encourage social and economic development, as well as to strengthen the many partnerships that UN organisations have set with the IOC”.

<sup>39</sup> Such as UN Special envoys/Advisors, Goodwill Ambassadors and UN Specialised Agencies. Julliart, Richard, Peace Through Sport, Historic Milestone: United Nations Recognises Autonomy of Sport 3<sup>rd</sup> November 2014 <[www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276](http://www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276)> accessed 27<sup>th</sup> October 2015.

<sup>40</sup> 4,045 in September 2014, Walter, n. 3.

has been in existence, albeit with a changing status, nature and importance, for well over 100 years.

### 3.2.7 That it is not an IGO

The final and potentially greatest attribute that the UN lays down for potential (I)NGOs is that it not be established by an inter-governmental agreement.<sup>41</sup> Hence this negative criterion (i.e. what it is not) bestows (I)NGO designation based on who an organisations founders were, and the nature of that foundation, and not from the scope of its activities (as NGOs cover all fields but tend to have a united single focus for public benefit). As already stated, the IOC was founded by Coubertin and various international sporting federations in 1894. Despite the evolution of the IOC from 1894 to 2015, it was then as it is now, a body established by actors (principally) independent of governments.<sup>42</sup> Mestre states that this separation from governments and status as an INGO was deliberate from the outset, and is why the IOC has not sought consultative status alongside many other (I)NGOs with ECOSOC despite serious consideration having been given to this and the IOC fulfilling ECOSOC's criteria for such status.<sup>43</sup> It is arguable that such UN status would bolster, not compromise, the IOC's independence as the UN is not meant to be at the whim of single national agendas.

## 3.4 Subjects of International Law

The current approach of international law is that only some international actors are its subjects ("subject(s)"), under its jurisdictional control. Subjects possess international rights and duties, and have full international legal *personality*.<sup>44</sup> This thesis advocates that the Movement should possess this full suite of rights, duties, *personality* and subject status, in order to govern and sanction a Truce Treaty operating from the assumption that new subject breeds can emerge.<sup>45</sup> Current thinking does not extend these in full to the Movement, preventing it from this new role. This section will therefore assess whether this approach is accurate in its determination that the Movement does not fall within any of the existing categories of international law subjects, and if it does not, whether it can still be propelled to the international

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<sup>41</sup> Ettinger, n. 5. See also Osmarczyk, Edmund Jan, *Encyclopaedia of the United Nations and International Agreements* (Routledge, 1985) 565.

<sup>42</sup> Ettinger, n. 5.

<sup>43</sup> The 1985 Simma proposal, Mestre, Alexandre Miguel, *The Law of the Olympic Games* (Asser Press, 2009).

<sup>44</sup> Walter, n. 3.

<sup>45</sup> As they have done over the years.

plane and govern a Truce Treaty by possessing the requirements for subject status (international rights, duties and *personality*). Thereby gaining this role another way.

There are many candidates for subject status.<sup>46</sup> These include states, IGOs, atypical subjects of international law, non-self-governing peoples,<sup>47</sup> mandated territories,<sup>48</sup> indigenous peoples, IGO created independent agencies, individuals and multinational enterprises.<sup>49</sup>

### 3.4.1 States, Mandated Territories, IGOs and Created Agencies

The primary, most important and universally accepted subjects of international law are states. They possess:- objective; <sup>50</sup>original;<sup>51</sup> full;<sup>52</sup> and equal *personality* due to recognised international law norms - sovereignty or sovereign equality.<sup>53</sup> Despite this thesis arguing that the Movement is linked to the state system, particularly by way of its NOCs and Host Nations, the Movement is not a state. Nor is the Movement a mandated territory, usually ex-colonial territories for which some form of trusteeship existed, and have all gained independence or been subsumed into other states. The Movement is therefore excluded from governorship and sanctioning of a Truce Treaty if only states were subjects.

However, some precedent for the Movement's involvement in a Treaty could arise from the fact that although states were the first subjects with full *personality*, extensions occurred.<sup>54</sup> By the early 19<sup>th</sup> Century, IGOs began to appear, and were recognised as subjects with some form of *personality*, by virtue of state agreement.<sup>55</sup> These included the Central Commission for Navigation on the Rhine established in 1815 by the Congress of Vienna<sup>56</sup> and the Commission for the Danube.<sup>57</sup> However, these were IGOs with territorial jurisdiction - a necessary precondition for *personality* and subject status.<sup>58</sup> Furthermore, as IGOs, they distilled their *personality* directly from their state.<sup>59</sup> Despite this extension, states are still, via their

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<sup>46</sup> Walter, n. 3.

<sup>47</sup> Including insurgents and national liberation movements.

<sup>48</sup> Including trusteeship territories and internationalised territories.

<sup>49</sup> Walter, n. 3. The candidates concerning peoples (non-self-governing peoples, indigenous peoples and individuals) can be ignored here, as the Movement is clearly not these.

<sup>50</sup> As per Article 2(1) of the UN Charter. Walter, n. 3.

<sup>51</sup> Original subjects are born. Once a state, they automatically have full *personality*. Walter, n. 3.

<sup>52</sup> Laid down in the *Reparation* case, *Reparation for Injuries Suffered in the Service of the United Nations* (Ad. Op.), I.C.J. Reports 1949 alongside their corresponding international legal rights and duties.

<sup>53</sup> Walter, n. 3. See also Shaw, Malcolm N., *International Law* (6<sup>th</sup> edition, Cambridge University Press, 2009).

<sup>54</sup> Walter, n. 3.

<sup>55</sup> Although it would take until the 20<sup>th</sup> Century and the UN for IGOs to be generally regarded as full subjects with full *personality*. Walter, n. 3.

<sup>56</sup> Amongst Belgium, France, Germany, Switzerland, the Netherlands and for a time, the USA.

<sup>57</sup> Walter, n. 3.

<sup>58</sup> Walter, n. 3.

<sup>59</sup> And their constituent documents, according to the *Reparations* Case, n.130, IGOs may not necessarily have equivalent legal *personality* to states but they are international law subjects.

agreement, the original source of *personality* and subject status.<sup>60</sup> They and their IGOs are the custodians of all rights and responsibilities under international law, and its supreme law-maker.<sup>61</sup> The Movement and its branches are INGOs, not IGOs, as the Charter is not signed by states. Yet there is potential here for a liberal interpretation of IGO status extending to the Movement, when it is considered that Host Nations sign agreements with various Movement entities and by the NOCs link to their governments. However, this is an unstable argument to support this thesis's presuppositions on, and examination of the other potential subjects will continue.

If the Movement being a subject is tenuous under IGO classification, even shakier is attaching it such status as an IGO-created agency, as per this thesis's proposal of making the Movement a UN agency. IGO-created agencies derive their *personality*, from their IGO, provided this has been expressly provided for in their founding documents.<sup>62</sup> Thereby meaning that potentially, should the UN-Movement relationship be so formalised, and the latter's status be so confirmed, the Movement could be a subject of international law and govern a Truce Treaty. However, this is a lot of presuppositions. But even if no such authorisation were to be given, the Movement's international subject status and *personality* may be implied, if the agency were essential, due to 'implied powers' recognised by the ICJ regarding the UN's *personality*.<sup>63</sup> It is unclear whether the Movement would be so considered, but it seems highly unlikely relying on too many 'ifs'.<sup>64</sup> Furthermore, the Movement's inability to gain subject status here is confirmed when it is discovered that this category is limited to EU agencies,<sup>65</sup> and not UN agencies.<sup>66</sup> Yet Walker does say that extensions in this category could occur, but this would rely on the Movement being a UN agency, the UN being allowed to create agencies that can have separate full international subject and *personality* status to it, and for this to be confirmed for the Movement. Again too many variables.<sup>67</sup>

### 3.4.2 Multinational enterprises

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<sup>60</sup> Walter, n. 3 who includes individuals and groups as having international rights and duties for example by way of the UDHR 1948. However, this centres on duties, a component of *personality* but not its synonym. A subject of international law may possess duties but not possess full *personality*.

<sup>61</sup> As per their constituent documents.

<sup>62</sup> In their constituent document, albeit not whether it is international or not, Walter, n.3.

<sup>63</sup> Walter, n.3.

<sup>64</sup> And mean that IGOs have autonomous capacity to create new subjects, Walter, n.3.

<sup>65</sup> E.g. FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders), by way of secondary legislation (Council Regulation [EC] No 2007/2004 of 26 October 2004).

<sup>66</sup> Walter cites the ad hoc Yugoslavia Tribunal where the headquarter agreement was between the Netherlands and the UN, and not the ICTY, n.3.

<sup>67</sup> Or for this to be implied, via the Movement's necessity, which would be even more tenuous.

Although multinational or transnational enterprises or corporations are not new and can be dated to the Hanseatic League,<sup>68</sup> their candidacy for a limited form of *personality*, and their exact status under international law remains unsettled.<sup>69</sup> They generally exhibit characteristics of universal or multi-national spread, akin the Movement, but their purposes in theory differ. The Movement being for the hosting of the Games and not to make profit.<sup>70</sup> Furthermore, the reason such enterprises may possess some status is because Article 25 of the Convention on the Settlement of Investment Disputes between Nationals and Other States necessarily implies it. This ensures that states and these companies are equal parties before the International Centre for Settlement of Investment Disputes.<sup>71</sup> Therefore, multinational enterprises and the reasons for their partial and potential *personality* seem too tenuous to cover the Movement.

### 3.4.3 Atypical subjects of international law

Another category that might prove more fruitful for consideration of the Movement as a subject of international law, is placing it in the ‘atypical’ category. The Italian Courts have recognised these on the basis that the “modern theory of the subjects ...recognises a number of collective units whose composition is independent of the nationality of their constituent members and whose scope transcends by virtue of their *universal character*, the territorial confines of any single state.”<sup>72</sup> Within this category, three entities are usually mentioned: the Sovereign Order of Malta; the Holy See; and the ICRC. Each shall be examined to ascertain whether the Movement is akin it or if the Italian courts are correct in saying that this could be a new extension.

#### 3.4.3.1 *The Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes and of Malta (the “Order”)*

The Order was established by the Knights Hospitaller as a religious, medical and military order after the 1099 Christian conquest of Jerusalem to prevent Christian persecution.<sup>73</sup> It was sovereign over various Mediterranean islands (Cyprus and Rhodes) and then Malta until

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<sup>68</sup> An internationalised corporate body of the 14<sup>th</sup> Century and lasting until the 19<sup>th</sup>, Walter, n.3.

<sup>69</sup> Shaw, n.53.

<sup>70</sup> Despite allegations to the contrary.

<sup>71</sup> 1965, Walter, n.3.

<sup>72</sup> *Nanni v. Pace and the Sovereign Order of Malta* (1935) 8 ILR 2, in Shaw, n.53. Supported by Wallace, n.3.

<sup>73</sup> The First Crusade.



French occupation in 1798.<sup>74</sup> From 1834, its modern incarceration, a humanitarian organisation, has operated from headquarters in Rome.<sup>75</sup>

The Order has had its status as a sovereign (secondary) subject of international law confirmed over the years, at least in the eyes of those recognising it, for example, this was specifically recognised by the Pope in 1113.<sup>76</sup> This was re-confirmed and recognised by the Italian Court of Cassation in 1935.<sup>77</sup> The Order has extraterritoriality over its Roman headquarters, akin embassies, with embassies in other states. It therefore maintains diplomatic and formal relations with over 100 states, the EU, other IGOs and the ICRC. It is therefore recognised (and self-identifies) as a subject by over 80 states with its principal officers being ‘citizens’. It enters treaties, issues passports, coins, licence plates and stamps.

However, some dispute the fact that the Order is a recognised subject,<sup>78</sup> a primary subject,<sup>79</sup> or a full subject.<sup>80</sup> They say that it cannot be a sovereign subject as it is not independent because of its religious affiliations and growing dependency on the Holy See.<sup>81</sup> They cite the fact that it is only a permanent UNGA observer as an ‘*other entity*’ alongside the Movement, and not as a UN member state, non-member UN state (Holy See) or an IGO. Furthermore, it is not a state.

Nevertheless, although its status as a subject is disputed, the Order does exhibit aspects of sovereignty thereby attributing it a quasi-subject status.<sup>82</sup> It has a slight international presence due to its limited evanescent and unique *personality*.<sup>83</sup> It has a “limited legal capacity

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<sup>74</sup> Cyprus 1291–1310, Rhodes, 1310–1523, and Malta, 1530–1798.

<sup>75</sup> As seen from its motto: Defence of the faith and assistance to the poor (*Tuitio fidei et obsequium pauperum*). This can also be seen from its employment of thousands of medical professionals and use of volunteers operating in over 120 countries to help the needy without discrimination.

<sup>76</sup> Pope Paschal ii. Its secondary status being confirmed by its recognition by primary subjects, Karski, Karol, *The International Legal Status of the Sovereign Military Order of St. John of Jerusalem of Rhodes and of Malta*, International Community Law Review 14 (2012) 19–32.

<sup>77</sup> Nanni n.72, See also Shaw, n.53.

<sup>78</sup> Crawford, James, Brownlie’s Principles of Public International Law, 8<sup>th</sup> Edition, Oxford University Press, and even that such recognition makes it a subject. For example, the Order does not have its own radio call sign (as granted by the ITU to quasi-sovereign entities, including the UN and the Palestinian authority), domain status or international dialling code (the Vatican has the latter two).

<sup>79</sup> Karski, n.76.

<sup>80</sup> Wallace citing the Holy See’s 1953 decree that the Order’s quality as a sovereign institution is functional, to ensure achievement of its purposes and that as an IL, it enjoys certain powers, but not the entire set of powers of sovereignty, Wallace, R.M.M., *International Law*, 1992, Sweet and Maxwell.

<sup>81</sup> Whose subject status is also on shaky ground, Cassese, Antonio, *International Law*, 2<sup>nd</sup> Edition, Oxford University Press.

<sup>82</sup> Cox, Noel, *The Acquisition of Sovereignty by Quasi-States: The Case of the Order of Malta*, Mountbatten Journal of Legal Studies.

<sup>83</sup> Cassese, n.81. Who also mentions the Italian court of Cassation in 1991 reaffirmed the Orders unique *personality* in *Sovrano militare Ordine di Malta v. Amministrazione delle finanze dello Stato*, at 177, where it stated that this *personality* is ‘functional in character, in that it operates exclusively so that the Order may attain its institutional goals of health and hospital assistance.’ From which Cassese states that the court derived the Order’s immunity from state jurisdiction.

to act in international relations for the purpose of achieving [its] goals”.<sup>84</sup> Therefore there is potential for entities to be atypical subjects which bodes well for the Movement also to be one. Each facet of the Order that indicates its atypical subject status shall be examined in turn.

Cox calls the Order’s humanitarian goals one of the most significant factors in its maintenance of *personality* and atypical status.<sup>85</sup> Furthermore, the Order needs unique *personality* and subject status to pursue these humanitarian goals. The Movement too has developed a humanitarian Mandate as per its 2<sup>nd</sup> Fundamental Principle and atypical status would also be useful in pursuit of this. Hence the Movement would fulfil this humanitarian and necessity requirement to be considered an atypical status.

The next most significant factor in the Order’s maintenance of subject status and *personality* is its unique history.<sup>86</sup> The Movement too has had a unique history, as documented more in Chapters 2, 4 and 6, both in terms of the ancient Games and the modern re-incarnation. If the Order links to its historical entity, potentially the Movement could too - to Elis in classical Greece. This would mean that they will both have had, at some point in history, territorial sovereignty, and Cox calls this the overarching reason, although lost, that the Order initially gained its status.<sup>87</sup> Hence the entity does not have to currently hold territory, but it must have done so in its history.<sup>88</sup> This could support the Movement being an atypical subject, if historical territorial sovereignty ensured subject status. Chapter 6 demonstrated that the ancient Games were absorbed into Elis and the Olympic site was inviolable. Furthermore, if a permanent Movement site were ever successfully established, this could be akin the Order’s Roman headquarters, or possession of Rhodes or Malta, over which it has extraterritoriality.

The Movement does not enter formal diplomatic relations or have embassies, unlike the Order, potentially its NOCs and IOC members could be considered to exercise this role in their various states. Rule 27 of the Charter states NOCs are to promote Olympism in their countries and Rule 16 requires IOC members to do likewise. Thereby supporting the Movement being considered an atypical subject like the Order.

Furthermore, the Movement enters treaties, such as the Host contracts with states, like the Order. It could also be likened to this atypical subject in the issuing of passports. Although

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<sup>84</sup> *Nanni*, n. 72. See also, *Cassese*, n.81.

<sup>85</sup> After 1798.

<sup>86</sup> See *Cox*, n.82. See also *Cassese*, n.81.

<sup>87</sup> The possession of Rhodes and Malta gave it this status and the Order’s Grand Master, a sovereign Prince, *Cox*, n.82.

<sup>88</sup> This is because the Order is cited as the only example of a sovereign subject without territory, but it seems to qualify as a subject because it did historically, probably because it was hoped it would regain lost territory, akin an exiled government, *Cox*, n. 81.

the Movement does not issue passports, it does allow athletes to compete under the Olympic flag in certain circumstances, and Olympic recognition is useful in the establishment of statehood. Competition under this flag and Movement support in establishing state recognition, tentatively could amount to self-recognition.<sup>89</sup> The Movement and the Order share many commonalities that are given as examples of the latter's *personality* and status.

However, and most significantly, the Movement is not recognised as a subject by itself or other primary or secondary subjects, distinguishing it from the Order. The IOC recognises itself as an INGO and a legal person, but not as having *personality*,<sup>90</sup> nor is this inferred by its external recognition, despite Switzerland's favourable treatments of it. This recognition and status is discussed further in Chapter 4. Nevertheless, the Order's justification of status and *personality* under international law derives from and places more weight on its:- humanitarian goals and the necessity of *personality* and status in pursuit of these; its unique history; and its former territorial sovereignty. All features that it shares with the Movement. This justifies the Movement being considered an atypical subject, akin the Order with quasi-subject status and a limited *personality*.

#### 3.4.3.2 Holy See

The Holy See ("See") is the 'parent' or 'ecclesiastical' jurisdiction of the Catholic Church, governing all its members and officers.<sup>91</sup> The Holy See, or the Papal States, have been recognised as a sovereign state since the medieval era.<sup>92</sup> However, with Italian unification in the late 19<sup>th</sup> Century, the See's territorial sovereignty was lost and debate surrounded whether it could remain a sovereign state, after this territorial loss.<sup>93</sup>

After this loss, but before the 1929 Lateran Treaty, the See continued its diplomatic relations and entering of international agreements and concordats, indicating its *personality* continued in these 'territory-less' years.<sup>94</sup> The issue seems nevertheless settled in the affirmative by the Lateran Treaty which recognised the sovereignty of the See.<sup>95</sup> It also restored to the See, the 'newly' recognised and created VCS for which the See holds territorial sovereignty over, negating its 'territory-less' years where this lack could mean a loss of its

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<sup>89</sup> Nor does it issue coins etc.

<sup>90</sup> This is not so designated.

<sup>91</sup> Cox, n.82.

<sup>92</sup> And some date it to biblical times.

<sup>93</sup> Shaw says it was, n.53.

<sup>94</sup> Shaw, n.53. Indeed the Lateran Treaty is such an example of this, thereby confirming, not bestowing its statehood. See also, Cox, n.81.

<sup>95</sup> Shaw, n.53 and was entered with Italy.

sovereignty.<sup>96</sup> This creation and recognition ensured the Pope's diplomatic and spiritual independence,<sup>97</sup> and gave the See its required territorial sovereignty for international affairs.<sup>98</sup>

Although interrelated, and part of the same construct, the See is different to the VCS, but it too has an equally unstable status.<sup>99</sup> The See is an independent sovereign entity, analogous to a state, with recognised full *personality* by the international community.<sup>100</sup> This is demonstrated by its diplomatic relations with states,<sup>101</sup> its entering of treaties and concordats with states, and its membership of various international organisations.<sup>102</sup> It has an:-

“exceptional nature within the community of nations; as a sovereign subject of international law, it has a mission of an essentially religious and moral order, universal in scope, which is based on minimal territorial dimensions guaranteeing a basis of autonomy for the pastoral ministry of the sovereign Pontiff.”<sup>103</sup>

Whereas the VCS is a small support state existing solely for its support role, with no diplomatic relations, no permanent population (aside Church functionaries), and with Italian assistance for its administrative duties.<sup>104</sup> Yet it does enter international treaties and is recognised as a state.<sup>105</sup> They both therefore possess their own separate international identities. The See, together with the VCS, show that atypical subjects of international law do exist. Cox calls the See the transition from an independent subject of international law with an essential territorial origin, to something different.<sup>106</sup> This bodes well for Movement being so considered. It too has an exceptional nature within the international community of an essentially sporting and humanitarian purpose, universal in scope and necessary for its independence. The Movement currently lacks territory, as does the See, but unlike the See, it did not hold lands, unless as

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<sup>96</sup> Essentially the lands lost to Italy in 1870.

<sup>97</sup> Hatschek states that “Since international law does not allow any one state to control the Pope in his character as head of the Catholic Church, he has to be put in a position of international independence ... even though he is not the head of a state ... he has to be made an independent subject of international law”, Hatschek, J, translated by Manning, C, *An Outline of International Law*, Bell & Sons, London, 1930, 56, cited in O'Connell, DP, *International Law*, 2<sup>nd</sup> edn, Stevens, London, 1970, 85-86. See also Cox, n.81.

<sup>98</sup> It also has extraterritorial sovereignty over other sites in Italy too.

<sup>99</sup> Shaw, n.53. It is analogous to a state as it does not strictly fulfil the Montevideo's Criteria of statehood, yet the case for the VCS is stronger.

<sup>100</sup> The See has *personality*, which can be seen as the Catholic Church's government operating from the VCS, thereby the VCS is the See's 'capital', Crawford, James, *Creation of States in International law*, Second Edn. Oxford University Press. See also Shaw, n.53.

<sup>101</sup> With 183 sovereign states, the EU and the Order.

<sup>102</sup> It is a permanent observer as a 'non-member state' to the UNGA, unlike the Order and Movement (other entities),

<sup>103</sup> Statement by the See to the UN in 1992, Shaw, n.53.

<sup>104</sup> Shaw, n.53, and where possible the See enters Treaties on its behalf.

<sup>105</sup> Shaw, n.53.

<sup>106</sup> Cox, n.82. See also Hatschek, n.97.

mooted above it links to Olympia or a permanent Olympic site is founded. Moreover it enters treaties and has the potential for informal diplomacy.<sup>107</sup> Nonetheless, the leap from the See being a subject of international law to the Movement being so considered, based on these factors, is not so great.

### 3.4.3.3 ICRC

The International Committee of the Red Cross (ICRC) is part of the International Red Cross and Red Crescent Movement (“RC Movement”). The RC Movement includes various entities, each with their own distinct legal personality spanning the globe.<sup>108</sup> These include the International Federation of Red Cross and Red Crescent Societies (IFRC) which co-ordinates the network of 190 National Red Cross and Red Crescent Societies (NRCS).<sup>109</sup> Although each entity is separate, all RC Movement entities share fundamental principles and purposes.<sup>110</sup> The RC Movement can therefore be likened in terms of organisational structure to the Olympic Movement in that they have:- an organisational committee (the ICRC and IOC);<sup>111</sup> an international federation (IFRC and ISFs); which draw from worldwide national entities (NRCS and the NOCs). Furthermore, each Movement and their entities, are united by their shared purposes and goals. The Movement has Olympism, its philosophical basis which values human rights, humanitarian goals, sport and health. Olympism unites the Movement, in the way the RC Movement is drawn together by its humanitarian goals. Furthermore the Movement and the RC Movement have an overlap in their missions, as many INGOs do, with the Fundamental Principles of Olympism having a humanitarian and human rights slant.<sup>112</sup>

However, it is not the RC Movement that is mooted as the atypical subject with a special status under international law – it is the ICRC – which would be akin to this thesis arguing for the IOC and not the Movement to have special status under international law (to govern an

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<sup>107</sup> As mentioned in the Order section above regarding host nation contracts, NOCs and IOC members.

<sup>108</sup> The Movement draws on nearly 100 million volunteers, members and staff from around the world and has humanitarian and human rights goals, including protection of life and health.

<sup>109</sup> The IFRC, was founded in 1919 (almost 60 years after the ICRC) and co-ordinates emergency relief missions alongside its member NRCS. These NRCS work in their home states (although 16 fewer than NOCs exist) following the RC Movement’s overall humanitarian goals and statutes. This is akin the Movement’s entities mandatorily following its Charter and the fundamental principles of Olympism. Furthermore, in the way that many NOCs are not separate to states, many NRCS connect to their national health service for emergency provision. <[www.ifrc.org/en/what-we-do/](http://www.ifrc.org/en/what-we-do/)> accessed 11<sup>th</sup> March 2017.

<sup>110</sup> *Ibid.*

<sup>111</sup> Both have a role in recognition for national entities within their Movements.

<sup>112</sup> Mestre, n.43. NGOs missions tend to be philanthropic, for example Oxfam International’s mission statement is “a global movement for change, to build a future free from the injustice of poverty ... to influence the powerful, to ensure that poor people can improve their lives and livelihoods and have a say in decisions that affect them.” Oxfam International <[www.oxfam.org/en/about](http://www.oxfam.org/en/about)> accessed 11<sup>th</sup> February 2016.

Olympic Truce Treaty). This thesis does not take this route as on its own, it does not possess sufficient of the features to justify atypical international law treatment nor does it consider it separable to the remainder of the Movement. The ICRC is the body within the RC Movement that potentially has a special status under international law as an atypical subject and a unique INGO. It could act as a precedent for the Movement/IOC having similar rights, obligations, mandates, recognition and status as the ICRC under international law.<sup>113</sup> Therefore it is necessary to understand what rights the ICRC possesses and why, to determine whether these could be serve as a foundation for the Movement's.

The ICRC was established in 1863 as a private association in Switzerland under the Swiss Civil Code, to undertake humanitarian activities during armed conflicts.<sup>114</sup> The 1949 Geneva Conventions then bestowed upon the ICRC a role in international humanitarian law, specifically in the implementation and enforcement of the GCs. For example, the ICRC is to provide relief to protected civilians, prisoners of war and to occupied territories.<sup>115</sup> As mentioned with the movements above, both the IOC and the ICRC share human rights goals. Furthermore they are both meant to be independent, neutral NGOs.

Again like the IOC, the ICRC's statute demarcates its role,<sup>116</sup> but offers little in terms of understanding whether it possesses *personality*. Both of their statutes define them as 'associations' governed by the Swiss Civil Code and endowing them with 'legal personality'.<sup>117</sup> But neither of their statutes mention whether this personality is international, thereby assuming it is national. Furthermore, despite demarcating the ICRC's role, potentially justifying its *personality* and atypical subject status, the GCs are silent on this.<sup>118</sup> This suggests that their constituent documents give the ICRC and IOC an equal footing with regard to status and *personality*. However, unlike the IOC, the ICRC asserts it is a subject of international law with a special status and *personality*,<sup>119</sup> although this may be limited or *sui generis*, a view

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<sup>113</sup> The ICRC under the GCs (and their Additional Protocols - all GC references here include their APs also) and the Movement would have rights under the Truce Treaty.

<sup>114</sup> 31 years prior to the IOC.

<sup>115</sup> GCIII, Articles 73 and 125, and GCIV, Articles 59 and 61.

<sup>116</sup> As per the Geneva Conventions, and to faithfully apply international humanitarian law and to protect and assist victims of armed conflicts, Article 4 ICRC Statute.

<sup>117</sup> the ICRC is "an association governed by Article 50 and following of the Swiss Civil Code, the ICRC has legal personality", Article 2 ICRC Statute; and 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...".

<sup>118</sup> They also do not require contracting parties to recognise its *personality* (domestic or international) or grant it immunities, Gazzini, Tarcisio, A unique non-state actor: the International Committee of the Red Cross, Human Rights and International Legal Discourse, Vol. 4, No. 1, 2010.

<sup>119</sup> It did this before the ICTY, which confirmed this conclusion in *Prosecutor v. Simic et al.*, International Criminal Tribunal for Former Yugoslavia, 27 July 1999, para 721, Gazzini, n.118.

confirmed by many states and the ICTY.<sup>120</sup> For example, the Swiss Federal Council entered a Headquarters Agreement with the ICRC in 1993 (and not the IOC despite its attempts), which comes with privileges of extraterritoriality and juridical immunity.<sup>121</sup> Such privileges can, but do not necessarily demonstrate special subject status, but nevertheless here they do show Swiss recognition of “the international juridical personality and the legal capacity in Switzerland of the ICRC.”<sup>122</sup>

This granting of (limited) subject status and *personality* to the ICRC appears to be due to seven factors, many of which could equally apply to the IOC/Movement.<sup>123</sup> The first factor cited is that the ICRC deserves special status because it has entered many treaties with states, international organisations such as the UN, and additional Headquarters Agreements with over 60 states.<sup>124</sup> The GCs are cited as the primary examples of these and are examined further in the mandate section - the 6<sup>th</sup> factor below.<sup>125</sup> The IOC’s only equivalents are the Host Nation contracts, being the beneficiary of rights under the Nairobi Treaty on the Protection of the Olympic Symbol 1981,<sup>126</sup> or benefiting as an international organisation headquartered in Switzerland under a 2007 Swiss federal law. This 2007 law regulated the relationships between Swiss authorities and certain international organisations headquartered there, and specifically identified the IOC as ‘special’.<sup>127</sup> Yet in terms of entering relationships, the IOC does not appear to be afforded the same opportunities as the ICRC, internationally or domestically, thereby suggesting a lesser status. However, it is important to note that the majority of the ICRC’s opportunities here came about after it was given its mandate in the GCs. The IOC could hope for such treaty opportunities and recognitions that the ICRC has, post a Truce Treaty.

Secondly, as a result of such agreements with states, the ICRC enjoys privileges and immunities from the jurisdiction of several states, such as those under the Swiss HQA mentioned above. This is an advantage that the ICRC has over the IOC in claiming special status and *personality* under international law. The third reason given as evidence for the

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<sup>120</sup> The German government has stated that the ICRC has *personality* “in a number of respects.... [its] work in ... armed conflicts is based on the four GCs... which give it the right to carry out specific activities... the basic prerequisite for its works is strict impartiality and neutrality”, Gazzini, n.118.

<sup>121</sup> Chappelet, n. 12. See also Agreement between the ICRC and the Swiss Federal Council to Determine the Legal Status of the Committee in Switzerland, 19<sup>th</sup> March 1993 (Headquarters Agreement). Although a 2008 Agreement between the IOC and the Swiss Federal Council gives it access to Swiss diplomats and consuls. Mestre, n.43.

<sup>122</sup> Article 1, 1993 Headquarters Agreement. Although Gazzini asserts that nothing prevents states granting such privileges to an organisation without *personality*, n.118.

<sup>123</sup> Gazzini, n.118.

<sup>124</sup> *Ibid.*

<sup>125</sup> Walter, n. 3.

<sup>126</sup> See Chapter 4.

<sup>127</sup> And any ISFs headquartered there.

ICRC's special status is that it maintains diplomatic relations with states and international organisations, although Gazzini disputes this as convincing evidence. This leads to the fourth cited piece of evidence which is that the ICRC has UN observer status.<sup>128</sup> However, the IOC and the IFRC also have this, all appearing under the category of 'other entities', supporting the argument that the IOC could be an atypical subject with *personality*, akin the ICRC. However, elsewhere within the UN system, the ICRC and not the IOC, is one of 4000 plus bodies granted ECOSOC consultative status, thereby suggesting that it is the former that is the more unique subject. The fifth reason is that the ICRC has claimed against subjects of international law, although again Gazzini disputes this as concretely evidencing subject status.<sup>129</sup> Furthermore, it is a factor to which the IOC has no equivalency, having made no such claims.

The sixth and most indicative factor in the ICRC having special subject status and *personality* under international law are its mandate and functions, as conferred on it by its statutes and more importantly, the GCs. This factor can be unpacked into two reasons. The first is that the ICRC's GC mandate requires it to have subject status and *personality* to fulfil this given role. The foundational basis and justification for this is the ICJ's *Reparation* Advisory Opinion which advised that the UN was exercising functions and rights which required the possession of *personality*, and was thereby an international law subject.<sup>130</sup> The IOC has a self-created mandate in peace and security as per its second Fundamental Principle, like the ICRC, and could have a treaty given one to under an Olympic Truce Treaty. If the latter were to happen it would justify the IOC at least having some necessary for of subject status and *personality* under international law. This would mean that the IOC would not have to have this now, only after such a Truce Treaty. However, Reparations centred on the UN, an IGO capable of having derivative *personality* and status, and the IOC is an INGO. However, as Chapters 2 and 4 show, this thesis has shown that the Movement, and therefore the IOC links to the state system. The mandate factor can also be further unpacked to understand why it justifies the ICRC receiving a special and *personality*. Under the GCs the ICRC in times of armed conflicts performs Convention duties traditionally performed by state parties. The ICRC steps into the role of the contracting state at war and assumes its duties or into the role of the 'protecting power'.<sup>131</sup>

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<sup>128</sup> UNGA Resolution 45/6, 16<sup>th</sup> October 1990.

<sup>129</sup> He cites the UN compensating the ICRC following the Katanga incident in 1961, n.118.

<sup>130</sup> It stated that the UN was a subject of international law entitled to bring an international claim as it "was intended to exercise and enjoy... functions and right which can only be explained on the basis of the possession of a large measures of [*personality*] and the capacity to operate upon the international plane", in Gazzini, n.118. See also *Reparation*, n.52.

<sup>131</sup> E.g. with regard to the visiting and interviewing of prisoners of war and civilian internees, Article 126 GCIII, and Art 143 GCIV, whereby if a contracting warring party denies the ICRC prisoner of war visitation rights, it



Whilst writers such as Gazzini and Barlie say that this role assumption does not infer or necessitate *personality* or atypical subject status, such commentary is unnecessary in determining the weight of the ICRC's precedent to the IOC/Movement. This is because irrespective of the ICRC's status, it is given a role similar to which this thesis advocates for a Truce Treaty. And moreover, many within the international community, as indicated above, do afford the ICRC such status and recognitions irrespective of this scholarly dispute. Therefore on both fronts, i.e. the ICRC's status and *personality*, and mandate, are suitable precedents for the IOC/Movement.

The final factor in attributing the ICRC an atypical subject with *personality* is because of its universality. Both organisations are universal, which they do not necessarily strictly achieve themselves, but are heavily aided through their national branches:- NRCs and NOCs. While universality is not sufficient itself to justify an atypical subject status necessitating *personality*, it contributes to it and shows why this thesis advocates extension of norms to the Movement, and not to the IOC. As mentioned under Olympic Singularity, this universality is achieved by the whole Movement.

Even if the Movement and IOC do not fit into an atypical subject of international law or one of the other non-state actor categories, or be in possession of some form of limited *personality*, it may still have capacity for international action and influence, or to be granted rights and obligations under a Truce Treaty.<sup>132</sup> *Personality* and subject status are of course not synonymous with capacity, although they are frequent corollaries.<sup>133</sup> This section has shown that as international law's subjects are not exhaustive, and that new breeds such as the Holy See, the Order and the ICRC do emerge, then the Movement/IOC could have emerged that have an emphasis on capacity for action.

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violates the other warring party's rights. A protecting power were states appointed by warring parties to safeguard each party's interests and enforces the GC.

<sup>132</sup> It is generally accepted that there are a plethora of international 'actors', which consist of states, their dependent territories, non-self-governing territories, international state organisations, NGOs, multinational companies, public companies, private companies, individuals, belligerent groups, terrorists, liberation movements, and any combination thereof, with the list being potentially limitless.<sup>132</sup> The Movement and its branches are actors in this broad sense.

<sup>133</sup> As capacity can vary amongst international actors, some suggest it should be divided from *personality* to focus on the relationship, Walter, n. 3.

### 3.5 Other Atypical International Webbed Networks

It could be argued that many atypical international actors have their own form of webbed universality akin the Movement's or some form of atypical status. Thereby, if the Movement should have special status and *personality*, then so should they, or conversely if they do not, then neither should the Movement.

The United Nation's International Labour Organisation (ILO) uses a "unique tripartite structure" drawing together governments, employers, and trade unions and workers representatives in order to promote and set the standards of decent working conditions around the world.<sup>134</sup> It has a close working relationship with the International Trade Union Confederation (ITUC), that seeks to promote and defend worker's rights and that the ILO's standards are upheld.<sup>135</sup> They (and their collegiate work) could be said to be a web of international actors that hitches to the state system with responsibility for enforcement of international law. Thereby occupying a position, not dissimilar to what this thesis advocates for the Movement. They are both based on contracts (employment contracts versus consent to the Olympic Charter or other sporting constitutions) and have a range of Tribunals through which to enforce rights. Yet the ITUC does not have atypical subject status or *personality*. This would suggest that the Movement follow this precedent, rather than the ICRC's or the atypical subjects mentioned above.

Indeed, when the reasons for Olympic Singularity (mentioned in section 1.3.2) and the specificity of sport (mentioned at section 4.5.1) are examined, many of the justificatory reasons for the specificity of sport and the Movement are shared by the ITUC:- work and sport are both significant; they have unusual webbed or pyramid structures that stretches across the world; they work closely with governments; they have forms of universality; unique histories; have a unifying purpose (sport and worker's rights) with wider goals of societal and peaceful development; and they are significant international non-governmental organisations. This seems compelling for the Movement to follow the ITUC's precedent.

However, the ITUC lacks some of the key features of Olympic Singularity and those justifying sport's specificity before the law. The features it lacks, centre on the autonomy of sporting institutions and their ability to develop their rules that are then enforced as law – or are indeed law to begin with due to sport's specificity. With regard to labour, what is enforced

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<sup>134</sup> Shaw, n.53.

<sup>135</sup> E.g., p.7 'Aims' of its Constitution states that it "shall work to strengthen the role of the ILO, and for the setting and universal application of international labour standards, and to win representation at other international and regional organisations with a view to having their policies and activities contribute coherently to the achievement of decent work", ITUC Constitution, 1 November 2006.

are existing employment or contract laws as developed by the appropriate body, with perhaps some leverage exerted to update or enforce those, not those developed by a non-state entity and observed as if they were already law. This is what allows sporting bodies to discriminate (on sex, age etc.) or to use terms differently. It has led to the Movement's special treatment in domestic jurisdictions and internationally before the UN by way of its UNGA observer status. Something which has only been extended to five non-IGO entities:- ICRC, IFRC, the Order (discussed above), and the Inter-Parliamentary Union (IPU).<sup>136</sup>

### 3.6 Conclusion

The IOC fulfils the UN's (I)NGOs criteria. However, the IOC is more than a 'regular' INGO. It is something unique. The IOC's plane is both national and international. However, on the international stage, the most powerful and fullest of actors are states, followed by IGOs. Clearly, the IOC is neither of these. This is where it was necessary to examine other types of actors who have international capacity and that may possess limited international subject status and *personality*, and whether the Movement or its entities could be thus. The most convincing argument here likens the Movement to an atypical subject of international law. There are similarities between it and the See and the Order. But this Chapter demonstrated that the Movement has more similarities with the RC Movement and ICRC. Whilst the Movement currently does not share the full range of international rights and duties, status and *personality* as the ICRC, it does have enough commonalities to justify inclusion here. Indeed it was the GCs and the ICRC's mandate that led to its recognition and *personality* under international law, and a Truce Treaty could do the same for the Movement.

Olympic Singularity means that the IOC cannot be removed from this international state system but nor is it purely an INGO. The full extent of the IOC's international rights, obligations and treatments will be examined in the next Chapter but some examination here was necessary, alongside other Olympic actors, as they compared to atypical subjects. This thesis is not submitting that the IOC is an IGO or state, but that it possesses similar *personality* features to them, placing it between an INGO and an IGO: an atypical subject. Indeed, Henkin notes that (I)NGOs can have recognised legal status under Treaties or international agreements.<sup>137</sup> And Walter claims that the *personality* of (I)NGOs is still unsettled albeit not

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<sup>136</sup> The IPU, as an international organisation of parliaments has not been discussed here as it does not possess sufficient features in terms of visibility, size or singular shared purpose as the Movement.

<sup>137</sup> Henkin, Louis, et al. 2<sup>nd</sup> edition, *International Law* (West, 2009) 318. See also Ettinger, n. 5.

entirely excluded.<sup>138</sup> Hence a new role can be potentially carved out for the IOC, and the singular Movement by this rhetoric.

## CHAPTER FOUR

### Legal Treatment of the IOC

#### 4.1 Introduction

Chapter 3 has shown that the IOC fulfils the UN's INGO checklist, and that at times it is one of the most unique and powerful INGOs, as demonstrated by the universal web proven in Chapter 2. It also demonstrated that the IOC, NOCs and ISFs share commonalities with other atypical subjects justifying the extension of their privileges under international law, to them. It is not a typical INGO, but more akin an atypical subject.

This Chapter will examine in more detail than previous Chapters, the fifth aspect of Olympic Singularity - whether the IOC (rather than other Olympic branches) receives special treatment under national and international laws. Any special legal treatments of the IOC can be uplifted to the whole Movement due to its web. In so doing, it will also determine whether there is a reason for the current informal pyramid of separate actors, rather than treating the Movement as one entity. It will also examine whether such treatments indicate a special status and *personality* under international law, enabling Movement governance of a Truce Treaty. And whether such treatment indicates a recognition or an affirmation of special status. It will do this by asking four questions:-<sup>1</sup>

1. What status does the Charter have and how do states treat it?
2. How do states/IGOs interact with the IOC?
3. What powers does the IOC possess?

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<sup>138</sup> Walter, n. 3.

<sup>1</sup> Some of these are derived from the requirements for *personality* and have been adapted to show here the IOC's special status as more than that of a regular INGO's.

4. Does the specificity of sport indicate state affirmation/recognition rather than creation of the IOC's special status? If the latter then the IOC's special status would stem from state sovereignty, and if the former, the IOC has law-making power - the seventh aspect of Olympic Singularity - and shall be examined here.

Chapter 4 will also examine whether the Charter's frequent references to the 'Movement' have unintentionally given birth to it in a legal sense, and is the sixth aspect of Olympic Singularity.

## 4.2 The Olympic Charter – Status as law

The Charter is the primary place to start any examination of whether the IOC receives special legal treatment. It could itself contain a designation or identification of its special nature as law, or be externally recognised by states as law. Even if it is not declared from within or out-with as law, the Charter may still receive some form of lesser recognitions or dispensations.

The Charter could be considered: hard law; customary law; or law via CAS judgements. Firstly however, the Charter cannot be considered hard law in the international or formal sense, as it is not created by an IGO or a state. Yet the argument that ISFs and the IOC can create a global sports law with autonomous rules via the Charter is also applicable here. If the IOC and ISFs can make 'law', they would be unique INGOs and an atypical subject. Although tenuous and unproven, this could show that the Charter as transnational law. This debate is strictly beyond this thesis, but its existence shows that the Charter occupies a unique position on the international stage. This shall be discussed briefly in this Chapter and this thesis takes the view that in certain circumstances, the Charter may be considered law, especially when states host the Games. The existence of the debate as to whether the Charter does or does not constitute hard law is enough to show its and consequently the IOC's special position here. Special enough for the Movement to have governorship of a Truce Treaty.

Secondly, the Charter could be considered customary law. The Charter itself could have passed into custom. And thirdly, the decisions of its 'court', CAS could have binding weight and be considered law. This third consideration opens the debate up from the Charter strictly and ties it back into the overall Movement and international sporting scene.

The majority of these arguments are inter-twinned, meaning that this Chapter will focus on whether the Charter constitutes customary law. The Charter would then be law making the IOC a unique entity as the creating body. If the Charter is customary law, then this would add

significant weight to the argument that the Movement be responsible for administering and enforcing a Truce Treaty.<sup>2</sup>

The main problem with such a consideration is that the Charter is ‘voluntary’, and cannot be law, which lessens the potential for the IOC to have a special status here.<sup>3</sup> This would mean any Charter observance by states, individuals, Teams, NOCs or other entities, rests on a contractual obligation. But the level of volition here is disputed due to the desire of athlete’s to ‘work’ i.e. participate at the Games, indicating that the Charter could still be customary law and shall be examined here.

#### 4.2.1 Is the Olympic Charter Customary International law?

If the Charter constitutes international law, customary or otherwise, then the IOC’s potential status, *personality* and sovereignty is unlimited. Hence its voluntariness is an essential component to be examined here.

##### 4.2.1.1 Treaty Recognition of the Olympic Charter

One of the necessary elements for the Charter to be custom is that it be recognised as law. O’Neill and Ettinger both say that states (governments and courts) and international law do recognise the Charter’s authoritative force and accord it due respect.<sup>4</sup> Ettinger claims that the Helsinki Accords of the 1970s established that the Charter constituted customary international law.<sup>5</sup> The Accords state that “to expand existing links and cooperation in sport, participating states will encourage contacts... on the basis of establishing international rules, regulations and practice.”<sup>6</sup> However Ettinger concedes that the Accords are themselves not legally binding, but guiding norms to its signatory states.<sup>7</sup> Therefore status of the Charter as law based on the Helsinki Agreements is tentative and the Charter’s authoritative force must come from elsewhere.

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<sup>2</sup> This could be considered as linked to the argument about whether ISFs/IOC creates global sports law – but it is specifically the Charter that is being discussed here.

<sup>3</sup> Nafziger, James A. R., *The Handbook of International Sports Law* (EE Publishing Ltd 2013).

<sup>4</sup> Ettinger, David J., ‘The Legal Status of the International Olympic Committee’ (1992) Volume 4 Pace International Law Review 97. See also O’Neill, Barbara, ‘International Sports: Have States Succeeded Athletes as the Players?’ (1988) Volume 6 Number 3 *Penn State International Law Review*.

<sup>5</sup> These were Conferences on Security and Co-operation in Europe commencing in Helsinki in 1973 and stretching to Geneva in 1975. Ettinger, n. 4.

<sup>6</sup> Ibid.

<sup>7</sup> Ettinger, n. 4. See also Nafziger, James A. R., *International Sports Law* (Transnational Pub, 1988).

#### 4.2.1.2 Recognition of the Olympic Charter as law in Domestic Courts

Domestic courts around the world have had several cases where the status of the Charter as law has arisen – whether it constitutes binding law, strong enough to supersede their own laws. It must be remembered that any domestic cases are only that state’s interpretation of the Charter and the IOC - other courts elsewhere may differ. Plus there would have to be sufficient repetition and universalism for that approach to be considered law.

Nevertheless, in Belgium, the courts confirmed that in certain circumstances international sport rules and the Charter can supersede conflicting national law and are thus binding.<sup>8</sup> This leads Ettinger to confirm that Belgium recognises the customary international law natures of IOC rules.<sup>9</sup> Thus paving the way for other states to do so too.

The US appears to follow Belgium in a number of cases where their courts upheld the Charter over competing domestic law rights. The first two cases *Martin* and *SFAA* suggest that the Charter may be a form of customary law. However, in those two cases the courts were clear to avoid specifically stating this or that the Charter is supreme over US law. In fact the ruling may contradict this as it suggests they upheld a contract. Hence side-stepping and court ambiguity is what these cases show.

The case of *Martin v International Olympic Committee (1984)* is the first US case that demonstrates the US’s approach.<sup>10</sup> Here, the courts applied the Charter instead of US domestic law and found in favour of the IOC, and the ISFs.<sup>11</sup> In *Martin* female runners sought to compel the IOC, LAOCOG, the USOC and the IAAF to include a woman’s 5 and 10k race at the 1984 Los Angeles Games.<sup>12</sup> These races existed on the men’s programme and in women’s international competition, but not at the Games. The women sought to use the equal rights protection of the California Civil Code (which contains and codifies the Unruh Civil Rights Act 1959), as Rule 32 of the 1970 Charter amounted to gender discrimination. Rule 32 governed the admission of new events to the Olympic programme.<sup>13</sup> It stated that this was a decision to be taken by the IOC and the ISFs, depending on popularity of participation in the four years preceding the relevant Games.

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<sup>8</sup> Ettinger, n. 4. See also Nafziger, n. 7. See also Bondoux, Batonnier Rene, ‘Law and Sport’ (1978) Aug-Sept Olympic Review, 494, 500-02.

<sup>9</sup> Ettinger, n. 4.

<sup>10</sup> *Martin v International Olympic Committee* (1984) 1 740 F.2d 670, 705 (9th Cir. 1984).

<sup>11</sup> And again involved the IAAF.

<sup>12</sup> There were a variety of pursuers and defendants in this case: the IOC, the USOC, the LAOCOG and the IAAF.

<sup>13</sup> This stated that “the IOC in consultation with the ISFs ... shall decide the events ... in bearing with the global aspect of the Olympic programme and statistical data referring to the number of participating countries in each event ... for a period of 1 Olympiad”, Rule 32 1970, Charter.

However the women were denied their motion on the reasoning that to force the Movement's hand would be apartheid as they were seeking individual races for themselves and not to run in the men's events.<sup>14</sup> This ignores that the genders are split in sport and the concept of equality of opportunity, which Judge Pregerson noted in his dissenting opinion.

Moreover, the court upheld Rule 32 and rejected the women's claim on the basis that:

“a court should be wary of applying a state statute to alter the content of the Games. The Games are organized under the terms of an international agreement - the Charter. We are extremely hesitant to undertake the application of one state's statute to alter an event that is staged with competitors from the entire world under the terms of that agreement.”<sup>15</sup>

This therefore suggests that the US courts apply the Charter over and above its own domestic laws and potentially if there is conflicts with domestic laws.<sup>16</sup> That the Charter (and the IOC) is authoritative with regard to the Games.

However, *Martin* avoided definitively determining that the Charter was superior to US law by ruling that the Charter did not breach US law. It held that Rule 32 of the Charter was not discriminatory as it applied to both men and women equally and thus it was gender neutral. Their reasoning for such a find is neither logical nor detailed and misunderstands that the effect of a rule may be discriminatory. Thus they found that Rule 32 did not breach US anti-discrimination laws and were thus not applicable. Thus they said they were applying contractual rules and created the loophole this way.<sup>17</sup> Potentially because the Games were being held on its territory.<sup>18</sup> It in effect found the Charter superior, and found a reason to justify it, basing it on contract.

In *San Francisco Arts and Athletics (SFAA) v USOC and IOC* the US courts again found in favour of the IOC and refused to overturn their decisions and authority, reinforcing

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<sup>14</sup> Judge Alarcon, concurred that the women's “disappointment should not blind us to the harm that if the courts were now to interpret legislation, enacted to end class based discrimination, to require a business establishment to offer separate ...privileges..... Such an apartheid construction of California's Civil Rights Act would raise serious constitutional questions under the equal protection clause.” *Martin*, n. 10.

<sup>15</sup> *Martin*, n. 10. See also Foster, Ken, ‘Is There a Global Sports Law?’ (2005) Vol 2(1) Entertainment and Sports Law Journal 1-18.

<sup>16</sup> *Martin*, n. 10.

<sup>17</sup> Ibid. A two thirds majority claimed US laws were not relevant, *Martin*, n. 10.

<sup>18</sup> As noted in the dissenting Pregerson opinion the USOC (like the Boy Scouts of America) is founded on a Congressional Charter and is seen to provide a quasi-public service. With this in mind it seems even more incongruous to believe that women in 1984 were not presented with equality of opportunity at the 1984 Games, *Martin*, n. 10.



its status as law.<sup>19</sup> The dispute here centred around *SFAA* using ‘Olympic’ as the US’s Amateur Sports Act 1978 strictly reserves its use to the USOC. US legislation had conferred on the USOC, and the IOC, permanent rights only variable by Congress under the Constitution and are found in the Charter.<sup>20</sup> The courts reaffirmed this legislative provision in *SFAA*, where they found that due to the IOC’s visibility and influence, ‘Olympic’ did require protection. The special status of the USOC can be seen due to the IOC being a highly visible and influential international body which is akin to factors 1 - 5 of Olympic Singularity.<sup>21</sup> Ettinger has speculated that *SFAA* paves the way for US courts/legislatures to protect other breaches of the Charter, upholding Charter rights and showing the IOC and its Charter’s weighted status under law.<sup>22</sup>

However, the most persuasive US case for demonstrating legal supremacy of the Charter over US law and the uniqueness of the IOC is *Liang Ren-Guey*.<sup>23</sup> Here the case intertwined the authority of the IOC and the binding nature of the Charter into one. In *Liang Ren-Guey*, the IOC once more faced the issue of the two Chinese NOCs (mainland China and Taiwan) who both wished to compete as ‘China’ at the 1980 Lake Placid Games. The IOC Session had historically recognised both NOCs, with the Executive removing the Taiwanese NOC’s right to compete as ‘China’. This was reserved solely to mainland China.<sup>24</sup> The issue had resurfaced because the US had rescinded diplomatic recognition of Taiwan. Hence the Taiwanese plaintiff was essentially asking for use of the Chinese national flag, anthem, emblem etc..... at the Games. He was attempting to assert his individual rights before the US courts on a matter that affected ‘states’. Thus in this case, Olympic participation was tied to politics and recognition, as national emblems were found to be intertwined with identity and sovereignty. Although, sensibly, the courts viewed this issue as *ultra vires* and political. It said this was solely within the President’s prerogative, who defers (via the State Department) to the IOC regarding national representation at the Games.

Thus, the US courts denied his motion, and for several further reasons. The court added that NOCs cannot define themselves - this is the IOC’s prerogative (albeit the US courts are doing that for Games on its territory).<sup>25</sup> It also reaffirmed that every Games participant must

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<sup>19</sup> Ettinger, n.4.

<sup>20</sup> Covering things such as use of the word ‘Olympic’, other property rights and the duty of promoting Olympic principles. Nafziger, n. 7.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid. See also Nafziger, n. 3.

<sup>23</sup> *Liang Ren-Guey v Lake Placid Olympic 1980 Olympic Games, Inc.* (1980).49 N.Y.2d 771 (1980).

<sup>24</sup> In 1960 Taiwan was told to use ‘Formosa’.

<sup>25</sup> And that NOCs are the IOC’s representatives in their respective countries, *Liang Ren-Guey*, n. 23.

accept the Charter and the IOC's supreme authority. Hence the US could be seen to relinquish its sovereign law making ability for foreign policy reasons and due to the uniqueness of the Games. Which is a promising precedent for the Charter to be considered as binding and thus the IOC and the Movement's special treatment under law.

This is compounded when another decisive feature of *Liang Ren-Guey* is considered that potentially makes its decision go further than *Martin* and *SFAA* (with its relinquishment of sovereignty). In *Lian Ren-Guey*, the case centred on Games on US soil.<sup>26</sup> The US Executive and Justice Department said they would not intervene in the Charter's application and would adhere to the IOC when the US was hosting a Games.<sup>27</sup> Ettinger noted that it was stated in this case that;

“[the] US has a substantial foreign policy interest in maintaining its ability to host international sporting events [Games] consistent with decisions reached by international bodies managing those events... US has committed to the IOC that it is bound by the IOC's invitee list and conditions of participation... based on our recognition of the private character of IOC and the Charter.”<sup>28</sup>

However, the court only noted the 'private' character of the Charter and did not designate it as superior law. Hence the US only agrees to be bound by the Charter out of goodwill and politics for home Games.

This seems to contradict the previous two cases (*Martin* and *San Francisco Arts*) because those suggested that the Charter had passed into customary international law.<sup>29</sup> *Liang Ren-Guey*, with its Executive authority, appears to dispel this. Nevertheless, at the least it narrows Charter observance to when it hosts the Games but suggests that there should be more concrete abidance then. This is contrary to the universality required to form customary law.<sup>30</sup>

Academic opinion also does not address this succinctly, avoiding a determination like the courts. Ettinger and Nafziger simply state that although Charter observance as law is not universal, there are elements which evidence the existence of customary international law, for example, repetition, duration, *opinio juris* and adherence under legal impulsion.<sup>31</sup>

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<sup>26</sup> As was the case with *Martin*, hence why that was found the way it did.

<sup>27</sup> Ettinger, n. 4.

<sup>28</sup> *Ibid.*

<sup>29</sup> Or at least certain aspects and/or rights.

<sup>30</sup> I.e. that universal observance and *opinio juris* exists.

<sup>31</sup> Ettinger, n. 4. See also Nafziger, n. 7.

The case of *Defrantz v USOC (1980)* may help clarify the status of the Charter and consequently whether the IOC has special INGO atypical status capable of governing a Truce Treaty.<sup>32</sup> Indeed, Siekman claims that *Defrantz* could infer that the IOC is a quasi-state because it possesses many state-like benefits, such as diplomatic immunity that have their basis in customary law.<sup>33</sup> If such an assessment of *Defrantz* is correct, it would definitively show the special status of the USOC and consequently, the IOC as the recognising body.

In *Defrantz*, the USOC resolved not to send a team to the 1980 Moscow Games, allegedly in protest over the Soviet invasion of Afghanistan. Twenty-five athletes sought an injunction against this USOC resolution, to enable them to attend the Games. They claimed that under the Amateur Sports Act 1978 (which founded the USOC)<sup>34</sup> they had a statutory right to compete at the Games. The athletes claimed that Games participation was a state action and that the USOC's refusal to send a team violated their constitutional rights.

However, the US Courts denied the athlete's motion, dismissing each of their claims. The court said that they had not established sufficient grounds to control USOC decision-making. Instead it found in favour of the USOC. It held that the USOC had the right and authority to decide whether or not to send a team to the Games, under s374(3) of the 1978 Act. Therefore, the court upheld the USOC's rights over those of the athletes.

Hence the case turned on what type of entity was the USOC and could it be directed by a court? Foster says this Act recognises the USOC's authority as deriving from the IOC and that the Act does not grant the USOC rights, responsibilities and functions.<sup>35</sup> For example, Section 22050(c)(2) deals with the USOC's main powers. It states that the USOC is to "represent the United States as its NOC in relations with the IOC".<sup>36</sup> This view is extended by the court later, where it adds that;

"congress was ...aware that a NOC is a creation and a creature of the IOC, to whose rules it must conform. The NOC gets its power and authority from the IOC, the sole proprietor and owner of Games."

Hence Foster says this implies that the IOC is equal to states.<sup>37</sup> However, this seems to be in line with the general understanding of what an NOC is under the Charter and does not ostensibly add anything new.

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<sup>32</sup> Foster, n. 15.

<sup>33</sup> Siekman, Robert C. R., 'Introduction to International and European Sports Law: Capita Selecta' (Springer, 2012). This is extended specifically to ISFs.

<sup>34</sup> United States Code Sec 220501 et sequence.

<sup>35</sup> Furthermore, it means that the IOC has the power to do this. Foster, n. 15.

<sup>36</sup> Thornton, Patrick K., Sports Law 2011 Jones and Bartlett Publishers.

<sup>37</sup> Foster, n. 15, i.e. negotiations with an equal state actor.

Nevertheless, what Defrantz does show, is that once more, US courts avoided explicitly determining that Olympic 'law' had supremacy over its constitutional rights, but carrying out that determination in practice. Instead, the courts said that the US constitutional rights were not applicable in the aforementioned cases. Even, if constitutional rights had been affected by the Charter, they the courts could still have avoided such a determination of their supremacy by applying a different piece of US legislation (the 1978 Act).

A more recent Canadian case goes further than these US cases by specifically attaching the Movement to the state system, when it is a Host Nation and demonstrating the necessity to view the Movement as one organisation.<sup>38</sup> This is a weighty precedent for permitting a singular Movement to be able to operate on the state system and guard a Truce Treaty. In *Sagen v Vancouver Organising Committee for the 2010 Olympic and Paralympic Winter Games (2009)*<sup>39</sup> fifteen female ski jumpers pursued VANOC in the Canadian courts for not including women's ski jump at the Vancouver Winter Games. They claimed this breach was discriminatory and contravened the Canadian Charter of Rights and Freedoms.<sup>40</sup> The Canadian court did find the exclusion discriminatory, meaning that the Movement must abide by national laws of Host Nations. The court's finding was based on its determination that VANOC's activities were tantamount to governmental activity, to which the Charter applied.<sup>41</sup> An important distinction arose however, as VANOC itself did not have sufficient governmental control to invoke the Charter. The Charter was only invoked because the actual staging of the Games, VANOC'S activities and not it itself, were a government activity.<sup>42</sup> Therefore this case definitively hitches the state and Olympic systems, when it comes to Host Nations.

In addition to the demonstration that VANOC's activities are governmental, Sagen also demonstrates that the Movement's loose pyramidal framework of separate entities permitted VANOC to escape culpability. It shielded VANOC from accountability here. The court found that VANOC had no ability to control what events were included due to the contractual relationship existing between it and the IOC. It was the IOC that was the 'critical decision maker', who was not a party to the action, and therefore not subjected to the Canadian Charter.<sup>43</sup> This meant that the action failed due to the Movement's framework - a deliberate

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<sup>38</sup> And definitively going further than *Liang Ren-Guey* and *Martin*.

<sup>39</sup> *Sagen v VANOC*, 2009 BCCA 522.

<sup>40</sup> The Canadian Charter, contained in the Constitution Act 1982.

<sup>41</sup> The Charter applies to 'government action' and to a legal entity that 'arises from government statute'. The courts successfully applied the Canadian constitutional test of ascribed activity. Findlay, Hilary, Case Law Comment - *Sagen v VANOC* (2009) <[www.sportlaw.ca/2009/07/case-law-comment-sagen-v-vanoc-appeal-2009/](http://www.sportlaw.ca/2009/07/case-law-comment-sagen-v-vanoc-appeal-2009/)> accessed 4<sup>th</sup> February 2016. See also, Nafziger, n. 7.

<sup>42</sup> Nafziger, n. 7.

<sup>43</sup> *Ibid.*

ploy to evade liabilities. The IOC should not be able to escape suit or its legal duties due to a lack of clarity of its framework. Nor should it have immunity from suit by way contracting these out to OCOGs. Clarity and formality must be brought here to the Movement which necessitates it being viewed as one entity under the rule of law. Only this way will legal rights be enforceable against the IOC. With these legal duties comes the opening up of new legal rights that an entire Movement could possess under international law.

### 4.3 Charter and CAS decisions – are they law?

As the Charter must be implemented by judicial bodies, their decisions can help show whether the Charter is compulsory law or a voluntary contractual obligation. National court responses were examined above. But, another judicial vehicle that makes decisions on the Charter and IOC autonomy is CAS. CAS decisions and attitudes to the binding nature of the Charter can be examined here.

This also raises the larger question of whether overall, CAS decisions are voluntary or whether they create law and whether initially CAS itself is voluntary or binding.<sup>44</sup>

#### 4.3.1 Does CAS view the Charter as binding law?

The CAS Code determines what rules will apply depending on the type of hearing: general, appeal or *Ad Hoc*.<sup>45</sup> The only hearings in which CAS considers the Charter as binding are in its Ad Hoc Panels at the Games. At these Game Panels, CAS must apply the Charter and any applicable general principles of law. Hence at the Games, but not necessarily elsewhere, the Charter is binding and on a par with the general principles of law.<sup>46</sup> And as shall be shown in the section below, this is binding most likely, by way of agreement.

In General hearings, CAS shall apply: the relevant regulations; the rules of law chosen by the parties; or in the absence of this choice, the domestic law covering the ISF's domicile.<sup>47</sup> Hence it is mostly likely to apply Swiss national law, unless both parties agree otherwise. In any event CAS's legal seat is always considered as Switzerland, irrespective of where the actual

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<sup>44</sup> Furthermore, a discussion of the voluntariness of CAS decisions is the same as discussing that of the Charter and the IOC especially when CAS independence of the IOC is questioned. WADA could also be considered a regulator.

<sup>45</sup> Code for Sports-Related Disputes (CAS Code), 1<sup>st</sup> January 2016. Nafziger also mentions that CPIL governs CAS arbitration, Nafziger, n. 7.

<sup>46</sup> With regard to general principles of law, Foster notes that in *AEK Athens and Slavia Prague v UEFA (1999)* CAS itself stated that; "all sporting institutions, and in particular all sporting federations must abide by general principles of law... drawn from ... various legal systems and in particular the prohibition of arbitrary or unreasonable rules", Foster, n. 15.

<sup>47</sup> Rule 58 CAS Code, n. 45.

hearing occurs.<sup>48</sup> Furthermore, Swiss Courts can review CAS decisions in certain circumstances.<sup>49</sup> However, this is only in exceptional circumstances.<sup>50</sup> Even when CAS appeals make it to the Swiss Federal Tribunal, they usually fail, as this normally defers to CAS.<sup>51</sup> Swiss law therefore seems to frequently apply to sporting disputes and the Games, even though Hosts move across the globe. This additionally shows that the Swiss law ranks higher than CAS rules and decisions.

If CAS sits as an appeal's panel, the parties may choose: the governing law; failing which, CAS applies the national law where the challenger is headquartered; or the rules of law CAS deems appropriate.

#### 4.3.2 What is CAS? Is it voluntary?

Hence if the Charter is only binding at the Ad Hoc Panels, is submission to it binding itself? Thus it is necessary to understand what CAS's purpose and composition is.

CAS was established in 1983 to adjudicate and resolve sport and Olympic disputes without interference or resort to national courts.<sup>52</sup> It was founded under IOC auspices although it was intended to be independent of it.<sup>53</sup> Hence it is called the IOC's 'little brother' as some consider it an extension of the IOC.<sup>54</sup> This lack of impartiality from the IOC means that it cannot be considered, a court, despite good intentions to the contrary.<sup>55</sup> It is an arbitration Tribunal. These claims of dependence, led to a CAS review in 1990. Its independence of the IOC was strengthened enabling it to be a proper judicial check on the IOC's supreme authority.<sup>56</sup> It is now governed by its own Code.

Nevertheless, CAS still requires both parties to consent in writing to its authority/jurisdiction via an arbitration agreement. Its jurisdiction is 'optional'. Yet in practice

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<sup>48</sup> Nafziger, n. 3.

<sup>49</sup> Beloff, Michael J, 'Is there a Lex Sportiva?' (2005) Volume 3 August I.S.L.R. 49-60. As seen above in the section regarding which rules apply to what types of CAS decisions.

<sup>50</sup> Nafziger, n. 7.

<sup>51</sup> *Ibid.*

<sup>52</sup> Ettinger, n. 4. Its popularity has exploded since then, with most cases being in its exclusive jurisdiction for doping. It also hears disciplinary appeals from NSFs/ISFs/NOCs, questions of eligibility and commercial disputes. CAS does not deal with disputes regarding rules of the game or technical questions, Nafziger, n. 3.

<sup>53</sup> Samaranch intended this independence. Its statutes and regulations came into force in 1984, and operational since 1986.

<sup>54</sup> Ettinger, n. 4.

<sup>55</sup> CAS is more flexible, has experts, and is simple, fast confidential and effective, which national courts are not necessarily. Nafziger, n. 7. Yet, they may be slow when an immediate Games decision is needed and lack the specific skill required to solve Olympic disputes, Chappelet, Jean-Loup, and Kubler-Mabbott, Brenda, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge, 2008).

<sup>56</sup> The IOC President used to be CAS President (Article 6, historic CAS statute) but now they have separate Presidents. CAS's statute used to be able to be changed by the IOC Session and it was historically funded by the IOC. Ettinger, n. 4.

parties, including the IOC do not refuse such consent. They accept the binding nature of CAS's judgements and consequently the agreement gives CAS's decisions the same force as that of the civil courts. This leads Nafziger to assert that CAS has all the powers of an international court of arbitration enabling it to be a proper check on, for example, the IOC's supremacy.<sup>57</sup>

However, Foster disputes the true voluntariness of CAS as parties have to consent due to their unequal bargaining positions. Both when they initially subscribe to a N/ISFs constitution, or when a dispute is referred to CAS. Athletes are made to waive the right to resolution of disputes in the national courts, before they can compete in the Games.<sup>58</sup>

The next question to be addressed is whether CAS can create such general principles of law that it must apply? In *IAAF v USA & Young*, it was determined that CAS judgements do not create precedent.<sup>59</sup> This problem is doubled because they avoid the national courts and their precedent creating ability.<sup>60</sup> Thus there is the problem of legal certainty, something which is prevalent in the sporting system and which has been so far demonstrated. Nevertheless, CAS decisions are a firm guide directing CAS in the future 'as part of an emerging *lex sportiva*'.<sup>61</sup> This means that they are only persuasive. However as *Young* was a CAS decision, it itself cannot be considered binding and thus could change. The decision that said CAS's decisions were not binding cannot be binding itself.

Although CAS as an arbitration Tribunal does not create binding precedent, its eventual decisions are enforced by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (once parties have agreed to initially be bound by it).<sup>62</sup> This international convention binds its 150 odd state parties to enforce CAS decisions. This shows the special status of CAS, the Charter and the IOC – capable of having the powers to establish a binding judicial institution. A precedent which can be applied to governance of a Truce/Treaty. Although here, effect has had to be given via state parties. Yet the fact that state parties agreed to this in a Convention demonstrates CAS's importance. Albeit it is not yet universal or therefore of customary status.

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<sup>57</sup> Ettinger, n. 4. See also Nafziger, n. 7.

<sup>58</sup> And this occurred at the last three Games, Foster, n.15.

<sup>59</sup> *IAAF v USA Track and Field & Jerome Young* 2004/A/628 CAS. See also, Nafziger, n. 7.

<sup>60</sup> It means that there is a 'paucity' of cases, and gives national courts no opportunity to form the law to ensure their exclusive jurisdiction over sport, James, Mark, 2<sup>nd</sup> edition *Sports Law* (Palgrave Macmillan, 2013).

<sup>61</sup> And again reopens the debate whether a global sports law exists, Nafziger, n. 7.

<sup>62</sup> *Ibid.*

CAS has nevertheless been viewed as a court around the world. For example, the Swiss courts have affirmed that CAS is the ‘Supreme Court’ for world sport.<sup>63</sup> However, this in turn means that recognition is stemming from a state, which diminishes CAS’s ability to be considered a maker of precedent. At the least, it is one of the world’s most unusual organisations, operating between the law and volition, as the Movement does. And again shows the uniqueness of the Movement’s organs.<sup>64</sup> Hence clarity is required here, and one way to achieve this would be for CAS to be involved in upholding the Truce/Treaty.

#### 4.4 Treatment of the IOC by states and IGOs

The next attribute that should be examined to discover whether the IOC has a special nature capable of governing a Truce/Treaty, is the treatments that it receives from external actors, at the international level. There are three levels that this can be split into: the domestic; the national (Hosts); and the international and each shall be addressed now in turn.

##### 4.4.1 Domestic Treatments - Switzerland

At the domestic level, the relevant jurisdiction is Switzerland as this is where the IOC has its headquarters and is incorporated.<sup>65</sup> Hence the way that Switzerland treats the IOC shall be examined here in order to discover whether it is a regular INGO or whether it is more than this – something quasi-judicial as Samaranch wished.<sup>66</sup>

Within Switzerland the IOC can obviously enter standard legal relations such as owning or leasing property (heritable, moveable and intellectual),<sup>67</sup> entering employment or procurement contracts,<sup>68</sup> and the ability to enforce rights or be sued in the courts.<sup>69</sup> These are

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<sup>63</sup> But yet, they can over-rule it.

<sup>64</sup> Albeit it is ‘separate’ to it now.

<sup>65</sup> Other relevant domestic jurisdictions may be any other territories in which it operates, yet there will be no examination of any of these as the IOC has no strict legal links/recognitions to these, although other Movement actors may have. Chappelet, n. 55.

<sup>66</sup> Samaranch asserted that a quasi-judicial role would be the IOC’s most fundamental role, as it must ensure respect for the Charter. Ettinger, n. 4.

<sup>67</sup> The IOC has a free leasehold until 2083 for its administrative headquarters in Vidy from the City of Lausanne. It owns Villa du Centenaire (Ethics Commission), vastly different to when it operated from a Lausanne jewellery store in the 1960s. Chappelet, n. 55.

<sup>68</sup> In the 1960s the IOC had 3 salaried employees under Otto Mayer’s Chancellorship, now its 29 Commissions are significant employers. Chappelet, n. 55. See also Preuss, Holger, *The Economics of Staging the Olympics: A Comparison of the Games 1972-2008* (Edward Elgar, 2006).

<sup>69</sup> The IOC was sued in the Swiss Courts by the Gibraltar Olympic Committee in an application for NOC recognition, and the IOC was the pursuer in the American Courts in *IOC & USOC v San Francisco Arts & Athletics 1986*, 229 U.S.P.Q. 1001. The IOC also operates in other jurisdictions predominantly through its NOC affiliates with the exception of the OCOGs. Beloff, Michael J., ‘The Specificity of Sport – rhetoric or reality?’ (2012) 4 International Sports Law Review 97-107.



the standard rights that any legally incorporated entity possesses, however the IOC is far more than this. It was incorporated in Switzerland under the Swiss Federal Constitution and Swiss Civil Code.<sup>70</sup> Furthermore, the Swiss Federal Council legislatively granted the IOC special legal status and recognises the IOC as an international institution.<sup>71</sup> This was confirmed in its 1981 Decree where the Council;

“expressly recognises the importance and universal vocation of the IOC in sport... it is in interests of our country to have you here.... the IOC benefits in Switzerland from a juridical nature and from rights and liberties guaranteed by Swiss law. We ... accord to the IOC a special statute which takes into account its universal activities and its specific character as an international institution. .... the IOC ... even more well able to promote the ideals which have inspired it.”<sup>72</sup>

Therefore, Swiss law regulates the IOC, giving it rights and obligations domestically, and thus the IOC occupies a special position within Switzerland. Thus its rights arise of Swiss law. This seems to strengthen the case for the IOC (and consequently a wider Movement) have a special status capable of governing a Truce/Treaty.

The IOC in Rule 15 of the Charter acknowledges Swiss recognition and states that:

“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.”

Mestre examines this November 2001 Agreement and notes that it explicitly reaffirms the Swiss authorities recognition of the IOC’s legal capacity in Switzerland.<sup>73</sup> It also provides the IOC with attaching rights and powers, such as tax exemptions and access to Swiss “diplomatic and consular representations abroad.”<sup>74</sup> The Agreement goes on to guarantee the IOC’s independence and freedom of action that enables it to be separate to and not influenced by, states.<sup>75</sup> Therefore the IOC seems a privileged entity adding credence to it and the Movement’s special nature, and capability to govern a Truce/Treaty.

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<sup>70</sup> Federal Constitution of the Swiss Confederation 1999 and Articles 52, 56 and 60 of the Swiss Civil Code. See also Mestre, Alexandre Miguel, *The Law of the Olympic Games* (Asser Press, 2009).

<sup>71</sup> Foster, n. 15.

<sup>72</sup> Ettinger, n. 4.

<sup>73</sup> It cannot comment on external recognition by other bodies, Mestre, n. 70. It is also worth noting that *personality* and subject status differs to capacity for action.

<sup>74</sup> The tax exemptions apply equally to the Olympic Museum Foundation and the IOTF. Mestre, n. 70.

<sup>75</sup> Alongside recognising its freedom of assembly, *ibid*.

Laying aside the fact that Rule 15 refers to an external Agreement between a government department and an INGO, that ascribes the founding organ rights, but not annexing it being poor, there are two issues with this. Firstly, Swiss recognition leads Mestre to conclude that the IOC cannot be a public international law subject, because it is a subject of Swiss law. This lessens its potential consideration as a special INGO.<sup>76</sup> However, this ignores that certain (I)NGOs are subjects of international law and ignores the myriad of other factors discussed in this thesis which show the singular nature of the Movement as an INGO. Secondly, the IOC has not entered a Headquarters Agreement with the Swiss authorities, which it has done with the ICRC. Therefore Switzerland has not bestowed on the IOC the fullest latitude possible.<sup>77</sup> The IOC is not on a par with the ICRC. However, when the IOC is considered as the whole Movement, alongside the many other Swiss ISFs and Swiss special financial treatments, its special INGO status is galvanised.

#### 4.4.2 International Treatment of the IOC

International treatment to the IOC can include, but is not limited to, the conclusion of Host contracts and treaties with states or non-state actors and its recognition by the UN. Foster states definitively that the IOC can interact on the international level – an obvious assertion.<sup>78</sup> Hence full engagement on the international plane would perhaps be the most significant indicator of the IOC being greater than a regular INGO, and thus deserving of custodianship of a Truce Treaty. Thus the possibility for a collective Movement being the guardian of a proposed Truce Treaty is particularly promising. Hosts and international dealings will now be addressed in turn.

##### 4.4.2.1 Host City Contracts

Firstly, with regard to contracts, the IOC contracts with the various Hosts (their municipal authorities) and the relevant NOC, on the day the Games are awarded.<sup>79</sup> The IOC enters this contract as an equal if not dominant contractor. The IOC also enters a multitude of contracts with the relevant OCOGs. All of these contracts are further evidence of its contracting capacity.<sup>80</sup> Hence as it is the body that is delegating obligations to state actors here (local

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<sup>76</sup> Mestre, n. 70. See also Silveiro, Fernando Xarepe, 'O Empresetimo Internacional de Futebolistas Profissionais' (2002) *Estudos de Direito Desportivo*, Coimbra, Almedina 121.

<sup>77</sup> Chappelet, n. 55.

<sup>78</sup> Foster, n. 15.

<sup>79</sup> Furthermore, the Host contract requires IOC approval of all OCOG sponsoring and merchandising contracts and there be detailed contracts regarding IOC/OCOG revenue distribution, Chappelet, n. 55.

<sup>80</sup> Chappelet, n. 55.

authorities), the IOC's power is and capabilities are strong, thus strengthening the case for it to have governorship over a Truce/Treaty.

Furthermore, in order to host the Games, after signature of the Host contract, states often give the Games and Movement special treatments and dispensations in their laws. For example, the UK passed the London Olympic and Paralympic Games Act 2006 which recognised the specificity of sport and the Movement/Games and specifically dealt with the hosting of the Games. The Act included a clause at the IOC's request (a private and not a state organisation), rather than on legal necessity, and consequently circumventing full parliamentary scrutiny and debate.<sup>81</sup> For example, it gave unparalleled protections to Olympic property and ticket sales and that have never been extended to other events.<sup>82</sup> This leads James to the correct assumption that it is the Games specifically within all human activity that merits special treatment before the law. The existence of this Act (and its corollaries around the world in advance of other Games) therefore show legislator recognition of the specificity of the Games. Their occurrence every two years, across the world compounds the international aspect of them.

#### *4.4.2.2 IOC as a beneficiary of rights*

Whether or not the IOC can contract on a par with states, it does receive special recognitions on the international stage as it is the beneficiary of rights recognised by intergovernmental Treaties. It benefits from intellectual property rights under the Nairobi Treaty on the Protection of the Olympic Symbol 1981, which was signed by 46 states and 30 state ratifications. Signatories agreed to prohibit unauthorised use of the Olympic symbol and confirmed IOC ownership of the Olympic symbols.<sup>83</sup> However, support for this international Treaty is far from universal and the major commercial powers did not sign it.<sup>84</sup> It is worth noting here that the IOC is simply the beneficiary of these rights. It is not a party to the Treaty, and in this instance, the IOC must have a lesser capacity for entering relationships than states.

#### *4.4.2.3 IOC Treatment by the UN*

Chapter 3 discussed specific UN-IOC collaborations that demonstrated the INGO nature of the IOC as per the UN checklist. This will be developed here, with specific focus on

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<sup>81</sup> James, n. 60.

<sup>82</sup> Whether national, international, cultural or sporting.

<sup>83</sup> E.g., the Olympic rings and was organised under the World Intellectual Property Organisation (WIPO), Chappelet, n. 55.

<sup>84</sup> E.g., the USA grants this right to USOC, Chappelet, n. 55.

the recognitions, rights and treatments that the UN affords the IOC, and will demonstrate the IOC's unique nature. And thus the ability of the IOC, via a singular Movement, to have a special international law role. This would mean that the IOC's special status would be dependent and derived from states, as the primary subjects of international law. Entities such as the IOC may only possess status and *personality* to the extent that states permit it.<sup>85</sup>

The IOC pursued ultimate international recognition of its special nature from the UN in 1982 which could have conclusively settled the matter of its special status. The IOC proposed a Draft UN Declaration where the UN would "protect and maintain the Games", and "avoid action that would harm the Movement" and that Charter Rules were international law.<sup>86</sup> Confirmation of the Charter Rules being international law would have conclusively determined the IOC as a unique body. However, the IOC withdrew the Draft due to fear that they would lose content and drafting control in the GA due to international politics in the early 1980s.<sup>87</sup> Hence, no such definitive determination was made.

Nevertheless, twenty-seven years later the UN gave a definite indication of the IOC's special INGO status, by designating it as a permanent UNGA observer in 2009. This has only been granted to four entities that are neither states nor IGOs, the ICRC being one of these.<sup>88</sup> Consequently the IOC must be considered special and on a par with the ICRC in terms of its capabilities.

There are also many other ways in which the IOC-UN relationship has affirmed the former's special status. The IOC's call on the UNGA to revive the Truce is a notable example. The UNGA now passes Truce Resolutions in advance of every Games, conferring on the IOC a certain unique international complainer role.<sup>89</sup> Furthermore, the IOC would also cite the appointment of the Special Advisor on Sport for Development and Peace and the resulting International Conferences and Forums as evidence of its special UN recognition.<sup>90</sup> This is

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<sup>85</sup> Derivative or relative *personality*.

<sup>86</sup> Ettinger, n. 4. See also Nafziger, James A. R., 'Nonaggressive Sanctions in the International Sports Arena' (1983) 15 Case W. Res. J. Int'l L.

<sup>87</sup> Canadian IOC member Dick Pound said in March 1982 that it would be a "bad mistake to try this right now... we're better off postponing it." Ettinger, n. 4.

<sup>88</sup> Alongside the Sovereign Order of Malta, Inter-Parliamentary Union, and IFRC. IOC Presidents are frequently invited to speak at the UNGA for example, Samaranch in 1995, Rogge in 2002 and Bach in 2013. <[www.un.org/en/members/intergovorg.shtml](http://www.un.org/en/members/intergovorg.shtml)> accessed 15<sup>th</sup> July 2015. See also, Bach, Thomas, President IOC, Statement on the Occasion of the Adoption of the Resolution "Building a peaceful and better world through sport and the Olympic ideal" 68th Session of the UNGA New York, 6 November 2013, <[www.olympic.org/Documents/IOC\\_President/2013-11-6\\_Speech\\_IOC\\_President\\_Bach-Olympic\\_Truce\\_adoption\\_Speech\\_4\\_November.pdf](http://www.olympic.org/Documents/IOC_President/2013-11-6_Speech_IOC_President_Bach-Olympic_Truce_adoption_Speech_4_November.pdf)> accessed 1<sup>st</sup> December 2015. Chappelet, n. 55.

<sup>89</sup> See Chapter 3 and also Chappelet, n. 55.

<sup>90</sup> The Conferences occurred in 2003 and 2005. In 2009 the IOC organised the 1<sup>st</sup> International Forum on Sport, Peace and Development where several UN bodies (WHO attended. 2010 saw the first UN-IOC Forum which was a jointly organised initiative between the UNOSDP and the IOC.

bolstered by the fact that the IOC has signed ‘co-operation’ agreements with the majority of UN agencies and affiliations.<sup>91</sup>

A further significant way that the UN has afforded the IOC special recognitions, developing the latter’s classification as a special INGO is by way of its endorsement of sporting autonomy.<sup>92</sup> In 2013, IOC President Bach gave a speech at the UNGA where he emphasised the need for sporting autonomy.<sup>93</sup> The following year the UN and the IOC entered a Memorandum of Understanding, which recognised and called for respect of sport’s autonomous organisation.<sup>94</sup>

These sentiments were solidified by the UNGA in Resolution 69/6, which was associated to the Memorandum. This too supports the independence and autonomy of sport and its institutions. For example, it ‘invites’ Members States, all bodies of the UN, sport organisations, the media, civil society, academia and the private sector to:-

“Support[s] the independence and autonomy of sport as well as the mission of the IOC in leading the Movement”.

This is explicit UN endorsement for autonomous law-making by sporting organisations (the IOC/Movement) and thus suggests that the IOC/Movement are special INGOs.

Bach made comments about what this sporting autonomy and the Resolution would entail. He said that it requires NOCs to lobby political leaders nationally for sport to be given due consideration. Thus NOCs will have to work with governments to integrate sport into policy making, including their peace-building activities.<sup>95</sup> Bach adds that:-

“We must form partnerships with political organisations based on this recognition of the autonomy of sport”.<sup>96</sup>

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<[www.un.org/wcm/content/site/sport/home/sport/history/pid/19908](http://www.un.org/wcm/content/site/sport/home/sport/history/pid/19908)> accessed 30<sup>th</sup> November 2015. Many other factors also show the IOC-UN’s growing relationship such as: the UN flag flying at all Olympic Villages since Nagano 1998; the Millennium Declaration calling on 160 member states to observe the Truce and to support the IOC in its promotion of peace and ‘mutual understanding through sport and the Olympic ideal; and the 1989 UNESCO Conference that adopted 2 Resolutions on anti-doping, the universality of the Games and the necessity of cooperation between public authorities and sports organisations. Chappelet, n. 55.

<sup>91</sup> For example, WHO in 1993, UNICEF in 1994, World Bank 1996, UNDP in 1996, UNESCO 1998/2004. It also undertakes joint activities with the High Commission for Refugees. Chappelet, n. 55.

<sup>92</sup> Bringing the international and EU positions into alignment.

<sup>93</sup> <[www.olympic.org/Documents/IOC\\_President/2013-11-6\\_Speech\\_IOC\\_President\\_Bach-Olympic\\_Truce\\_adoption\\_Speech\\_4\\_November.pdf](http://www.olympic.org/Documents/IOC_President/2013-11-6_Speech_IOC_President_Bach-Olympic_Truce_adoption_Speech_4_November.pdf)> accessed 1<sup>st</sup> December 2015.

<sup>94</sup> UNGA A/RES/69/6, 31<sup>st</sup> October 2014 and was passed by consensus at the GA. See also <[www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276](http://www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276)> accessed 27<sup>th</sup> October 2015.

<sup>95</sup> <[www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276](http://www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276)> accessed 1<sup>st</sup> December 2015.

<sup>96</sup> This close NOC-government collaboration with the UN, could blur the line between the non-Olympic system and states, compromising NOC independence.

Bach, nevertheless recognises the importance of NOCs and the IOC, in remaining politically neutral.<sup>97</sup> However, it is unclear how this will operate in practice and remains to be seen, but nevertheless does show the special status of the IOC in its governmental and IGO collaboration.

Resolution 69/6 also makes further advancements to the position of the IOC as a special INGO as it makes specific mention of the Charter, and calls for the upholding of its 6<sup>th</sup> Fundamental Principle.<sup>98</sup> This lends weight to the Charter being considered customary law, at least with regard to its 6<sup>th</sup> Fundamental Principle. For example, the Resolution states that events such as the Games should be;-

“organised in the spirit of peace, mutual understanding, friendship, tolerance and inadmissibility of discrimination of any kind and that the unifying and conciliative nature of such events should be respected, as recognised by Fundamental Principle 6 of the Charter”.

This demonstrates that parts of ‘Olympism’ may be universally recognised: the 6<sup>th</sup> Fundamental Principle OC; and the importance of conciliation and dialogue.<sup>99</sup> The latter two aspects being potential IOC/Movement forays into peace building and thus could be considered to be UN recognised.<sup>100</sup>

Hence, this Resolution could be considered the international community’s inadvertent recognition of the IOC and the OC. The ‘hardness’ of the Charter could be inferred from the UN’s call to member states to recognise the IOC’s/Movement’s authority and supports the European doctrine of the specificity of sport and legal dualism. This autonomy is therefore ultimately bestowed by states, but nevertheless supports the position of the IOC/Movement being a unique INGO.

#### 4.5 Specificity of Sport and the IOC/Olympic Movement

The doctrine of the specificity of sport has been recognised under EU law as it relates to areas of its competence. This means that in certain circumstances the CJEU, due to the specific nature of sport, recognises sport’s exemption from its sphere of influence and application of the law. This means that the IOC/Movement as the centre of the international sporting web must also have this specificity apply to it. Olympic sport may therefore upon occasions be exempt from EU law. Although with the IOC’s headquarters in the non-EU

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<sup>97</sup> “This relationship with governments requires that sport always remain political neutral”, n. 93.

<sup>98</sup> That no discrimination will be tolerated in sport or at the Games.

<sup>99</sup> “Recognising the potential of sport to contribute to ...intercultural dialogue.” A/RES/69/6, n. 94.

<sup>100</sup> <[www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276](http://www.olympic.org/news/historic-milestone-united-nations-recognises-autonomy-of-sport/240276)> accessed 1<sup>st</sup> December 2015.

Switzerland, this specificity would have to be by way of the other actors in the Movement's webs - the EU based NOCs and ISFs.

Firstly, in order for Olympic sport to be 'exempt' from EU law, sport had initially to be recognised as being included in the EU's sphere of competence. The Treaty on the Functioning of the European Union 2007 (TFEU) under Article 6 states that:-

"The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: .... (e) ... sport and vocational training;"

This consequently gives the EU the authority to act and intervene in sporting matters. This is consolidated by Article 165 which specifically places sport within the EU's jurisdictional competence of education by stating that:-

"1. The Union shall contribute to the development of quality education by.... contributing to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:....- developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen."

Hence from a mandate perspective, the TFEU clearly gives the EU competence to act in sporting matters. However, Siekman is keen to point out that it does not consider itself a European sports regulator. Although for many it is still unclear what is specifically included in this mandate to act. Nafziger, for example, raises the issue of it being inapplicable to field of play decisions but it may apply to the organisational structure of sports.<sup>101</sup>

This legislative inclusion of sport within EU competency consolidates the case law position of the CJEU which had been dealing with sporting matters for a number of years preceding the TFEU. The CJEU had based its competency to act on sports matters because it can affect free movement of workers and individuals. Hence CJEU judgements are considered to be the most important source of international sports law. Beloff cites the case of *David Meca-Medina and Igor Majcen v Commission of the European Communities (2006)* where the CJEU

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<sup>101</sup> Nafziger, n. 7.

took the view that sporting rules can be included within the concept of free movement of workers and thus is not automatically removed from EU competencies simply because it is a sporting rule.<sup>102</sup>

Consequently this case seems to confuse the situation because on one hand the specificity of sport is explicitly recognised in Article 165 suggesting its total exclusion from EU law and the autonomy of sporting institutions as ISFs such as FIFA and UEFA and ex-IOC President Jacques Rogge have been intensively alleging and campaigning for years - sporting institutions and ISFs do not have complete autonomy.<sup>103</sup> Yet it categorically does not mean this when you read the TFEU in its entirety. The TFEU and case law has specifically reserved sport as an area of EU competency. However, what it does appear to mean is that because sport has a specific nature, a fine jurisdictional balance is struck between sports bodies and EU institutions, where certain sporting areas are reserved for each but without this 'devolution' or 'reservation' being absolute. The CJEU has specifically ruled that it itself will determine whether or not to intervene due to the 'specificity of sport'.<sup>104</sup> Hence it seems that the specific nature of sport means an *ad hoc* ability to decide whether to intervene or not.<sup>105</sup>

Although the doctrine of specificity seems to be a magic wand conjuring up different solutions as it sees fit, there are themes of EU involvement in certain areas. For example, the EU's competency, intervention and legislative application tends to be restricted to areas connected to its existing mandate such as where sport and its disputes intersect free movement, the internal market, competition law, employment and economic activity.<sup>106</sup> With regard to free movement, the CJEU considers sport to be a social advantage with the potential to affect a workers ability to take up employment in another Member State.<sup>107</sup> Hence EU intervention

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<sup>102</sup> *Meca-Medina and Igor Majcen v Commission of the European Communities* (2006) Case C-519/04 P.

<sup>103</sup> Beloff, n. 69.

<sup>104</sup> In *Meca-Medina* 2006, two swimmers were banned for doping and challenged this claiming the IOC's ban breached EU anti-discrimination laws and free movement principles such as those contained in Articles 45 and 56 of TFEU. They argued for sport's inclusion within EU law, and not just when it concerned economic activities (*Bosman* aside). They also argued it breached Article 102 due to abuse of a dominant position as applicable tribunals were not independent. The ECJ held that anti-doping rules could fall within their competency. EU law (free movement provisions) apply to sporting rules that regulate employment and service provision, but not if it is unconnected to economic activity. If a rule is purely sporting/nothing to do with economic activity, it may still be covered by EU law if it breaches Articles 102. These consider a rule's context, objectives and its proportionality in determining illegality and it must not stretch farther than its immediate objectives. Anti-doping rules combat doping to ensure fair competition and penalties enforce these. They have a legitimate objective and do not necessarily breach Article 102. This essentially meant that cases are decided *ad hoc* opening ISFs to judicial scrutiny with the EU establishing its primacy over them, n. 108.

<sup>105</sup> James n. 60.

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*



is not strictly limited to employment issues, so it can apply to both professional and amateur athletes, albeit the vast majority of case law centres on the professional athlete.

#### 4.5.1 Why does sport receive special treatment under EU law?

This leads to the question that many writers, such as James, pose: why does sport receive specific and exceptional treatment of the law? What is the legal basis for its special treatment? The answer to this can be said to overlap with the reasons for Olympic Singularity. These special features can be added to Olympic Singularity to emphasise it and overlap in some fields. These therefore are a commonality in justifying the specific treatment of the Movement with regard to a Truce Treaty. However, with specific regard to sporting specificity under EU law, the reasons can be broken down into three areas: sport's social significance; sport's unique structure; and a variety of other reasons.<sup>108</sup>

##### *4.5.1.1 Social Significance of Sport*

The first reason for special treatment before the law, centres on the philosophical, cultural and educational values of sport as reaffirmed in the TFEU above and further EU Declarations, such as Declaration 29 to the Treaty of Amsterdam.<sup>109</sup> Although not legally binding, this Declaration emphasises the:-

“social significance of sport, in particular its role in forging identity and bringing people together. The Conference therefore calls on the bodies of the EU to listen to sports associations when important questions affecting sport are at issue. ... special consideration should be given to the particular characteristics of amateur sport.”

Thus the EU recognises that one of the reasons sport is unique is because of the multitude of societal benefits that it has. The Charter also recognises such philosophical benefits of sport in its concept of Olympism, and thus would appear to fulfil the first requirement to have the Movement and its rules recognised in law. However, these wide ranging societal benefits are of course not unique to sport, with culture, art and many other areas also having a similar

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<sup>108</sup> Beloff notes other less significant features that contribute to specificity before the law. The fact that CAS uses a different standard of proof (comfortable satisfaction) to accepted standards. The notion of the sporting celebrity and their immunity from suit. The contemplation of sanctioning unruly fans in football, Beloff, n. 49.

<sup>109</sup> Declaration 29 on Sport annexed to the Treaty of Amsterdam Amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts 1997. See also the Nice Declaration: ‘Declaration on the specific characteristics of sport and its social function in Europe, of which account should be taken in implementing common policies 2009’ (also not legally binding). This considered that where the “social, educational, and cultural” values of sport were to be considered by the EU when creating new laws and policies respectively. James, n. 60.

societal impact and may also be organised along a similar framework as sport. Therefore, the specificity of sport and of the Movement to special treatment cannot solely stem from this area. It is the accumulation of the features, as with all eight features of Olympic Singularity, that justify sport's and the Movement's special treatment before the law.

#### *4.5.1.2 Uniqueness of Sport's Structure*

The second reason that accords sport specific treatment before the law according to the 2007 White Paper is the uniqueness of its structure. This draws together all of the aspects of Olympic Singularity into one overall term, which Olympic Singularity broke down. The EU doctrine also breaks this down into meaning a variety of different things. For example, Beloff notes sporting structure's autonomy, diversity and pyramid nature are cited as reasons for sport and its organisations to be treated differently before the law, and shall be tackled in that order here.<sup>110</sup> However, Olympic Singularity showed that this pyramid was incorrect.

##### *4.5.1.2.a) Autonomy and Diversity*

Turning first to the autonomy of sporting structures, it is generally accepted by courts, legislators and governments, that sport administration and regulation is best left to the autonomous ISFs. The former's general acceptance of this, indicates sports special status. This delegation to ISFs of autonomy is deliberate on the part of the judicial authorities who neither have the capacity or inclination to be further involved, for example, and as already stated, the EU did not want to be a European sports regulator. In *Yang Tae Young v International Gymnastics Federation (FIG) & Hamm* a post Athens CAS Panel it was stated that sport would be "fatally undermined if every decision taken could be judicially reviewed".<sup>111</sup> Indeed the existence of CAS helps promote the specificity of sport and the Olympics before the law, as it monopolises sport dispute resolution keeping it away from national and international courts.<sup>112</sup> In turn this reaffirms its own autonomy, alongside that of ISFs and the Movement.<sup>113</sup> Alongside borrowing *ekecheiria* from the ancient Greeks, the Movement also appears to be borrowing *ouroboros*, the snake that regenerates by eating its own tail.

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<sup>110</sup> Beloff, n. 49. Diversity means they span different sports and are incorporated in different states and will not be discussed here with the exception of ISFs.

<sup>111</sup> CAS 2004/A/704. See also Beloff, n. 49. Beloff adds that this is also the British courts view as shown in *Cowley v Heatley* T.L.R., July 24, 1986, which ruled that it not having running litigation challenging governing bodies' decisions would be better.

<sup>112</sup> James, n. 60.

<sup>113</sup> Such as the ECJ, James, n. 60.

But nevertheless the state does interfere (whether directly or indirectly) as Beloff notes, all sporting decisions are theoretically justiciable. According to *Segura v IAAF*<sup>114</sup> and *KOC v ISU*,<sup>115</sup> there is no complete immunity.<sup>116</sup> However, in practice, it appears that it is only field of play decisions and rules of the game that are largely excluded and left to the autonomy of ISFs and the Movement. But the extent of sporting immunity from the law in each of these areas is not ‘wholly clear’.<sup>117</sup> With regard to field of play decisions, what is clear is that judicial exclusion covers mistakes made by officials, whether admitted or otherwise.<sup>118</sup> The Official’s honest intent is sufficient to justify exclusion of field of play decisions from judicial scrutiny. They only invoke court/CAS recourse if there has been some form of fraud, corruption or bad faith on the part of the official.<sup>119</sup> For as Lord Denning stated, fraud unravels everything.<sup>120</sup> Thus if field of play decisions were a ‘domain into which the King’s writ does not seek to run’ then Lord Atkin notes that this would mean it were (and there could be) a sphere beyond the law and was instead governed by agreement.<sup>121</sup> Furthermore, rules of the game are also theoretically judicially reviewable as they are not considered autonomous ‘micro law’ but circumspection must be exercised in determining whether to review or not.<sup>122</sup> This means that in practice they are almost never reviewed by CAS unless there are exceptional circumstances.<sup>123</sup> Hence Beloff notes that for both field of play decisions and rules of the game, there can be no absolutes, meaning that the determination as to whether review or not must be based on self-restraint.<sup>124</sup>

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<sup>114</sup> *Segura v IAAF* CAS OG 00/013.

<sup>115</sup> *KOC v ISU* CAS OG 02/007.

<sup>116</sup> Beloff, n. 49.

<sup>117</sup> *Yang Tae Young v FIG & Hamm etc.* CAS 2004/A/704. See also Beloff, n. 49.

<sup>118</sup> *Ibid.*, and extended immunity to admitted judging errors which are irreversible due to the unknown of how the result could have turned out. In this case, bronze medallist (Korean Yang Tae Young) was wrongly docked points in the parallel bars, part of the all-round men’s gymnastics final. If he had been correctly marked, he would have won gold (instead of American Paul Hamm). CAS confirmed it would not reverse the field of play decision, and upheld Hamm’s gold, despite a blatant judging error. The KOC should have raised a formal objection in a timely manner. A field of play judging error, according to CAS, was not grounds for decision reversal as it is unknown how the competition could have turned out. With the famous edict being given that: field of play decisions must be honest ones, even if not necessarily correct. See also Beloff, n. 49. See also Nafziger, n. 7.

<sup>119</sup> This field of play exclusivity also extends to competition technology, Beloff, n. 49.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.* See also *Yang v FIG & Hamm* 2004, n. 123.

<sup>122</sup> Beloff, n. 49.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.* Beloff adds that self-restraint is the determining factor. See also *KOC v International Skating Union (ISU)*, OWG Salt Lake City 2002 007, Reeb 3, 611.

#### 4.5.1.2.b) Pyramid Structure

Returning to the uniqueness of the structure of sporting organisations, ISFs control their sport worldwide meaning they can be said to sit atop their pyramid. This includes professional and non-professional alike in a single tiered hierarchy.<sup>125</sup> At the same time, the Olympic web must be overlaid over all the ISFs. It is likely that it is this structural duality that warrants special treatment before the law. Beloff notes that ISFs have a wide all-encompassing nature, but that the IOC has a narrower but deeper field due to its temporal activities. And when their framework is overlaid together it means that both bodies would fulfil this specificity test. However, in reality as James points out, attributing specificity to a hierarchical structure permits ‘monopolistic private bodies to control huge areas without significant legal interference.’<sup>126</sup>

#### 4.5.1.3 Assorted reasons

The next reason for sport’s special treatment under law can be found in the European Commission’s White Paper on Sport 2007,<sup>127</sup> which covers a whole variety of reasons.

The first of many reasons, is that there is widespread acceptance that sport is unique and reserved from law because of the acceptance of discrimination in sporting competition. For example, men and women, on the whole, compete separately in elite sport with claims that it is ingrained even for competitions such as table tennis, where there is no apparent physical need.<sup>128</sup> Modern UK legislation recognises the equality of the sexes but it also give specific exemptions for sport. The Sex Discrimination Act 1975 lays down a specific exception for competitive sport under section 44.<sup>129</sup> Beloff says this Act and the Equality Act 2010 institutionalises sporting sex discrimination.<sup>130</sup> So keen are sporting bodies to maintain separate competitions for male and female athletes that when faced with intersex athletes they have to adopt new and detailed rules to determine who can compete in what competitions.<sup>131</sup> Furthermore in the US *Martin* case, the ruling Judge’s verdict that to suggest separate competitions was akin apartheid is preposterous. The dissenting Judge Pregerson noted that

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<sup>125</sup> Nafziger, n. 7, who adds this contributes to the European Sports Model.

<sup>126</sup> James, n. 60.

<sup>127</sup> Beloff, n. 49.

<sup>128</sup> Beloff, n. 49. See also Syed, Matthew, Nice Declaration: ‘Declaration on the specific characteristics of sport and its social function in Europe, The Times 2011.

<sup>129</sup> Beloff, n. 49.

<sup>130</sup> *Ibid.*

<sup>131</sup> E.g., the IAAF had to instigate new rules to deal with Caster Semanya after her inconclusive DNA test results were leaked to the media (previously she had competed in women’s races), Beloff, n. 49. This raises questions of substantive and procedural fairness and how to deal with mixed gender athletes, Nafziger, n. 7.

this overlooked physical differences and distorted equality of opportunity and would require the banning of all separate sporting events on grounds of apartheid. That it could extend to the necessity not to provide separate toilets. Judge Wallace in this case also hinted that the women's case might have had more merit if it had argued for inclusion in the male events. Consequently, with regard to sport, the notion of equality of the sexes is somewhat suspended in favour of equality of opportunity.

There is also acceptance of age discrimination in sporting competition by way of separate competitions depending on age. And this is again condoned in the UK by way of the Equality Act 2010 where separation is allowed if it is proportionate to achieving a legitimate aim.<sup>132</sup> As with the other reasons for separating competitors whether based on sex, disability<sup>133</sup> or age, the purpose is to achieve safe and fair competition that is in line with generally accepted international practice.<sup>134</sup> Therefore separate competitions are excluded from anti-discrimination laws.<sup>135</sup> This permission of discrimination within sport contributes to its specific nature. This concept can also extend to include things such as stakeholders requiring a certain outcome, competition against an external party, and that there should be a set number of participants.<sup>136</sup>

Another, of many reasons, that gives sport and the Olympics their specificity, is that it uses, either day-to-day terms or legal terms, differently. For example, Beloff mentions that sport has its own definition of nationality, separate to political nationality. Entities that are not states before the UN, possess 'sporting' nationality, such as Taiwan and Scotland. Furthermore, Chappelet notes that Games participation may be a stronger example of sovereign statehood than UN admission.<sup>137</sup>

Nafziger adds that following the fall of the Eastern bloc, IOC recognition was one way for new states to obtain recognition and legitimacy of their statehood on the international

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<sup>132</sup> Beloff, n. 69.

<sup>133</sup> The 2010 Act defines disability but does not include equal participation of sports within it. Beloff, n. 69.

<sup>134</sup> This was specifically mentioned in the Consultation Paper to the Equality Act 2010 and is government endorsed. Beloff also cites *Pistorius v IAAF*, CAS 2008/A/1480, where Pistorius argued for inclusion in regular competition. Whereas the IAAF claimed that springs included in his 'blades' and violated their rules. The issue was whether his disadvantage was removed or whether he was at a specific advantage. CAS ruled that he had no overall advantage either net or metabolically. Beloff, n.69. See also Nafziger, n. 7.

<sup>135</sup> Nafziger also discusses examples of sporting specificity before the law, in criminal and civil liability. To avoid absurdities normal rules regarding culpability for causing injury must be suspended to ensure sport can occur, especially full contact combat sports. The law has determined ways to deal with this, such as consideration of the type of sport, the level it is played at, intent, level of injury etc. (*R v Barnes* [2004] EWCA Crim 3246;), Nafziger, n.7. See Beloff, n. 69.

<sup>136</sup> Beloff, n. 69.

<sup>137</sup> Chappelet, n. 55

scene.<sup>138</sup> Indeed, it contributed somewhat to the legitimacy of statehood of some of the former Yugoslavian states contrary to the UN and other sporting competition's position at the time. For example, at Barcelona 1992, Slovenia and Croatia sent teams for the first time and it allowed the inclusion of individual athletes from Serbia after UNSC sanctions.<sup>139</sup> These individual athletes used the Olympic flag as transitional symbols of statehood.<sup>140</sup> However, former Serbian sports teams could not attend.<sup>141</sup> Nafziger concludes that thus the IOC was more expansive at the time, that organisations such as UEFA (Union of the European Football Associations) which did not allow participation by former Yugoslavian teams. However, he fails to note that in fact, the IOC was not more inclusive than them, as it only allowed individuals and not team participation at the Games. Moreover the IOC, via the Truce, failed, to bring an end to the conflict in Bosnia at the time.<sup>142</sup>

A further reason for sport's specificity is the relationship it and its institutions have with governments. This is especially true with regard to OCOGs, who are considered by Chappelet, as para-public. He adds that NOCs are inextricably linked to governments as they are the organisation that selects the Games team that will parade in front of the world at the opening ceremony – an unparalleled opportunity for a state to display statehood in a peaceful manner.<sup>143</sup>

It appears that the courts understand when the doctrine operates and when to interfere, and then work back to justify this. Therefore, according to the EU doctrine of specificity, there are many ways in which sport may differ from other pursuits which do not obtain specificity before the law. It is a combination of competitiveness, uncertainty of outcome and physical differences of the individual that give sport its unique nature, alongside the political sporting field it appears on. All of which apply to competition at the Movements thus fulfilling the first hurdle for its special treatment before the law using the EU doctrine. However, this arbitrariness of outcome diminishes the doctrines credibility and potential application to the Movement, compounded by the fact that many CAS/European decisions relate to professional football. Furthermore, whilst EU sports law is international, it is only limited to Europe.<sup>144</sup> Hence the application of the doctrine to the Movement is not on solid ground.

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<sup>138</sup> Nafziger, n. 7.

<sup>139</sup> Reaching a settlement with the Sanctions Committee of the SC. Individual Macedonian athletes also attended. Nafziger, n. 7.

<sup>140</sup> As did athletes from the former Soviet Union, Nafziger, n. 7.

<sup>141</sup> Such as those for handball, basketball, swimming and water polo, Nafziger, n. 7.

<sup>142</sup> Nafziger, n. 7.

<sup>143</sup> Chappelet, n. 55.

<sup>144</sup> Furthermore, the country that dominates Olympic sport is Switzerland, a non-EU state.

However, the rest of the world could assume its doctrines either into domestic or international law, using the same reasoning. Jurisdiction is relevant to the Olympic system because of the interplay with host nation's laws and the potential for Swiss law to apply. There is always the potential that different rights/laws could exist at different Games depending on where they are being held.

Furthermore, this thesis contends that the specificity of sport stops too soon as the existing doctrine has not understood Olympic Singularity. Existing academics have viewed the exemption from the law of the Movement's constituent parts - focusing on whether the ISF or the IOC can make law. However, as this thesis contends that whilst these core Movement actors are extraordinary, so is the collective Movement. It is unusual due to its visibility and charisma.<sup>145</sup> Hence Olympic Singularity compounds the specificity of sport enabling the Movement to be able to sanction a Truce Treaty

#### 4.6 The birth of the Olympic Movement in the Olympic Charter

The sixth feature of Olympic Singularity which necessitates the Movement's grouping as a singular organisation capable of enforcing a Truce Treaty, is that it has been created by the Charter, albeit unintentionally.

As it stands the Charter does not consider the Movement as able to hold power or act on its own. The Charter simply considers it an ease of use term grouping various actors together. It does this in part c) of its Introduction where it says that the IOC, the NOCs, and the ISFs are the "three main constituents of the Movement" alongside the OCOGs.<sup>146</sup> Therefore this suggests that the Movement is simply the collective grouping of these actors for ease of reference. Furthermore, to refer to the IOC as the Movement is erroneous.

However, there are flaws with the Charter's approach to the 'Movement'. It does not consider that its frequent usage and definition (albeit muddled) have unintentionally given rise to a new actor where the sum (the Movement) is greater than its actor parts.

The Charter refers to the Movement 61 times. On its pages, the Movement is real. Furthermore, the Charter does attempt to define the Movement. Drafting wise it is a defined term which includes the aforementioned actors. It is also further defined, albeit woollily, in the 3<sup>rd</sup> Fundamental Principle as

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<sup>145</sup> Ettinger, n. 4.

<sup>146</sup> In order to participate in the Games, these Movement actors must observe the Charter in addition to their own constitutions and articles.

“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 5 continents. It reaches its peak with the bringing together of the world’s athletes at the great sports festival, the Games. Its symbol is five interlaced rings”.

The Movement is significantly more than an ease of use term to group together various actors. The Charter even gives this collective Movement rights and obligations such as that of autonomy.<sup>147</sup>

The reason for the Charter’s repeated usage of ‘Movement’ as a defined term, but not giving it legal status is likely so that its actors can potentially cloak themselves from legal risk, particularly the IOC. Although the Charter gives the Movement rights and responsibilities, the Movement has no legal capacity.<sup>148</sup> It cannot enter contracts, sue or be sued. Therefore in terms of the Charter and the potential for avoiding responsibilities, lawyers have a duty to bring order to this sports field, as Beloff suggests.<sup>149</sup> This thesis manages this by way of its clear definition of the Movement as a singular collective organisation that is capable of having rights and responsibilities, notably in the field of a Truce Treaty. The Movement is meant to be viewed as one, with the ‘whole’ Movement being greater than the sum of its parts. The solution offered therefore has its legal basis in the aforementioned specificity of sport.

#### 4.7 Conclusion

This Chapter has shown that the IOC, as it can be subsumed into the Movement, is no ordinary INGO. It takes the universal features of an INGO mentioned in Chapter 3 and adds more flavour to the IOC/Movement as a unique INGO. It has the capacity to create law, both via its Charter and its ISFs. It receives special treatments and recognitions from the UN by way of its observer status, involvement in the Truce and various departments, and in terms of the rights bestowed on it. Furthermore, various domestic jurisdictions afford the IOC and the wider Movement web specific rights and recognitions. Whilst the IOC may not be quite on a par as the ICRC in terms of these rights, its unusual status is solidified.

The EU has recognised the doctrine of the specificity of sport, which necessarily includes the Movement/IOC. However, it has failed to reason it and has not sufficiently dealt with the fact that the Olympic sporting competition stretches beyond its borders. Thus this

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<sup>147</sup> 5<sup>th</sup> Fundamental Principle of Olympism, Charter.

<sup>148</sup> As evidenced by the fact that the IOC has no financial or legal liability for hosting the Games.

<sup>149</sup> Beloff, n. 69.



thesis in Part I has accurately deconstructed and then reconstructed sporting specificity in an Olympic light. It has termed this Olympic Singularity and draws from some of the same fields, such as the importance of the structure and the recognitions afforded to it. Olympic singularity recognises sporting specificity, but comments that the unique and special features of sport, are at their most unique in the Olympic sphere. Part II will go on to demonstrate that this singularity extends into certain spheres, out-with the sphere of envisaged by specificity – beyond sport and into the legal-political.

## **PART II**

### **THE OLYMPIC MOVEMENT AND PEACE AND SECURITY**

*Why should the Olympic Movement be viewed as one entity with regard to the Olympic Truce?*

## CHAPTER FIVE

### **The Olympic Truce – a new mandate for the Olympic Movement in international law and peace and security?**

#### 5.1 Introduction

Part I demonstrated that the Movement is a unique singular organisation. Part II will examine whether there is a new role for this Movement in peace and security and what that role can be. Specifically, it will examine whether that single collective Movement can have a role in a Truce Treaty.

The Truce's existence shows that the Movement has given itself a widened mandate encroaching on international peace and security. Despite the Truce Resolutions being passed by the UNGA, the IOC was the organisation that called on the UN to revive the concept of *ekecheiria* in 1992, via the Appeal for the Olympic Truce.<sup>1</sup> This was because the IOC was concerned that the Games would be disrupted by poor attendance from a number of political upheavals in the early 1990s.<sup>2</sup>

Chapter Five will examine the current Truce and assess its effectiveness in order to determine whether it is the right vehicle through which the Movement can fulfil its new peace-building mandate. It will examine the Truce's nature and content. Its status as a source of law will be tentatively considered, although as a UNGA Resolution, this seems unlikely. It will do this by examining the language and nature of UN and Olympic agreements, publications, Solemn Appeals and Resolutions, including the Charter and Truce Resolutions. It will also consider whether these sufficiently define the Truce or not.

Chapter Five will then assess whether the Truce is effective, and if not, why? Specific consideration will be given to whether any failures of the Truce's observance are attributable to the Movement's lack of international status and disparate web framework. Therefore, it will examine whether a singular Movement, receiving special treatments and recognitions (as shown by Olympic Singularity in Part I) would be better placed to do this. This desire for involvement in peace-keeping is part of the last aspect of Olympic Singularity yet does not

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<sup>1</sup> 'Appeal for the Olympic Truce' passed by the IOC at its 99<sup>th</sup> Barcelona Session 21<sup>st</sup> July 1992 and presented to the UNSG in 1993.

<sup>2</sup> E.g., the fall of communism in Eastern Europe ending the Cold War, African civil wars, and war in the Balkans.

justify this role. However, when Part I's discussion of Olympic Singularity combines with the desired mandate in this field, and the current failings of the Truce, new possibilities and solutions must be examined here.

This Chapter and the next will therefore consider possible solutions to remedy the ineffectiveness of the current Truce. The Truce's ancient predecessor - *ekecheiria* - will also be examined to discover whether it had any advantages over the current Truce incarnation.<sup>3</sup>

## 5.2 What is the Olympic Truce?

The language used by the Movement, the UN and invested third parties<sup>4</sup> regarding the Truce shall be examined to understand its terms and status. This includes the Olympic Charter, the IOC's initial 'Appeal', and UN Truce Resolutions and their associated SG Solemn Appeals. This will help to understand whether and why it is being observed. It will use the usual intrinsic and extrinsic interpretative tools, alongside consideration of context and purpose.

### 5.2.1 Charter Language

The IOC was the institution that first mooted the idea of renewing the Olympic Truce and hence its language and institutions are a good place to start an examination of its content and status. However, before Olympic sources can be examined, historical contextualisation will help to understand why the IOC thought its revival necessary.

#### 5.2.1.1 History

In 1981 the IOC explored the possibility of organising UN adoption of a Resolution requiring non-interference of the Games by states following two unsuccessful Games. This coincided with an IOC search for a deeper meaning to the Games in the hope of securing its longevity.<sup>5</sup> The first approach was well supported by the international community,<sup>6</sup> but the IOC dropped its submission to the 1982 UNGA Session. The "highly charged political era" and a fear of losing control over it at the GA due to its weak position dictated the IOC's turnaround.<sup>7</sup>

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<sup>3</sup> See Chapter 6, with minor references in Chapter 5.

<sup>4</sup> Such as the IOC founded IOTF and IOTC (International Olympic Truce Foundation, and Centre, respectively),

<sup>5</sup> Montreal 1976 was a financial disaster with South Africa-related boycotts and there were many boycotts of Moscow 1980. Wassong, Stephan, 'The United Nations' Attitude to Olympic Peace' <<http://library.la84.org/SportsLibrary/ISOR/isor2010zu.pdf>> accessed 16<sup>th</sup> December 2015. See also Pound, Richard, *Five Rings over Korea* (Boston, MA: Little, Brown and Company, 1994), 52. See also Kidd, Bruce, "Montreal 1976," *Encyclopaedia of the Modern Olympic Movement*, eds. John E. Findling and Kimberly D. Pelle (Westport, CT and London: Greenwood Press, 2004).

<sup>6</sup> Wassong, n.5. Pound added that the time was ripe, n.5.

<sup>7</sup> Pound, n.5 and Wassong, n.5.

Although not strictly a Truce, this first exploration paved the way, ten years later, for the successfully uplifted IOC-UN organised Truce Resolution. The UN heeded the IOC in the early 90s because once again, there was a charged political climate, but this time, super-powers were not directly involved. Specifically, this was the breakout of war in the Balkans in 1991. However, the UN's uplift of the Truce Resolution was not as simple as war in an ex Olympic Host Nation.

In 1991 the UNSC established a Sanctions Committee against Yugoslavia and in 1992 sanctioned Serbia and Montenegro with sporting sanctions via Resolution 757.<sup>8</sup> This called on all states to take "the necessary steps to prevent the participation in sporting events on their territory of persons or groups representing FRY [(Former Republic of Yugoslavia)]".<sup>9</sup> This meant that the UN endorsed sporting sanctions and prohibitions of FRY athletes, preventing Olympic participation, potentially establishing this as a future precedent for international law breaches.

However, this precedent was not set as the IOC raised concerns. The IOC thought this sanctioning was at odds with Olympism.<sup>10</sup> The IOC also raised concern over these sanctions because it wanted to protect its independence from the UN and ensure Games success.<sup>11</sup> The IOC pitted its 'international muscle' against the UN in inviting FRY athletes. The IOC and UN agreed that FRY athletes would be allowed to participate in Barcelona 1992, individually, under the UN flag and not representing a state's NOC.<sup>12</sup> Croatia, Bosnia Herzegovina and Slovenia also sent their first teams to Barcelona. Some claim that this was a compromise with the UN yielding more ground.<sup>13</sup> However, this is lessened, as the IOC's suggestion regarding FRY, required UN 'approval', reaffirming UN superiority. It also makes Resolution 757's sporting sanction entirely redundant.

This is interesting for three reasons. Firstly, it shows that the UN valued sporting sanctions for breaches of international law as mooted by this thesis and that there was a desire for the UN to be able to affect the IOC, strictly out-with the state system. Secondly, this demonstrates that the IOC and the UN's objectives were conflicting. This conflict between 'IOC inclusion' and 'UN sanctioning of international law' is potentially what prevents the

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<sup>8</sup> UNSC Resolution 757, 30<sup>th</sup> May 1992, sanctioned the Federal Republic of Yugoslavia (FRY).

<sup>9</sup> Paragraph 8(6).

<sup>10</sup> 'Inclusion and Movement unity' and 'protection of athlete's interests and the Games', Jarvie, Grant, with Thornton, James, *Sport Culture and Society: An Introduction*, Routledge, 2<sup>nd</sup> ed, Mar 2012.

<sup>11</sup> Wassong, n.5. See also Kidane, Fekrou, "The Olympic Truce", *Olympic Review* XXVI, no. 19 (1998), 5.

<sup>12</sup> They also paraded into the opening ceremony wearing a uniform of the Olympic Rings. Wassong, n.5. See also Kidane, Fekrou, "Sport and politics, diplomacy of a Truce" *Olympic Review* XXVI, no. 28 (1995), 50.

<sup>13</sup> Wassong, n.5.

Truce from working effectively. Each walks the line balancing their conflicting missions resulting in the Truce's impotency. Thirdly, Resolution 757 also shows that when the IOC had to decide between 'inclusion' and its 2<sup>nd</sup> Fundamental Principle (peace), it chose inclusion, even when parties were warring. This suggests 'inclusion' outranks peace-building and demonstrates the IOC's lack of serious commitment to promoting peace and ending hostilities.

Nevertheless, in order to be seen as maintaining commitment to its 2<sup>nd</sup> Fundamental Principle of peace-building, and to balance out the inclusion of athletes from states at war and to ensure the success of the Games, the IOC's Appealed to the UNGA for an Olympic Truce.<sup>14</sup>

#### 5.2.1.2 The IOC's Appeal for the Olympic Truce

NOCs and the IOC, after governmental collaboration, proposed the Appeal at the UNGA in 1993.<sup>15</sup> It uses semi-formal language akin a UN Resolution and is another indicator of the linking of the Olympic and state systems – they are not as divided as the Charter claims. The Appeal, as the first written espousment of the Truce, provides some definition but confuses this clarity by later using woolly terms. Its wording resurfaces in later Olympic language and Resolutions, but as shall be shown, its initial certainties are lost over the years.

The Appeal's first indicator of a definition comes from its pairing of the Truce to *ekecheiria*, for example, its introduction states that the Movement is "[a]nxious ...to restore the ancient Greek *tradition of ekecheiria* or "Truce Pledge". This Truce pairing frequently resurfaces within the Appeal and in later sources.<sup>16</sup> However, little attempt to define *ekecheiria* is made in the Appeal.

Secondly, the Appeal infers that the Truce is an armistice.<sup>17</sup> Although armistice is not specifically used, nor defined, it is implied from "laying down of weapons". The Truce, whilst in IOC control, is not a permanent or lasting peace, similar to *ekecheiria*. This armistice implication is one that again frequently resurfaces.

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<sup>14</sup> In 1992 and to the UN in 1993.

<sup>15</sup> Although passed by the IOC in 1992.

<sup>16</sup> Introduction, Appeal. E.g., Paragraph 2 calls on states to decide that: "during the Olympic Truce dictated as in ancient Greece, to the spirit of brotherhood and understanding between peoples, all initiatives shall be taken and all group or individual efforts made to being and continue to achieve by peaceful means the settlement of conflicts, whether or not of an international nature, with a view to establishing peace."

<sup>17</sup> "During the period, all armed conflicts, and any acts related to, inspired by or akin to such conflicts, shall cease, whatever the reason, cause or means of perpetration thereof."

Thirdly and linked to the Truce being an armistice is its limited duration, again similar to *ekecheiria*.<sup>18</sup> The Appeal stated that the Truce is to last 30 days (16 days of the Games and 7 days either side). This defined duration is the Truce's clearest feature.

Fourthly, the Appeal places a positive obligation on itself, states and international and national organisations to observe the Truce and again this resurfaces in later sources.<sup>19</sup> It requires all parties to take 'initiatives' to ensure this, whatever these may be.<sup>20</sup> Not only must they have no involvement in conflicts but various initiatives must be taken. Many states may not actively be involved in conflicts by default, but they do not establish peace through sport initiatives. The notable exception to this are the Host Nation's Olympic Programme initiatives and therefore, only they observe this requirement.<sup>21</sup>

The final aspect to be drawn from the Appeal indicating the Truce's content and status, is that it has no binding weight under international law and this is amplified when adopted by the UNGA via its Resolutions. This is recognised by the Appeal being a 'call'. At best, it evidences signatory consensus.<sup>22</sup>

This Appeal does cursorily give definition to the Truce as an armistice of a set duration, but many other terms within it, such as 'conflict' and 'initiatives' are not defined. This is not necessarily problematic in itself. The Appeal is simply a good faith plea, not intended to have legal meaning or intent. This mediocre lack of certainty does however become an amplified issue when UNGA Truce Resolutions use this IOC Appeal as a basis for their definitions and references. This Appeal contains reasonable certainties and definitions, the Resolutions do not. The Resolutions refer to this non-binding Appeal for content and definition as they lack it themselves. This amplifies the mediocre certainties of a non-binding plea into woolly uncertainties, making adherence difficult.

### 5.2.1.3 The Charter and IOC Truce Institutions

This section will continue to look at Olympic language, before the next section examines UN language for a definition of the Truce and understanding of its nature. The

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<sup>18</sup> E.g., paragraph 1 of the Appeal states that:- "During the period from the seventh day before the opening of the Game until the seventh day after the end of these Games, the "Truce" shall be observed."

<sup>19</sup> E.g., paragraph 1 states that "[t]he Truce shall be observed."

<sup>20</sup> Paragraph 2.

<sup>21</sup> E.g., Vancouver in 2010 had 'Make Your Peace', where individuals could make peace relevant to their daily lives. London's OCOG established 'Get Set for the Truce', aimed at building knowledge and understanding of the Truce amongst youths and having them apply it to their communities, The Truce Timeline, <[www.olympictruce.org/index.php?option=com\\_k2&view=item&layout=item&id=3&Itemid=268&lang=en](http://www.olympictruce.org/index.php?option=com_k2&view=item&layout=item&id=3&Itemid=268&lang=en)> accessed 19<sup>th</sup> September 2016.

<sup>22</sup> IOC's Executive, ASOIF, AIOWF and ANOCA, Appeal, n. 8.

Charter, the IOC's constituent document, does not mention the Truce. A significant lapse if the Truce is as central to the Movement as it claims. Although its 2<sup>nd</sup> Fundamental Principle gives the Truce a generic nod as "[T]he goal of Olympism is to place sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society".<sup>23</sup> The Charter does little to advance a Truce definition aside from this 2<sup>nd</sup> Principle which suggests it is a tool, lacking in legal clout as perceived by the organisation that initiated its instigation.

Nevertheless, the IOC attempts to fulfil this 2<sup>nd</sup> Principle and the propagation of the Truce via its establishment of various institutions, such as the IOTF and IOTC.<sup>24</sup> The IOC and the Greek government established the IOTF and IOTC in 2000 as a joint venture to promote the Truce world-wide and to give it real effect. Their language might therefore help to elucidate a Truce definition. They say that the Truce is an:-

“institutional compact; a ceasefire; a suspension or interruption of hostilities; an act of peace; non-inception of war; a means or tool for peace; or an educational process.”<sup>25</sup>

They also favour using *ekecheiria* when referring to the Truce. The IOTF uses the aforementioned interchangeably and synonymously with ‘ancient truce’, ‘Greek tradition’, ‘concept’ and ‘*ekecheiria*’.<sup>26</sup> This suggests that the Truce could be an armistice, binding law and yet a loose concept – all potentially conflicting each other – leading to confusion. Furthermore, these long-winded, multi-faceted descriptions lack focus and devalue the Truce's clarity and potential legal impact. This and its lack of further definition suggest the Truce is a confusing concept involving some form of conflict cessation, which must assume to be deliberately intended by Olympic institutions. Therefore, to find any further definition of the

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<sup>23</sup> 2<sup>nd</sup> Fundamental Principle, IOC Charter, 2<sup>nd</sup> August 2015. Rule 2.4 expands this requiring the IOC to cooperate “with the appropriate bodies to promote peace” and support the UN and its goals. Yet the IOC's ‘peace promotion’ differs to the UN's “maintaining peace.”

<sup>24</sup> Part of ‘Olympism in Action’, and its Peace through Sport initiative. The IOTF is chaired by the IOC President and the Greek Minister for Foreign Affairs. They are headquartered in Lausanne, governed by Swiss law, but are Greek funded and have bases in Olympia Athens, Jean-Loup Chappelet and Brenda Kubler-Mabbott, *The International Olympic Committee and the Olympic System: The Governance of World Sport* (Routledge, 2008). See also IOTC About, <[www.olympictruce.org/index.php?option=com\\_k2&view=item&layout=item&id=1&Itemid=266&lang=en](http://www.olympictruce.org/index.php?option=com_k2&view=item&layout=item&id=1&Itemid=266&lang=en)> accessed 19<sup>th</sup> September 2016.

<sup>25</sup> Introduction, Georgiadis, Konstantinos, and Syrigos, Angelos, *Olympic Truce: Sport as a Platform for Peace*, IOTC Publication 2009.

<sup>26</sup> The IOTF states its main objectives is promoting “the ancient Greek *tradition* of the Truce and initiating conflict prevention and resolution through sport, culture and the Olympic ideal, by co-operating with all inter and national governmental organisations specialised in this field, by developing education, and research programmes and by launching communication campaigns to promote the Truce”. Olympic Movement, IOC, Olympic Truce, IOTF <[www.olympic.org/content/the-ioc/commissions/public-affairs-and-social-development-through-sport/olympic-truce/?tab=international-foundation](http://www.olympic.org/content/the-ioc/commissions/public-affairs-and-social-development-through-sport/olympic-truce/?tab=international-foundation)> accessed 11<sup>th</sup> February 2016. See also Rogge, foreword, Georgiadis and Syrigos, n.25, “the IOC revived the ancient Greek tradition of “*ekecheiria*”, the Truce: using sport as an instrument to foster dialogue for reconciliation and peace, with the support of the UN calling on its member states.”



Truce beyond the parameters of the initial IOC Appeal requires examining the UN Truce Resolutions.

### 5.2.2 UN Resolutions and Solemn Appeals

The IOC on its own was unable to do little more than the aforementioned soft measures:- its initial Appeal and the establishment of its Truce institutions, although the latter were a joint venture with the UN. After the initial Appeal in 1992, that was passed to the UN in 1993, the decisive factor in the UN ‘hearing’ this Appeal for a Truce was due to the Bosnian team<sup>27</sup> being trapped in Sarajevo by the surrounding conflict.<sup>28</sup> Being trapped by war was an important historical reason for *ekecheiria*’s existence and underpinned the Truce’s revival. This entrapment was compounded by the fact that the international community felt it owed a ‘moral duty’ to the 1984 Winter Games Hosts to aid their participation. The UN therefore believed that the Truce could help advance UN and IOC Charter principles that it would:-

“protect[ing] as far as possible the interests of the athletes and sport in general and to encourage searching for peaceful and diplomatic solutions to the conflicts around the world.”<sup>29</sup>

Between the 1992 SC sanction Resolution and the Lillehammer 1994 Games, a turnaround in UN policy on sport as a sanction can be seen. UN policy was brought into alignment with IOC inclusiveness. Consequently, the UN uplifted the Appeal and transformed it into a UN Truce Resolution, 48/11, on the 25<sup>th</sup> October 1993, in advance of the winter 1994 Lillehammer Games. The UN quickly established a precedent passing a Truce Resolution several months in advance of every summer and winter Games. The Resolutions state the UN’s commitment to the Truce for the upcoming Olympiad as it (the Truce and any global, local, national or international conflict) are deemed permanently on the UNGA’s agenda.<sup>30</sup> These Truce Resolutions are followed by the SG’s Solemn Appeal, that urge observance of its related Resolution, a few weeks ahead of its Games.<sup>31</sup>

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<sup>27</sup> Allowed to attend as individuals as per the IOC-UN agreement and the Barcelona precedent.

<sup>28</sup> Briggs, Rachel; McCarthy, Helen; and Zorbas, Alexis, 16 Days of Peace, The Role of the Olympic Truce in the Toolkit for Peace, Demos Athens (2004) (Hendy Banks and IOTC).

<sup>29</sup> Olympic Movement, Olympic Truce, History <[www.olympic.org/content/the-ioc/commissions/international-relations-/olympic-truce/](http://www.olympic.org/content/the-ioc/commissions/international-relations-/olympic-truce/)> accessed 11<sup>th</sup> February 2016.

<sup>30</sup> Jarvie, Grant, with Thornton, James, *Sport Culture and Society: An Introduction*, Routledge, 2<sup>nd</sup> ed, 2012.

<sup>31</sup> Titled, the ‘Olympic Ideal’ and/or ‘Building a Peaceful and Better World Through Sport and the Olympic Ideal’.

#### 5.2.2.1 Lillehammer Games' first Olympic Truce Resolution and Solemn Appeal (1993)

Lillehammer's Resolution commences by affirming its support and endorsement from 184 NOCs, close to 96% of all NOCs in 1993.<sup>32</sup> This support mirrors one of the reasons for *ekecheiria*'s observance according to Georgiadis and Syrigos - its universal application. In the ancient world, this universality indicated the Truce codified a customary norm. However, universal application and universal support are different. Resolution 48/11 had near universal support, but it did not have universal application as conflicts still continued during the Games' duration. In February 1994, the Balkan conflict continued, the Rwandan genocide was brewing and there were on-going troubles in Iraq and Afghanistan. Lillehammer's Resolution did nothing to quell these conflicts – it only enabled Bosnian attendance.

The Resolution goes on to affirm the 2<sup>nd</sup> and 4<sup>th</sup> Fundamental Principles of Olympism before mentioning the Truce.<sup>33</sup> This Fundamental Principle affirmation is significant as UN recognition of the Charter. This could elevate these to recommendations to the international community or show evidence of a customary norm. This again shows the linking of the IOC and the UN, and the IOC and its Charter's special status.

Lillehammer's Resolution and Appeal begin a repeated UN linking of the Truce to *ekecheiria*, as begun in the IOC's Appeal.<sup>34</sup> For example, the Resolution states that the UNGA "recognise(es) ... the efforts of the IOC to restore the ancient Greek tradition of *ekecheiria*, or "Olympic Truce". And the Appeal adds that:-

"The Olympic Truce, or *ekecheiria*, is based on the ancient Greek tradition.... All conflicts ceased during the period of the Truce...", and  
"I urge us to place at the forefront of our thoughts and actions the *principles* and *ideals* which the *ekecheiria* and the Movement seek to propagate."

These indicate that the Truce is therefore akin the ancient's *ekecheiria*. The Appeal also emphasises the armistice aspect of the Truce, for example, it calls on those "engaged in armed

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<sup>32</sup> 1993 saw a rise of 25 NOCs following the dissolution of the Eastern Bloc, bringing their total number in 1993 to 192. This meant that almost 96% of NOCs at the time, supported the resolution.

<sup>33</sup> "Recognizing that the goal of the Movement is to build a peaceful and better world by educating the youth of the world through sport, practised without discrimination of any kind and in the Olympic spirit, which requires mutual understanding, promoted by friendship, solidarity and fair play," Resolution A/RES/48/11, 25<sup>th</sup> October 1993, paragraph 2.

<sup>34</sup> E.g. the Appeal says that "[B]y applying the principle of *ekecheiria* the world can at least hope for some respite, however temporary, from....conflict", Solemn Appeal 'Building a Peaceful and Better World Through Sport', issued by the UNGA President on the 19<sup>th</sup> January 1994 in advance of the February Lillehammer Games (A/48/851 (1994)). It addressed all states to observe the Truce for the upcoming Games, and such Appeals now occurs in advance of every Games. These Solemn Appeals are as unbinding, if not more so, as the Truce Resolutions to which they relate. They are simply pleas or calls for its observance.

struggles to... suspend hostilities” and that “[b]y applying the principle of the *ekecheiria*, the world can at least hope for some respite, however temporary, from....conflict.” Thus the Appeal gives marginally more detail to the Truce than the Resolution does, but there still remains little understanding, outside conflict ‘cessation’ during the relevant time frame regarding its Terms. Meaning that in UN ownership (as opposed to the IOC’s initial Appeal) there is a lack of definition.

However, paragraph 2 of Resolution does add some depth by reaffirming the limited duration first seen in *ekecheiria*, and later in the Movement’s Appeal. It:-

“urg[es] Member States to observe the Truce from the 7<sup>th</sup> day before the opening and the 7<sup>th</sup> day following the closing of each of the Games, in accordance with the Appeal launched by the IOC;”.

The SG’s Appeal reiterates that the Lillehammer Truce was to last just over a month giving specific dates (5<sup>th</sup> February to 6<sup>th</sup> March). Hence the Resolution and Appeal together do give some certainties regarding the modern Truce, with more certainties appearing in the Appeal than the Resolution.<sup>35</sup>

The Appeal goes further than its Resolution yet again, as whilst both direct all states to observe the Truce, the Appeal adds “whether or not they are now parties to a confrontation”. It clarifies that it is not just warring states that must observe the Truce – it is all states.

Lillehammer’s Resolution also calls upon “all Member States to cooperate with the IOC in its efforts to promote the Truce”.<sup>36</sup> This aims to develop the UN-Movement partnership. Yet it only extends to UNGA member states, excluding UNGA observers, non-state UNGA member parties and states that are not GA members. This would not ordinarily be an issue but Resolution 48/11 raises a recurring problem when viewed within the Olympic framework. Palestine is a UN non-member observer state but it has a NOC.<sup>37</sup> Furthermore many non-sovereign states, such as the British Virgin Islands that have NOCs, only commit to this Resolution via their sovereign state, the UK. Hence unaddressed gaps exist here in terms of reach, agreement and parties.

In furtherance of this UN-IOC partnership, building on the special relationship and status of the IOC and Charter, the UN proclaimed 1994 as the ‘International Year of Sport and the Olympic Ideal’, commemorating 100 years of the Games.<sup>38</sup> The Movement bore sole

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<sup>35</sup> A problem as the Appeal carries even less weight than the Resolution.

<sup>36</sup> Paragraph 4.

<sup>37</sup> Granted in 2012, Resolution A/RES/67/19, 29<sup>th</sup> November 2012.

<sup>38</sup> Resolution on the ‘Olympic Ideal’, 48/10, 25<sup>th</sup> October 1993 (A/RES/48/10) at the UNGA’s 36<sup>th</sup> Session.

responsibility for its financing and organisation.<sup>39</sup> Whilst this may seem wily of the UN, handing responsibility for peace through sport initiatives to INGOs, may amplify the Truce's effectiveness. Together they could reach all conflicting parties by operating on the state and sub-state level. Yet it may also be seen as evidence of the UN's lack of commitment to sanction breaches of the Truce Resolution as it is advocating soft measures instead. Furthermore, the International Year of Sport Resolution does not mention the Truce, not adding anything to its definition. It does, however, reiterate already familiar soft UN language. For example, it "recognis[es] the Olympic *ideal*" and "commends the Movement for its *ideal* to promote international understanding".<sup>40</sup>

The Olympic Truce Resolution 48/11 also requires the UNSG (Boutros-Ghali) to be a figurehead in Truce promotion, globally and amongst Member States.<sup>41</sup> Boutros-Ghali was the first SG to actively bring the two organisations together and treat the Resolution's obligations sincerely, developed by later SGs.<sup>42</sup> However he did not add any definition and only compounded its woolly nature. For example, he stated that:-

"the Olympic ideal is a hymn to tolerance and understanding between people and cultures. It is an invitation to completion, but competition in the respect for others... Olympism is a school of democracy. There is a natural link between the ethics of the Games and the fundamental principles of the UN."<sup>43</sup>

Resolution 48/11, the Lillehammer Appeal and the IOC's Appeal are the Truce's original formal documentation from which later sources draw and refer. When read together, especially with the two Appeals, they define the Truce as *ekecheiria*, conflict cessation for a specific period of time and a peace – all much broader than the ancient *ekecheiria*, which was

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<sup>39</sup> E.g., the UN and its Member States bore no "financial implications ... nor will it require the setting up of any administrative structure", A/RES/48/10. Further initiatives this year included the cooperative agreement between the IOC and the UN Environment Programme and the Centennial Olympic Congress. This helped promote "respect for the environment to be one of the Charter's Fundamental Principles and calls for the Movement and environmental organisations to cooperate and contribute to the education of the sporting world and young people in ecological sustainability." IOC Commission for Sport and Environment, Sustainability Through Sport – Implementing the Olympic Agenda 21 – 2012.

<sup>40</sup> It reaffirms the values of Olympism, specifically the Charter's 2<sup>nd</sup> Fundamental Principle (building a peaceful and better world through sport), indicating the special status of the IOC and the Charter once more.

<sup>41</sup> He was to "promote the observance of the Truce among Member States, drawing attention ... to the contribution such a truce would make to the promotion of international understanding and the maintenance of peace and goodwill, and to cooperate with the IOC in the realisation of this objective." He facilitates this partnership.

<sup>42</sup> In the modern era, the Truce was only mentioned for the first time in 1956, at the Melbourne Games, Mestre, Alexandre Miguel, *The Law of the Olympic Games* (Asser Press, 2009). For example, Boutros-Ghali stated that:- "in the IOC, the UN has a precious ally in its action in the service of peace and bringing peoples together". Stated in 1994, Miller, David, *The Official History of the Olympic Games and the International Olympic Committee*, 5<sup>th</sup> April 2012, Mainstream Publishing Ltd.

<sup>43</sup> Kidane, n.12.

simply an armistice. This lack of clarity regarding the Truce hampers its observation as compared to the legally binding *ekecheiria* Treaty.<sup>44</sup>

#### 5.2.2.2 Atlanta Games' Resolution and Appeal (1995/6)

The next Olympic Truce Resolution and Appeal called on Member States to reaffirm Truce observance for the 1996 Atlanta Games.<sup>45</sup> It echoed the previous Resolutions and again affirmed the Charter's 2<sup>nd</sup> Fundamental Principle potentially meaning a loose adoption of Charter Principles into the UN system, but gives these concepts no legal definition or weight.. It once more focused on joint IOC-UN endeavours and called for SG involvement.<sup>46</sup> These editions offer little further definition to the Truce. It therefore remains a woolly and looped concept.

#### 5.2.2.3 Nagano Games' Resolution and Appeal (1997/8)

The Nagano Resolution and Appeal formalises the UN-IOC partnership by introducing the UN flag at Games' sites. Potentially this is Nagano's 'most significant development.'<sup>47</sup> They also develop the Truce by linking it to development, environmentalism, peace and security in advance of the Millennium Declaration.<sup>48</sup> The Appeal develops this bridge to the future aspect by stating that:-

“Today the Truce has become an *expression* of mankind's desire to build a world based on the rules of fair competition, peace, humanity and reconciliation ...symbolic link to the next millennium... [the Truce is a] bridge from the old and wise *tradition* to the most compelling purpose of the UN – the maintenance of international peace and security....where ideals of peace, goodwill and mutual respect form the basis of relations among countries.”<sup>49</sup>

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<sup>44</sup> IOC Factsheet Olympic Truce Update, December 2015, <[www.olympic.org/Documents/Reference\\_documents\\_Factsheets/Olympic\\_Truce.pdf](http://www.olympic.org/Documents/Reference_documents_Factsheets/Olympic_Truce.pdf)> accessed 23rd June 2014.

<sup>45</sup> A/RES/50/13, 21<sup>st</sup> November 1995, entitled 'The Olympic Ideal' and Solemn Appeal 50/997, adopted at the GA's 50<sup>th</sup> Session, 11<sup>th</sup> July 1996.

<sup>46</sup> E.g., noting 'with satisfaction' their increased number and the inclusion of more parties in the fight and it "request[s] the SG continue to co-operat[e] with the IOC in joint endeavours for the promotion of peace, equality among nations and the harmonious development of humankind". It also suggests Member State's Ministers of Youth and Sport collaborate with the IOC. This could be again seen as linking of the state and Olympic systems.

<sup>47</sup> Georgiadis and Syrigos, n.25.

<sup>48</sup> Resolution 52/21 of the 8<sup>th</sup> of December 1997, e.g., it:-“Urges Member States to observe the Truce during... Nagano... the vision of which is to be a link to the 21<sup>st</sup> C, inspiring the search for wisdom for the new era”.

<sup>49</sup> Appeal 52/782 of 2<sup>nd</sup> February 1998, made five days before the Nagano Games opened.

This and the Resolution broaden the Truce's impact, indicating it is a tool for change.<sup>50</sup>

However, they also re-affirm familiar vernacular about the Truce, that it is an 'expression', 'tradition'. That the Truce is only temporary - an armistice. It pairs the Truce to *ekecheiria* by using the same language as the IOC Appeal and Lillehammer's Resolution.<sup>51</sup> They also refer to Charter Fundamental Principles (fairness, peace and respect for humanity).<sup>52</sup> Again, it calls for member state cooperation with the IOC and requests the SG promote Truce observance.<sup>53</sup> In 1997 Kofi Annan, as UN SG, took this seriously, building on Boutros-Ghali's work. Annan actively attempted to find diplomatic solutions to the re-emerging Iraq and Gulf conflicts.<sup>54</sup> These reiterate already familiar wording and content of previous Resolutions and Appeals, adding little more to a Truce definition.

It is worth noting that the Appeal mentions international conflicts only, contrary to the IOC's appeal which did not distinguish conflict types, ignoring the changing nature of war. This could lessens its impact, and increases its framing as simply a concept.

#### 5.2.2.4 *The Millennium and the Sydney Games' Resolution and Appeal*

Sydney's Resolution was co-sponsored by 180 Member States, meaning it was on its way to achieving *ekecheiria*'s universality.<sup>55</sup> However, it and its Appeal offer no further Truce definition, only more woolly language.<sup>56</sup> They continue to broaden the Truce's reach by welcoming and encouraging cooperation at different levels, beyond national boundaries, urging concrete action at regional and global levels.<sup>57</sup> But this raises difficulties for states curtailed by their sovereignty. This explains why Sydney's Resolution re-affirms that the 'work' is to be done by the IOC for example by the newly created Truce institutions, and not the UN.<sup>58</sup> The

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<sup>50</sup> It may "bring about even a brief respite from conflict", Appeal.

<sup>51</sup> "[T]he idea of the Truce, as dedicated in ancient Greece to the spirit of fraternity and understanding", and discusses the "Olympic Ideal", e.g., For example, its preamble states that "The Olympic ideal promotes international understanding ... through sport and culture in order to advance the harmonious development of humankind", A/RES/51/21, 8<sup>th</sup> December 1997.

<sup>52</sup> Fair play is mentioned in the 4<sup>th</sup> Fundamental Principle, and peace and humanity in the 2<sup>nd</sup>, Charter.

<sup>53</sup> As per Resolution 48/11. It also tabled a future Truce Resolution on building a peaceful and better world through sport and the Olympic ideal for Sydney, ensuring its reoccurrence every Olympiad, A/RES/52/21.

<sup>54</sup> Georgiadis and Syrigos, n.252.

<sup>55</sup> 54/34 of 18<sup>th</sup> January 2000.

<sup>56</sup> For example, the Games' vision "at the dawn of the new millennium, [is] to be highly harmonious, athlete-orientated and environmentally committed", A/RES/54/34.

<sup>57</sup> This builds on Sport Ministers using sport to build peace in their states from Atlanta's Truce Resolution.

<sup>58</sup> As per earlier Resolutions and is part of solidifying the UN-IOC partnership once more. Here the UN is simply the Truce's endorser, it 'welcomes' the IOC's decision to mobilise all ISFs and NOCs of member states to "undertake concrete action at the local, national, regional and world levels to promote and strengthen a culture of peace based on the spirit of the Truce ... [and the IOC's establishment of the IOTC that is to] promote peace and human values through sport and the Olympic *ideal*". It also specifically mentions the IOC-UNESCO partnership,

IOC could have greater reach than the UN, and is one of the reasons this thesis advocates for the Movement's singular control over a Truce Treaty. But as it stands, the IOC does not have the same authority as they UN and is why the institutions have to work together or for the Movement to have amplified control.

This Resolution and its Appeal again confirm that the Truce is a concept and tool.<sup>59</sup> It also links the Truce again to *ekecheiria*.<sup>60</sup> But significantly it states a time extension of the Truce - "beyond the Games period." The Truce is to extend beyond the Games, unlike previous Resolutions and Appeals that restricted it to the Games (and 7 days either side).<sup>61</sup> This extension could hamper its effectiveness *ekecheiria*'s temporary nature was a reason for its success.<sup>62</sup>

Less than a week after Sydney's Appeal, the Millennium Declaration Resolution was passed reaffirming various UN Charter principles and Truce Resolution wording.<sup>63</sup> It again mentioned the Truce in woolly language, offering no definition, but it did solidify the UN's backing of it as an ideal at the turn of the millennium.<sup>64</sup>

#### 5.2.2.5 Salt Lake Resolution and Appeal

Salt Lake's Resolution, despite the UN-IOC partnership, confirms UN superiority and Truce ownership, showing a power shift back to the UN.<sup>65</sup> This dominance can be attributed to the newly created UNOSDP office. This Resolution and Appeal also reframes the Truce as 'safe passage' for Games participation rather than an 'armistice'.<sup>66</sup> Safe passage is an easier, more accessible concept to accept than a global armistice or permanent peace. This could be

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e.g., it notes the joint work fighting against AIDS and juvenile delinquency (laid down in GA Resolution 53/243 of 13<sup>th</sup> September 1999).

<sup>59</sup> E.g. it is an "*instrument* to promote peace, dialogue and reconciliation in areas of conflict", A/RES/54/32.

<sup>60</sup> E.g., the President states that the "*idea* of the Truce dates back to ... *ekecheiria* ... [*it is an*] expression of mankind's desire to build a world based on ... fair competition, peace, humanity and reconciliation", Appeal 54/971, 1<sup>st</sup> September 2000.

<sup>61</sup> With the potential for soft initiatives to be on-going.

<sup>62</sup> Georgiadis and Syrigos, n.25.

<sup>63</sup> A/RES/55/2, 6-8<sup>th</sup> September 2000.

<sup>64</sup> Paragraph 10 states "We urge Member State to observe the Truce, individually and collectively, now and in the future, and to support the IOC in its efforts to promote peace and human understanding through sport and the Olympic ideal", A/RES/55/2.

<sup>65</sup> A/RES/56/75, 10<sup>th</sup> January 2002, e.g., Truce observance must be within the UN Charter's framework, meaning that UN Charter obligations dominate over the Truce with all related action being under its auspices. Furthermore, the UN's calls for IOC aid programmes show UN dominance. And the Resolution moves from 'welcoming/noting' IOC work, to 'urging' its endeavours and it urges the IOC to develop aid programmes in countries affected by conflict and poverty for physical education and sport.

<sup>66</sup> The Resolution requests Truce observance "by ensuring safe passage and participation of athletes at the Games" (Res/56/75) and is reiterated in its Appeal which calls on "all States to demonstrate their commitment to the Truce ....to ensure the safe passage and participation of athletes", Appeal, 56/795.

due to the global climate of the day and events such as the September 11<sup>th</sup> terrorist attacks, which are specifically mentioned in the Appeal, alongside the need of the Truce to counteract these.<sup>67</sup> It is however a slight redefinition of the Truce akin *ekecheiria*'s purpose, and somewhat confuse the Truce definition.

Salt Lake's Appeal again paired the Truce to *ekecheiria*.<sup>68</sup> But the Appeal added that states had to demonstrate their 'general' Truce support. This leaves the usual question as to how this will occur or whether safe passage fulfils this. This shows why the Truce is deliberately vague and fluid - so it can be interpreted and adapted to suit contemporary needs.

#### 5.2.2.6 Athens Resolution and Appeal

Athens' Resolution had unprecedented UN support and was the most widely supported UN Resolution in its history.<sup>69</sup> It was unanimously adopted by 190 member states, showing near universal Truce support, potentially in light of the war in Iraq and Afghanistan commencing the previous year.<sup>70</sup> The Greek government's support of the Truce's revival was instrumental to Athens being awarded the Games, for example, the Appeal notes Greece's important role in the Truce and in the IOTC/IOTF.<sup>71</sup>

Again this Resolution and Appeal reiterate previous editions as they: refer to Millennium Declaration goals;<sup>72</sup> broaden the Truce to other fields;<sup>73</sup> frame it as a tradition;<sup>74</sup> pair it to *ekecheiria*;<sup>75</sup> emphasise safe passage;<sup>76</sup> note the importance of the IOC/IOTC/IOTF's growing work (rather than more formalised measures); UN superiority;<sup>77</sup> and highlight its

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<sup>67</sup> "[E]ven more concerted efforts and cooperation on the part of the world community are needed to ensure that the .... Winter Games are safely and peacefully conducted", Solemn Appeal 56/795.

<sup>68</sup> E.g., "In 1992, the IOC renewed this tradition by calling upon all nations to observe the Truce", Appeal 56/795 of 25<sup>th</sup> January 2002.

<sup>69</sup> A/RES/58/6, 18<sup>th</sup> November 2003. See also Briggs, et al., n.28.

<sup>70</sup> *Ibid.*

<sup>71</sup> "We are confident that the appropriate measures taken by Greece, in close cooperation with the international community, will ensure the staging of the Games in a safe and peaceful environment", Appeal. Greece carved itself a new role in 1998 when it proposed Truce reform and institutionalisation ahead of the millennium, IOTC, Solemn Appeal, 58/863.

<sup>72</sup> It 'takes into account' the Millennium Declaration and its Truce work and notes that Greece was the home of the tradition of the Truce, n.69 and *ibid.*

<sup>73</sup> It reaffirms the Truce's connection to worthy issues in education, poverty and health etc., *ibid.*

<sup>74</sup> It states that "Resolution 48/11 .... Revived the ancient Greek tradition of *ekecheiria* or 'Truce' ... that would encourage a peaceful environment and ensuring the safe passage and participation of athletes and others at the Games", *ibid.*

<sup>75</sup> The Appeal reiterates the "*Greek tradition of ekecheiria (truce)*", calling it the "longest lasting peace accord in history", *ibid.*

<sup>76</sup> The Solemn Appeal reiterates its contribution to "providing safety and a peaceful environment" for attendees, *ibid.*

<sup>77</sup> It "welcome[s]... the establishment by the IOC of an IOTF and an IOTC...[and]... individual support of world personalities for the promotion of the Truce", *ibid.* Their work was visible this year by the Olympic Flame Relay,



utility as a tool.<sup>78</sup> It adds little more to the Truce's definition aside indicating its growing universality.

#### 5.2.2.7 Resolution and Appeals 2006 - 2012

The Resolutions and Appeals for Turin, Beijing, Vancouver and London were similar to previous incarnations offering little advancement to a definition.<sup>79</sup> However, they did make two minor developments. Firstly, from Beijing onwards, the UN dropped equating the Truce to safe passage – showing a fluidity to the Truce's definition.<sup>80</sup> Secondly, Vancouver's Appeal recognises the IOC's invite from the UNGA to be a permanent observer.<sup>81</sup> This more formalised role could potentially pave the way for a more specific and defined Truce.

#### 5.2.3 Conclusions on Olympic and UN Language

A thorough examination of the aforementioned sources reveals that certain themes are discovered when trying to ascertain a Truce definition. They recur in Olympic and UN language, becoming more chronic over the years, obfuscating any clarity that might have initially been established. This thesis has ascertained six recurring traits when attempting to define the Truce.

Firstly, it is difficult to gain sufficient legal understanding of the Truce from the available sources, as no suitable definition exists as to its terms or status. The few certainties established by the IOC's Appeal and Lillehammer's Resolution are lost over the years by conflicting terms and no further definition being given to recurring ones, such as 'conflict' or '*ekecheiria*'. In addition to the UN and the IOC, many such as Georgiadis and Syrigos, even avoid defining it.<sup>82</sup>

Secondly, when the Truce is actually mentioned, it is described in altruistic, emotive and woolly, imprecise terms, which leads to a lack of clarity. Definitions are often circulatory, cross referring to another woolly term, where none are actually defined or carry any legal status.

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which for the first time was a global event in 2004. IOC website. Resolution A/58/863 reaffirms this internationality by stating that the Flame appeared at UN headquarters.

<sup>78</sup> The Truce is an instrument in the promotion of peace during and beyond the Games period, *ibid.* previously this was inferred and is being made explicit here rather than something legally binding.

<sup>79</sup> E.g., Turin Truce Resolution 60/8 (1<sup>st</sup> December 2005) revives the 'ancient Greek tradition of *ekecheiria*, or the Truce' appearing again in Beijing's Resolution 62/4 (31<sup>st</sup> October 2007). Solemn Appeal 60/662 (Turin 2006) reaffirms the Truce as a "hallowed principle" and Turin's Resolution (60/80 2005) reaffirmed it as "an instrument to promote peace, during and beyond the Game period".

<sup>80</sup> Resolution 62/4, 31<sup>st</sup> October 2007.

<sup>81</sup> In Resolution 64/3, 19<sup>th</sup> October 2009.

<sup>82</sup> Georgiadis and Syrigos, n.25.

If terms and status are not known, they cannot be adhered to. This is the first stumbling block regarding Truce observation, and is the first factor that must be remedied in a Truce Treaty. Clear definition in a Truce Treaty would ensure parties were aware of their commitments and increase its observance. Even if the Truce were binding, such wooliness would inhibit its ability to be so considered.

Thirdly, these woolly terms describe the Truce as a non-binding, symbolic concept, practice, ideal or a tool, rather than international law.<sup>83</sup> Each carry different definitions and weights, could potentially conflict and are not defined. It therefore appears that the Truce is to mean different things to different parties in order to gain maximum support. This means that the IOC does not have to exclude parties and the UN does not have to enforce international law. This severely hampers the commitment that states and other actors will place on its observance. In any event, the UNGA passing of Truce Resolutions mean that the Truce itself is not-binding. Their associated Solemn Appeals are also simply pleas from the UN SG to observe it. But it still means that the international community is ‘being seen to be doing something’. Perception of the Truce as a tool and not law, is upheld by independent third parties such as Demos.<sup>84</sup>

Despite stating the Truce is a non-binding conceptual tool, the UN and IOC still describe the Truce as *ekecheiria*.<sup>85</sup> This is confusing as it overlooks that they are different concepts - *ekecheiria* was international law and a tool is not necessarily.<sup>86</sup> It was a Treaty, signed by three Kings, requiring warring parties to lay down arms for the Games’ duration, plus travel periods either side.<sup>87</sup> The Greeks were sure on its terms and it was largely observed ensuring the Game’s peaceful staging. *Ekecheiria* was international law, potentially enshrining customary law. The modern Truce is not Treaty or customary law (not being the later as the parties do not perceive it as law nor is it universally observed). They equate a modern soft tool

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<sup>83</sup> “the ancient concept of the Truce “, Olympic Movement, Olympic Truce, History <[www.olympic.org/content/the-ioc/commissions/international-relations-/olympic-truce/](http://www.olympic.org/content/the-ioc/commissions/international-relations-/olympic-truce/)> accessed 11<sup>th</sup> February 2016. Briggs, et al., n. 28.

<sup>84</sup> The independent think tank Demos states that “the IOC revived the ancient Greek tradition of “*ekecheiria*”, and that the Truce is an “ancient *practice* which has become a modern *idea*”, Briggs et al., n.28.

<sup>85</sup> The Preamble’s third paragraph of Lillehammer’s Resolution states that the UNGA:- “recognis(es) also the efforts of the IOC to restore the ancient Greek tradition of *ekecheiria*, or “Truce”, in the interest of contributing to international understanding and the maintenance of peace”, and section 3 “notes the idea of the Truce, as dedicated in ancient Greece to the spirit of fraternity and understanding between peoples, and urges Member States to take the initiative to abide by the Truce, individually and collectively, and to pursue in conformity with the purposes and principles of the Charter of the UN and the peaceful settlement of all international conflicts”. Demos also uses *ekecheiria*, concept and ‘Truce’ synonymously, *ibid*.

<sup>86</sup> Discussed more below and in Chapter 6. See also Georgiadis and Syrigos, n.25.

<sup>87</sup> To allow all those attending to have safe passage from their homes to Olympia on the western coast of the Peloponnese Athletes, coaches, spectators, judges, artists etc....., see Chapter 5.

without force, to ancient international law. This pairing does not turn the Truce into international law.

The fifth and sixth observations to be drawn from an examination of the Truce sources is that it is framed as an armistice and is of limited duration. However, at times, the UN attempts to extend it beyond this time frame, thereby negating one of the Truce's few certainties.

These conflicting and confusing definitions, that lack detail, lead to the conclusion that such wording is deliberate. It can mean different notions to different parties according to their own motivations thereby gaining wide support. A loose concept to some and *ekecheiria* to others. Yet this confusion means it avoids any real international commitment to a binding norms whilst avoiding the difficulties in enforcing and sanctioning international law or unpopularising the Games with an exclusion. This means the Truce is destined and deliberately intended to fail. Therefore, as Chapter 6 will show, the Truce needs to be codified into a binding Treaty with governorship by an organisation with significant international clout. It should contain proper, legal definition, adding to its formal weight. This could be done by mimicking the Treaty of *ekecheiria* that contained sanctions – as it currently claims the Truce to be.

### 5.3 Is the Olympic Truce effective?

The first sections of this Chapter focused on what constitutes the Truce and what the international community's attitudes are towards its binding nature. They are correct that the Truce is not binding. It is a non-binding UNGA Resolution, and the other party involved (the Movement) does not have the ability to create binding norms in its current guise. Despite the Truce's lack of binding status, the next question to be asked is, nevertheless, is the Truce observed? And if not, why not? Is it linked to its lack of binding status? Although not perceived as law by the international community, if it is universally observed, this may add credence to evidencing customary law.

#### 5.3.1 Breaches of the Olympic Truce

It is easy to determine whether the Truce is observed or not by examining whether conflicts continued or commenced during the Truce's duration. A cursory glance reveals that despite the Truce's revival in the early 1990s, it has had little impact on hostility cessation. States and other entities involved in modern armed conflicts therefore frequently contravene the Truce.

This section will focus on the breaches of the Truce by states, specifically host nations, as the primary subjects of international law.<sup>88</sup> Although the divide between the Olympic and the UN state systems arises again here, it can be bridged by Host Nations. They should have a higher commitment to and observance of the Truce, but continually fail in this. This is because Host Nations table the Resolution at the UNGA and call for Truce observance, even though this may be at odds with their aggressive foreign or domestic policies. Furthermore, the Host City contract is entered by a governmental division of the Host Nation and the IOC, potentially linking the Olympic and state system here. Hence this section will focus on observance of the Truce by Host Nations. It will also examine whether the Truce's lack of observance is the result of its non-binding status and whether it needs to be turned into a binding international Truce Treaty.

#### *5.3.1.1 Sochi 2014*

The selection of Sochi for the 2014 Winter Games was a controversial choice due to the instability of the region following the Georgian and Chechen conflicts, aggressive Russian foreign policy in the region and its poor human rights record.<sup>89</sup> Nevertheless, some claimed that the Games could have helped bring peace and stability to the region. This was dispelled by the kicking off what would become the Russian-Ukraine crisis in late February 2014. Although active Russian involvement in the Crimea did not begin until later in 2014, it passed a resolution on the 1<sup>st</sup> of March permitting the use of Russian force in the Crimea, one day out-with the Truce period, taking an interpretation of the Truce as an armistice to the extreme.

#### *5.3.1.2 War in Afghanistan 2001 – 2014, and, War in Iraq 2003 - 2011*

The 'Wars on Terror' started with a US led invasion of Afghanistan in 2001 and lasted thirteen years with a marginally shorter occupation of Iraq. During this time, the US and its allies hosted many Games. The US hosted the 2002 Salt Lake Games, and its allies hosted Games in 2012 (the UK), 2010 (Canada) and 2006 (Italy). The UK was the first Member State to obtain all 193 UN signatures to the Truce Resolution, indicating Truce universality and potentially a customary status. This is immediately dispelled when it is discovered that the UK had 10,000 troops in Afghanistan. Whilst the UK could have employed a cease fire during its Games, the emphasis of the Truce as a tool sits against such Host Nation involvement. This

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<sup>88</sup> And they are linked to the UN and Olympic system in a way that sub-state warring actors are not. Moreover, gaining evidence of these guerrilla actors and their observance is less reliable.

<sup>89</sup> Of the 7<sup>th</sup>-23<sup>rd</sup> February 2014.

also shows, that at this time, the Truce was unable to dispel wars involving non-state combatants, dispelling claims that it can affect all different conflict levels.<sup>90</sup>

#### *5.3.1.3 Norway and Greece*

Norway and Greece hosted the 1994 and 2004 Games respectively. They were involved in the Balkan and Afghan Wars (respectively) during their staging of the Games. This was despite the Truce being specifically revived for Lillehammer and aiding Bosnian participation. And was despite Greek propagation of the Truce securing its election as Host Nation and co-founding of the IOTC/IOTF. It can therefore be said that Host Nations maintained their involvements in ongoing wars, during their hosting of the Games.

#### *5.3.2 Instances of Observance of the Olympic Truce*

Consequently, since the Truce's revival, it seems that it has only been taken seriously during three Games: Nagano 1998; Sydney 2000; and Beijing 2008. Japan's hosting of the 1998 Games was considered a Truce success due to the aforementioned Kofi Annan talks in Iraq. The Australian millennium hosting and Truce success was just before the 'War on Terror', in which they nevertheless participated. It was a brief respite in the eye of the continually warring storm. Furthermore, many would dispute China's mention on the list of Truce observers, due to its aggressive policies in Tibet. It seems that the only Host Nation to honour and observe the Truce is Japan.

Georgiadis and Syrigos (writing in 2009) mention three additional Truce successes but all were before the 'War on Terror', potentially limiting the Truce's ability to cease modern wars.<sup>91</sup> They mention the successful contribution of the first Truce and the Sudanese NOC's to organising a ceasefire between the government of Sudan and the Sudanese People's Liberation Army.<sup>92</sup> They mention the contribution to the ceasefire between Georgia and Abkhazia and how the first Truce helped ensure a ceasefire to deliver humanitarian aid to the people of Bosnia.<sup>93</sup> With regard to Truce observance, it can be concluded that it was limited to its first edition where some clarity and newly garnered momentum helped ensure Bosnian participation via safe-passage, to millennial years, before the global climate changed again. This reasoning can be extended to suggest that initial Movement control, rather than UN domination heralded

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<sup>90</sup> Demos, Briggs et al., n.28.

<sup>91</sup> Georgiadis and Syrigos, n.25.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

success (Bosnia) and where non-Anglo (Japan and China) or non-European states (Australia) were Hosts and not involved in their wars on a global stage.

### 5.3.3 Reasons for the Olympic Truce's Failure

It cannot be ignored that one of the reasons for the Truce's lack of observance is because it is deliberately not binding. States understand that they are not compelled to observe it, legally, morally or customarily, as it is not law. In turn, it is not given binding legal status because it is perceived as only capable of being toothless and redundant - a tool at best. The vicious cycle repeats. It is this cycle that is at the heart of its lack of observance alongside the confusing and erroneous comparison to *ekecheiria*, which this Chapter has demonstrated.

Demos rightly claim that the Truce fails because it is not sufficiently alike *ekecheiria*, i.e. binding. Their reasoning as to why the Truce fails and *ekecheiria* was observed, is too narrow and not fully reasoned (the latter is explored more in Chapter 6).<sup>94</sup> Demos claim that *ekecheiria* was observed because it was temporary, universal,<sup>95</sup> and perceived as law.<sup>96</sup> This thesis in Chapter 6 extends these reasons and adds the religious compulsion forcing observation. Hence for the Truce to be observed (like *ekecheiria*), it must possess these same features. The Truce shares the temporary aspect with *ekecheiria*, but has proven insufficient to generate observance. The Truce has universal support but not universal application, hence indicating this as a reason for its failure. And crucially as mentioned above, the Truce is not perceived as law, with no religious duty attached. However, the only factor that cannot be replicated from antiquity is *ekecheiria's* observance due to religious reasons. Our laws are rightly secular today.

## 5.4 The Olympic Truce as a Treaty

Despite Truce breaches, this thesis asserts that it, in Treaty format, is the right vehicle to secure peace and security in and around the Games, preserving their longevity, all as recognised in ancient Greece. That is, provided that three developments are made to rectify its current defects.

As shown by this Chapter, and in Chapter 6, the first defect to be remedied is for the Truce to be codified into binding international law - a viable possibility based on the historical precedent of *ekecheiria*. Its present status as a non-binding UN GA Resolution is one of the

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<sup>94</sup> Briggs et al., n.28.

<sup>95</sup> Universally applied rather than universally supported and not applied.

<sup>96</sup> Briggs et al., n.28.

main reasons it is not observed – parties do not view it as mandatory. Recognition of it by the relevant parties (states, the Movement and its entities) as international law will be the first step towards ensuring its observance. Parties need simply know it is law and must be observed and this move would break the vicious cycles of cross-definition.

The second defect to be remedied is that the Treaty be framed as an armistice – a temporary cessation of hostilities. This temporary Truce ensures it would not over-reach or deter potential signatories and is therefore achievable. The ancient Greeks recognised this as a necessity for *ekecheiria*'s success. They also emphasised 'safe-passage' a concept toyed with by the UN in its middle Truce years, but ultimately dropped by London. This could also be uplifted into a Truce Treaty. Remedying these two defects would ensure that the parameters and commitments be clear. This would make a Truce Treaty more appealing than the woolly, lukewarm and confusingly wide sentiment of today's GA Resolutions.

The third defect to be remedied is that it needs to be placed under the governorship of a single body that has capacity to impose real sanctions: the new singular Movement. It should have the power to unilaterally sanction signatories, such as Host Nations or NOCs for their state's breaches. Sanctions should be limited to the Games or fines, as it was in ancient Greece. Yet NOCs are not states and are not involved in war mongering and their punishment seems harsh. However, as shown in Chapters 2 and 4, they are inherently linked to the state, justifying NOC assumption of state liability and vice versa. NOCs must, for the purposes of the Games be viewed as their state's extension, which does comprise the political independence of the Movement, which it nevertheless invariably is.

Moreover, the Movement is the perfect vehicle, and the Truce the perfect tool, to combat modern warfare. This is recognised by the UN but they are unable to successfully implement this as detailed by the aforementioned reasons. It is the perfect tool today as it can adapt to the shifting nature of war.<sup>97</sup> The Truce's re-birth coincided with the collapse of communism and the rise of decentralised 'humanitarian wars'.<sup>98</sup> Conflicts moved from inter to intra-state, ignoring political boundaries.<sup>99</sup> Actors were no longer states, but terrorists, warlords, local actors and mercenaries, who possessed extreme religious or ethnic ideologies. Traditional peace-keeping and conflict-resolution methods were seen as out-dated, being too

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<sup>97</sup> Moving from interstate wars which are now rare, down to high risk tensions (troubled societies with continual low burning violence, e.g. Israel), followed by long running sub-state conflicts (e.g. Rwanda) and finally there is a 'culture of violence' present in all societies from living together, Briggs, et. al, n.28.

<sup>98</sup> Where there were frequent violations of human rights and international humanitarian law, Ibid.

<sup>99</sup> Briggs, et al, n.28, who give the example of Angola.

light or deep to resolve these new types of conflicts and ideologies.<sup>100</sup> For example, Demos asserts that traditional high-level diplomacy can still work but not on sub-state actors.<sup>101</sup>

The Truce and the Movement can step in here and plug this breach as they are mobile.<sup>102</sup> The Movement can move and operate at all levels of a conflict, ‘outside, across and within states’, which the UN cannot.<sup>103</sup> At the highest level, the Truce has world leader support due to the Movement’s influence. The recurrence of the Games every two years gives them and the Truce, a global influential reach.<sup>104</sup> It also has a ‘bottom up’ influence because the Movement has a ‘dense network of grass root level sports organisations’ enabling it to affect community level change.<sup>105</sup> Lederach believes this community-level influence is just as important as governmental talks, as a peaceful world starts with educating individuals.<sup>106</sup> Thus Demos claims that the Truce and the Movement can influence sub-state actors, governments and the bodies sending Olympic teams.<sup>107</sup> If states are losing the ‘monopoly’ on war, then they must also be losing it on peace-building. Therefore it appears that the UN is failing in its peace-building objectives, and this failure is only solvable by the Truce due to its mutability and mobility and its frequent successes.<sup>108</sup>

It is worth bearing in mind the parties’ intent here – that they do not desire a binding Truce due to a multitude of legal and political difficulties. This thesis offers solutions to overcome this unwillingness. The Truce, as a UNGA Resolution, is constricted by current assumptions on international law meaning that it is easier for the parties to frame it as non-binding than re-work existing norms. This means that the UN and the IOC are unable to impose real sanctions, due to a lack of status or jurisdiction. This thesis solves these practical difficulties by solidifying this partnership (giving control to a singular Movement) whilst keeping offence to a minimum – only the Games would be affected or related fines imposed. With a new normative basis, the Movement can have jurisdiction here. Furthermore, a Truce Treaty may be politically unwelcome due to the current trends of inclusivity at the UN and the

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<sup>100</sup> Briggs adds that strong intervention methods have uneven records of success whereas mediation has more mixed results and gives the examples of the Dayton Agreement regarding Bosnia and Serbia, and the US’s on-going role in the Middle East. There is little consensus as to what works e.g. between sanctions, preventative deployment or peace enforcement, Briggs et al., n.28.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> It talks of the pyramid of conflict and that the UN must find ways for its work to transcend national borders, helping actors on all levels of the pyramid, Briggs et al, n.28.

<sup>104</sup> Briggs, et al., n.28.

<sup>105</sup> E.g. ISFs, continental associations, regional bodies, local clubs etc... Briggs et al., n.28.

<sup>106</sup> In Briggs, et al., n.28.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*



Games. However, as the SA example in Chapter 7 shows, however undesirable sanctions are, they are effective and must be embraced. Wrestling the Treaty away from UN control would lessen the political stale-mate and ensure swift and specific action. Furthermore, parties would have an incentive to consent in the first place due to a desire, like the Greeks, to attend the Games. The incentive would therefore outweigh possible disincentives. Furthermore, the Truce is deliberately non-binding because it has been construed too broadly, it is framed as meaning too many things to all people. Focus and clarity would reduce this ensuring a narrowly construed armistice Treaty and a less onerous commitment than the broad ideals of the Resolutions.

Therefore, the stage is set for a Truce Treaty as a joint venture between the UN and the Movement. Signatories would know and understand its terms, a temporary armistice, that would not be unduly onerous. A singular Movement would be able to impose real Games-relevant sanctions for its breach. Thus desire to attend the Games would prompt observance. And the barriers to its observation: lack of binding legal status, confusion regarding clarity of terms and collegiate IGO control; will have been remedied.

## 5.5 Conclusion

This Chapter has demonstrated that there are few observations of the Truce following its initial facilitation of Balkan Game's participation in the early 1990s. The Truce is barely 'real' out-with the pages of Greek history and it is difficult to accurately identify.

The Movement is dominated by states such as the US, US, Russia and France who have a frequent involvement in global conflicts. They are unlikely to take any non-binding Truce seriously when this could compromise their foreign policies, unless they have legally agreed to this. They know the Truce is not a binding legal commitment. However, as this Chapter and Chapter 8 examine, if a Truce Treaty is constructed sufficiently accurately and narrowly, no compelling reasons exist for states to avoid it.

Furthermore, difficulties exist for the UN in turning the Truce into a legally required obligation. It would mean merging the non-state Olympic system with the UN state system, compromise IOC independence and autonomy, and set a dangerous precedent for the Movement being an enforcer or source of law. The UN and the Movement's subjects differ, meaning that their potential obligations also differ, but the current framing of the Truce groups them together, emphasises their partnership and yet does not address this huge institutional difference. This is another potential reason why grassroots rather than state-led initiatives are

focused on. It means that international law as it relates to the Games does not have to be enforced against states, but can be delegated to sub-state actors. This thesis offers a viable solution to these difficulties – a Truce Treaty in control of a singular Movement that merges the state and non-state system and that can apply Games related sanctions. A true extension of the UN-IOC partnership relationship.

Hence it seems that as it stands, the Truce is deliberately intended to be a vague, woolly concept. The UN and IOC liken it to *ekecheiria* to further confuse and obfuscate matters and to repeat the cycle of indeterminacy and impotency, as the term is not defined and the Truce is not law. Lawyers have a duty to bring clarity to the Truce by way of serious consideration and drafting of an international Truce Treaty.<sup>109</sup> This would increase its certainty and its observance, furthermore parties would know to abide it. Its narrow construction in a Treaty, rather than its wide framing as a concept, would secure parties' commitment. This requirement of a binding nature is something that the ancient Greeks recognised nearly 3,000 years ago. Hence the ancient concept of *ekecheiria* and the reasons for its observance shall now be examined in the next Chapter to discover whether these can be replicated today in a modern Truce Treaty.

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<sup>109</sup> Beloff, Michael J., 'The Specificity of Sport – rhetoric or reality?' (2012) 4 International Sports Law Review.

## CHAPTER SIX

### What lessons can be learned from the ancient Olympic Games and *ekecheiria*?

#### 6.1 Introduction

The origins of the ancient Games and the reasons for their occurrence are cloaked in myths. Stories abound that the Delphic Oracle ordered King Iphitos of Elis to stage games every four years to counteract inter-Greek wars. Whilst the veracity of this is unknown, what is certain is that the ancient Elean Games can be reliably dated to 776 B.C. They grew over the following millennium, like the modern Games have grown in their 121 years, and reached their pinnacle around 500 BC.<sup>1</sup> They began as a single-day sporting festival of only one event, with more events accruing over time. Most events had a martial theme extending the Game's overall purpose to avoiding war.<sup>2</sup> The Games were also dedicated to Zeus and other Gods making religion another integral part of competition.<sup>3</sup> Therefore, the Games were a sporting, religious *and* a martial festival that held cultural, diplomatic and commercial importance. By the time the Romans conquered the ancient world in the years A.D. and the later spread of Christianity, Game celebrations started to fade, as they were associated with a heathen past.

In furtherance of the Game's martial purpose, Elis concluded peace treaties, known as *ekecheiria*, with Hellenic states who sent athletes to the Games to safeguard their arrival and the Game's success. *Ekecheiria* offers an important precedent for the modern Truce because *ekecheiria*, unlike today's Truce, was observed in the ancient world.<sup>4</sup> However, what is less accepted, are the reasons for *ekecheiria*'s observance. This Chapter will examine and determine

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<sup>1</sup> It is unclear when they actually began, although records show Coroebus (an Elean cook) won the *stade* in 776 B.C., but the Games may have been well underway then, Symons, Michael, *A History of Cooks and Cooking*, University of Illinois Press, 2003. See also, Olympic Museum Educational and Cultural Services, *The Olympic Games in Antiquity*, 3<sup>rd</sup> ed. 2013 <[www.olympic.org/documents/reports/en/en\\_report\\_658.pdf](http://www.olympic.org/documents/reports/en/en_report_658.pdf)> accessed 8<sup>th</sup> December 2015.

<sup>2</sup> They initially comprised a short one length sprint of the *stade*, *The Olympic Games in Antiquity*, n.l. See also, Swaddling, Judith, *The Ancient Olympic Games* 2<sup>nd</sup> ed. 1999 University of Texas Press.

<sup>3</sup> Although the same source contradicts itself and claims that the Games were secular and not overtly religious, IOC, *History of the First Ancient Olympic Games* <[www.olympic.org/content/olympic-games/ancient-olympic-games/history/](http://www.olympic.org/content/olympic-games/ancient-olympic-games/history/)> accessed 7<sup>th</sup> December 2015.

<sup>4</sup> This Chapter operates from the generally accepted position that *ekecheiria* was observed.

the various reasons for *ekecheiria*'s observance. Understanding why *ekecheiria* was observed can help remedy why today's Truce is not observed. These reasons can be replicated for the UN Truce and potential Treaty. This analysis will ask whether *ekecheiria*'s observance stemmed from:

- a. its construction as an armistice;
- b. its perception by the contemporary international community as a tradition *and* binding international treaty law concluded between states. This Chapter will therefore also determine whether *ekecheiria* was law, its type of law (Treaty and/or custom) and if even international law and the bodies capable of forming it, existed;
- c. respect for the rule of law and general observance;
- d. its absorption into the state system and governance by a single state or organisation - Elis;
- e. the existence of definite sanctions;
- f. or a religious requirement; and
- g. corresponding desire to attend the Games.

This Chapter will therefore address whether *ekecheiria*'s unilateral state-control (rather than today's IGO control) with international recognition of its status as law (alongside available sanctions), were the most important reasons for observance. This Chapter therefore addresses this thesis's first research question of whether a singular organisation with legal rights equal to that of a state, should have control of a Truce Treaty. It is also necessary to understand what *ekecheiria* is and why it was observed as this is crucial to understanding today's Truce and its status/potential under international law'. Today's Truce makes numerous references to *ekecheiria* and this means they are inherently and conceptually tied together.

## 6.2 Why was *ekecheiria* observed?

On the whole *ekecheiria* was observed with only a few recorded instances of its breach. Thucydides records a breach in 420 B.C., when Elis accused Sparta of military manoeuvres on its territory.<sup>5</sup> Sparta had deployed infantry to Lepreum and attacked Fort Phyrus, both within Elis.<sup>6</sup> Sparta claimed this was before *ekecheiria*'s proclamation, but Elis disagreed fining them

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<sup>5</sup> As part of the ongoing Peloponnesian Wars, Thucydides, History of the Peloponnesian War, Book 5. See also Ross, Stewart, The Original Olympics, Peter Bedrick, September 1 1999.

<sup>6</sup> Totalling c.1,000 hoplite soldiers.

per deployed *hoplite*, totalling 200,000 drachmas to be collected in Zeus' honour.<sup>7</sup> Sparta refused to pay, and was then banned from the Games for twenty years, until the Peloponnesian War ended.<sup>8</sup>

This Chapter will determine why *ekecheiria* was observed and whether this can serve as replicable precedent for today's Truce. It will do this by necessarily asking what was *ekecheiria* and what status did it have in the ancient world, as per the hypotheses 'a' and 'b' of the introduction above. It will examine its content, legality, and influence as it may have had greater weight and wider reasons for observance than today's Truce. It will then progress through the remainder hypotheses above in c – g which will show that *ekecheiria* had more of an impact and stricter observance than today's Truce.

Georgiadis and Syrigos identify some of these reasons but not all.<sup>9</sup> They do not necessarily go far enough or comprehensively break the reasons down. They emphasise *ekecheiria*'s temporary duration, its universality and that observation stemmed from a customary moral obligation. However, if each of their reasons are unpacked, temporary duration is actually its conceptualisation as an armistice, and universality actually means the Greeks strong desire to attend the Games. Also, their customary moral obligation actually means a respect for fairness and the rule of law, and that *ekecheiria* was a Treaty that codified a custom, hailing from a tradition. They also fail to accept the dominant part that religion played in its observance. Hence they have a worthwhile insight as to why *ekecheiria* was observed, but not a comprehensive one.

### 6.2.1 What was *ekecheiria*? – Commencement, Content and Status

There are many uncertainties regarding *ekecheiria* including when it commenced and what it was, in terms of its content and status.

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<sup>7</sup> Demonstrating that *ekecheiria* was a temporary armistice. 1 mine is equivalent to 100 drachmas, a skilled worker's daily wage.

<sup>8</sup> There was also the religious sanctioning where Sparta could not participate in the hecatomb. Following exclusion, Elis posted soldiers to guard the Games as they were fearful of Spartan reprisals.

<sup>9</sup> Georgiadis and Syrigos, Introduction to the Olympic Truce: Sport as a Platform for Peace, IOTC Publication 2009.

### 6.2.1.1 Commencement and Myth

Its precise commencement is unclear. Some date *ekecheiria* to the first reliable records of the Games at the end of the 8<sup>th</sup> Century B.C., and others to 864 B.C. (before reliable records).<sup>10</sup>

Although its commencement is unclear, the mythical reasons for its birth have endured. Myth attributes the start of the Games to Elean King Iphitos who organised them upon advice of the Delphic Oracle that Games would help counteract inter-Hellenic wars.<sup>11</sup> War was substituted for *bonhomie* sporting competition. To facilitate the Games, Iphitos and two other kings purportedly signed a long-term Treaty, establishing *ekecheiria*, helping to bring Hellenic peace, stability and prosperity.<sup>12</sup> Hence the Games and *ekecheiria* were tied, each serving the other. The veracity of this legend is unknown, but it is clear that *ekecheiria* and the Games were real, inspiring its modern revival.

### 6.2.1.2 Operation and Content - Armistice

Even if *ekecheiria*'s commencement is unclear, what is more certain is its operation and content. Heralds from Elis, *spondophoroi* (truce bearers), travelled throughout the Hellenes to proclaim *ekecheiria* and the upcoming Games. *Ekecheiria* was therefore necessary to allow safe-passage of these officials as well as athletes, trainers, pilgrims, spectators, artists and families. Nearly 45,000 people attended.<sup>13</sup> *Ekecheiria* therefore meant free movement and immunity even when crossing hostile territories.<sup>14</sup> In addition to this safe-passage, *ekecheiria* also ensured that Elis and the Games themselves were not attacked during the festival.<sup>15</sup> Once again showing the tie between the Games and *ekecheiria*. *Ekecheiria* also required that games attending states cease their judicial disputes and capital executions.<sup>16</sup>

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<sup>10</sup> And amongst the 3 Kings mentioned in n. 12. The IOC itself states that the Truce was a tradition on which the Games were built on in 776 B.C. so they existed then. Swaddling, n. 2. See also, Antiquitatem, 'The Sacred Truce Made Possible the Continuity of the Olympics for 1.170 years', 17<sup>th</sup> December 2013 <<http://en.antiquitatem.com/sacred-truce-olympiad-zeus-olympic-games>> accessed 11th December 2015.

<sup>11</sup> This ties into Plato's view of the ancient world that states were perpetually and naturally at war with each other. Furthermore, Philip II's ambassadors supported the view that regarding 'foreigners – barbarians', all Greeks have and ever will have is eternal war' and that war was the natural default setting of the Hellenes, Bederman, David, *International Law in Antiquity*, 2007, Cambridge Studies in International and Comparative Law.

<sup>12</sup> It was signed by Ifitos, Lycurgus (a Spartan law maker) and Cleosthenes of Pisa, Mestre, Alexandre Miguel, *The Law of the Olympic Games* (Asser Press, 2009). See also, Swaddling, n. 2.

<sup>13</sup> Swaddling, n.2.

<sup>14</sup> Mestre, n.12.

<sup>15</sup> Toohey, K, James Veal, A. (2007). *The Olympic Games: a social science perspective*. UK: CIBI International.

<sup>16</sup> Ross, n.5.

However, *ekecheiria*'s duration is a little unclear. Some accounts state it initially lasted for throughout the Games plus seven days either side. Other accounts say it totalled a month and grew over time to three months.

Furthermore, uncertainties surround the content, wording and resultant obligations of *ekecheiria*, which are compounded by the passage of time.<sup>17</sup> Pausanias mentions *ekecheiria* whilst writing about the Elean Temple of Hera:-

“There are here other offerings also:.... the quoit of Iphitos; a table on which are set out the crowns for the victors.... The quoit of Iphitos has inscribed upon it the truce which the Eleans proclaim at the Olympic festivals; the inscription is not written in a straight line, but the letters run in a circle round the quoit!”<sup>18</sup>

From this it can be gathered that *ekecheiria* took written form although no physical copies have survived. Nevertheless, its depth and content are likely superficial, if it fit entirely on a metallic quoit.<sup>19</sup>

There is little further hard evidence regarding *ekecheiria*'s wording and content. A literal translation of *ekecheiria* explains it as ‘holding back one’s hands’ or ‘laying down arms’. This suggests that arms may be picked-up following *ekecheiria*'s expiration.<sup>20</sup> *Ekecheiria* must therefore have been an armistice – an abstention from arms over a given period, or, a cessation of involvement in on-going hostilities.<sup>21</sup> *Ekecheiria*'s construction as an armistice is reinforced by its mythical recommendation by the Delphic Oracle. Furthermore, *ekecheiria* could not have been a permanent peace (*eirene*) as it was temporary in duration. Therefore it did not equate to or deliver peace, permanent or otherwise.<sup>22</sup>

*Ekecheiria*'s construction as an armistice is a significant difference between it and today's Truce. The latter focuses on establishing peace, with incidental inclusion of an armistice. Chapter 5 shows the modern Truce's prolific usage of ‘peace’. For example, Resolution 66/5 passed in advance London 2012 mentions peace 15 times.<sup>23</sup> It seems possible

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<sup>17</sup> As individuals due to their sworn Olympic Oath had obligations here, like modern international law has come to recognise following the Nuremberg Trials.

<sup>18</sup> Section 5.20.1 of Pausanias, Pausanias' Description of Ancient Greece, 2<sup>nd</sup> C A.D.

<sup>19</sup> This links to the claims about the paucity of norms in the ancient world preventing international law existing yet, this is dismissed here as there is written evidence of its existence.

<sup>20</sup> IOTC <[www.olympictruce.org](http://www.olympictruce.org)> accessed 11<sup>th</sup> February 2016.

<sup>21</sup> Armistice can be etymologically traced to the Latin: *arma* (weapons) and *statium* (stopping). Mestre, n. 12. See also Bederman, n.11.

<sup>22</sup> Although in practice it may have temporarily meant the same thing, Mestre, n.12.

<sup>23</sup> UNGA Resolution A/RES/66/5, 8<sup>th</sup> December 2011.

that *ekecheiria*'s framing as an armistice and not as a 'peace' may be a reason for its historically successful application, as compared to today's limited success.

However, Mestre dismisses any emphasis on a difference between armistice and peace as he claims they are the same. He says states desired peace *and* hostility cessation in the ancient world. This would therefore mean that *ekecheiria*'s success cannot solely be attributed to its construction as an armistice. As this one difference to today's Truce, it is argued, is negligible.

#### 6.2.1.3 Status - Legal Nature of Ekecheiria

In terms of status, *ekecheiria* has been described as an early form of international law, the longest running peace accord in history, custom, myth, concept, principle, tradition.<sup>24</sup> Such disparate descriptions are one commonality it shares with today's Truce. Consequently, as with *ekecheiria*'s content above, its precise legal nature is also unclear. It may have been a legally binding treaty (serving as a precedent to today's Truce and potential Treaty), custom, or it may have simply been a tradition (which is how today's Truce is framed today). Indeed it may have combined elements of each and this could be the reason for its success. Each shall now be examined.

### 6.3 Was *ekecheiria* a Treaty?

The nature of *ekecheiria*'s formation indicates it was an international Treaty – a significant advantage it has over today's Truce. *Ekecheiria* was codified on bronze discs and Elis sent their *spondophoroi* heralds to other *poleis* detailing its terms. *Poleis* either formally accepted or rejected terms by sending athletes and returning the disc to the Games. These were formal measures for *ekecheiria*'s acceptance, equivalent to modern day Treaty signing or ratification.

Yet, there were no formal criteria in the ancient world for successfully identifying the conclusion of Treaties. Modern criteria for Treaty formation (or at the least customary international law), can be applied to *ekecheiria* to determine whether it was an international Treaty. Article 2 of the 1969 Vienna Convention on the Law of Treaties contains the modern requirements of treaties, and says that they are:-

“an international agreement concluded between *states* in *written* form  
and governed by *international law*, whether embodied in a single

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<sup>24</sup> For example, it was also termed 'the sacred truce', Mestre, n. 12.



instrument or in two or more related instruments and whatever its particular designation”.

Therefore, for *ekecheiria* to be a Treaty, it would have to fulfil all requirements of Article 2: that it be between states; in writing; and governed by international law.

### 6.3.1 Concluded between States

In order for *ekecheiria* to be an international Treaty it would need to have been agreed between states. But before this can be determined, the related question of whether states - the bodies capable of forming such law - existed in antiquity?<sup>25</sup>

Some claim categorically that states did not exist in antiquity, as constant and endemic inter-*poleis* wars meant no international community.<sup>26</sup> However, Melko and Weigel call claims of constant war an exaggeration. They say that whilst war was endemic, at some points in certain locations, “peace was normal and war exceptional....as at any time a border was being violated, tens or hundreds of others were being respected.”<sup>27</sup> If war was so endemic then the Games would have been un-thinkable due to the waste of eligible soldiers. Nevertheless, this all ignores the fact that war/peace is largely irrelevant to state existence. A state exists irrespective of whether another takes up arms against it, unless by war, it is subsumed under another state’s dominion.

This potentially occurred during the high period of the Games when Philip II of Macedonia ‘united’ the Hellenes into his Kingdom.<sup>28</sup> Thereafter *poleis* states may not have existed due to losing their independence and autonomy.<sup>29</sup> Bederman calls this the end of the international state system.<sup>30</sup> However, even after ‘unification’ *polis* retained their governments and signed treaties with each other, which makes this unification and evidence of a lack of states, irrelevant. Furthermore, Philip’s unification itself confirms their earlier existence. For Philip to unify them, means they must have been autonomous, sovereign states. At the least,

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<sup>25</sup> Alongside the rise and fall of the *poleis*, and the transitional nature of their governments, other states formed and declined over this time: republics (4<sup>th</sup> C. B.C. Athens); monarchies that became republics (Rome, a Kingdom in 753 B.C., a Republic from 509 B.C. – 27 A.D, then an Empire falling c476 A.D.); Kingdoms (Persia); and others (Corinth), flitted between oligarchies and tyrannies, Paul A Bishop, *Rome Transition from Republic to Empire*. See also, Edward Gibbon, *The History of the Decline and Fall of the Roman Empire*, 1776-89 (Strahan & Cadell).

<sup>26</sup> E.g., in the 5<sup>th</sup> Century B.C. war was ‘endemic’ and ‘virtually permanent’ until Macedonian unification in 338 B.C., Bederman, n.11. And during the Peloponnesian and Persian Wars, Athens was at war two out of every three years, Raaflaub, Kurt A., *War and Peace in the Ancient World*, January 2007, Wiley-Blackwell.

<sup>27</sup> Raaflaub, n.26.

<sup>28</sup> Macedonia united *poleis* such as Corinth, Athens, Delphi and Elis by their decisive win over Athens and Thebes in the Battle of Chaeronea, and gained control of the north Aegean, Raaflaub, n.26.

<sup>29</sup> Bederman, n.11.

<sup>30</sup> As opposed to when Rome conquered the Greek world and influenced the Games, Bederman, n.11.

before Hellenic unification, states could have existed.<sup>31</sup> Another consideration, is that even after unification, the notion of ‘Hellenic’ continued to develop, reaffirming the endurance of the sovereign *polis*. This notion meant balancing their *poleis* independence whilst still identifying as part of superior Greek-speaking club. Hence in theory *poleis* states could exist in the ancient Greek world both before and after Hellenic unification.

The criteria for statehood shall now be examined, now that the theoretical reasons refuting state existence have been dismissed. Again the ancient world had no definite criteria regarding what constituted a state, other than the polity thinking it so. Modern criteria can again be used to determine whether states existed (with awareness that our understanding of statehood may differ to that in antiquity). It may be said that using modern criteria is futile, but if a *polis* can meet modern standards, it can surely be deemed a state. The Montevideo Convention 1933 (MC) codified accepted customary law on the criteria for possessing statehood.<sup>32</sup> Statehood requires:- a permanent population; a defined territory; a government; and capacity to enter into relations with other states, in order to be considered a state.<sup>33</sup>

#### 6.3.1.1 Permanent Population

The first MC criterion requires a potential state to have a permanent population, with no minimum or maximum threshold.<sup>34</sup> Therefore it is irrelevant that ancient states had small populations. They would inevitably possess fewer inhabitants than their modern counterparts, but possess a larger percentage of the global population.<sup>35</sup>

The Games continued through archaic, classical and Hellenistic time-spans, ceasing under Roman Greece in 394 A.D.<sup>36</sup> Populations therefore need to be considered throughout these time frames. However, Greek statistics from over 2000 years ago are difficult to find

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<sup>31</sup> Such as Athens, Sparta, Argos, Elis, Thebes, Corinth etc., Bederman, n.11.

<sup>32</sup> <[www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml](http://www.jus.uio.no/english/services/library/treaties/01/1-02/rights-duties-states.xml)> accessed 8<sup>th</sup> December 2015.

<sup>33</sup> Article 1. Some consider this list non-exhaustive and subject to change, as many other factors (e.g., self-determination or recognition) may influence bestowment of statehood and capacity to create international law. MacLean, *Public International Law*, editor, Oct. 1997, Old Bailey Press.

<sup>34</sup> Shaw, Malcolm N., *International Law* (6<sup>th</sup> edition, Cambridge University Press, 2009). See also Maclean, n.33. Today, Tuvalu and Nauru have only c 10,000 inhabitants each and China, 1.4 billion, they are all sovereign states, irrespective of their population size, World Bank, Data, China <<http://data.worldbank.org/country/china>> accessed 11<sup>th</sup> February 2016.

<sup>35</sup> Although the *poleis*’ small size was often due to only counting the free Greek males.

<sup>36</sup> Archaic Greece runs from 800-480 B.C., Classical from 480 – Alexander the Great’s death in 323 B.C., the Hellenistic period runs until 146 B.C. where Rome’s rise in the west and their defeat of Corinth heralded Greek demise. Roman Greece runs until it split into East and West Empires in 330 A.D. Thereafter Greece was under Byzantine rule until the Games ended in 394 A.D.

despite there being the occasional census occurring elsewhere.<sup>37</sup> Yet the main issue in ascertaining *poleis* populations (and their permanency) are that many sources only refer to the number of citizens - males of a certain age, class, possessing rights such as landownership and the ability to vote - and not necessarily to all the inhabitants. Thus it must be ascertained whether *poleis* data represents the 'citizens' or the entire population. Therefore whilst such data may not necessarily be reliable for overall inhabitants, they can at least show the permanency of the populations if they continue to show the numbers of only a set group.<sup>38</sup>

Athens and Sparta were the largest *poleis* in ancient Greece. Sparta, a major military power, was somewhat smaller than its Athenian rival.<sup>39</sup> Athens possessed around 250,000 inhabitants and 30,000 citizens, whereas at its peak Sparta had around only 8,000 citizens.<sup>40</sup> However, Sparta's low figure is disputed as it is likely that this only included fighting age males in the *Homoioi* - peer class.<sup>41</sup> If the 'lower classes' were included, the *Hypomeiones*, with no restriction on age, the figure raises to 16,000 males.<sup>42</sup> This swells to 40,000 when women are included and to 200,000 when Sparta's environs are included.<sup>43</sup>

Corinth, a large political power occupying a small geographical territory, had between 10,000-90,000 inhabitants.<sup>44</sup> It seems likely that the former figure includes only the wealthy upper class fighting age males, and the latter is the entire population. Argos and Elis are recorded as having populations around 16,000, and 23,000 respectively. Again it seems likely that this was its male peer class, as they are respectively calculated as possessing around

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<sup>37</sup> The Babylonians took censuses in 3800 B.C., the 2 A.D. Han Dynasty in China, the Romans in Biblical times and the Domesday book following the Norman invasion of England, Chandler, Tertius, *Four Thousand Years of Urban Growth: An Historical Census* (1987), St. David's University Press. Census have only become regular in Europe in the last 200 years or so, e.g. occurring in the UK every 10 years since 1801, Office of National Statistics Census <[www.ons.gov.uk/ons/guide-method/census/2011/census-history/200-years-of-the-census/1801-1901/index.html](http://www.ons.gov.uk/ons/guide-method/census/2011/census-history/200-years-of-the-census/1801-1901/index.html)> accessed 7<sup>th</sup> December 2015.

<sup>38</sup> In any event, as stated, there is no minimum or maximum number.

<sup>39</sup> Bederman, n.11. Furthermore, when it comes to Spartans, it must be remembered the influence that 300 of them allegedly had on Persia!

<sup>40</sup> Athens peaking in the 5<sup>th</sup> C B.C., <[www.bbc.co.uk/history/ancient/greeks/greekdemocracy\\_01.shtml](http://www.bbc.co.uk/history/ancient/greeks/greekdemocracy_01.shtml)>, accessed 11<sup>th</sup> December 2015. And, King Demaratus of Sparta informed the Persian King Darius I during his reign from 515 B.C. to 491 B.C., Herodotus, *Histories*, Ed. Hornblower, Simon 12<sup>th</sup> December 2013, Cambridge University Press.

<sup>41</sup> Sealey, Raphael, *A history of the Greek City States 700 – 338 B.C.*, 1976, California University Press. See also, Ancient Greek Battles, Can the Population of Ancient Sparta be Calculated? <[www.ancientgreekbattles.net/Pages/47932\\_Population.htm](http://www.ancientgreekbattles.net/Pages/47932_Population.htm)> accessed 7<sup>th</sup> December 2015.

<sup>42</sup> Ibid. See also Jensen, Sean R., and Figueria, Thomas J., *Hypomeion/ hypomeiones (Sparta)*, *The Encyclopaedia of Ancient History*, 2013 Blackwell Publishing Ltd., 1<sup>st</sup> edition <<http://onlinelibrary.wiley.com/doi/10.1002/9781444338386.wbeah04143/pdf>> accessed 16<sup>th</sup> February 2016.

<sup>43</sup> This is Sparta at its population peak, <[www.princeton.edu/~pswpc/pdfs/morris/120509.pdf](http://www.princeton.edu/~pswpc/pdfs/morris/120509.pdf)>, accessed 16<sup>th</sup> February 2016.

<sup>44</sup> It covered only 340 square miles. Bederman, n.11.

110,000 and 186,000 respectively.<sup>45</sup> Consequently, ancient *poleis* including Elis, can be said to have possessed permanent populations throughout the Games' lifespan, fulfilling the first criteria of statehood.

#### 6.3.1.2 Defined Territory

The statehood criterion of a defined territory requires the 'effective establishment of a political community.'<sup>46</sup> Ancient Greek *poleis* easily meet this criterion as they were established political communities, with etymological tracing of the word 'political' stemming from the ancient Greek '*polis*', meaning town.<sup>47</sup> This statehood criterion places no limitations on a potential state's geographical size, which is reassuring for the small ancient *poleis*, for example, Corinth was only 340 miles<sup>2</sup>.<sup>48</sup> Nor does it require settled boundaries at any time, again reassuring to warring *poleis*.<sup>49</sup>

Furthermore, to participate in the Games, strict geographical entrance criteria had to be met.<sup>50</sup> The Games were open to 'any free born Greek-speaking male in the world.'<sup>51</sup> As the Greeks held land throughout the Mediterranean, from Gibraltar to the Black Sea, any such male from these regions could participate.<sup>52</sup> Statehood and nationality were therefore recognised in antiquity, and crucial to Games participation. This requirement was so strong that 'Barbarians' - foreign non-Greeks who were automatically perceived as uncivilised – were banned from Olympic competition.<sup>53</sup> This demonstrates that states were recognised as such by their own nationals and by other states, the polity of the day, including the Elean Games organisers. The defined territory requirement is therefore met as states did exist at the ancient Games due to recognition. The Games themselves also helped to form and apply the concept of international, which shall be discussed more below.

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<sup>45</sup> Clinton, Henry Fynes, *An Epitome of the Civil and Literary Chronology of Greece from the Earliest Accounts to the Death of Augustus*, 1851, Oxford University Press.

<sup>46</sup> MacLean, n.33.

<sup>47</sup> And referred to city states such as Athens, Corinth, Argos, Elis and Sparta amongst others.

<sup>48</sup> Close in size to the modern state of the Vatican (less than 0.5km<sup>2</sup>) or San Marino (61.2km<sup>2</sup>). Modern states may also be as large as Russia (over 17,000,000km<sup>2</sup>), MacLean, n.33. See also Encyclopaedia Britannica <[www.britannica.com](http://www.britannica.com)> accessed 4<sup>th</sup> February 2016. See also, Bederman, n.11.

<sup>49</sup> At birth, or any time thereafter, MacLean, n.33.

<sup>50</sup> Along with other criteria discussed later.

<sup>51</sup> Sansone, David, *Ancient Greek civilization*, Wiley-Blackwell, 2003, p.32.

<sup>52</sup> Victors list document the winners. Athletes also came from other parts of the Greek world, from Croton (Astylos who represented Syracuse), Macedonia, and Rhodes. In reality however, and likely due to practical considerations, most were from *poleis* in the Hellenic peninsular or nearby island colonies. Christensen, Paul, *Olympic Victors Lists and Ancient Greek History*, October 2012, Cambridge University Press.

<sup>53</sup> They themselves were the only civilised peoples, Bederman, n.11.

### 6.3.1.3 Existence of Government

Statehood also requires that a territory have its own government.<sup>54</sup> *Poleis* had organised political life with their own governments. By the 5<sup>th</sup> Century B.C., Athens had established itself as the world's first democracy which adds credence to it fulfilling this statehood criterion. Its plenary assembly (*ecclesia*) was a debate forum, an election/lottery forum for city officials and had power over its military.<sup>55</sup> It widened and advanced its democratic institutions, eventually possessing further assemblies, courts and judicial institutions, becoming the most politically organised *poleis*.<sup>56</sup> Athens clearly possessed a government and was therefore a state.

Sparta's was governed by two kings who were advised by an elected Elder Council who also held judicial functions.<sup>57</sup> Alongside this was the powerful *ephors*, a modern day executive who also had judicial and legislative functions, and the plenary *demos* assembly.<sup>58</sup> Sparta had an equally developed government to Athens. However, the establishment of democratic government was less successful in Corinth in the archaic and Hellenistic periods when it was intermittently a tyranny.<sup>59</sup> Yet, tyrannies aside, even monarchies and oligarchies had government forums.<sup>60</sup> Thus Argos (a monarchy) and Elis and Thebes (oligarchies) also meet the governmental requirement for statehood.<sup>61</sup> Hence it can be said that *poleis* possessed their own governments during the staging of the Games, fulfilling this statehood criterion.

However, in order for an entity to be a state, its government must not be subject to control or 'hegemony' of another state. During the time of the Games, *poleis* and their governments were mostly uninfluenced by outside control,<sup>62</sup> however as mentioned above, Greek colonialism meant conquered territories may not always have had 'independent'

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<sup>54</sup> Montevideo Convention. See also, MacLean, n.33.

<sup>55</sup> Defined rules, roles and procedures also existed for all Athenian citizens. Public appointments were by lottery, as elections were thought too easily corruptible by the rich and therefore undemocratic. Hansen, Mogens Herman, and Fischer-Hansen, Tobias, *Monumental Political Architecture in Archaic and Classical Greek Poleis*, in Whitehead, David, *From Political Architecture to Stephanus Byzantius: Sources for the Ancient Greek Polis*, *Historia: Einzelschriften*, vol. 87, Stuttgart: Franz Steiner Verlag.

<sup>56</sup> Which included jury, trial, Tritel, Lawrence, Laughing for Joy – War and Peace amongst the Greeks, in Raaflaub, n.26.

<sup>57</sup> Cartledge, Paul, *Sparta and Lakonia: A Regional History 1300 to 362 BC* (2002, 2 ed.), Oxford: Routledge.

<sup>58</sup> Xenophon, *Constitution of the Lacedaimonians*, 7 vols, 7. See also, Marchant, E. C., Bowersock, G. W., *Constitution of the Athenians* Harvard University Press, Cambridge, MA; William Heinemann, Ltd., London. 1925.

<sup>59</sup> It was also a monarchy and oligarchy.

<sup>60</sup> But to greater or lesser extents, restricted involvement to certain classes.

<sup>61</sup> <[www.ancientgreece.co.uk/staff/resources/background/bg10/home.html](http://www.ancientgreece.co.uk/staff/resources/background/bg10/home.html)> accessed 15<sup>th</sup> December 2015.

<sup>62</sup> Whether in the form of democracies, monarchies, oligarchies or tyrannies (benevolent or otherwise), and certainly during classical times, although less so in the Hellenistic period, Alonso, Victor, *War, Peace, Fear and International Law in Ancient Greece*, in Raaflaub, n.26.

governments, and thus not be a state.<sup>63</sup> This is because conquered territories were assumed into the conqueror's political ideology. Their supreme governments were the conquerors, even if they maintained their own, token, governments. Hence it is unclear whether during Hellenistic unification, or at times of other Greek dominion, whether this government criterion is fulfilled, and *poleis* were thus, 'states'. Nevertheless, even during times of external control, Greek patriotism meant they still saw each other as different, but in a Greek-speaking club, meaning that at times of Greek dominion, this statehood criterion may still be fulfilled. Fulfilment may be less likely when domination came from non-Greeks, such as the Persians in the 5<sup>th</sup> century B.C., as non-Greeks were considered barbarians.<sup>64</sup> Control was domination and by an 'other'. However, it is irrelevant whether a *polis* was dominated by a rival or foreign power. Temporary domination following hostilities does not affect statehood and such control here may constitute this here. Hence government interruption from hostile occupation does not necessarily cancel statehood if one existed previously, and the *poleis* may be considered to have had independent governments at most times.<sup>65</sup>

#### 6.3.1.4 Capacity to Enter Relations with Other States

The final statehood criterion is that the entity must have capacity to enter relations with other states and this helps confirm both relating parties' statehoods.<sup>66</sup> 'Relations' can include contracting, negotiating, treating or entering diplomatic relations, and be uni or multi-lateral.<sup>67</sup> *Ekecheiria* could even be evidence of this.<sup>68</sup>

Such entities, must again, be independent from each other in order to fulfil this criterion. This again raises the issue of *poleis* 'relating' to other *poleis* as opposed to non-Hellenes - *xenos*. This is because whilst other *poleis* were 'foreign' to an extent, they may not always have been independent of each other during the Hellenistic-unification period or at other times of Greek domination. If *poleis* treated with *xenos*, then the independence criterion is more readily fulfilled, but of course foreign control during the 5<sup>th</sup> Century B.C. Persian wars also occurred. Nevertheless, Hellenic and *xenos* relations shall be addressed in turn as the latter amplifies the requirement of independence.

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<sup>63</sup> *Poleis* respected their fellow Greeks but patriotism and desire to expand their small territories, led them to fight and intermittently hold dominion over each other. Bederman, n.11.

<sup>64</sup> Persian wars.

<sup>65</sup> MacLean, n.33.

<sup>66</sup> Contained in the Montevideo Convention.

<sup>67</sup> E.g., unilateral would be one Greek *polis* contracting with another entity, Greek or otherwise. Multi-lateral would be between a *polis* and other entities, Greek or otherwise.

<sup>68</sup> Even though its status as law is what this section is seeking to establish.

#### 6.3.1.4.a) Hellenic Treaties

Examples of Hellenic agreements are plentiful, particularly involving Elis and Olympia. Elis concluded the Treaty of Alliance with Heraria in the 6<sup>th</sup> Century B.C.<sup>69</sup> This Treaty shared certain features with *ekecheiria*. It too was written on a bronze tablet and held in Olympia with sanctions for its breach.<sup>70</sup>

The Thirty Years Peace Treaty of 446 B.C. attempted to regulate affairs between Athens and Sparta but contained insufficient arbitration provisions, helping to contribute to the Peloponnesian War of 432 B.C.<sup>71</sup> Hence the same problems existed then as now, regarding arbitration and enforcement of international law. Yet lack of enforcement does not negate its initial formation and status.

A further example of Hellenic ‘relating’ comes from the later Hellenistic period when Philip formed the League of Corinth in 337-322 B.C. to help enforce his ‘common peace’ treaties – *koine eirene*.<sup>72</sup> This League was not subjugation, as *poleis* had volition in joining. The larger and (historically) powerful city states, such as Athens, did not see much benefit to the League, and Sparta was noticeably absent.<sup>73</sup> Thus the states were still independent of each other and the League remains evidence of ‘relating’. Consequently, *polis* treated with each other on matters of war and envisaged sanctions for their breach.

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<sup>69</sup> Circa 588-527 B.C. Osborne, Robin, *Greece in the Making 1200 – 479 B.C.* 2<sup>nd</sup> ed. (2009) Routledge p. 271. See also, Bederman, n.11.

<sup>70</sup> It stated that if one failed to come to the other’s aid, or defaced the Treaty, then they were fined a talent of silver, Bederman, n.11.

<[www.britishmuseum.org/research/collection\\_online/collection\\_object\\_details.aspx?objectId=463980&partId=1](http://www.britishmuseum.org/research/collection_online/collection_object_details.aspx?objectId=463980&partId=1)> accessed 5<sup>th</sup> December 2015.

<sup>71</sup> This Treaty recognised Athens’ empire and Sparta’s mainland dominance, but no suitably powerful third party state arbiter could be appointed that satisfied the parties, Alonso, n.62. Argos was the only major non-aligned state but was too biased due to its feuds with Sparta. Athens also refused Sparta’s requests for arbitration, claiming it a delaying tactics (to gain a moral advantage and support from the Gods), Raaflaub, n.26. Yet Thucydides says that it was Sparta who refused to treat, but Thucydides often showed bias for his Athenian home, downplaying its war mongering. Nevertheless, Athens likely refused arbitration for many reasons (to show strength, prevent future conflicts, to maintain or gain power, position, glory, or wealth) and took advantage of a loophole in the Treaty’s arbitration provisions, circumventing their commitments, Tritle, n.56. See also Thucydides, n.5.

<sup>72</sup> Also known as the Hellenic League, these treaties were generic peace treaties, usual following hostilities. They ended hostilities by finding a peaceful settlement and provided for dispute resolution by way of a *synedrion* (council or senate) and a *dikastes* (judiciary), all under Macedonian control. Following the Peloponnesian Wars, the Greeks were happy with these Treaties as it established a process to either pre-empt or end conflicts, Tritle, n.56. The League also meant Philip could form a federation powerful enough to challenge Persia, Raaflaub, n.26.

<sup>73</sup> Smaller states had more to gain than larger states from the League.

#### 6.3.1.4.b) Hellenic-Persian Relations

If inter-*poleis* relations cast doubt on the parties' independence meaning that they may not be states, then relations with *xenos* could demonstrate this more persuasively, instances of foreign control aside. The Greeks had open discourse, trade and relations with Persia that took a variety of forms. They observed customary diplomatic practices of the day, for example, envoys secured permission to cross foreign territory.<sup>74</sup> Persia acted as guarantor to Treaties, such as the Peace of Antalcidas in 387 B.C. which ended the Corinthian War.<sup>75</sup> Persia entered many peace treaties,<sup>76</sup> and trade Leagues with Greek *poleis*.<sup>77</sup> Therefore the various *poleis* entered agreements with Persia in a variety of fields: peace; security; and trade, ultimately evidencing statehood.<sup>78</sup>

However, any discussion of Greek relations with *xenos* requires asking whether *xenophobia* negated the existence of true 'relations' as Greeks may not have viewed them as sovereign equals.<sup>79</sup> This often meant a reluctance to enter treaties and frequent hostilities and could in turn hamper the existence of statehood. *Xenophobia* meant an overwhelming patriotism, a tolerable regard for other *poleis*, and treating non-Greeks as *barbarous* – with complete disregard.<sup>80</sup> Although *xenophobia* clouded Greek relations with all foreign states, they specifically used it as propaganda against Persia.

Nevertheless, despite their *xenophobia*, the Greeks were largely keen to treat with *xenos* as equal sovereign powers, including the Persians, especially when it was to their advantage, even over a Hellenic rival.<sup>81</sup> This shows that *xenos* could not entirely be beneath *poleis* contracting scope, as at times, the Greeks respected them more than their Hellenic brothers.<sup>82</sup> Thus extensive relations with other states, Hellenic or *xenos* were undertaken, showing that the *poleis* fulfilled the last criterion of statehood. These relations took many different forms and were for varying purposes: trade; diplomacy; and peace-keeping and war.<sup>83</sup> Although relations

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<sup>74</sup> There were some interruptions to their discourse, such as the 5<sup>th</sup> Century B.C. Persian invasion (culminating in the battles of Marathon and Thermopylae), Bederman, n.11.

<sup>75</sup> This was between Sparta and Persian backed Thebes, Athens, Argos, and Corinth, Xenophon, *Hellenica*, c 1890s, 5.1.31.

<sup>76</sup> E.g., the Peace of Callias in 449 B.C. between Persia and the Delian League, and the peace Treaty between Sparta and Darius II in 411 B.C.

<sup>77</sup> E.g., the Second Athenian Naval League of 377 B.C., led by the Athenians sought to control the Aegean and Black Seas. Whilst primarily Hellenic, *barbaros* – barbarians – were permitted entry.

<sup>78</sup> Bederman, n.11.

<sup>79</sup> Bederman, n.11.

<sup>80</sup> Alongside slaves and women. Some attribute this as contributing to the Persian wars, Philipson, Coleman, *The International Law and Custom of Ancient Greece and Rome* Macmillan and Co., London, 1911.

<sup>81</sup> As was the case in the Athenian Naval League, where Sparta was pitted against Thebes, and the Pan-Hellenic coalitions led by Athens and Sparta of the First Peloponnese War. 431-404 B.C., Bederman, n.11.

<sup>82</sup> Tritle, n.56.

<sup>83</sup> To end it, avoid it, or regulate its aftermath, Bederman, n.11.



and agreements sometimes failed, and the Greeks had disdain for their brothers and foreigners, this does not negate their existence or legality.

#### 6.3.1.2 Conclusions on State existence

This section has shown that *poleis*, including Elis, meet the criteria of statehood and were states. The only potentially tempering factors being Hellenic unification and subjugation (Greek or foreign), meaning that the entities may no longer have been ‘independent’. However, the persistence of individual governments, their continued entering relations with others in their own right, enduring *poleis* patriotism and identity, and the fact that temporary subjugation following war does not negate statehood, means that the *poleis* as independent sovereign states, persisted throughout these set-backs. The various *poleis* party to *ekecheiria* fulfilled the requirements of statehood and thus the first requirement for it to be considered law be met: that it have been between states. The next requirement for *ekecheiria* to have been international law is that it have been written down.

#### 6.3.2 Written Codification

*Ekecheiria* easily fulfils the second requirement to be international law.<sup>84</sup> It was written on bronze discs and kept in Hera’s temple at Olympia likely after having achieved customary status, which is discussed further below.<sup>85</sup> Codification was fairly unusual at the time, as many treaties were customary rather than written.<sup>86</sup> Hence *ekecheiria*’s codification shows how seriously and highly it was regarded amongst the *poleis*. As Olympia held other important treaties, its sanctity was reaffirmed and can invoke comparisons to it and the UN today.<sup>87</sup>

#### 6.3.3 Governance by international law

The final criterion that *ekecheiria* must meet in order to be a treaty is that it have been governed by international law. This necessitates addressing whether international law existed during the Games. If it did, it would certainly have governed *ekecheiria*, which was concluded between states, in writing and given serious consideration.

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<sup>84</sup> Contained in Article 2 of the Vienna Convention.

<sup>85</sup> Certain accounts say it was held in Zeus’s temple at Olympia instead, as his Temple held many peace Treaties entered by Elis and other *poleis*, such as the alliance pact between Lydia and Sparta, confirming their *philotes* and also engraved in bronze, Alonso, n. 62. See also Ross, n. 5. See also, Faulkner, Neil, *A Visitor’s Guide to the Ancient Olympics* Yale University Press, 2012, Chapter 5. See also Scott, Michael, *Delphi and Olympia* Cambridge University Press p. 202.

<sup>86</sup> Raaflaub, n.26, with none surviving to this day

<sup>87</sup> Scott n. 85. It is worth remembering that being in writing is not sufficient to indicate international law as the UN Truce is also in writing, but as a UNGA Resolution, carries only recommendatory weight.

It seems that there was a ‘law of the Hellenes’ or ‘laws common to men’ with a Hellenic ‘common idea of justice’, that required them to act in prescribed ways.<sup>88</sup> This suggests that at least customary international law existed. Its lack of codification compounds its customary status, and also shows that state autonomy and choice were present.<sup>89</sup> The foundation on which legitimacy of all international law is based.<sup>90</sup>

However, some disagree that international law existed and they cite four arguments in support of this. Firstly, it is asserted that international law could not have existed as there was no notion of sovereignty or universal community.<sup>91</sup> However, the examination of statehood in section 6.2.3.2 above and the inviolability of territory recognised by *ekecheiria*, show that the notion of sovereignty was recognised. With regard to a universal community existing, Bull sets the test:-

“An international society exists when a group of states conscious of common interests or values forms a society and conceives that they are bound by a common set of rules in their relations with each other”.<sup>92</sup>

This clearly existed with regard to the ancient Greeks and the Games. Their common interests were: peace; security; fair play; justice; honesty; and the rule of law. All foundations for international law.

Secondly, it is asserted that international law could not have existed because the norms were unwritten and that the nations forming them, too primitive.<sup>93</sup> However, there were many examples of written codifications, particularly kept at Olympia.<sup>94</sup> Furthermore, the detailed Laws of Olympia reveal that their societies and legislatures were developed, not primitive.<sup>95</sup> They may not be akin modern developed nations, but that does not preclude the existence of states and international law. If today only non-primitive territories were states, then that could mean fewer states.

Thirdly, it is argued that international law could not have existed as these norms were limited in range and were based on religion.<sup>96</sup> Firstly, this argument is self-defeatist. It admits the existence of norms but limits their number and scope. Law cannot be less so because of its

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<sup>88</sup> During the 4<sup>th</sup> and 5<sup>th</sup> centuries B.C., Bederman citing Aristotle, n.11.

<sup>89</sup> Bederman, n.11. This is obviously not Treaty law as it is not specifically said to have been written.

<sup>90</sup> Dinstein, Yora, *The Conduct of Hostilities under the Law of International Armed Conflict 2004* Cambridge University Press, p.5. See also Bederman, n.11.

<sup>91</sup> Philipson, n.80. See also Bederman, n.11.

<sup>92</sup> Bederman, n.11.

<sup>93</sup> Again they were unwritten.

<sup>94</sup> See n.85, including *ekecheiria*.

<sup>95</sup> These included *ekecheiria* and the rules governing the Games.

<sup>96</sup> And their sanctions, Bederman, n.11.

paucity. Furthermore, although international norms were limited, they were reasonably comprehensive in diplomacy,<sup>97</sup> respect for treaties and alliances (*pacta sunt servanda*),<sup>98</sup> and war (*jus ad bellum*).<sup>99</sup> They cannot be considered less binding due to their paucity. Furthermore, the claim that international law could not have existed because its link to religion lessened its legality, rendering it primitive and irrational ignores that religious laws exist today.<sup>100</sup> It also ignores that law is still law, whatever the reasons for its observation. Phillipson agrees and adds that it is:-

“of no consequence... where the [sanction] lies: the fundamental question is whether there is an admitted rule regulating certain [international] relationships.’<sup>101</sup>

Finally, it is argued that international law (specifically custom) could not have existed because consistent, certain rules did not develop. Yet, although there were few international norms, they were certain.<sup>102</sup> Furthermore, the longevity and consistency of *ekecheiria* and the sophisticated Laws of Olympia also quash this argument. All parties knew what these laws entailed and were considered the longest running peace accord in history.

#### 6.3.3.1 Fundamental Laws of Olympia

*Ekecheiria* was part of the Fundamental Laws of Olympia – a well organised pyramid of three different types of laws, ranked according to their importance with relative sanctions.<sup>103</sup> They were based on fairness, respect for the individual and the collective unit and had an international element to them. The most important of the Fundamental Laws, were Olympic Laws. These were important enough, like *ekecheiria*, to be written on bronze plates and held at the Olympic Senate.<sup>104</sup> These were similar to today’s international Treaty law, the Charter’s Fundamental Principles and UN Truce Resolutions. Next in importance were Olympic Regulations, which assisted Olympic Law application, similar to the remainder of today’s Charter.<sup>105</sup> Lastly, Competition Rules governed individual events and were sport specific, similar to today’s ISF and NFs rules.

<sup>97</sup> Such as ‘conduct of embassies, immunities granted to envoys and protection of foreigners.’ Bederman, n.11.

<sup>98</sup> It includes negotiation, ratification, enforcement and termination of treaties, Bederman, n.11.

<sup>99</sup> Bederman, n.11.

<sup>100</sup> Dinstein, n.90. See also Bederman, n.11.

<sup>101</sup> Bederman, n.11.

<sup>102</sup> Bederman, n.11.

<sup>103</sup> Like today’s Movement, Mestre, n.12.

<sup>104</sup> Mestre, n.12. Although this may have been in the Temple of Zeus, or Hera. It also held the Treaty of Alliance.

<sup>105</sup> See Chapter 4.

#### 6.3.4 Conclusions on *ekecheiria* as international Treaty law

This section has shown that *ekecheiria* meets the threefold Vienna Convention criteria to be considered Treaty. Elis and other *poleis* agreed on the written *ekecheiria* and it was framed against the wider agreed international law norms of the day. Whilst *ekecheiria* was Treaty law, it was also governed by contemporary written and unwritten customary international law norms. Although, the Games themselves helped create the normative concept of statehood and the laws to deal with their international relations.

#### 6.4 *Ekecheiria* as a Tradition or Customary International Law

This Chapter has shown that *ekecheiria* was Treaty law, yet its status as such is somewhat lessened by frequent references to it as a ‘tradition’, as the UN, its Resolutions, the IOC and many others do today.<sup>106</sup> As well as ‘tradition’, they refer to it as customary law, making it unclear which it is.<sup>107</sup> *Ekecheiria* may therefore have been a tradition and customary law, before being codified. Custom and Treaty law are, of course, not mutually exclusive.<sup>108</sup> Consideration of *ekecheiria* as custom law is largely redundant to this thesis due to its later codification, but will cursorily be considered here.

Custom evidences “general practice accepted as law”. There must be evidence of state practice (*usus*) and state acceptance that law requires that practice (*opinio juris sive necessitates*).<sup>109</sup> Abidance and observance (*usus*) of *ekecheiria* was extensive and near uniform with no deviations, and is discussed further in section 6.2.4 below, and is the ‘tradition’ element. Customary law also requires that the state practice occurs over a sufficient time. *Ekecheiria* and the Games’ repetitive nature over a millennium fulfils this, again supporting it as a tradition. *Poleis* also knew that they were required by law to observe *ekecheiria*, as they indicated their agreement to it and abided by its sanctions (*opinio juris*). The use of ‘tradition’ therefore appears to feed into both of these customary tests, the *usus* and *opinio juris*. This

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<sup>106</sup> Papandreou (Former Greek Prime Minister), Rogge (Ex-IOC President), and Syrigos (IOTC Director), UN and the Olympic Truce – Background, <[www.un.org/events/olympictruce/background.shtml](http://www.un.org/events/olympictruce/background.shtml)> accessed 4<sup>th</sup> February 2016. See also, Olympic Movement, Olympic Truce, History <[www.olympic.org/content/the-ioc/commissions/international-relations-/olympic-truce/](http://www.olympic.org/content/the-ioc/commissions/international-relations-/olympic-truce/)> accessed 11<sup>th</sup> February 2016. See also, <[www.olympic.org/content/the-ioc/commissions/public-affairs-and-social-development-through-sport/olympic-truce/](http://www.olympic.org/content/the-ioc/commissions/public-affairs-and-social-development-through-sport/olympic-truce/)>, accessed 11<sup>th</sup> February 2016. See also, Papandreou, George A., The Olympic Truce Objectives, 12 January 2003 <<http://papandreou.gr/en/the-olympic-truce-objectives/>>, accessed 11<sup>th</sup> February. See also, Georgiadis and Syrigos, n.9. Which could in turn bolster the Truce as customary rather than Treaty law.

<sup>107</sup> Syrigos calls it the “most important instance in the ancient world of customary law”, Syrigos, n.9, p.22.

<sup>108</sup> Treaties often codify principles, traditions and customary law especially in international humanitarian law, e.g. The Hague Conventions 1899 and 1907 and The Geneva Conventions 1949 and their Additional Protocols 1977. See also Dinstein, n.90.

<sup>109</sup> Albeit softer than Treaty law. Its status is contained in Article 38(1)(b) of the ICJ Statute. Dinstein, n.90.

section has demonstrated that *ekecheiria* appears was Treaty law, rooted in tradition and customary international law. It is both custom and Treaty and references to it as a ‘tradition’ bolster its initial customary status. Thereby it has demonstrated that parties observed *ekecheiria* due to perceiving its binding status.<sup>110</sup>

#### 6.4.1 Respect for fairness, justice and honesty

Bederman claims that the Greeks observed their commitments such as *ekecheiria*, because they valued fairness, justice and honesty.<sup>111</sup> Greeks treated in good faith, and swore Oaths to abide by their commitments.<sup>112</sup> If they swore an Oath (religious or otherwise), they were compelled to keep it and the promise was deemed enforceable.<sup>113</sup> Oaths were therefore an integral part of respect for fairness.

Respect for the Olympic Oath, meant the Greeks observed the Laws of Olympia, including *ekecheiria*.<sup>114</sup> Mestre calls this the *religio athletae*, where noble, respectful and honest competition honoured and pleased the Gods and is indicative of their wider respect for fairness and the rule of law.<sup>115</sup> Indeed, the Games themselves were considered the ultimate evidence of fairness as they were ‘open’ competitions and fairly organised. However, the concept of fairness was relative to its time as many exclusions to participation applied.<sup>116</sup> And fairness at the Games were ensured by the *Hellanodikai* - judge of Greeks - enforced the Laws of Olympia and competition rules. They were highly esteemed, skilled, independent and

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<sup>110</sup> Perception of law is a necessary element to customary law (*opino juris*).

<sup>111</sup> Mestre, n.12.

<sup>112</sup> Bederman, n.11.

<sup>113</sup> Philipson, n.80. See also Bederman, n.11.

<sup>114</sup> Athletes trainers, referees, *Hellanodikai* and occasionally, family members, swore the Olympic Oath before a statue of Zeus over a pig sacrifice, alongside a variety of other Oaths. The Olympic Oath confirmed: their desire to compete; their compliance with the Laws of Olympia (arriving 1 month before competition, completing 10 consecutive months of training and achieving certain trial results); abidance of any sanctions for breach of the Laws of Olympia or the Olympic Oath; observance of *Hellanodikai* decisions; that wins would be fair, honest and just; their age eligibility; and that they would not harm the Games. Today’s Olympic Oath echoes these sentiments, e.g. athletes etc.... still swear to take part “respecting and abiding by the rules that govern [the Games], in the true spirit of sportsmanship, for the glory of sport and the honour of our teams.”

<sup>115</sup> Theagenes of Thasos was fined when he entered an event simply to ‘spite an opponent’ meaning he left his primary event, the *pankration* (a mixed martial art and crowd favourite, where only gouging, biting and fish-hooking were disallowed). This was considered dishonest conduct not in the spirit of the Games.

<sup>116</sup> Women, slaves (although stars of Roman Gladiatorial Games) and *barbaros* (who participated in Roman times) were excluded. Women could not attend the Games, and if found, were thrown off Mount Typaion. Although this is questioned as Pausanias alleges a disguised woman who was discovered was not punished. Girls and the Priestess of Demeter Chamyne were the only females in attendance. Un-married women had the *Heraria* Games. Also excluded were those pursued by law (murderers), committers of sacrilege (defiling or robbing Temples and breaching *ekecheiria*), those subjected to fines and those of doubtful morality, Mestre, n.12. See also Pausanias, n.18. See also Swaddling n.2.

impartial judges.<sup>117</sup> There was even a fair check on their power as their decisions were monitored by the Council of Elders.<sup>118</sup> Hence review, appeal, checking and sanctioning occurred - all essential in due process and the rule of law. Therefore, respect for fairness, honesty and justice underpinned the Games, and observance of *ekecheiria* and the Laws of Olympia.

## 6.5 State Control by Elis

One of the significant differences between *ekecheiria* and today's Truce is that Elis unilaterally controlled it. Elis organised it, dictated its terms and could impose sanctions for its breach, without consultation or hindrance from another entity, unlike today's. *Ekecheiria*, in its formation and sanctioning, had the power and status of a state behind it. It is this power that meant its observance and is the factor that could be replicated today in a Truce Treaty. The UN Truce's lack of binding status passed by a general assembly forum means that singular, decisive action cannot and will not occur. Furthermore the control of the Games by a spread of actors today, means action by relevant bodies is slow and piecemeal, unlike when *ekecheiria* or the Laws of Olympia were breached. If the power of a state such as Elis was invested, in a singular organisation, a united Movement, then unilateral action could be taken on a breach of a Truce Treaty. This demonstrates the value of the precedence that is *ekecheiria* and the ancient Games to today's concepts and Olympic frameworks.

## 6.6 Sanctions

Elis was clear that breaches of *ekecheiria* would not be tolerated. It imposed real and severe sanctions for its breach, such as heavy fines (on *poleis* and individuals) and bans (in extreme cases).<sup>119</sup> For example, Elis fined Sparta for breaching *ekecheiria* in 420 B.C. and imposed religious sanctions by excluding them from the *hecatomb*, the Games' most important religious ceremony.<sup>120</sup> As the Greeks desperately wanted to attend the Games and festivals, it

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<sup>117</sup> They were considered fairly appointed by lottery after initial election to a pool from upper class Eleans. Lottery and the fact *Hellanodikai* paid for their role, reduced bribery and corruption, and meant the Gods had their say.

<sup>118</sup> Athletes could complain to them, if successful, the *Hellanodikai* were fined. The Council of Elders, the *Hellanodikai*, and the sub-committees (for specific events and rules) ran the Games. The Council organised and supervised the Games (akin the IOC). The *Nomophylakes* monitored, maintained and amended the Laws of Olympia. Sanctioning fell to the *Alytarches* (the Games' police force who dealt with breaches of the Laws); the *Rabdouchoi* (the rod bearers who conducted punishments); and the *Mastigophoroi* (the scourge bearers kept the venue free from beggars, pedlars, prostitutes, whilst directing crowds and dealing with breaches of the peace).

<sup>119</sup> In addition to fear of religious condemnation, Wheaton and Rostovtseff, in Bederman, n.11.

<sup>120</sup> Ross, n.5.

seems likely that fear of non-participation and condemnation ensured their observance of *ekecheiria*,<sup>121</sup> meaning few recorded breaches.

Sanctions were also unilateral and swift due to *ekecheiria* and the Laws of Olympia being governed by a single state, Elis, who could unilaterally take decisive action on breaches. It was unhindered by collegiate (UN) action, unlike today's Truce.

Various real sanctions also occurred for breaching the Laws of Olympia: political; economic; sporting; and corporal. Each had their own spectrum of severity depending on the breach.<sup>122</sup> Political penalties included *Hellanodikai* condemnation for decision challenging,<sup>123</sup> and the *statute of shame* for cheats, alien concepts today.<sup>124</sup> *Hellanodikai* could fine athletes and can be seen in ISF/NSF finings for breach of their rules today. Historically, if athletes refused to pay fines, their home *polis* assumed the liability.<sup>125</sup> If the *polis* refused, it was banned for the following Olympiad or until payment had been made. This merged political, economic and religious sanctions, as bans meant *polis* were prevented from Olympic sacrifices, risking the wrath of the Gods.<sup>126</sup> Hence a mix of sanctions were often used for serious offenses. *Polis* assumption of liability for athlete wrongs and/or fines is an interesting precedent for this thesis' proposed Truce Treaty. Sporting sanctions included Games expulsion and stripping of titles and has survived today.<sup>127</sup> Corporal sanctions meant athletes and officials could be whipped for corruption or intimidation and are non-existent today.<sup>128</sup>

Breaches of *ekecheiria* and the Laws of Olympia were met with real and religious sanctions, underpinned by good faith and the rule of law.

## 6.7 Religion

Part of the reason why the Greeks considered the Games so important was their religious roots. Religious reverence was not restricted to the Games – they were an important religious festival – but it also guided Greek observance of *ekecheiria* and the Laws of Olympia. They swore Oaths before the Gods to observe these.<sup>129</sup> If they breached Oaths (laws or rules),

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<sup>121</sup> And the Laws of Olympia.

<sup>122</sup> Serious breaches violated the founding principles and Laws of Olympia, e.g. dishonesty, bribery, match fixing, placing victory above rule compliance and endangering or disadvantaging an opponent. Mestre, n.12.

<sup>123</sup> Challenge was only allowed via the Council and athletes had sworn to accept their decisions.

<sup>124</sup> A statute was erected outside the *stade*, a visible condemnation to all and the Gods and a deterrent to others. Although media condemnation could be akin this today.

<sup>125</sup> Potentially trainers and guardians could also be fined and could be paid to wronged athletes/organisers.

<sup>126</sup> Fines themselves funded the Temples, known as *zanes*.

<sup>127</sup> E.g. if an athlete killed their opponent (deliberately or accidentally), and could be in addition to the *polis* ban.

<sup>128</sup> Carried out by the rod and scourge-bearers, Mestre, n.12.

<sup>129</sup> As evidenced by the Oaths.

fought near or disrupted the sanctity of Zeus's Temple, then they feared the God's disfavour. Breach risked sanctions from:- the Gods (such as abandonment); their priests; or the *Hellanodikai*.<sup>130</sup> Hence sanctions were real and perceived.<sup>131</sup> And observation due to religious reasons appears to have ensured fewer breaches of *ekecheiria* and the Laws of Olympia than today's Truce. Although, it is likely that these Oaths and sanctions were known to be imposed by humans and not the Gods, but they observed them out of fear anyway.

Olympia was also a holy site. Plutarch, citing Aristotle, states that:-

“Olympia is a sacred place. Anyone who dares enter it by armed force will be branded as sacrilegious. Equally godless is he who has it within his power to avenge a misdeed and does not do so”.<sup>132</sup>

*Ekecheiria* required Olympia's recognition as inviolable, religiously sacred and neutral, for its duration.<sup>133</sup> If troops entered, then they had to lay down their weapons.<sup>134</sup> This in turn helped secure Game attendance, as attendees were reassured as to their safety.<sup>135</sup> It also reinforced Elis' impartiality as host, a fortuitous move rendering Elis a modern-day Switzerland or UN.<sup>136</sup>

Olympia was itself often the source of conflict and thus required a religious proclamation of inviolability and neutrality. For example, in 668 B.C. Pheidon, tyrant of Argos, captured the Temple of Zeus. Pheidon then hosted the Games for an Olympiad, but Elis soon regained control.<sup>137</sup> The Eleans again lost the Olympic Games and Temples in 364 B.C. this time to the Arcadians. Elis regained the Temples after a day-long battle involving thousands of soldiers during the Games' festival.<sup>138</sup> They felt it necessary to restore the Temple's sanctity, by any means, after Arcadian defilement.<sup>139</sup>

Hence the Games, *ekecheiria* and religion were linked. *Ekecheiria's* observance<sup>140</sup> stemmed from this religious link. However, religious respect was not the only respect that

<sup>130</sup> The *Hellanodikai* inspected venues, determined whether athletes met entry preparation criteria, entered suitable athletes into competition lists (the *leukoma*), entered winners on the Victor's Roll (ensuring much is still known today of the Victors such as names, events and home-*poleis*), Christensen, n.52. See also, Mestre, n.12.

<sup>131</sup> They feared a 'miasma' – the occurrence of something cataclysmically awful. So fearful of wrathful Gods were the Greeks, that an Athenian who defaced religious statutes was sentenced to death because they feared divine retribution to their whole society. Bederman, n.11.

<sup>132</sup> <[www.newyorker.com/magazine/1984/07/09/the-original-olympiads](http://www.newyorker.com/magazine/1984/07/09/the-original-olympiads)> accessed 11th December 2015.

<sup>133</sup> Mestre, n.12.

<sup>134</sup> Mestre, n.12.

<sup>135</sup> Christensen, n.52, p. 62-65.

<sup>136</sup> Mestre, n.12.

<sup>137</sup> Pausanias, n. 18, s6.22.6. See also Xenophon, n.75, s7.4.28-32.

<sup>138</sup> Some date it as 362 B.C. but “the horse race had been completed...the finalists of the pentathlon who had qualified for the wrestling event were competing in the space between the *dromos* and the altar....The attacking Eleans pursued the allied enemy... The allied forces fought from the roofs of the porticos... while the Eleans defended themselves from the ground level”, Xenophon, n.75.

<sup>139</sup> Mestre, n.12.

<sup>140</sup> And the Laws of Olympia.



drove the Greeks to observance. Respect for fairness and the rule of law also underpinned observance.

## 6.8 Importance of the ancient Olympic Games

The ancients considered Games attendance important and they did not want to jeopardise their attendance by being sanctioned for *ekecheiria*'s breach. This is demonstrated by the Spartan breach above and the famous battle of the 300 Spartans at Thermopylae. There were only '300' Spartans at Thermopylae repelling Xerxes's Persian invasion because the remainder of the Greeks were marching to the Games.<sup>141</sup> Syrigos and Georgiadis have termed this 'esteem' as universality. They say that the Games were universal and that this is one of the most important reasons for *ekecheiria*'s observance. However, universality falls short in explaining observance, as the Games were universal because they were *important* to the Greeks. High esteem includes and goes further than universality, as a reason for *ekecheiria*'s observance.

## 6.9 Conclusion

The commencement of the Games in the archaic period places it alongside, emerging concepts of international law and statehood. Using a modern framework – a higher criteria than what would have existed then - this Chapter has demonstrated that *ekecheiria* (and the Laws of Olympia which it comprised) was observed for a variety of inter-linked reasons. This chapter operated from the standpoint that *ekecheiria* was more widely observed than today's Truce, with only a few recorded breaches.

It was observed because it was an armistice, meaning that it did not seek to do the impossible by imposing a permanent *eirene* – peace. It simply allowed the cessation of hostilities for ease of travelling to the Games.

It was Treaty law that codified customary international law that had historically also been a tradition. This meant that the relevant parties viewed it as binding. This Chapter examined whether the necessary features existed in the ancient world for *ekecheiria* to be Treaty law, using the modern framework of the Vienna Convention. It demonstrated, in theory and with specific regard to *ekecheiria* that: states existed (by possessing permanent populations, defined territories, independent governments and the capacity to enter relations

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<sup>141</sup> Although the figure of 300 is apocryphal and some claim the absence was because of the battle of Marathon - Thermopylae's paucity of soldiers was because of a different religious festival, Pausanias, n.18.

with other states); that *ekecheiria* was in writing; and governed by international law. *Poleis*, including Elis, were states, able to form binding international law, which existed at the time of the Games.<sup>142</sup> In addition to *ekecheiria*, this Chapter saw many international law examples, Greek and non-Greek, regarding war, trade and diplomacy. International law and the Laws of Olympia were not rudimentary. This suggested that in order for today's Truce to be successfully adhered to today, it must be codified into Treaty law. Yet this is not sufficient in itself to ensure observance as whilst the Greeks observed *ekecheiria* because it was Treaty law, they also had a high respect for the rule of law, potentially lacking today. And is a further reason for *ekecheiria*'s observance over today's Truce.

However, the main reason for *ekecheiria*'s observance is because the Games were streamlined and linked to one state: Elis. Its ability to enforce and sanction breaches without balancing other's needs, as is the case with the UN now, is significant. This explains why there were real sanctions, economic, corporal, sporting and political. All swiftly applied, unilaterally, by one state. Reinforcing the fact that *ekecheiria* and the Laws of Olympia were binding.

In addition to these 'real' sanctions there was the fear that breaching *ekecheiria* and the Laws of Olympia would invoke religious condemnation, hence the Greeks desperately wanted to attend the Games. They had to attend to participate in the religious festival aspects and dishonour through breach of an Oath would invoke the God's wrath. Hence the Games were significant to them.

The Games were an early international forum for applying a robust set of international norms, which their existence helped establish. In turn this initial establishment reinforced its *ouroborus* ability to develop such norms again. The Greeks went further than the UN Truce does today – no Treaty exists today. Thus the modern Truce needs codification into a binding Treaty and governorship by a single organisation with powers on a par of states and their ability to sanction and punish its breach: the proposed singular Movement.

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<sup>142</sup> The respect and competition with other *poleis* and treatment of non-Greeks as *barbaros*, did not hinder dealing with them as foreign sovereign powers. *Xenophobia* reinforced it, and their own statehood. It demarcated them from the foreign state and reinforced their superiority. The existence of states, international law, *xenophobia* and the nationalities of athletes stretching from the Black Sea to Sicily, meant the Games were international.

## **CHAPTER SEVEN**

### **Case Study – South Africa – an Olympic Movement success in international peace and security?**

#### **List of Definitions**

|          |  |
|----------|--|
| AAM      | Anti-Apartheid Movement                                  |
| ANC      | African National Congress                                |
| ANOCA    | Association of National Olympic Committees of Africa     |
| BWF      | British Weightlifting Federation                         |
| FASA     | South African Football Association                       |
| FIFA     | Federation Internationale de Football Association        |
| GANEFO   | Games of the Newly Emerging Forces                       |
| IAAF     | International Association of Athletics Federations       |
| INOCSA   | Interim National Olympic Committee of South Africa       |
| IOC      | International Olympic Committee                          |
| Movement | Olympic Movement   |
| NOC      | National Olympic Committee                               |
| NOCSA    | National Olympic Committee of South Africa               |
| OCOG     | Olympic Games Organising Committee                       |
| SA       | South Africa   |
| SASA     | South African Sports Association                         |
| SASF     | South African Soccer Federation                          |
| SANROC   | South African Non-Racial Olympic Committee               |
| SAOCGA   | South African Olympic and Commonwealth Games Association |
| SAAWBF   | South African Weightlifting and Body-Building Federation |
| SCSA     | Supreme Council for Sport in Africa                      |
| TIYC     | Transvaal Indian Youth Congress                          |
| UN       | United Nations   |

## 7.1 Introduction

This thesis has shown so far that the Movement requires to be grouped as a singular collective organ if the modern Truce is to be a success. In addition, it should have custody of that Truce, in the form of a Treaty with the ability to sanction its breach.

This Chapter will examine a major success that the Movement had in peace and security, which established a precedent for it to act in this field – bringing an end to apartheid in South Africa (SA). Hence this Chapter and case study helps address this thesis's second research question of why in international peace and security? It is because it has a precedent and because of its universalism and singularity, it is the appropriate body to act.

Therefore, this Chapter will assess the extent to which the Movement brought about the end of apartheid. Or, whether apartheid in Solemn Appeal ended due to the involvement of other actors such as the UN, and other factors, such as economic boycotts and Conventions. It will do this in Part I by taking a historical methodological approach and chart the history of apartheid in SA and the reasons for its demise. Part I will be specifically framed against the Movement and the IOC/Movement's involvement in ending apartheid. Part II will address the extent of third party involvement in the end of apartheid, specifically the UN, but also the role of international Conventions, individuals, ISFs, states and political ideologies.

Ultimately it will address whether there is a precedent for the Movement's involvement in peace and security, in turn answering the second research question. It will also determine whether this involvement and ultimate end can be attributed to the idea of a singular collective Movement, rather than a disparate INGO.

## Part I History of sporting apartheid in South Africa

### 7.2 Early British and Dutch Settlement of South Africa

To understand the effectiveness of the Movement's and the international community's reaction to apartheid, an historical examination is necessary, with an emphasis on sport.

SA was settled by the Brits and the Dutch in the mid-17<sup>th</sup> Century. Almost immediately, there was separation between white settlers and the indigenous or coloured populations instigated by the Dutch. For example barrier trees were planted at the Cape to separate whites from indigenous populations.<sup>1</sup>

In the late 18<sup>th</sup> Century, the British military are credited with bringing organised sports such as cricket and rugby to SA.<sup>2</sup> They also brought their own cultural, social, political and economic values, as was usual for colonisation. The Afrikaans, and to a lesser extent the Brits, viewed indigenous South Africans, as their subordinates with whom they did not mix, socially or sportingly.<sup>3</sup> Unlike other colonised states, this superiority and separation took root in SA. It would not be revoked in SA until the mid-20<sup>th</sup> Century with the worldwide recognition of human rights.

Some disagree that the British viewed their society as separate to the black population at this time, especially their sporting society. For example, mixed race goodwill sport existed and British missionaries used sport as a tool to educate, Christianise and 'tame' indigenous black youths.<sup>4</sup> These British missionaries felt obligated to Christianise these children, to safeguard their moral, spiritual and physical health, and sport could help do this.<sup>5</sup> Therefore, on the church and school sports field, there was some mixing of races. However, they treated the 'civilised youth' differently to their 'uncivilised' parents, who were ostracised from such

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<sup>1</sup> A. Du Toit, and H.B. Giliomee, *Afrikaner Political Thought: Analysis and Documents* (University of California Press 1983). In 1650, Commander of the Cape (Jan Van Riebeeck) planted trees to separate whites and 'hottentots'. See also, Mountain, Alan, *The First People of the Cape* (2003) David Philip Publishers p.49.

<sup>2</sup> The first recorded matches for each were between artillery and colonial officers, and the military and civilians respectively. Cricket being documented in the early 19<sup>th</sup> Century and rugby dating to 23<sup>rd</sup> August 1862 in Cape Town. Brits brought capitalism and militarily organised sport in 1795 and their sports which later became popular (cricket, rugby, soccer and tennis). Nongogo, P., P. Nongogo's Report: *The Olympic Movement and South Africa – The Effect of Sport Boycott and Social Change in South Africa: A Historical Perspective, 1955-2005*.

<sup>3</sup> 'Apartheid' comes from 'apart-ness' in Afrikaans. Nongogo, n. 2.

<sup>4</sup> Until 1948 in boxing, cricket and baseball when official apartheid laws were introduced and Scottish Presbyterians established unified missions and schools, Shepherd, Robert Henry Wishart, *Lovedale, SA: the Story of a century 1841-1941* (1940) (Lovedale Press). See also Nongogo, n. 2.

<sup>5</sup> With specific reference being made to athletics, rugby, soccer, cricket, netball and tennis. They also stated that the indigenous Bantu's amusements were incompatible with Christianity. Nongogo, n. 2. See also Espy, Richard *The Politics of the Olympic Games: With an Epilogue, 1976-1980*. University of California Press (1981)

mixing.<sup>6</sup> This leads some such as Nongogo, to conclude that there was no true mixing, in sporting social terms, amongst adults, only in outreach missionary work.

With SA's domestic sporting scene being thus entrenching by the end of the 19<sup>th</sup> Century, it began to participate in international sporting competitions, mostly alongside other colonial, European or English speaking nations. For example, a South African pair lost the first ever men's doubles final at Wimbledon in 1884,<sup>7</sup> and nine years later, SA achieved their first world record in cycling at the World Fair in Chicago. Thus by the close of the 19<sup>th</sup> Century, SA was becoming 'sports mad',<sup>8</sup> making a successful international sporting name for itself which it used to form a link between itself and those with whom the minority felt a cultural affinity with.

### 7.3 Early years of Olympism - Athens (1896) - London (1908)

It is at the *fin de siècle* that a fractured relationship develops between the two colonising forces in the form of the Boer War.<sup>9</sup> This coincided with changes to SA's internal governance and the rebirth of the Games. These wars and changes explain why SA did not attend the inaugural 1896 Athens Olympics and the 1900 Paris Games.<sup>10</sup> Although at Paris, SA exhibited at the attaching Exposition but fielded no athletes.

After these Wars, SA's European descendants identified sport as a way to build bridges amongst themselves, with little thought to or inclusion of, the indigenous blacks or immigrant coloureds.<sup>11</sup> This led to the interesting *non sequitur* of the 1904 St. Louis Games where an unofficial team of 8 represented SA. This team comprised one white British descendant, five Boers and two blacks.<sup>12</sup> The Boers took part in the tug-o-war and were somewhat apart from the rest of the team. But the remaining three athletes ran together in the marathon, meaning that SA's whites and blacks, raced as part of the same national team in an international competition.<sup>13</sup> This leads Mbaye to conclude that apartheid did not always exist in South African sports, but was consciously introduced.

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<sup>6</sup> Due to them not being Christian and not 'youth', Nongogo, n. 2.

<sup>7</sup> William and Lewis <[www.wimbledon.com/en\\_GB/roll\\_of\\_honour/gentlemensdoubles.html](http://www.wimbledon.com/en_GB/roll_of_honour/gentlemensdoubles.html)> accessed 19<sup>th</sup> September 2016.

<sup>8</sup> Meinthes won the 62-mile championship in Chicago in 1893. They also first beat the British Isles in the rugby in 1896.

<sup>9</sup> The first Boer War was 1880-1881 and the second Boer War was 1899 – 1902.

<sup>10</sup> In any guise from the four provinces.

<sup>11</sup> This was also their policy for international sport competition.

<sup>12</sup> The white British descendant was Robert Harris and the two blacks were Len Tau and Jan Mashiani.

<sup>13</sup> The results were 9<sup>th</sup> place, 15<sup>th</sup> and DNF.

To assume that these athletes competed together because SA in 1904 was a more tolerant and inclusive place than four years later in London, or 50 years later under apartheid, due to the Boer War's 'ground levelling' factor, is erroneous.<sup>14</sup> The 1904 team was unofficial and Tau and Mashiani were only included because they were primarily in Saint Louis for the World Fair. They were part of the '*Workers of the Anglo-Boer War*' exhibit, and whilst there, took advantage of the opportunity to compete. Therefore, their participation was coincidental and fortuitous.

Nevertheless, racism, that would later form apartheid, was not yet entrenched at this time. This coupled with the early Coubertin Olympic philosophies of tolerance and inclusion, could explain why Tau and Mashiani participated.

Furthermore, in 1904 the entity that competed internationally as 'SA' was British ruled.<sup>15</sup> This lessened the austerity of some of the Dutch policies over their historically ruled lands. Yet even so, when 'SA' appeared at the 1908 Games they had no non-white athletes.<sup>16</sup> When the four regions came together to form 'SA' in 1909, later Olympic teams represented domestic policies of the Dutch-Afrikaans who were asserting their position within the new SA.<sup>17</sup> Thus the St Louis anomaly can be explained by a political window in SA's history.

Therefore the fact that a mixed-race team did not compete again until 1992, shows that in the early years when the Games were paired with the World Fair - this pairing may not have been as disastrous as first thought to Olympism.<sup>18</sup> It gave individuals the opportunity to participate in elite sport who were not wealthy, middle class or white. Also, Game's participation at this time was simpler and less bureaucratic than in the mid-20<sup>th</sup> Century. Athlete selection was not yet in the clutches of a South African National Olympic Committee (NOC) or government organisation (indirectly by yielding pressure). It was left to individuals and their employers.<sup>19</sup>

However, by London 1908 there was no Olympic and World-Fair pairing. This meant that SA's first official team was fifteen white athletes, and it then continued its already

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<sup>14</sup> War always being a great factor for social change as can be seen with the introduction of apartheid post Second World War.

<sup>15</sup> Following the Boer War.

<sup>16</sup> The Orange territory and the Transvaal and were now British ruled post Boer War.

<sup>17</sup> SA did not exist until 1910. Westminster granted SA independence in 1909 via the 'South Africa Act 1909' with the Union of SA being created the following year comprising the four territories of the Cape, Natal, Orange and Transvaal. However, its predecessors could and did have some Olympic presence before then (St Louis 1904).

<sup>18</sup> And its values. Albeit it was seen to diminish attention to the Games and therefore their overall success.

<sup>19</sup> Seeing the power of workers and economies when tied to the Games as later discussed with regard to the perceived threat of GANEFO and to a lesser extent, the Workers Games.

established international sporting precedent of only fielding white teams.<sup>20</sup> As there were no official laws supporting racial sporting segregation at this time, this means that an all-white team mirrored societal attitudes.

However, Nongogo goes further than attributing separation to societal attitudes. He says that SA's authorities had a conscious and deliberate unofficial policy of race exclusion (and later separation) that fell short of hard law that would exist half a century later. This observation gains credence when it is shown that other Olympic teams contained black athletes. For example, Henriquez de Zubiera competed for France in 1900,<sup>21</sup> George Poage winning two sprint bronzes in 1904 for the USA<sup>22</sup> and Joseph Stadler winning medals in the triple and high jump once again in 1904 for Team USA.

Therefore, this shows that at the time, mixed teams existed, and yet, the IOC took no issue with SA's unofficial race exclusion. Furthermore, even at this early stage, the Olympics and politics were mixing in SA. Thus it is a 'misguided cliché' that the two were separate. For example, the Cape's Prime Minister lobbied the BOA to wield its influence at the IOC to vote and invite SA into the Movement and to the 1908 Games.<sup>23</sup> Hence, even in early Olympic life, politics, discrimination and sport were already intertwined.

#### 7.4 1912 – SA's Final Olympic Participation in Melbourne 1956

Therefore before apartheid laws were introduced in the 1940s, SA had a custom of race segregation in sport, in contrast to say, France or the USA. For example, NSFs such as the athletics association and the cricket unions, developed along uni-racial lines.<sup>24</sup> This affected black athletes domestically and internationally. They could not compete abroad and foreign teams visiting SA had to exclude non-white players. For example, in 1919 New Zealand's (NZ) army rugby team left Ranje Wilson behind,<sup>25</sup> and in 1928 their Rugby National Federation

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<sup>20</sup> It comprised seven track and field athletes, four cyclists, three tennis players and one fencer, all traditionally white sports. Furthermore, officially SA was not independent of the UK in 1908. Naughton, John, and Parrish, Charles (ed.) *History, Culture and Practice – Sports Around the World 2012ABC-CLIO* p. 85 & 155.

<sup>21</sup> Wiggins, David Kenneth (ed.), *African Americans in sports*, Volume 1, p 264.

<sup>22</sup> Lockyer, Bridget, *Minority Black Athletes in the 20<sup>th</sup> and Early 21<sup>st</sup> Centuries*, 2009, Sport and Society, The British Library.

<sup>23</sup> The PM was Sir Starr Jenson and the vote was unanimous at their Hague meeting of 1907.

<sup>24</sup> These were white only by 1931, with blacks being specifically excluded in the 1930s. Blacks and coloureds did set up their own federations in order to participate in sport. Mbaye, Keba, *The International Olympic Committee and South Africa: Analysis and Illustration of a humanist sports policy*, 1995, The Committee.

<sup>25</sup> One of their best forwards, Nongogo, n. 2.



excluded George Nepia.<sup>26</sup> At this time, other states and the IOC tolerated this exclusion and an international backlash had not begun.

It would take an entrenching of the white South Africans views in the 1930s to kick-start the anti-apartheid sports campaign. This decade saw unofficial policy become official policy (although still short of law), with non-whites being banned from NSFs.<sup>27</sup> For example, the national weightlifting association barred blacks in 1939, having initially been open to all colours.<sup>28</sup> SA was also applying this thrown attitude internationally. For example, a South African journalist remarked in 1921 that the South African Springboks had to play against the 'coloured sports person' on tour. This resulted in the international community entrenching their views towards SA too, such as when the NZ Maoris collectively as a rugby team refused to play the visiting Springboks in 1937. This 'tit-for-tat' retributive stance developed internationally, at least amongst states with a significant mixed population.

These official policies of the 1930s, that were not yet law, were a stepping stone to the official apartheid laws of the 1940s. The National Party came to power in 1948 and introduced apartheid laws that affected all areas of life: whites were geographically segregated from blacks, Indians and coloureds.<sup>29</sup> However, it is worth noting that these general apartheid laws did not specifically ban inter-racial sport.<sup>30</sup> This is confusing given the practical segregation. Instead, the government achieved this segregation by using and manipulating the Group Areas Act 1950 to hinder inter-racial sport. Although not out-rightly banned, it was practically impossible. This Act prohibited mixed public sports and audiences, except by permit. Permits were seldom granted, and if they were, they required strict segregation.<sup>31</sup> Therefore SA's government did openly interfere in sports.<sup>32</sup>

The fact that no hard law existed that specifically banned mixed sport was tested in a case from the early 1960s.<sup>33</sup> Discussion of it is relevant to this time frame as it shows what the

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<sup>26</sup> One of their crucial players. The reasons for exclusions were clearly given – the visiting team wished to avoid confrontation over the (unofficial) colour bar.

<sup>27</sup> As opposed to them simply developing after their own fashion.

<sup>28</sup> Upon its establishment in 1933. This is one of the first credited exclusions in SA, Mbaye, n.24.

<sup>29</sup> The laws of 'grand apartheid' were contained within several pieces of legislation: Population Registration Act 1950, Group Areas Act 1950, Prohibition of Mixed Marriages Act 1949, Immorality Act 1950, Reservation of Separate Amenities Act 1953, Suppression of Communism Act 1950, Bantu Authorities Act 1951 and the Bantu Education Act 1953. These provided for no free movement of blacks and coloureds (required permits), containment in specific housing areas (with forcible relocation) and only to use specific amenities.

<sup>30</sup> Nongogo, n. 2.

<sup>31</sup> Permits required 6 foot fence separation, spectator separation separate entrances, canteens, toilets and some events were race specific. Reddy, E.S., Sports and the Liberation Struggle: A Tribute to Sam Ramsamy and Others Who Fought Apartheid Sport <<http://scnc.ukzn.ac.za/doc/SPORT/SPORTRAM.htm>> accessed 20<sup>th</sup> September 2015.

<sup>32</sup> Reddy specifically mentions the Vorster regime of 1966-1978, Reddy, n. 31.

<sup>33</sup> Minister of d'Interior v Lockhart 1961 (2) SA 587 (A).

position was in SA in the 1950s. In this case, the state pursued two whites, five blacks and two Indians for a mixed sporting encounter in Durban using the Group Areas Act. The state lost the case and thus Mbaye, draws from this that SA had no law against mixed sporting events. Mbaye also adds that the government itself did not view this policy as law, as in early 1963 the Minister of the Interior made a Declaration regarding sports competitions.<sup>34</sup> Amongst other things, the Minister stated that “whites and non-whites may not compete together in SA “but internationally they can against non-whites of foreign countries but still not alongside non-white South Africans.”<sup>35</sup> The Minister added that:-

“South African sports bodies may not send mixed teams to represent SA internationally. White teams represent the whites and black teams the blacks of SA.”<sup>36</sup>

The Minister then attempted to assert his government’s dominance over bodies connected to the Movement. He added that:-

“non-white bodies must develop alongside the corresponding white body. The white executive council must co-ordinate all activities of non-white bodies.”<sup>37</sup>

Furthermore, the most significant assertion that the Minister makes is that if these government policies are not respected by sports bodies, then laws “will be promulgated to enforce them.” This therefore shows, that this government policy is not based on specific legislation and is not law but were expected to be respected nonetheless.<sup>38</sup>

Although there were loopholes around these policies that has a loose backing in law, it nevertheless ended any mixed race good will sport. This was because blacks and whites did not meet, play or compete together as they had different sports clubs in different locations. Thus the government did not have to resort to passing official laws to segregate sport.<sup>39</sup>

At the next level up, NSFs dictated membership along race legislation lines, meaning that trials for national team selection were only open to whites via their white national federation as blacks were excluded from such organisations and teams. Therefore, whilst the rest of the developed world was moving into the human rights post-WWII era, SA took an opposing route and enacted racial segregation laws.<sup>40</sup>

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<sup>34</sup> Repeating the 1956 Minister d’Interior Declaration.

<sup>35</sup> Mbaye, n 24.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> This juxtaposes the Universal Declaration of Human Rights 1948.

In response, the black and coloured majority formed official opposition to these new laws.<sup>41</sup> And a variety of actors came to the fore, such as the African National Congress (ANC) and the Anti-Apartheid Movement (AAM).<sup>42</sup> These South Africans also looked for external assistance to help assert their civil and human rights from countries such as the UK due to their historical links. However, when this proved to be unfruitful they sought political and sporting support from African states. One such example of external support was the ultimately unsuccessful 'Indian Passive Resistance Campaign' which started in 1946 and they had the support of Indians in SA and India itself.<sup>43</sup> Their peaceful occupation of municipal land rendered 'Ghetto' Acts unenforceable but they failed to amend the proposed and enacted apartheid laws.

In addition to the political protests of the late 1940s, there was equal complaint by the oppressed majority with regard to segregation and discrimination in sport specifically. The influence of the Indian Passive Campaign can be seen in Ragasamy's application for non-white South Africans to affiliate to the British Amateur Weightlifters. He was seeking their external support and a solution to wide-spread South African exclusion, but his application was refused.<sup>44</sup> Nevertheless, this shows that Indians and South African Indians were early anti-apartheid vocalists. Further complaints were made to the IOC by Indians, black and coloured athletes and their sporting bodies that they were being excluded from Olympic participation. However, the complaints were referred back to their NOC, which was the all-white South African Olympic and Commonwealth Games Association (SAOCGA), who had a policy of prohibiting inter-racial competition amongst its members.

This became a vicious and inescapable circle of impotence as they could not participate in international sport by their *de facto* exclusion from the Games, nor could they participate in national sport on a non-segregated basis. One fed the other, with many athletes being practically unable to meet international competition standard as they did not have access to the same opportunities and education as those available to whites.<sup>45</sup> Crucially this shows that from early on the IOC was aware of SA's apartheid laws and their influence on bolstering

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<sup>41</sup> Although it began before the official laws were introduced, Mbaye, n. 24.

<sup>42</sup> These organisations took a civil rights opposition to apartheid.

<sup>43</sup> The issue was raised at the UN GA in June 1946 by Naicker and Dadoo, with the formal request for consideration being by the Indian government regarding the treatment of Indians in South Africa (prior to its own independence in 1947). The Campaign was led by notable high profile football stars such as George Singh. Reddy, n. 31.

<sup>44</sup> Nauright and Parrish, n. 20.

<sup>45</sup> Especially in costly sports such as tennis, horse-riding, fencing etc.... although they competed on the mission school circuit with their own organisations in 'accessible' sports (track and field, boxing and weight lifting).

discriminatory sporting policies, and non-white Game exclusion. This is why many took issue (domestically and internationally) with SAOCGA's 'unqualified' recognition by the IOC.

The passivity and soft approach of the anti-apartheid resistance campaign of the 1940s gave way to a more assertive and radical approach by the 1950s. New laws had been passed in SA with more areas of life being affected, and according to Nongogo, sport was another highly visible arena in which to field this opposition.

In the mid-1950s it was the ISFs that were the leading lights in the anti-apartheid sporting movement, by way of denying or revoking recognition to single race NSF's in SA. For example, in 1955 the Federation Internationale de Football Association (FIFA) denied recognition to the all-white South African Football Association (FASA).<sup>46</sup> A year later, the International Table Tennis Federation (ITTF) went further than this blanket non-recognition. It showed its support to the all-inclusive South African Table Tennis Board (SATTB)<sup>47</sup> by recognising and revoking membership to the all-white body. These ISFs could take such a bold stance as they were a globally centralised force. Their likely headquarters were in Europe or America where an exclusive stance would not be supported and they would be beyond the jurisdictional reach of SA's apartheid laws. However, this does not explain, why the IOC did not follow suit and revoke SAOCGA's recognition.

This rocking of the status quo by the ISFs had two repercussions from SA's government and the IOC.<sup>48</sup> Firstly, the South African government exerted domestic and political control by refusing passports to athletes who wished to travel to international competitions.<sup>49</sup> This meant that coloured and black athletes could not compete internationally at world championships or at Games. A sentiment which was in stark contrast to the Movement's principles of inclusion and non-discrimination. The South African government therefore ensured by actions rather than hard law that only members of white NSF's could compete internationally. It also confirmed that the government would not be swayed on its domestic policy thus upholding apartheid and its control. For example, SATTB members wished to compete in the 1957

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<sup>46</sup> Although they also denied recognition to the all-inclusive South African Soccer Federation (SASF). FASA was formally suspended in 1961. Mbaye, n. 24.

<sup>47</sup> Formed by Kes Stone who accordingly spent 6 months in prison.

<sup>48</sup> And resulted in many South African NSF's being suspended by their ISFs, Mbaye, n. 24.

<sup>49</sup> And passports of their representatives and those involved in their federations. Reddy gives three extreme examples of this, e.g. Dennis Brutus (SANROC President) who attempted to attend an IOC meeting but had his passport refused in 1963. He was discovered in Mozambique by the Portuguese authorities who handed him back to SA and detained in prison. John Harris (Chairman of SANROC) was also refused a passport, and was later executed for participation in an armed resistance movement. And SACOS President, Pather, had his passport seized even though he was on his way to consult with the UN, Reddy n. 31.

Stockholm World Championships but the SA government refused to issue them passports to travel.

Secondly, the IOC also responded to this ISF status quo disruption by re-confirming and entrenching their stance. Albeit this inadvertently supported apartheid as it referred exclusion complaints back to the NOC.<sup>50</sup> For example, when the IOC was solicited by the all-inclusive South African Amateur Weightlifting and Body-building Federation (SAAWBF) for participation in the 1956 Melbourne Games, they passed the complaint back to the all-white SAOCGA. Unlike in the 1940s, the reasoning for this now was a desire not to ‘interfere in local affairs.’ Hence the IOC, via its SAOCGA, considered access to sport and Game participation as a ‘local’ and not an ‘Olympic’ matter. The IOC was therefore shirking responsibility for implementing Olympism and its Fundamental Principles, relying on others to uphold these for them when they would not.

In the 1950s it was the all-white SAOCGA that was IOC recognised and not the multi-racial NSFs or NOC. Albeit these NSFs had more of an influence on and a sympathetic ear with the ISFs who bestowed their recognition. Therefore these ISFs were initially more inclusive to SA’s oppressed majority and less tolerant of discrimination than the IOC was, as the latter tolerated SA’s discrimination and human rights breaches.<sup>51</sup>

## 7.5 Munich 1959 Meetings – Olympic Expulsion of South Africa 1970

The 1960s brought a shift in IOC and international attitudes towards SA. Mbaye notes this as moving from a long period of hesitation and indifference, to a growing awareness and increasing action. Albeit many would still claim that the IOC’s inaction meant it was in ‘dereliction of duty’ and in contravention of its own Fundamental Principles, the UN Charter and international and human rights law.<sup>52</sup>

Mbaye attributes this IOC shift to external pressure on Brundage to deal with the political ramifications and international derision of SA’s participation in the 1958 Welsh Commonwealth Games. Whereas Nongogo attributes the IOC shift to the founding of the multi-racial unofficial Olympic Committee of SANROC and the AAM’s heavy external pressure.<sup>53</sup> Nevertheless, they both attribute the change to external influences. Mbaye focuses

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<sup>50</sup> As they had been doing for the past decade.

<sup>51</sup> The progressive ISFs governed sports such as weightlifting, soccer and table tennis, Nongogo, n. 2.

<sup>52</sup> James, Mark, 2<sup>nd</sup> edition *Sports Law* (Palgrave Macmillan, 2013). See also, Nongogo, n. 2.

<sup>53</sup> SANROC was established in 1962 and is discussed further below in section 7.5.3. SAOCGA only affiliated white bodies (previously called the South African Olympic and Empire Games Association (SAOEGA). Brutus, Dennis, Dennis Brutus Papers 1970 - 1990, Schomburg Center for Research in Black Culture, The New York Public Library.

on reaction to a single event (the Welsh Games) whereas Nongogo, focuses on the influence of localised actors.

However, their assessment of the influential factors on the IOC shift is overly simplistic. Firstly, the Welsh Games were only a single incident. The Games are a global phenomenon that occur on a larger stage than the CGs. Therefore IOC change occurred due to a wider amalgamation of events.

Secondly, their assessment ignores the influence on the IOC from ISFs, SA's multi-racial NSFs, and more importantly, the calls for action from states from Africa, Asia, and crucially the USSR (with her Eastern bloc allies). Collectively these states levied some influence on ISFs, but their Olympic influence was more significant. African and Asian states supported the anti-apartheid movement to safeguard the position of their citizens at international sporting events. Such states had growing (combined) international power and influence with the IOC and ISFs, as their numbers increased following decolonisation in the 1950s. The reasons for the Eastern bloc support are more complex. Communist philosophy supported the movement on ethical grounds, yet a more sceptical view would be that they could use this movement to wield leverage on the IOC and on the international community in general.

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It is this multi-pronged onslaught that eventually forced the IOC to put the SA question firmly on its agenda. Its determination to ignore it began to crack. For example, in 1958, IOC President Brundage wrote to Emery, Secretary-General of SAOCGA, saying that

“pressure is mounting and I am receiving many protests and requests for an official [IOC] statement from all over the world. Sooner rather than later the apartheid question would be placed on the IOC agenda and when that time came, there could be only one result, because the rules of the Charter were clear.”<sup>55</sup>

Brundage wanted SAOCGA to give a response that would satisfy those disputing SA's involvement at the upcoming May 1959 Munich IOC Executive Board Meeting and Session. Thus, in the last year of the 1950s, apartheid was first 'officially' discussed by the IOC in Munich.

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<sup>54</sup> These communist states en-masse managed to eventually secure SA's suspension from the UNGA Session in 1974-1994. Suttner, Raymond, 'Has SA been illegally excluded from the UN GA? The Comparative and international law journal of SA Vol. 17, No. 3(November 1984), pp 279-301.

<sup>55</sup> Nongogo, n. 2.

### 7.5.1 Munich Meetings 1959 – SAOCGA Called to Account

At the Munich meetings, the IOC's sole concern was whether SAOCGA had violated the Charter, specifically its anti-discrimination provisions.<sup>56</sup> And consequently whether it could continue to be recognised.<sup>57</sup>

Apartheid clearly breached Charter anti-discrimination Fundamental Principles and as Brundage stated, only "one result was possible".<sup>58</sup> This *fait accompli*, or as Mbaye calls it, 'a recognition of inevitable sanctioning', explains the IOC's reluctance to address the SA problem. Expulsion was final and contrary to another Charter principle, inclusion. It was this inevitability that the IOC was attempting to avoid. This exclusion is particularly ironic, as it shows that the IOC preferred one exclusion to another, i.e. SA's black athletes to SANOC.

The inevitability and hint at a change of IOC policy in Munich is however, tempered by Brundage's actions on the eve of the Session. Following the IOC's demand for SAOCGA to respond at Munich, SAOCGA tested the IOC's position by threatening to leave the Movement. Therefore SAOCGA preferred Movement withdrawal to renouncing apartheid, upholding Charter principles and reaching a compromise.<sup>59</sup> This threat worked as it provoked a conciliatory attitude from Brundage towards SAOCGA pre-Munich. He acknowledged in conspiratorial tones to SAOCGA, that "social and political problems have been accumulating before our door."<sup>60</sup> This suggests he viewed sporting apartheid as irksome, and that the IOC supported and tolerated SAOCGA's behaviour. Brundage's apologetic words also show that the desire to address the issue does not come from him.

Thus at the Munich 1959 meetings, a lukewarm debate by the IOC on the SA question emerged. SA's IOC member, Reginald Honey, made a statement defending SAOCGA's position and all-white team. He said that whites had been selected as they were the only ones who met the qualification standards. Non-whites had not met the standard, as they "did not have enough experience or talent". He reasoned that this was because non-white sport was badly administered, disunited and divided, if it existed at all, and that non-white Olympic interest was recent.<sup>61</sup> Therefore Honey emphasised that there was no objection to non-white participation if they met the requisite international and Olympic standard. Honey added that no

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<sup>56</sup> It was not concerned generally with sporting apartheid, Nongogo, n. 2.

<sup>57</sup> Mbaye, n. 24.

<sup>58</sup> Nongogo, n. 2.

<sup>59</sup> Mbaye, n. 24.

<sup>60</sup> Mbaye, n. 24.

<sup>61</sup> In the last year or so, Extract of Minutes of the 55<sup>th</sup> Session of the IOC 1959 <<http://library.la84.org/OlympicInformationCenter/OlympicReview/1959/BDCE67/BDCE67zb.pdf>> accessed 9<sup>th</sup> July 2015. See also, Mbaye, n. 24.

non-white had been excluded from the national team on that basis, as a colour bar did not exist within SAOCGA as it treated white and non-white athletes on equal footings.<sup>62</sup>

SAOCGA also stated that most non-white athletes were professionals and therefore automatically ineligible for Game competition under the OC. He added that the complaints and requests for affiliation and recognition by complainer sporting bodies were all politically motivated, thus again falling foul of the corresponding Charter and Fundamental Principles.

Nevertheless, Honey and SAOCGA conceded that although they had no colour bar, some of their affiliated units did. They claimed this was a South African tradition that was dictated by their government. They asserted that they wished to help non-white athletes in their Olympic goals, therefore they could be selected to SA's Olympic Team if they were associated to the recognised organisations. However, the recognised organisations were all white, with colour bars, and would not recognise them. Therefore, an impenetrable cycle of exclusion continued, allowing the IOC to wash its hands of the SA question.

The IOC accepted Honey and SAOCGA's statements. However, the delegates from the USSR and India took serious contention with them. The Soviet IOC member stated that he did not think that "the situation [was] as Mr Honey describes" and the Indian member demanded guarantees to ensure equal competition. This shows early Indian and Russian support against sporting apartheid and how instrumental they were in elucidating change.

#### 7.5.2 Examination of and Responses to SAOCGA's Munich Statement

The South African Sports Association (SASA) also examined Honey and SAOCGA's Munich comments by drafting a Memo to the IOC.<sup>63</sup> This Memo was the cornerstone of the anti-apartheid movement in sport, although it had no effect as it the IOC did not respond to it.<sup>64</sup> The Memo refuted SAOCGA's comments one by one, and made four requests of the IOC, all of which it ignored. For example, SASA asked the IOC to defend its Charter Fundamental Principles so that there be "no discrimination towards a[n]... individual for reasons of race, colour, religion or pol creed." They also asked the IOC to apply this to SAOCGA and its related Olympic organisations by having them cease all discriminatory behaviour.<sup>65</sup> Alternatively SASA suggested that the IOC:-

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<sup>62</sup> Ibid.

<sup>63</sup> SASA was founded along multicultural lines specifically to oppose sporting apartheid, Nongogo, n. 2. It was previously known as the Committee for International Recognition and was established in 1953.

<sup>64</sup> Mbaye, n. 24.

<sup>65</sup> Mbaye, n. 24.



“request the ISFs to conduct investigations on the functioning of their South African affiliates or that SAOCGA be expelled from the Movement because of its Charter violations.”

Therefore, even by the late 1950s, the suggestion of the various Movement organs being able to enact collective action to uphold Olympism by excluding SA was being mooted.

SASA also turned the mirror on SAOCGA's claims of them and the other complainers being political. For example, it asked the IOC to “examine the level of interference of the government in the administration of amateur sport in SA”. This demonstrates the twin core of the SA problem, that it merged politics and sport, and that the Charter compelled the IOC to address discrimination within its movement. Thus their indifference and laissez faire attitude was remiss.<sup>66</sup>

Nevertheless, the IOC side-stepped SASA's Memo, the Indian and Russian complaints and following up on SAOCGA's Munich comments and commitments. Mbaye attributes this to various SAOCGA subterfuges. This avoidance meant the IOC could support the South African stance of debating the problem from a qualification perspective. Rather than debating it from a discriminatory perspective. It therefore resulted in no practical consequences for SAOCGA.<sup>67</sup> Brundage said the Charter's anti-discrimination rule applied only to the Games, and not to domestic competition. Yet this deliberately ignores the operation of the Movement and trial selection, and of the barriers to Olympic international competition experienced by coloured athletes.

Brundage, as a concession, suggested instigating a twin and parallel system of NSFs with a composite national team, or that elimination rounds be held.<sup>68</sup> This he thought, would allow them to meet their Charter obligations. Therefore Brundage and the IOC were reluctant to support SA's non-white athletes and condemn apartheid supporters (including SAOCGA) and a deliberate avoidance of the issue.

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<sup>66</sup> Mbaye, n. 24.

<sup>67</sup> Mbaye, n. 24.

<sup>68</sup> Albeit no black athletes appeared on SAOCGA's behalf at Rome. Mbaye, n. 24.

### 7.5.3 Rome 1960 Meeting and Olympic Games

SAOCGA continued its racial exclusion policy for selecting its Rome 1960 Team which many attributed to subterfuge.<sup>69</sup> They had no open selection heats and the all-white NSFs had not affiliated or accepted memberships of non-whites. This was despite the promised changes made at Munich, and the start of their marginalisation by the IOC and SASA.

At the Rome 1960 meetings, SASA reiterated that SAOCGA's policies were discriminatory and that the IOC discuss the problem again. However, Brundage thought that the problem was solved, although he did not think that there even existed a problem at all.<sup>70</sup> Nevertheless, this did check on whether SAOCGA's Munich promises had been met and the SA question was placed on the Rome Agenda. SASA were permitted to attend alongside Honey (SA's IOC member) and Braun (SAOCGA's representative).<sup>71</sup>

However, the IOC favoured SAOCGA's submissions at the Rome meetings and thus they retained their recognition (and implied IOC validation). They accepted that SAOCGA had made "every reasonable effort" to abide by their Munich statements, so that no ranking athlete, whatever colour, was excluded.<sup>72</sup> Again Brundage was quick to state that he thought the problem resolved, as "we have had our discussion.... in Rome and the subject will not be on the agenda of our Athens [June 1961] meeting."<sup>73</sup> Brundage was therefore still keen to wash his hands of the SA question.

It was the period from the 1960 summer Rome Meetings to April 1961 that the real IOC turnaround occurred. This was because following the Rome Meetings SAOCGA were allowed to compete at the 1960 Rome Games.<sup>74</sup> Whilst the visibility of this participation may have prompted the IOC's turnaround, it seems more likely to have occurred due to Honey's controversial statements. Honey openly admitted to SASA in 1961 that racial discrimination existed in SA and that it must be accepted.<sup>75</sup> Hence SA's IOC representative admitted that Charter Fundamental Principles were being breached and that the IOC was to do nothing about this. This statement destroyed non-white faith in the Movement and its ability to enact change, and it was this that that prompted other actors to intensify their pressure for change.<sup>76</sup>

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<sup>69</sup> Mbaye, n. 24.

<sup>70</sup> Letter from SASA to Brundage dated July 1960, Mbaye, n. 24. SASA added that they wished to attend meetings and make verbal and written submissions in support of their claim.

<sup>71</sup> SASA's representatives included Reverend Michael Scott, Honorary Director of the Africa Bureau (London) and Nana Mahomo, SASA. Mbaye, n. 24.

<sup>72</sup> Mbaye, n. 24.

<sup>73</sup> Brundage letter to Emery, April 1961, Mbaye, n. 24.

<sup>74</sup> And the Squaw Valley Winter Games.

<sup>75</sup> In a speech (late April 1960), Mbaye, n. 24.

<sup>76</sup> Mbaye, n. 24.

Consequently the IOC moved from considering that the problem had been resolved, to acknowledging “protests from all sides” and that the SA question was unresolved.<sup>77</sup> Honey’s admittance of racial discrimination and its effect on the anti-apartheid movement meant IOC inaction was no longer possible. Yet this in no way meant that real change would occur, or that the IOC would support boycotts of SA. It simply meant that the IOC now recognised that SAOCGA constituted a real problem. Moreover, Brundage was still stating that the accumulating pressure was external and not at his impetus.

The anti-apartheid movement amplified its pressure by establishing the all-inclusive London-based South African Non Racial Olympic Committee (SANROC) in 1962. It aimed to be recognised by the IOC as SA’s NOC instead of SAOCGA.<sup>78</sup> However, this did not occur, as SAOCGA was still recognised. Instead the IOC chastised and rejected SANROC and was told to delete ‘Olympic’ from its name.<sup>79</sup> The IOC said this was because SANROC was politicised being led by politicians and not sportsmen.<sup>80</sup> This shows that the IOC’s modus operandi was avoiding politicisation when dealing with the SA question.

Consequently, in the early to mid-1960s Brundage and the IOC wished to keep SAOCGA on board, over and above rival committees.<sup>81</sup> The IOC therefore supported SAOCGA’s view that it would be a “tragedy” if it were to withdraw from the Movement due to a few “political agitators” in non-European sports.<sup>82</sup> Lack of IOC sanctioning against SAOCGA, meant its omission amounted to its endorsement including its apartheid policies. Furthermore, at this stage, SAOCGA still preferred the prospect of Movement withdrawal to changing its domestic policies and laws.<sup>83</sup>

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<sup>77</sup> Stated by Brundage in a letter to Emery of October 1961, Mbaye, n. 24.

<sup>78</sup> SANROC alongside other poorly funded bodies (e.g. SASA) fought to end racism in sport and to have non-racial South African sporting bodies recognised internationally by their ISFs. However non-racial South African NSFs were repeatedly rejected. SANROC later worked alongside the South African Council on Sport (SACOS) (a non-racial sports federation) when the latter body was established in the 70s who said there “could be no normal sport in an abnormal society”. Reddy, n. 31. See also, Mbaye, n. 24.

<sup>79</sup> The IOC refused to deal with it if it continued to use ‘Olympic’ in its name (they changed it to ‘Open’), Nongogo, n. 2.

<sup>80</sup> Reddy, n. 31.

<sup>81</sup> Such as SANROC.

<sup>82</sup> SAOCGA threatened to leave the Movement due to the furore in the late 1950s, IOC Extract of Minutes 1958, n. 61.

<sup>83</sup> Mbaye, n. 24.

#### 7.5.4 First Exclusion of South Africa by the Commonwealth – 1961 - 1962

The following years other bodies began to exclude SA and this compounded pressure on the IOC to quicken its glacially-slow shift in dealing with appropriately with SA.<sup>84</sup> For example, the Commonwealth excluded SA by taking advantage of its 1961 declaration as a republic. SA's declaration meant it had to reapply for Commonwealth membership as it was no longer automatically eligible for participation in the 1962 Commonwealth Games.<sup>85</sup> The ethnically diverse Commonwealth did not support or appreciate racial exclusion, especially as many African states were members.<sup>86</sup> SA responded to this exclusion by reaffirming segregated sport, but as a compromise, it proposed having segregated Olympic trials abroad.

At this time in the 1960s, the Commonwealth's influence on the Movement becomes apparent. The 1963 IOC Session was to be held in Nairobi, but the Kenyan government refused visas to SA's delegates. This forced the IOC to hold the meeting in Baden-Baden instead. Therefore SAOCGA, now called the South African National Olympic Committee (SANOC), had not changed its position, and yet African states were committed to isolating SA to force it to end apartheid.<sup>87</sup>

#### 7.5.5 Baden-Baden Session 1963, IOC Ultimatum and South African Suspension

At Baden-Baden, SA's delegates attempted to reassert that apartheid was a domestic matter out-with IOC interest.<sup>88</sup> However, this time, two events conspired to elicit a definitive change in IOC policy forcing SA's revocable suspension, based on an Indian proposal.<sup>89</sup>

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<sup>84</sup> Including that of international action against apartheid with athletes winning South African competitions not receiving their full commendation, such as Papwa Sewgolum. He won the Natal Open Golf Championships in 1963 but was not allowed in the all-white club house. He received his trophy in the pouring rain outside in front of the world's press. Reddy, n.31.

<sup>85</sup> Known as the British Empire and Commonwealth Games held in Perth, Australia, November-December 1962.

<sup>86</sup> For example, four African teams participated at the 1962 Commonwealth Games from Kenya, Rhodesia (Zimbabwe), Tanganyika (Tanzania) and Uganda. The number of African Commonwealth countries increasing post decolonisation, Nongogo, n. 2.

<sup>87</sup> A knock on effect was that SAOCGA had to change its name to the South African Olympic and National Games Association (SAONGA), which later evolved into SANOC.

<sup>88</sup> Frank H Braun, J.R. Rathebe and Mr Kaplan were SANOC's delegates.

They also asserted that non-white athletes could 'train among themselves' and against white athletes outside of South Africa and that political agitators were the vocal opposition in South Africa. Interestingly, SA's government (and not the NOC) issued the non-white athletes who qualified for Tokyo with passports. Extract of the Minutes of the 60<sup>th</sup> Session of the IOC Baden-Baden October 1963

<<http://library.la84.org/OlympicInformationCenter/OlympicReview/1964/BDCE85/BDCE85n.pdf>> accessed 9<sup>th</sup> July 2015.

<sup>89</sup> India submitted it after the British Anti-Apartheid Movement's attempt to have SANOC admitted floundered, Mbaye, n. 24.

The first event was that the Baden-Baden session imposed on SANOC a two-staged test that they had to meet by the end of 1963, in order to be invited to the 1964 Tokyo Games.<sup>90</sup> Failure to satisfy this test, meant their exclusion from those Games. This was because the IOC took the view at Baden-Baden that SANOC had not done enough. The IOC credited SA as having made “important progress ... there was still much to be done”.<sup>91</sup> As the Rome promises had not been implemented.

The first Baden-Baden criterion was that SANOC had to declare its support for the Charter and its spirit. The IOC specifically wanted to see support of Principle I: that the Games are “fair and equal competition” with “no discrimination ... against any country or person on grounds of race, religion or politics”.<sup>92</sup> They also wanted to see a declaration supporting Charter Rule 24 that “every athlete will be entered in the Games, provided that he has the standard necessary and whatever his colour may be.”<sup>93</sup> The IOC were therefore attempting to ensure some guarantee from SANOC that their athlete selection would be honest and fair. The second Baden-Baden requirement placed on SANOC, and in direct contrast to non-politicisation, was that it had to secure from its government, a change in policy regarding racial discrimination in sports in SA. This was an ambitious task to secure in the last quarter of the year.<sup>94</sup>

These declarations and changes did not occur and the Baden-Baden requirements were unfulfilled. This led to the unprecedented situation of SANOC being excluded from Tokyo 1964. It remained affiliated to the IOC with their return to Olympic participation secured should they fulfil the Baden-Baden conditions. It seemed hopeful and likely that SA would return for the following Games in Mexico City 1968.

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<sup>90</sup> Via a Resolution made at the Baden-Baden Session, Extract of Minutes, n. 88.

<sup>91</sup> Baden-Baden Session, Extract of Minutes Baden-Baden 1963, n. 88. See also, SA’s failure to comply with its assurances to the IOC given at the 57<sup>th</sup> Rome Session 1960. The IOC warned them in writing that if their government’s policy of racial discrimination did not change before the 1963 Session, then they would be suspended. IOC, Extract of Minutes of the 57<sup>th</sup> Session of the IOC, Rome, 22<sup>nd</sup> August – 23<sup>rd</sup> August 1960 <<http://library.la84.org/OlympicInformationCenter/OlympicReview/1960/BDCE72/BDCE72q.pdf>> accessed 9<sup>th</sup> July 2015. See also IOC, Extract of Minutes 59<sup>th</sup> Session of the IOC Moscow, 5<sup>th</sup> June – 8<sup>th</sup> June 1962 <<http://library.la84.org/OlympicInformationCenter/OlympicReview/1962/BDCE80/BDCE80o.pdf>> accessed 9<sup>th</sup> July 2015

<sup>92</sup> 1958 Charter - Fundamental Principles, Rules and Regulations of the IOC, <[www.olympic.org/Documents/Olympic%20Charter/Olympic\\_Charter\\_through\\_time/1958-Olympic\\_Charter.pdf](http://www.olympic.org/Documents/Olympic%20Charter/Olympic_Charter_through_time/1958-Olympic_Charter.pdf)> accessed 11<sup>th</sup> February 2016.

<sup>93</sup> It also required NOC to “not associate themselves with matters of a political or commercial nature” and “be completely independent and autonomous and entirely removed from all political, religious or commercial influence.”

<sup>94</sup> Although SA were given longer to fulfil the requirements, BBC, On This Day – 1964: South Africa Banned from Olympics, <[http://news.bbc.co.uk/onthistday/hi/dates/stories/august/18/newsid\\_3547000/3547872.stm](http://news.bbc.co.uk/onthistday/hi/dates/stories/august/18/newsid_3547000/3547872.stm)> accessed 4<sup>th</sup> February 2016.

The second factor that led to the IOC's revocable exclusion of SA was the gathering pressure and successes in the early-mid 1960s of the organisations formed to tackle (sporting) apartheid. For example, in 1966 after having increased its international campaign, SANROC was allowed to affiliate to the Association of National Olympic Committees of Africa (ANOCA). The Supreme Council for Sport in Africa (SCSA) was also established in 1966 by the Organisation of African Unity (OAU), thus it had political backing.<sup>95</sup> Its mission was to have SANOC (or apartheid SA) excluded from the Movement by whatever means necessary. They with their allies, introduced the idea of boycotts of the Games if SA were allowed to compete. The founding and successes of these bodies shows that within Africa, sporting racism was political and needed to be tackled accordingly.

#### 7.5.6 Token Compromise, Non-politicisation and a Fact-Finding Commission 1967

##### *7.5.6.1 Token Compromise*

The presence and actions of these anti-apartheid sports bodies prompted SANOC to propose a compromise at the IOC's Tehran Session 1967 and meet their IOC obligations as they saw it.<sup>96</sup> SANOC suggested that separate sports committees would hold trials to select athletes, feeding in to an eventual single mixed race team.<sup>97</sup> They claimed this would uphold Charter Fundamental Principles of non-discrimination and inclusiveness, and not breach apartheid rules and laws that prohibited different races competing against each other on home soil. SANOC attempted to further demonstrate their agreeability by offering a revocation of the policy against mixed race international competition. However, as shall be shown this proposed compromise proved unacceptable.

##### *7.5.6.2 Reiteration of IOC Non-politicisation*

However, once more, the conflict between non-politicisation and the IOC's prescribed mandate caused problems here.<sup>98</sup> As already seen, the IOC had restricted itself to solely tackling whether SANOC had breached its Charter obligations.<sup>99</sup> This was expressly reiterated by

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<sup>95</sup> At their Executive meeting in Mali, Nongogo, n. 2.

<sup>96</sup> At the IOC Session in Tehran 1967, Extract of the Minutes of the 65<sup>th</sup> Session of the IOC Tehran May 1967, <<http://library.la84.org/OlympicInformationCenter/OlympicReview/1967/BDCE98/BDCE98w.pdf>> accessed 20<sup>th</sup> September 2016.

<sup>97</sup> Similar to Brundage's solution a few years earlier.

<sup>98</sup> This problem initially prevented its involvement in the 1950s but was still being cited by the IOC as a rein on their action by the late 1960s, Mbaye, n. 24.

<sup>99</sup> Specifically the non-discrimination Rules 24 and 25, Mbaye, n.24.

Brundage to Killannin in 1967, where he said that “our concern is with the NOC and what it is doing to comply with Olympic regulations.”<sup>100</sup>

The IOC was clear on what its role was not – it was not to examine whether the SA’s government or apartheid were contrary to the OC. This was political meddling and to be avoided. Brundage specifically stated this, as “We must not become involved in political issues” as sport and politics should not mix.<sup>101</sup> He added that the IOC “does not deal with governments nor with the political policies of any country” and that apartheid was an internal matter for SA.<sup>102</sup> However, this overlooks that sport and the fight for political liberties were inevitably linked.<sup>103</sup>

However, it is worth noting that whilst the Charter is clear on the Movement being non-political, it could be abused by others for such purposes. This explains why Brundage qualified the non-politicisation of the IOC in 1967 by saying, “nor permits the Games to be used as a tool or as a weapon for extraneous causes”, targeting the anti-apartheid movement.<sup>104</sup> What the IOC failed to address both then and now, is that it was being used as a political tool/weapon by SA’s government to reinforce apartheid. The IOC’s stance also overlooks the difficult position of SANOC. If they held open domestic trials this would potentially breach SA’s apartheid laws/policies. This was the reason for the offer of international trials in 1962 or the offer of separate trials with a mixed composite eventual team in 1967, and would remove them from the jurisdiction of SA’s courts. These were the only legal offers it could legally make then. However, Nongogo says such an interpretation is naïve as SANOC had the same views as its government on apartheid, which Brundage and the IOC did not appreciate.

Despite the desire for non-politicisation, the IOC via Brundage, nevertheless formed a view on apartheid, it:

“did not approve either the government of SA nor of its policies... if we [the IOC] were to judge apartheid *per se* it isn’t necessary to send a commission at all”.<sup>105</sup>

This appears to support the human rights campaigners yet commits to nothing specific. Furthermore the word ‘of’ is strategically omitted after ‘approve’. A strict interpretation of this statement is that Brundage is not making a judgement of SA’s policies or its government, but

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<sup>100</sup> Ibid.

<sup>101</sup> Brundage, in Mbaye, n. 24.

<sup>102</sup> Brundage to Killannin 1967, Mbaye, n. 24.

<sup>103</sup> Epsy, n. 5.

<sup>104</sup> And African, communist states and those oppressed within South Africa, Mbaye, n. 24.

<sup>105</sup> Brundage was making reference here to the fact finding commission that was to be sent to examine a breach of Charter obligations, Mbaye, n.24.

is akin dispensation of recognition. This lack of significant international condemnation of SA/apartheid, in favour of a suggesting a lack of recognition, again shows the IOC's hesitancy and averseness in addressing the question in the 1960s.

Alternatively, Brundage could be balancing IOC observance of Charter Fundamental Principles (non-politicisation) in order to meet other Charter obligations (non-discrimination and inclusion). As with all rights, this suggests that they can compete and that there exists a hierarchy of Charter rights, with non-politicisation being more important than inclusiveness and non-discrimination.

#### *7.5.6.3 Fact Finding Commission and SA's Invite to Mexico 1967-8*

Nevertheless, despite SANOC's suspension, the IOC was still "ben[ding] over backwards" to keep SA in the Movement. To attempt to definitively settle whether SANOC had breached its Charter obligations, the IOC sent a three member fact-finding commission, chaired by Lord Killannin to SA in September 1967.<sup>106</sup> Potentially this gave the IOC more time and meant that it was 'seen to be doing something'. However, the contribution of this commission and its Report to SA's Movement exclusion cannot be overlooked and due credence must be given to it, albeit it did not initially deter the SA's Mexico invite, which shall now be discussed.

The commission delivered its Report to the Executive in January 1968. This was in advance of the February 1968 Grenoble Winter Games and its 66<sup>th</sup> Session.<sup>107</sup> A postal vote was to occur at the Session regarding the commission's findings and whether to readmit SA. However, instead of debating the commission's findings, the Session focused on procedural voting matters. The Executive had decided that the SA vote should be by post,<sup>108</sup> but the February Session suggested a live vote which some IOC members disputed. The change was allegedly due to the importance of the vote and the resultant increase in attending members. A postal vote was considered irregular by the Session when the majority of members were present.<sup>109</sup> Thus instead of debating the actual issue, the Session voted on whether a live or postal vote should occur. The outcome was that a postal vote would occur as it had previously been announced and would have affected the attendance of many members.

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<sup>106</sup> Nongogo, n. 2.

<sup>107</sup> 1<sup>st</sup> – 6<sup>th</sup> February 1968, Nongogo, n. 2.

<sup>108</sup> Two months previously, Ibid.

<sup>109</sup> 42 indicated that they would attend, whereas 55 actually attended, which was the majority of members, Ibid.



Thereafter, the actual (postal) vote occurred. The IOC asked its member whether SANOC should be invited to the 1968 Summer Mexico Games. An absolute majority thought that it should. Hence the IOC and the Mexico City OCOG thought that SANOC had made sufficient progress to be invited. On the 15<sup>th</sup> of February, during the Winter Games, the IOC announced SA's invite, on the proviso that all sport discrimination end by the 1972 Munich Games. The result could be due to the anti-apartheid supporters not having significant IOC/Executive and were impotent in affecting the outcome.<sup>110</sup>

Therefore even by the late 1960s, the Tokyo Games suspension was still viewed by the IOC as a one-off. A second chance was being given provided SANOC fulfilled a future condition. The IOC therefore hoped this would be sufficient to appease the anti-apartheid supporters and chastise SANOC.

#### 7.5.7 International Backlash – First Proposed Boycotts 1968

The Mexico invite was not well received by the international community. Many African countries, via the SCSA and the OAU, announced their withdrawal and their intent to boycott Mexico.<sup>111</sup> The proposed boycott had an element of government backing as the Mexican government announced that it would not issue visas to SA and was somewhat propagated by the UN.<sup>112</sup> This governmental legitimisation could be what resulted in the boycott achieving its goals.

The IOC was not initially concerned by these boycott threats. Brundage responded by saying that the “Games must go on”.<sup>113</sup> He saw no need to investigate nor call a special IOC Session to address the problem. It is likely this was because these African countries had little clout either politically or at the IOC. The IOC may not have felt that their absence would be detrimental to the Games. Furthermore, the IOC would not want to create a precedent of yielding to boycotters when it felt it had already addressed the issue.

However, the African boycott burgeoned to include more states and groups. Those from the Caribbean, the Islamic world, African-American athletes from the USA,<sup>114</sup> and crucially, India and the USSR and her Eastern bloc states, all threatened to join. The number of states

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<sup>110</sup> Or that power rested with those that supported South Africa, Ibid.

<sup>111</sup> The SCSA initiated the campaign for a boycott, Gonzales, Sarah, Trans-National Resistance Forces South Africa Out of the Mexico City Summer Olympics 1968, Global Non-Violent Action Database <<http://nvdatabase.swarthmore.edu/content/trans-national-resistance-forces-south-africa-out-mexico-city-summer-olympics-1968>> accessed 4<sup>th</sup> February 2016.

<sup>112</sup> And supported by the OAU, James, n. 52.

<sup>113</sup> Brundage in Mbaye, n. 24.

<sup>114</sup> Organised in the US by the American Committee on Africa, Nongogo, n. 2.

threatening a boycott was over 32.<sup>115</sup> They all stated that they would not participate if SANOC were present. The IOC were not prepared to risk losing the participation of this large number of states, and were most likely swayed by the proposed Eastern bloc departure and consequently rescinded SA's Mexico invite.

#### *7.5.7.1 Reasons for Revocation of South Africa's Invite to Mexico*

The weight of this threatened boycott was heavy with four reasons emerging for the IOC's rescission. Each reason demonstrates the political and legal significance of the IOC in the fight against apartheid and shall be discussed in turn. However, ultimately one of the four factors was more persuasive than the others – the Russian threat.

The first reason forcing IOC reconsideration of its SANOC invite was its fear that the 32 states would abandon the Movement and join the potential rival mega-sporting event, the Games of the Newly Emerging Forces (GANEFO). Therefore, it was not solely the number of boycotting states or their political might that forced an IOC turnaround, but it was these *plus* the existence of a rival Games. The GANEFO Games were organised and aimed at second and third world countries that shared political ideologies. They deliberately attempted to rival the Games. They took place in 1964 (Jakarta) and 1966 (Phnom Penh), with 51 states attending Jakarta.<sup>116</sup> With its political links, GANEFO stood in stark contrast to the non-political Movement. GANEFO's constitution deliberately and systematically fused politics and sport.<sup>117</sup> Hence the IOC appeased the majority of its boycotting members over SANOC, in order to keep the former in the Olympic fold. GANEFO's ultimate demise and regionalisation reinforces the fact that the IOC made the right choice in dealing with SA and maintaining its non-politicisation. The IOC chose the will of the majority of its members over the will of one rogue nation, with only marginal involvement in politics rather than GANEFO's complete politicisation.<sup>118</sup>

The second reason why IOC rescinded SANOC's Mexico invite was because the USSR and her Eastern bloc allies indicated they would join the boycott, and was briefly mentioned above.<sup>119</sup> It was not necessary for the USSR to actually boycott. Their threat was enough to

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<sup>115</sup> There is some dubiety over the actual number but the members of the SCSA (32 African countries) with Iraq, Syria, Pakistan, Malaysia, Saudi Arabia and Cuba joining in and the USSR and India threatening to join in too, Nongogo, n. 2. See also Mbaye, n. 24.

<sup>116</sup> Some sent elite others sub-Olympic standard athletes, Mbaye, n. 24.

<sup>117</sup> Field, Russell, *The Olympic Movement's Response to the Challenge of Emerging Nationalism in Sport: An Historical Reconsideration of GANEFO*, <[https://doc.rero.ch/record/24926/files/Russell\\_Field\\_-\\_report.pdf](https://doc.rero.ch/record/24926/files/Russell_Field_-_report.pdf)> accessed 5th June 2015.

<sup>118</sup> In additions GANEFO was marginalised as its second edition became Asian only, Field, n. 117.

<sup>119</sup> Gonzales, n. 111.

exact a change on IOC policy. This shows how important Soviet (*et al*) participation and opinion was to the IOC due to its collective policy making might and its athletic achievements.<sup>120</sup> The IOC chose Soviet inclusion and deference to Soviet policies over SA's (and potentially its own). This suggests the IOC thought that the success of the Games rested on the participation and accommodation of certain key players, one of whom was the USSR and not SA.

However, it was not the weight of the USSR's threatened boycott alone that prompted the IOC's turnaround. It was this in combination with the aforementioned fear of them leaving permanently for GANEFO that shook-up the IOC. However, once more the IOC's worry here would prove to be unfounded. The USSR did not plan on leaving the Movement for GANEFO - they did not wish to jeopardise their Movement standing.<sup>121</sup> Furthermore, the USSR wished to attend the Games to demonstrate their athletic accomplishments to the non-communist world. This required remaining within the Movement. Thus international politics and the cold war were ultimately the wielder and tool in achieving Soviet objectives. This meant that the boycott's success can be attributed to cold war politics and that the Games were nonetheless and inevitably politicised.

The third and related reason to the above two, that forced the IOC's reconsideration of inviting SA, was that the Mexican OCOG was concerned its Games would be deserted, with only a handful of NOCs attending. They therefore requested that the IOC reconsider its invite to SANOC. This shows that a temporary and ever-changing OCOG, albeit with governmental links by way of the Host contract, can exert significant control over IOC behaviour regarding who was invited. It also highlights an interesting facet of the Movement-OCOG relationship. As seen in Chapter 2, the Games are held by a Host and an OCOG, and although independent, they are influenced by their citizens, city councils and governments to hold their Games in a manner compatible with their legislative framework and conception of rights. Here the IOC deferred to the Mexico OCOG, suggesting that the latter had organisational and political superiority over the IOC.

There is also a fourth reason for the revocation of SA's Mexico invite and this look to what was happening in the formation of international law. In 1969, the ICERD became effective that incidentally tackled the issue of apartheid. However, within four years an actual

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<sup>120</sup> Since its first Olympic participation in 1952. The Russian Empire had competed 1900-1912, before the October Revolution.

<sup>121</sup> They sent a team to GANEFO who were sub-Olympic standard. Although some Soviet allies did leave for GANEFO, Nongogo, n. 2.

convention against apartheid was deemed necessary and the International Convention on the Suppression and Punishment of the Crime of Apartheid was passed. Hence with the international community taking a zero tolerance attitude towards apartheid and its racial discrimination, the Movement had to follow suit. Although it technically was not a traditional subject of international law or one of the conventions' signatories, it would nonetheless not want to be seen as taking action contrary to its terms.

#### 7.5.8 The IOC's second suspension of South Africa 1968

In the face of these potential boycotts and complaints, the IOC Executive were compelled to act. It called a meeting on the 21<sup>st</sup> of April 1968 to seek a diplomatic resolution. It put the question of SA's second exclusion to its members.<sup>122</sup> This time the votes were significantly in favour of SANOC's invitation being revoked, at 47-16.<sup>123</sup> Supporters of SANOC mainly came from Northern European and English speaking countries.<sup>124</sup> On such a conclusive majority, the IOC was forced to exclude SANOC with the official recommendation being that,

“due to the international climate the Executive ... is of the opinion it would be most unwise for SA to participate.”<sup>125</sup>

Hence the exclusion only related to the 1968 Mexico Games and was not yet an entire Movement exclusion.

#### 7.5.9 South Africa's Eventual Olympic Expulsion 1969 - 1970

The IOC would take steps towards full expulsion the following year as this required more 'due process' than mere suspension.<sup>126</sup> It established a committee to further investigate SANOC and to find out whether there was merit to the allegations of Charter breaches. The committee found such a breach and its Report contained seven specific allegations of discrimination.<sup>127</sup>

In May 1970, at the IOC's Amsterdam Executive and Session, the IOC put forward a vote on whether to retain SANOC in the entire Movement. This would go further than the

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<sup>122</sup> And by this time Rhodesia's too, Mbaye, n. 24.

<sup>123</sup> With 8 abstentions, Mbaye, n. 24.

<sup>124</sup> Such as Germany, Scandinavia, USA and Australia, *ibid*.

<sup>125</sup> SANOC maintained the semblance of international sport by hosting the SA Open Games 1969 for international white athletes, Nongogo, n. 2.

<sup>126</sup> Reddy, n. 31.

<sup>127</sup> Alongside intellectual property infringement in SA (they used the Olympic rings at their games which were unauthorised), Mbaye, n. 24.

temporary Games bans of the 1960s. The permanency of this solution explains why the result was closer than the last, with 35 votes in favour and 28 against. Nevertheless, the IOC members had spoken. For the ongoing success and non-politicisation of the Games, the IOC formally expelled SANOC in 1970, an unprecedented act in IOC history. One small politicised act of expulsion, due to abhorrent domestic laws, was favoured in order to deter future political boycotts. SA would not reappear at the Games until 1992, post-apartheid.<sup>128</sup> There was no hope for future SANOC participation and re-admission until their racial segregation policy in sport had ended.

It easy to assume that international politics and states were the primary instigators behind SA's expulsion. However, this overlooks other events, both inside and outside of the sporting world. Firstly, within the sporting world, the NSFs and ISFs were the unsung heroes who lobbied for change. Their global reach and their degree of autonomy helped create sufficient pressure on the IOC for change. Their anti-apartheid stance was in turn influenced by many African states, with whom they fought alongside. Many Olympic and non-Olympic ISFs excluded SA's uni-racial NSFs, such as judo and wrestling.<sup>129</sup> However, heavyweight sports, with large international memberships and significant South African participation, such as rugby, did not take action until the 1970s.

Secondly, out-with the sporting world, non-sporting boycotts, economic sanctioning and the actions of the UN worked collectively with the international sports community to end apartheid. For example, the Dutch boycotted SA's citrus company Outspan and shell oil.<sup>130</sup> These wider sanctions and measures began to take hold in the early 1970s and shall now be discussed.<sup>131</sup>

## 7.6 Expulsion to Re-admission 1992 - South Africa's Growing Isolation

### 7.6.1 A New Type of Boycott Aimed at South Africa's Sporting Competitors

With SA excluded from the Games it was hoped that this isolation would force them to end apartheid. However, this proved unforthcoming. SA still competed sportingly and gave enticement to others to secure this.<sup>132</sup> Therefore to further isolate SA and force it to end apartheid, there was attempted sporting sanctioning of those who broke that isolation and

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<sup>128</sup> Which was officially abolished in 1991, Nongogo, n. 2. See also Mbaye n. 24.

<sup>129</sup> Furthermore, in 1964 SA was suspended from fencing. In 1968 it was suspended from basketball and expelled from boxing. And in 1969, SA was refused ISF membership of judo, wrestling and pentathlon. Reddy, n.31.

<sup>130</sup> From the 60 -90s, Nongogo, n. 2.

<sup>131</sup> The UN shall be discussed below in detail in section 7.8.

<sup>132</sup> They had many tactics to circumvent the isolation (large cash prizes and discrete last minute competitions) which promised international competition to their own white athletes. Reddy, n. 31.

engaged with SA. For example, in 1976 the NZ rugby All Black Team toured SA.<sup>133</sup> The tour occurred a few weeks after the massacre of hundreds of protesting High School students in Soweto.<sup>134</sup> The indelicacy of this timing prompted many African, Middle Eastern and Caribbean states to call for NZ's exclusion from the 1976 Montreal Games, failing which, they would boycott once more.<sup>135</sup>

However, this time, unlike the previous Games the IOC refused to discuss the NZ issue or its sanction. The IOC would not diplomatically engage with the concerned parties. However, Tanzania and the Congo were unsatisfied with the IOC's avoidance and sought to recreate the success of the earlier threatened boycott to the Mexico Games. They led 29, mainly African states, to boycott the Games, and almost a whole continent did not participate in the Montreal 1976 Games.<sup>136</sup>

There were a few differences in this Montreal boycott as compared to the previous (threatened) ones. Firstly, many of the National Teams were in Canada, ready to compete but chose not to at the last minute,<sup>137</sup> or had participated but later withdrew.<sup>138</sup> The uncertainty of their participation meant many events were cancelled or re-scheduled. The boycotters sought to achieve their objective via confusion. Therefore this was an evolution from the threatened abstention in the 1960s.

Secondly, the IOC did not respond to the 1976 boycott. It considered it had addressed the SA problem by expelling it. They were unwilling to ban further NOCs for policies not of their making. This shows an IOC desire to inflict sanctions directly on SA and not on third party states for their interaction with SA. The IOC was therefore re-asserting their dominance over the Games and its non-political stance, following the SA exception. It also seems likely that the IOC were attempting to avoid a vilification and ostracisation of NZ. Even though the 1976 Rugby tour went ahead, the country had a long history of opposing South African sporting

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<sup>133</sup> BBC, On This Day, 17<sup>th</sup> July 1976 African Countries Boycott Olympics <[http://news.bbc.co.uk/onthisday/hi/dates/stories/july/17/newsid\\_3555000/3555450.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/july/17/newsid_3555000/3555450.stm)> accessed 11<sup>th</sup> February 2016.

<sup>134</sup> BBC, On This Day – 16<sup>th</sup> June 1976 – Soweto Protest Turns Violent <[http://news.bbc.co.uk/onthisday/hi/dates/stories/june/16/newsid\\_2514000/2514467.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/june/16/newsid_2514000/2514467.stm)> accessed 11<sup>th</sup> February 2016.

<sup>135</sup> Alongside a lack of expressed regret by the NZOC, Reddy, n. 31.

<sup>136</sup> 26 African countries boycotted alongside Iraq and Guyana, but it is worth remembering that not all African states had NOCs then (Botswana). China also boycotted for other reasons. Mbaye, n. 24.

<sup>137</sup> E.g. Swaziland participated in the opening ceremony but did not compete. IOC, Africa and the XXIst Olympiad, <<http://library.la84.org/OlympicInformationCenter/OlympicReview/1976/ore109/ore109h.pdf>> accessed 5th June 2015.

<sup>138</sup> E.g. Morocco and Tunisia, Ibid.

apartheid.<sup>139</sup> If it had banned NZ, then perhaps there would be no NOCs left to attend the Games!

Thirdly, this time the boycott did not involve the USSR and the Eastern bloc states. Any detrimental effect that their absence would have did not arise. Therefore the boycott had less international escalation and clout.

Fourthly, and the IOC's espoused reason for its resistance to a threatened boycott, was that the matter concerned rugby, an 'Empire' and not an 'Olympic' sport.<sup>140</sup> The All Blacks had no links to the NZ Olympic Committee (NZOC), and therefore the IOC felt it had no mandate for its sanctioning. Hence NZOC were permitted to attend the Montreal Games. Thus the IOC was operating within its Charter mandate, including its non-politicisation, as it had in earlier dealings with SA, with the exception of its 1970 expulsion.<sup>141</sup>

#### 7.6.2 Empire Sports and Commonwealth Action – The Last Nail in the Coffin 1977

The IOC did not appreciate Empire sports' and the Commonwealth's potential contribution to fighting apartheid. Such sports were SA's focus, before and after, its Olympic exclusion. SA competed intermittently with Commonwealth countries in Empire sports during its Olympic exclusion years, although they had been banned from the Commonwealth Games since 1958. However, occasionally, teams would refuse to play against SA.<sup>142</sup>

This encroachment on SA's isolation led the Heads of Government of the Commonwealth to target the inroads SA was making into international Empire/Commonwealth sport, as opposed to Game or Commonwealth Games participation. It did this by adopting the anti-apartheid Gleneagles Agreement in 1977 (GA77).

However, the Agreement did not purely stem from altruistic desires to preserve human rights. The Heads of Government were concerned that their Commonwealth Games would be adversely affected by protests and boycotts, despite their exclusion of SA. The Commonwealth Games were in a difficult position. If they sanctioned those who engaged with SA then this would adversely affect its dominant Anglo members. And if it did not sanction these third

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<sup>139</sup> NZ demonstrated *en masse* when SA's rugby team toured it showing their support for non-racial sport and previous tours such as the 1974 had been cancelled due to this public opinion and the coinciding threat to boycott the 1974 NZ CGs (by Indian and African countries). There were also demonstrations in Australia at rugby tours by SA. These proved to be readily apparent, but it was difficult stopping these nations touring SA. Reddy, n. 31.

<sup>140</sup> Such as Rugby Union, cricket etc., Reddy, n.31

<sup>141</sup> E.g., when it discussed whether it had met the Charter obligations or not, Reddy, n. 31. See also Mbaye, n. 24.

<sup>142</sup> E.g., Australia in 1971 'broke with SA in cricket and rugby', and cancelled a rugby tour, Reddy, n. 31.

parties, then potentially, the more numerous but less influential states, could boycott the CGs. Hence the GA77 was the Commonwealth's concession to the anti-apartheid campaign.<sup>143</sup>

#### *7.6.2.1 The Gleneagles Agreement 1977*

The GA77 recalled and reaffirmed the Singapore Declaration of Commonwealth Principles 1971. The Singapore Declaration denounced racism generally and reaffirmed this with regard to apartheid sport.<sup>144</sup> The GA77 then added that apartheid in sport is an abomination and that sport:-

“is an important means of developing and fostering understanding.... [that] sporting contacts... encourage[d] the belief (however unwarranted) that [such nations] are prepared to condone this abhorrent policy or are less than totally committed to ... the Singapore Declaration... [it is] the urgent duty of each of their governments vigorously to combat... apartheid by withholding any form of support for, and by taking every practical step to discourage contact or competition by their nationals with sporting organisations, teams or sportsmen from SA.”<sup>145</sup>

Albeit it was left to the governments to determine how to discharge this obligation, its intent is clear. There was to be no games with SA, at home or abroad. This condemnation and call for action/avoidance of SA therefore goes further than the Movement's attitude of the time which was to tolerate those that did play with SA. Albeit both the Commonwealth's and the Movement did not call for actual sanctions for those that played against SA.

Furthermore the GA77 is significant. It is an international commitment by governments to act or refrain from acting in a certain manner. However, it overlooks the problem that it is not governments that arrange these sporting competitions but individuals, teams, federations and organisations, aside from the marginal input governmental authorities have in the two mega-events of the Games and the CGs. This may explain why the 'methods' section of the GA77 is blank. States themselves must fulfil this obligation by methods at their disposal, for example, by visa or passport refusal.

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<sup>143</sup> Reddy, n. 31.

<sup>144</sup> The Singapore Declaration, 22<sup>nd</sup> January 1971.

<sup>145</sup> “Or from any other country where sports are organised on the basis of race, colour or ethnic origin.” GA77.



#### 7.6.2.1.a) *Economic Sanctions Against South Africa – 1970s – 80s*

The Commonwealth's isolation of SA coincided with UN developments,<sup>146</sup> and the flurry of boycotts from consumers and businesses in the 1980s. The economic boycotts and embargoes were intended to hit SA hard. Banking,<sup>147</sup> oil,<sup>148</sup> agriculture,<sup>149</sup> were all affected. SA had difficulty exporting its major resources of gold, diamonds, uranium, coal and agriculture. Reconciliatory meetings began in the commercial world in the late 1980s and sporting organisations, not wanting to be 'left behind', began re-integratory attempts.<sup>150</sup> However, SANOC failed to be invited to Seoul 1988 and SA was excluded from the first rugby union World Cup in 1987, which was sorely felt domestically amongst whites.<sup>151</sup> Thus in the late 1980s, although dialogue had begun, there was no turn around in IOC policy. The IOC would exclude SA for as long as apartheid continued.<sup>152</sup>

#### 7.6.3 IOC's Institutional Action Against Apartheid – 1980s

The IOC, in the mid-late 1980s, contributed two developments in the eradication of racial sporting discrimination. These coincided with the UN's amplification of the matter via its International Convention Against Apartheid in Sports (ICAAS) and its 1986 SC Resolution 591, mandatorily calling for an arms embargo against SA.<sup>153</sup> The first IOC development was that it adopted on the 21<sup>st</sup> of June 1985, the Declaration Against Apartheid In Sport and, secondly thereafter, it helped form the Apartheid and Olympism Commission. Each shall now be examined to determine how effective they were in ending apartheid.

#### 7.6.4 Declaration Against Apartheid in Sport 1985

The IOC was keen to reaffirm its anti-apartheid stance in the 1985 Declaration, made the same year as the UN's ICAAS.<sup>154</sup> However, neither organisation were the first to make such

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<sup>146</sup> Such as the UN Special Committee Against Apartheid, Mbaye, n. 24.

<sup>147</sup> In 1982 banking boycotts meant SA had to borrow from international banks, who were asked to join the boycott, Nongogo, n. 2.

<sup>148</sup> This targeted the Anglo-Dutch company Shell and Arab countries had an oil embargo thus forcing SA to pay more for its oil, *ibid*.

<sup>149</sup> Almost all South African agriculture had disappeared internationally, Nongogo, n. 2.

<sup>150</sup> Mbaye, n. 24.

<sup>151</sup> Rugby officials were viewed as traitors for going to Harare and negotiating an entry with the A.N.C. and the non-racial SA RU, with the former backing the boycotts and sanctions. Mbaye n. 24.

<sup>152</sup> Samaranch re-iterated the position by saying that "apartheid cannot be reconciled with the Olympic ideal and is a source of concern for entire world. We must all fight to eradicate it whilst listening careful to the Africans who once this objective is achieved will tell us when and how SA can be reinstated in the international sports community from with the IOC was the first org to expel it.", Mbaye, n. 24.

<sup>153</sup> SC Resolution 591 followed many others calling for arms and parts embargoes against SA.

<sup>154</sup> "[S]olemnly reaffirms its position against apartheid in sport", Declaration Against Apartheid in Sport.

a Declaration against apartheid, given that the Commonwealth had done so seven years earlier in its GA77, and SA had been banned by certain ISFs.<sup>155</sup> Nevertheless, the IOC's Declaration urged:-

“all members of the Movement, particularly the ISFs included on the Olympic programme... [to] implement the IOC's previous recommendations to exclude or suspend South African NSFs and to discourage strongly sport contacts with SA and South Africans until the abolition of apartheid.”

Once more, this wording shows the importance of the ISFs in the fight to end apartheid due to their large network which was recognised by the international community.

The Declaration broadens its call, in a similar way to GA77, by stating that all sports organisations should refuse:-

“to enter into any contact, official or otherwise, of a sporting nature with official South African organisation or South African sportsmen and women.”

This call is categorical in its objectives specifying what bodies cannot do, rather than what they can do, thus the call is a prohibitive one.

However, the most important development made by the IOC's Declaration, similar to the Commonwealth's GA77, is that it is attempting to encourage other states to isolate SA. This is in addition to reaffirming previous acknowledgement of the abhorrence of sporting apartheid. Both documents urge states and organisations to not engage in sporting contact with SA, whether within the Games or non-Games orbit, whilst not providing for any sanctions if they do. However, the Declaration (unlike GA77), specifically labels sporting engagement with SA as a ‘disrupt[ion]’ to the Movement's unity. It is this disruption that justifies the IOC's mandate in directing non-apartheid parties i.e. third parties to isolate SA.

However, in addition to this IOC advancement, the Declaration goes further than historic IOC conduct in two further ways. Firstly, it is the IOC's first written attempt at a blanket SA exclusion extending beyond its Game's one. As the first IOC written Declaration on the matter, it goes beyond previous IOC action (including the ban) which focused on the merits of committees, meetings, debates and fact finding commissions in dealing with the SA problem.

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<sup>155</sup> E.g., the ITTF banned the all-white SA body in 1956 and FIFA suspended SA in 1961, Mbaye, n. 24. See also Nongogo, n. 2.

However, the Declaration's potential legal nature and the hardness of its obligation diminishes when considered in light of the Movement's infrastructure. The Declaration was the result of a conference of several IOC members, ISFs, NOCs, SANROC and those involved in African sports governance. This again shows the Movement's lack of legal bite as it is separate to governments and their legislatures who could give it such legal effect leading to real political change.<sup>156</sup> The Preamble also lays down the Declaration's purpose, which is to vigorously reaffirm the afore-mentioned parties' stance against sporting apartheid. Sentiments already expressly given at IOC Sessions and Executive Meetings, or impliedly given by way of SA's expulsion.

It is also worth noting that the IOC Declaration when compared to GA77 is a softer sentiment. The obvious reason being that the GA77 has states parties, whereas the IOC Declaration only has organisation parties. However, after this significant difference, the GA77 diminishes compared to the IOC Declaration. The GA77 only prohibits contact or competition with SA with everything else being left up to states to decide. Whereas the IOC Declaration provides more of a realistic framework and infrastructure for implementing the shared purposes. But this could be precisely because the parties are not states, who would not have made such an onerous commitment.

The second advancement made by the IOC Declaration, is its recognition of apartheid sport as a geographical problem, as "no non-African entity can purpose to impose a solution to resolve this specifically African problem." The IOC therefore views the problem as only affecting Africans and is not one of general global racial discrimination. This is another IOC attempt to prevent the involvement of other states. Although the Declaration also gives Africans, whether or not within SA, the ability to accept or deny solutions.

This Declaration closed with a re-affirmation of SA's Movement ban as no new 'elements' had developed, albeit it would "not be entirely satisfied" until SA returned on the non-negotiable criterion of abolishing apartheid.<sup>157</sup>

#### 7.6.5 The Apartheid and Olympism Commission 1988

The second manner in which the IOC developed its anti-apartheid stance was by way of the Apartheid and Olympism Commission established under IOC President Samaranch's

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<sup>156</sup> Stated in the Preamble, Declaration Against Apartheid in Sport.

<sup>157</sup> Which they stated was far from being the case, but not that long time wise considering the upcoming occurrences, Mbaye, n. 24.

impetus in 1988.<sup>158</sup> This Commission was to “study and follow all matters concerning apartheid in sport”, in order to monitor SA and develop a strategic approach to the problem.<sup>159</sup> It was headed up by IOC Executive Member Keba Mbaye and drew on the experiences of a variety of key anti-apartheid players, such as the SCSA, SANROC, human rights activists, and those involved in African sport governance and Olympism.<sup>160</sup> It was therefore a “treetop” campaign by the IOC where it drew “together all stakeholders”.<sup>161</sup> At the same time, negotiations began in earnest to end political and legal apartheid. All parties agreed that ending apartheid was a prerequisite to re-admission, including SANOC.

By 1989 following several meetings, some clandestine, Samaranch, Mbaye and Johan Du Plessis (SANOC President) agreed and accepted a ‘minimum’ set of conditions for SA’s Movement readmission, in addition to apartheid’s abolition.<sup>162</sup> These conditions were:- links to be established with South African athletes of all races; sport must be organised multi-racially; relations must be established with non-racial bodies in and outside of SA (e.g. SANROC) and neighbouring or African countries; and a normalisation of relations between a SANOC and ANOCA. Similar criteria were again espoused for re-admission in time for Barcelona 1992. However, there was real concern that although these conditions might be met on paper, that they would be token or superficial and would disguise that real progress in attitudes had not occurred. However, as time would show, SA fulfilled these criteria and competed at Barcelona.

#### 7.6.6 Samaranch’s Role in South Africa’s Re-admission

Samaranch is credited with a propulsion forward in IOC anti-apartheid policy in the 1980s. This was because he had a desire to uphold, and to be seen to be upholding, Charter Fundamental Principles, Olympism and Coubertin philosophies. Credit must be given to his role in encouraging SA to end apartheid and to return to the Movement. For example, he said that the-

“Movement has possibly a unique opportunity to show it[self] as one of the greatest and beneficial social forces of our time... This can’t coexist with apartheid.”<sup>163</sup>

<sup>158</sup> Samaranch took office in 1980. <[http://olympic-museum.de/president/pres\\_ioc.html](http://olympic-museum.de/president/pres_ioc.html)> accessed 20<sup>th</sup> September 2016.

<sup>159</sup> IOC, Structure of the Olympic Movement, <[www.olympic.org/Documents/Reports/EN/en\\_report\\_269.pdf](http://www.olympic.org/Documents/Reports/EN/en_report_269.pdf)>, 31<sup>st</sup> January 2002, accessed 11<sup>th</sup> February 2016. See also the Declaration Against Apartheid in Sport 1985.

<sup>160</sup> And future IOC Vice President, Mbaye, n. 24.

<sup>161</sup> Mbaye, n. 24.

<sup>162</sup> Johan du Plessis later became SG of INCOSA (with Sam Ramsamy as President), Russouw, Johann, History of the Olympics – South Africa’s Participation at the Olympic Games, The Medalist October 2012.

<sup>163</sup> 1990, in Mbaye, n. 24.

This shows that he is more definite in attacking apartheid than his predecessors, especially Brundage. Samaranch thought it his “duty to react committing [the IOC] to the peace and wellbeing of our society.”<sup>164</sup> Albeit Samaranch was President at a later time than Brundage, taking the helm once the civil and human rights movement of the 1960s had already won its successes.

#### 7.6.7 South Africa's Return – 1990s

With Samaranch as IOC leader at the turn into the 20<sup>th</sup> Century's final decade, a momentous turn around within SA occurred. In February 1990 President De Klerk announced to parliament that apartheid would end, political prisoners, including Nelson Mandela would be released from prisons within the fortnight and that the ANC was no longer banned.<sup>165</sup> With these political changes, there was at last no need for SA's exclusion and the resultant boycotts to continue.<sup>166</sup> De Klerk stated enthusiasm for non-racial sport as it was not in SA's interests to “be in a state of conflict with the rest of the world.”<sup>167</sup> This paved the way for bridges to be built unifying sport in the new SA but De Klerk did raise the issue of IOC double standards and victimisation of SA as many other countries had policies equivalent to or worse than SA.<sup>168</sup>

In order for SA to be invited to Barcelona 1992 they had three months to meet the IOC's conditions for readmission agreed between Samaranch and de Klerk. These conditions were similar to those agreed in the late 1980s but this time there were five. The conditions reiterated the requirement of full abolition of apartheid. Mbaye notes that this requirement was open to dubiety. However, what was sought was the removal of apartheid's three remaining pillars (neighbourhood segregation, race classification and the right to purchase land on equal footing). The conditions thereafter amalgamated the earlier ones: - resolving the differences between rival sports bodies in SA; unification of sports on non-racial grounds; and the establishment of good relations with other African sports organisations, especially ANOCA.<sup>169</sup>

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<sup>164</sup> Samaranch in 1999, in Mbaye, n. 24.

<sup>165</sup> And formal apartheid legislation was repealed the following year, e.g. the Population Registration Act 1950. BBC, On This Day – 1990 – De Klerk Dismantles Apartheid in South Africa <[http://news.bbc.co.uk/onthisday/hi/dates/stories/february/2/newsid\\_2524000/2524997.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/february/2/newsid_2524000/2524997.stm)> accessed 4<sup>th</sup> February 2016.

<sup>166</sup> SAs first representative democratically elected government came to power on the 10<sup>th</sup> May 1994 and the SA Question was removed from the UN Agenda that year. SA's Paralympic committee had an integrated team far earlier (1975), but were expelled in 1985.

<sup>167</sup> At the IOC Apartheid and Olympism Commission in 1991, in Mbaye, n. 24.

<sup>168</sup> “we were told we'd be readmitted if we modified the fundamental laws on which apartheid rested... currently seeing to this... we want to be sure that you'll not come with yet another condition... there are some countries which go unpunished although they do not systemically respect individual freedoms ... Why should there be double standards?”, De Klerk, in Nongogo, n. 24.

<sup>169</sup> Nongogo, n. 2. See also Mbaye n. 24.

However, there was the added and significant addition of Charter compliance by a new NOC, thus showing how the Charter ties into respecting human rights and that a sporting bodies' actions, depends on that of its government's laws.

#### 7.6.8 Foundation of a Multi-Racial South African NOC

Following the end of apartheid, a racially unified interim NOC was established, with the aid of ANOCA and Sam Ramsamy as President.<sup>170</sup> The word 'interim' was deleted from its name in July 1991 following fulfilment of the above conditions.<sup>171</sup> A full South African NOC, now called NOCSA, was therefore recognised by the IOC.<sup>172</sup> Much later, in 2004 NOCSA became the South African Sports Confederation and Olympic Committee (SASCOC) when it merged with other bodies.

At the same time as the Movement's reacceptance of SA, other sporting bodies clamoured to do likewise. For example, there was a competition between the IOC and the IAAF to see who would re-admit SA first, with the IOC blocking and delaying the IAAF's advancements so that it could make the first offer.<sup>173</sup> Once again, this shows the ISF's clout in bringing about an end to (sporting) apartheid and how the two streams of organisations worked together to help isolate SA and in turn, end apartheid.<sup>174</sup>

#### 7.6.9 South Africa at Barcelona 1992 and beyond

With a Movement and ISF welcome, NOCSA returned to the Games at Barcelona. It sent SA's first Olympic team since Rome 1960 and the first official racially diverse team.<sup>175</sup> Many of the vestiges of SA's identity were considered reflective of the apartheid government. Hence NOCSA first competed under the Olympic flag as the orange, white and blue one was considered inappropriate.<sup>176</sup> SA's current flag was not adopted until April 1994. They used Beethoven's Ode to Joy for medal ceremonies as SA's national anthem, '*Die Stem van Suid-*

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<sup>170</sup> In March 1991 in Gaborone under ANOCA's auspices. This followed another IOC Commission to SA to discover their progress, Mbaye, n. 24.

<sup>171</sup> At the IOC July 1991 Lausanne meeting. The Medalist, Sport Science Knowledge, The University of Pretoria October 2012 <[www.up.ac.za/media/shared/Legacy/sitefiles/file/1795/4917/ontherun25/octobermedalist.pdf](http://www.up.ac.za/media/shared/Legacy/sitefiles/file/1795/4917/ontherun25/octobermedalist.pdf)> accessed June 2015.

<sup>172</sup> On the 9<sup>th</sup> July 1991, Nongogo, n. 2. See also Nauright and Parish, n. 20.

<sup>173</sup> In 1990, Mbaye, n. 24.

<sup>174</sup> SA attended the Tokyo World Athletics Championships in August 1991 after the IAAF rescinded a four year ban.

<sup>175</sup> Saint Louis 1904 was an unofficial team.

<sup>176</sup> From 1928-94, Mbaye, n. 24.

*Afrika*’, represented the old SA.<sup>177</sup> The current anthem ‘God Bless Africa – *Nkosi Sikelel iAfrika*’ was not used until 1997. This shows a conscious effort to re-brand SA’s identity post-apartheid. However, there was some carry over from the old SA in the wearing of its famous green and gold colours. This was a concession to white South Africans who were particularly attached to these sporting colours.<sup>178</sup>

SA embraced Movement re-admission and was welcomed back swiftly.<sup>179</sup> It bid unsuccessfully for the 2004 Games, but it did host the 1999 All Africa Game in Johannesburg.<sup>180</sup> This shows that it was looking to solidify and re-establish its Olympic presence.

However, many felt that SA’s turnaround was swift and that although laws may have changed, attitudes had not and vast inequalities remained, like the concern in the late 1980s over SA’s ability to meet the IOC’s criteria for readmission.<sup>181</sup> Booth claims that unity was a sham and that figureheads were ceremonial. This sham explains why, almost nine years post-apartheid, NOCSA selection did not represent other NOC procedures as positive discrimination existed.<sup>182</sup> For Sydney, NSFs were to select athletes (as was normal practice) but on NOCSA pre-approved criteria (which was not normal). This demonstrated NOCSA’s attempt to “centralise power” and retain selection control over the NSFs.<sup>183</sup> NOCSA’s criteria was both objective and subjective, even in non-artistic sports, in order to secure mixed racial selection. Nevertheless, the IOC were unconcerned with ‘attitude changes’. They focused on practical changes. Ramsamy states that this would be evidenced by having resources and funding devoted towards multi-racial training in addition to having mixed teams and bodies.<sup>184</sup>

Since the end of apartheid, the IOC has sought to maintain and extend its mandate for dealing with international peace and security. Although laying down a mandate in this field for itself, it was nonetheless conscious of being used by political boycotters once more. Hence it has sought to prevent further boycotts and political misuse by third parties by:- the Truce and

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<sup>177</sup> Used from 1957-1994 and Ode To Joy in 1994, Editorial, South Africa Poaches on Europe’s Anthem, New York Times 24<sup>th</sup> November 1991.

<sup>178</sup> They also did not use the springbok emblem, but this was mostly reserved for rugby. Reddy, n. 31

<sup>179</sup> Booth, Douglas, The Antinomies of Multicultural Sporting Nationalism: A Case Study of Australia and South Africa, University of Otago, New Zealand <[www.aafila.org/SportLibrary/ISS/ISS2102/ISS2102h.pdf](http://www.aafila.org/SportLibrary/ISS/ISS2102/ISS2102h.pdf); <http://www.la84foundation.org/SportLibrary/ISS/ISS2102/ISS2102c.pdf>> accessed 15<sup>th</sup> June 2015.

<sup>180</sup> Which are under Movement auspices by way of being organised by SCSA, now ANOCA, Mbaye, n. 24.

<sup>181</sup> Full education and sporting integration has still not been achieved, Booth, n. 179. See also Nongogo, n. 2.

<sup>182</sup> To the complaint of many, such as the predominantly white hockey team, Reddy, n. 31.

<sup>183</sup> Mbaye, n. 24.

<sup>184</sup> Reddy, n. 31.

its IOTC/IOTF; the International Forums on Sport, Peace and Development; and securing UNGA observer status. The former are discussed further in Chapter 5. The latter development has meant that the IOC and the UN have formed a relationship utilising their different mandates and organisational set-ups to the maximum advantage in this field. Moreover by way of their constituent Charters, they share many goals, such as preservation of human dignity in a peaceful society. The UN's involvement in ending apartheid and its collective IOC work shall be discussed in Part Two, where the interplay between the state and non-state system in ending apartheid shall be examined, and that each bolstered the position of the other, reaching and acting in ways that only they could.



## Part II Observations on the South Africa Example

### 7.7 Extent of IOC Involvement in Ending Apartheid

The IOC has asserted that it was the first international sports organisation to address apartheid in sport in 1955, and to sanction it by SANOC's expulsion in 1970.<sup>185</sup> However, both parts of this are inaccurate.

Firstly, the IOC's assertion that it was the first international organisation to address apartheid, is a liberal interpretation of events. It did address the issue, but it did not do so of its own volition nor with a contemporaneously favourable outcome. In the mid-20<sup>th</sup> Century, apartheid was tabled at Sessions or Executive meetings by members from aggrieved states and NOCs. It was not at the behest of the large majority of the IOC or its Executive Members. Hence the IOC has embellished its involvement and has erased its avoidance and ignorance of the issue through inaction. The IOC was latterly involved in the anti-apartheid struggle, but in the early years, its participation was not at the level that it would suggest.

Secondly, the IOC's statement that it was the first organisation to sanction SANOC in 1970 also ignores that SA were rendered *de facto* ineligible for the Commonwealth Games due to their Commonwealth's expulsion. This was based on SA's domestic policies and vociferous complaints from other Commonwealth member states. After, 1958, SA did not compete in the Commonwealth Games until 1994, an earlier exclusion than their Olympic one.

Hence IOC claims of a pivotal involvement in ending apartheid can be considered important but not decisive or central. Part II will identify any other actor(s) who had a more decisive or central role in ending apartheid.

Identification proves tricky due to the multitude of interlinking actors, political and non-political. This is why exacting further political or sporting change, by the IOC, post-apartheid has been difficult to replicate. With regard to apartheid, the involved actors and the surrounding crucible, helped wilt the IOC's ignorance and evolve it into decisive action and exclusion.<sup>186</sup> And in turn, this helped end apartheid. Each of the contributing factors and actors will be assessed in turn, with a determination of their influence on ending apartheid, as compared to that of the IOC. The influential factors can be divided into 'actors' and

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<sup>185</sup> "[T]he IOC became the first international sports organisation to exclude SA because of apartheid", Mbaye, n. 24.

<sup>186</sup> Mbaye, n. 24.

‘circumstances’, albeit that the actions of one may deliberately or inadvertently have led to the other.

## 7.8 UN Involvement in Ending Apartheid

Until now, examination of the end of apartheid has focused on the input of the IOC, the NSFs, the ISFs and the Commonwealth. It has largely ignored the significant contribution of the UN.<sup>187</sup> The UN contributed many valuable developments to the anti-apartheid movement by way of:- discussions;<sup>188</sup> Conventions;<sup>189</sup> UN resolutions; establishing and supporting embargoes and boycotts; establishing the Special Committee Against Apartheid; compiling a Register of sporting and cultural contacts with SA; and drawing together and legitimising the anti-apartheid movement.<sup>190</sup> These all helped diminish apartheid’s legitimacy in the international state system. Many of these developments interlinked with the work of other bodies, including the IOC.

As the UN is the appropriate forum for dealing with international political issues, its contribution to ending apartheid as compared to the IOC, must be undertaken with the caveat that it is inherently more capable of dealing with the issue. This is why an examination of UN involvement in SA and sports is necessary. However, unlike the IOC, the UN could not address the bodies that practiced sporting apartheid as these were not under its international legal jurisdiction or its subjects.

Furthermore, the SA issue shows the inextricable linking of the international UN state system with the international Olympic sporting system on three grounds. Firstly, and again, the Olympic system inherently made the sporting apartheid issue international. The Movement’s unique nature and its infrastructure meant that issues are innately internationalised. Secondly, the policies and laws of a state (SA) dictated its NOC’s ability to meet its Olympic legal obligations due to the specificity of the Movement system. And thirdly, by not banning the errant SAOCGA immediately for its apartheid selection, shows the power that the Movement has over athletes *and* states.

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<sup>187</sup> And the political contributions of the A.N.C. and anti-apartheid groups.

<sup>188</sup> Such as the late summer International Seminar on Apartheid held in Brazil 1966 and the June 1986 World Conference on Sanctions Against Racist SA (in co-operation with the OAU).

<sup>189</sup> GA Resolution 3068 (XXVIII) of 30<sup>th</sup> November 1973 approved the International Convention on the Suppression and Punishment of the Crime of Apartheid ICSPCA).

<sup>190</sup> Also its various organisations worked towards bringing sport within its auspices such as UNESCO’s International Charter of Physical Education and Sport 1978 and its 2015 edition.

The 'switch' for sporting apartheid and the Games being considered international, is triply switched on. This international aspect to the Movement allows it to work alongside the UN and influence areas, and make policies and legal obligations, which the UN cannot. If this reasoning is applied to this thesis, it demonstrates that if a Truce Treaty is to be effective, it requires governorship by a singular collective Movement with the ability to impose real and legal sanctions. This would mean the collective Movement would with regard to the Truce Treaty have power on a par with states. Consequently, a UN-IOC comparison in terms of action to end apartheid is relevant. This is due to the Olympic Singularity, the inherent international nature of the SA question and a need to discover the real reasons for the end of apartheid.

#### 7.8.1 Early UN Attention - 1940s -1960s

The UN had the SA question on its agenda from its inception. The UNGA's Indian delegate levied its concern at the first UNGA Meeting.<sup>191</sup> However, this only focused on SA's Indians and not all non-whites. It also did not mention their sporting participation. The UNGA's response was conciliatory and mediatory, in stark contrast to the IOC's ignorance. By 1950, the UNGA had officially declared apartheid as racial discrimination in Resolution 395(V) and was therefore condemned SA earlier than the IOC.<sup>192</sup> This also meant that apartheid was under the UN's mandate.

Following the Sharpeville Massacre in 1960 the SA question escalated to the SC, who first took action in Resolution 134. Resolution 134 deplored the massacre and SA's governmental policies and called on it to:-

“initiate measures aimed at bringing about racial harmony based on equality... and to abandon its policies of apartheid and racial discrimination.”

Compliance measures were at SA's discretion and involved no third parties, in that it was only targeted towards SA and not states that had relationships with it. Therefore this Resolution contains stronger language and directives to SA's government than the UNGA's resolutions.<sup>193</sup> It was also more decisive than the IOC's inclusionary policy of 1960 which permitted their Rome 1960 participation.

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<sup>191</sup> Specifically in light of the discriminatory treatment of SA's Indians, Resolution 44(I) of the GA of 8<sup>th</sup> December 1946, which noted that the “treatment of Indians in the Union should be in conformity with the ... Charter”.

<sup>192</sup> Resolution 395(V), 2<sup>nd</sup> December 1950, which declared racial segregation (apartheid) to be racial discrimination, although it related only to the treatment of Indians in SA.

<sup>193</sup> SC Resolution 134, 1<sup>st</sup> April 1960 <[www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/134\(1960\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/134(1960))> accessed 20<sup>th</sup> September 2016.

### 7.8.2 UNGA Resolution 1761, 1962

Within a couple of short years, the UN had amplified its language and extended its scope in dealing with SA. The UNGA in Resolution 1761 stated that SA's government and its apartheid policy disregarded their UN Charter obligations.<sup>194</sup> Therefore the Resolution had the goal of "bring[ing] about the abandonment" of apartheid.<sup>195</sup>

Resolution 1761 also reaffirmed an earlier SC Resolution, as they both recognised the potential of the situation to endanger international peace and security.<sup>196</sup> Although it had already led to international friction. Hence the UN was stating that a lower disruption of international 'friction' had been met by apartheid. This helps explain the harsher GA language and recall of the SC Resolution, as SA's compliance was sought.

Resolution 1761 also developed the UN's standpoint on SA. It requested involvement from and of third party states, mimicking the contemporary sporting boycotts. It requested that Member States:-

"separately or collectively... break[ing] off diplomatic relations...  
close their ports to all vessels flying South African flags... boycott[ing]  
all South African goods and refraining from exporting goods, including  
all arms and ammunition to SA".

This call set the precedent and tone for the international community's actions in dealing with SA, including the IOC latterly. The UN is clear on what Member States are to do here. It launched the notion of a UN backed boycott, going hand-in-hand with the NOC's sporting boycotts and the IOC's bans of the 1960s.<sup>197</sup> However, many western states felt that it and the Special Committee Against Apartheid that it established, were too harsh.<sup>198</sup>

By the mid-1960s, although the IOC was beginning to treat apartheid seriously, it was not as earnestly dealt with as at the UN. The UN was ahead of the IOC at this time – the UN involved the relevant actors (states and SA's government). The UN was the IGO formed to

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<sup>194</sup> A/RES/1761(XVII), 6<sup>th</sup> November 1962.

<sup>195</sup> "Strongly deprecates the continued and total disregard by the Government of SA of its obligations under the Charter of the UN and, furthermore, its determined aggravation of racial issues by enforcing measures of increasing ruthlessness involving violence and bloodshed", Ibid.

<sup>196</sup> It recalled SC Resolution 134 (1<sup>st</sup> April 1960) as GA Resolution 1761 stated that it "recalled that the SC in its resolution of 1 April 1960 recognised that the situation in SA was one that had led to international friction and, if continued, might endanger international peace and security".

<sup>197</sup> And is repeated in many later resolutions such as SC Resolution 181 of 7<sup>th</sup> August 1963, where states are not to sell or ship arms to SA. Also, GA Resolution 1899 (XVII) of 13 November 1963 which advocated a petroleum embargo. These sanctions were not removed until GA Resolution 48/1 of 8<sup>th</sup> October 1993.

<sup>198</sup> See section 7.8.3 below.

help foster peace and security, placing the issue directly within its mandate and Charter.<sup>199</sup> As the IOC and UN Charters have some similar themes, it seems difficult to understand why the IOC did not enforce compliance of its own Charter from its relevant actor before the 1964 Games, when the UN had already issued such an edict and set such a precedent.

### 7.8.3 UN Isolation of South Africa and its Establishment of the Special Committee Against Apartheid

The UN had historically requested political and economic embargoes on SA. During the 1970s and 1980s, the UN would escalate the embargo call from the UNGA to the SC by way of various resolutions that would become mandatory, and form international law.<sup>200</sup> However these Resolutions did not specifically mention the use of sport in fighting apartheid. Whereas UNGA Resolution 2396 (XXIII) 1968 did. Resolution 2396 specifically recognised the importance of sporting isolation on SA and the valuable potential contribution that the IOC, the ISFs and the NOCs could make in this and ending apartheid.<sup>201</sup> Therefore the UN took the leap that the IOC was yet to make at that time.

Moreover, although sporting organisations were not UN members and were not part of the international state system, the UN overlooked this sought to control their activities. They overlapped their mandate with the IOC's but targeted only states, which obviously the IOC could not. The UN used a blanket policy and wording to do this, ahead of full South African Olympic expulsion, for example, Resolution 2396 amongst many other strong calls: -

“request[s] all States and organisations to suspend cultural, educational, *sporting* and other exchanges with the racist regime and with organisations or institutions in SA which practice apartheid.”

This is the UN's first mention of sport as a weapon against apartheid. This UN call goes some way to explain why the IOC repeated their Game ban in 1968 and finally expelled SA in 1970.

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<sup>199</sup> In sporting terms, the IOC and not the UN was the relevant actor to enforce SA's isolation, but it chose to only exclude SA latterly.

<sup>200</sup> The SC Resolutions started as early as the late 1960s but grew in import over the years, with Resolution 418 being the most significant (4<sup>th</sup> November 1977 - the same year as GA77). It made the arms embargo already requested by the SC, mandatory. It also stated that SA's military accumulations were a disturbance to peace and security. Also, Resolution 591 of 28<sup>th</sup> November 1986 extended the embargo to anything that could be used to manufacture weapons even if they went through third party states.

<sup>201</sup> Resolution A/RES/2396(XXIII), 2<sup>nd</sup> December 1968.

Resolution 2396 also distinguishes between South African organisations that practice apartheid and those who do not. It only addresses the all-white bodies to prevent their functioning and international acceptance.

It was also the UN (alongside domestic organisations such as SANROC) that recognised the necessity of specialised institutions in combating apartheid. Consequently, the UN established the Special Committee Against Apartheid.<sup>202</sup> Initially the Committee was not well received by many western states. They felt its presence and measures were too harsh. Nevertheless, the Committee's credibility and acceptance grew and support was found in the west amongst groups such as the London based AAM and from African and Asian states. All of these parties helped promote international (sports) boycotts.<sup>203</sup>

In 1976 the UN founded the Centre Against Apartheid and it worked closely with the above Committee. The Centre was a useful UN weapon against apartheid due to its permanency and long term focus. This meant that it could surpass the IOC's *ad hoc* fact finding commissions and committees of the same time.<sup>204</sup> The IOC did not recognise the necessity of a permanent anti-apartheid body until 1988. Therefore, before 1988 the IOC had no formal permanent initiatives to facilitate SA's Charter observance. These could easily have been introduced by the IOC, and allowed it to observe the various aforementioned UN resolutions.

#### 7.8.4 Consolidation of UN Resolutions and Sport

The UN continued to pass resolutions on SA, apartheid and sport. Resolution 2775 was passed at the 26<sup>th</sup> UNGA Session of 1971, and declared the UN's "unqualified support of the Olympic principle of non-discrimination". This once again shows the overlap in their jurisdictions. This gives UN permission for the IOC to uphold its Fundamental Principles, over inclusion, alongside approval for SA's IOC expulsion in 1970. Moreover, it adds legitimacy to the suggestion that the Charter may amount to customary international law via its UN support.<sup>205</sup>

Resolution 2775 adds that "merit should be the sole criterion for participating in sport". This is clearly intended for the Movement and all sporting organisations. They are called to

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<sup>202</sup> This was another UN contribution via landmark GA Resolution 1761. Initially it was called the Special Committee on the Policies of Apartheid of the Government of the Republic of SA, and commenced work on 2<sup>nd</sup> April 1963.

<sup>203</sup> Reddy, n. 31.

<sup>204</sup> These only superficially investigated the problem or submitted inaccurate reports, Mbaye, n. 24. See also Reddy, n. 31.

<sup>205</sup> And that the Movement can form such principles, although likely it is the reverse, that the Charter lays does existing customary principles.

uphold this Olympic principle and to deny their “support to sporting events organised in violation of this principle”. This attempts to ensure that all branches of the Movement work together so that SANOC cannot take advantage of the Movement’s organisational loopholes to shirk their Charter responsibilities. Once again the problems of the Movement’s infrastructure have been recognised and tackled by the UN, and not the IOC. Consequently, this shows the necessity of the Movement to be viewed as one singular organ when it acts on the world stage.

A further UN recognition contained in Resolution 2775 is to the importance of individuals in ending (sporting apartheid). Something which the IOC did not appreciate. Albeit the status of individuals under international law is questionable, the Resolution nevertheless calls on individual sportsmen to refuse their participation in such events in states that practice racial discrimination.<sup>206</sup> This is only relevant to Games within SA. Therefore, this resolution does not tackle the international aspect of sports, such as SA competing abroad. Something which other resolutions, the boycotts and Movement expulsion do instead. Consequently, this shows that both organisations were necessary to tackle all levels of apartheid, on the state and sub-state level. This acts as a precedent for today’s Movement in dealing with the Truce and potential Treaty. The UN and singular Movement should work closely, with the Movement having enforcement and sanctioning powers on a par with the UN for it.

#### 7.8.5 Register of Sports Contacts with South Africa

One tool that the Special Committee established in 1980 was the establishment of the annual Register of Sports Contacts with SA.<sup>207</sup> This tackled the sub-state nature of sports and reaffirmed the recent recognition of the importance of the individual in fighting apartheid. The Register was a list of around 2,500 sportsmen and women, teams and officials who chose to participate in events in SA during the 1980s.<sup>208</sup> Many high profile athletes, ranging in nationalities in both Olympic and non-Olympic sports, appeared on the Register. For example, the registered named:<sup>209</sup> Jimmy Connors<sup>210</sup> and Boris Becker<sup>211</sup> in tennis;<sup>212</sup> and Seve

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<sup>206</sup> “Calls upon individual sportsmen to refuse to participate in any sports activity in a country where there... is racial discrimination”, paragraph 4, UNGA Resolution 2775 of 19<sup>th</sup> October 1971.

<sup>207</sup> It also included entertainers, Rogers, Thomas, UN Reports Contacts With South Africa, 15<sup>th</sup> April 1988, The New York Times <[www.nytimes.com/1988/04/15/sports/un-reports-contacts-with-south-africa.html](http://www.nytimes.com/1988/04/15/sports/un-reports-contacts-with-south-africa.html)> accessed 4<sup>th</sup> February 2016.

<sup>208</sup> From September 1980 – December 1987, it covered many sports and nationalities, Rogers, n. 207.

<sup>209</sup> Amongst many others.

<sup>210</sup> American athletes included tennis players (Billy Jean King and Chris Evert), golfers (Lee Trevino, Fuzzy Zoeller, Raymond Floyd and Tom Kite), gymnasts (Mary Lou Retton), swimmers (Craig Beardsley) and boxers (Mark Breland), Rogers, n. 207.

<sup>211</sup> West Germany, Rogers, n. 207.

<sup>212</sup> Pat Cash (Australia) and Henri Leconte (France), Rogers, n. 207.

Ballesteros<sup>213</sup> and Greg Norman<sup>214</sup> in golf.<sup>215</sup> Names could be removed from the Register if the athlete wrote an undertaking to the Committee not to compete again in apartheid SA.<sup>216</sup>

The Register can be considered ‘softer’ action than the aforementioned UN Resolutions and actions. Being listed had no formal legal implications, punishments or recommended action attached.<sup>217</sup>

However, it could also be considered ‘harsher’ action than UN Resolutions as it ‘named and shamed’ specific individuals, some of whom were disciplined and suspended by their NSF/ISFs.<sup>218</sup> Furthermore, although sanctions were not formally UN backed, some governments would not permit the named person to enter or compete in their countries by refusing visas.<sup>219</sup> The UK banned them from using their sporting facilities.<sup>220</sup> The logic behind this was so that:-

“those who profited from apartheid and showed contempt for the majority of the South African people, would not be allowed to make money in their countries.”<sup>221</sup>

Therefore, both Reddy and Mousouris claim that the Register was an effective tool to exert “pressure on [a] country's government to eliminate apartheid”.<sup>222</sup>

The IOC did not take specific action against third parties appearing on the Register, as demonstrated in its response to its treatment of NZ and its NOC. The IOC wished sanctions to target SA itself, and not other parties. The IOC rarely sanctioned athletes themselves for conduct that breached Olympism, out-with doping and cheating.<sup>223</sup> Although the USOC did this by stripping its ‘Black Power’ athletes of their 1968 Mexico Game track medals because the games were not to be forums for demonstrating political sentiments. Despite SANOCs doing precisely this by implementing its government’s apartheid policies. Coincidentally, the US action occurred alongside the 1960s civil rights movement, the recognition of rights internationally and the backlash over SA’s potential inclusion in the 1968 Games. Although

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<sup>213</sup> Spain, *ibid.*

<sup>214</sup> Australia, *ibid.*

<sup>215</sup> British golfers Ian Woosnam and Sandy Lyle also appeared, *ibid.*

<sup>216</sup> Such as American golfer Jack Nicklaus, and tennis star Ivan Lendl, *ibid.*

<sup>217</sup> Reddy, n. 31.

<sup>218</sup> Such as Zola Budd who was investigated by the IAAF for racing at Brakpan in SA and was later suspended for it. Zola Budd; Hugh Eley (1 January 1989). *Zola: The Autobiography of Zola Budd*. Partridge.

<sup>219</sup> Reddy, n. 31.

<sup>220</sup> Reddy adds that more states were taking action against the names on the Register, Reddy n. 31.

<sup>221</sup> Reddy, n. 31.

<sup>222</sup> Mousouris was Assistant UN SG, in Mbaye n. 24. See also Reddy, n. 31.

<sup>223</sup> In such cases they would remove their medals and leave sanctioning to NSFs/ISFs, WADA and potentially CAS.



the IOC was forced to take a stance on apartheid, it then re-exerted control on other Olympic actors to regain that control and ensure its non-politicisation, which seems ironic to a modern audience. Nevertheless, the UN made greater strides than the Movement did or could have done here, potentially because of its political mandate, with less fear of offending its members.

#### 7.8.6 International Convention Against Apartheid in Sports 1985

A further way in which the UN made more of a significant stab at apartheid than the Movement was by the adoption of the International Convention Against Apartheid in Sports (ICAAS) 1985.<sup>224</sup> This was in addition to the two general anti-discrimination conventions and anti-apartheid conventions of 1969 and 1973 respectively. By virtue of ICAAS being inter-state, it inevitably trumped the IOC's Declaration of the same year. This again highlights the IOC's lack of capacity in dealing with the international state system and its requirement for power on a par with the UN regarding a Truce Treaty.

ICAAS drew together UN and IOC historic work in the fight against apartheid in sport and non-sporting fields. It once more “strongly condemn[s] apartheid” and undertakes to pursue by “all appropriate means” the elimination of apartheid in all sports.”<sup>225</sup> Therefore although not yet showing an advancement in terms of its content, its codification in a Convention, means its terms are binding alongside the fact that sport is a tool to enforce international law.

##### 7.8.6.1 South Africa's Continued Isolation

Similar to previous UN Resolutions, ICAAS targeted SA and its sporting competitors, even if the latter did not practice apartheid.<sup>226</sup> Under Article 3 of ICAAS, signatory states were to avoid sporting contacts with those practising apartheid.<sup>227</sup> They were to deny entry to those who participated in competitions in SA, their representatives, those who invited such competition and those who maintained contacts with an apartheid practising country.<sup>228</sup>

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<sup>224</sup> Adopted 10<sup>th</sup> December and in force as of April 3<sup>rd</sup> 1988, but work began drafting it in 1978, Reddy n. 31.

<sup>225</sup> Article 2, ICAAS 1985.

<sup>226</sup> Similar to Resolution A/RES/2396(XXIII), 2<sup>nd</sup> December 1968. However, only one ICAAS Article (10) specifically mentions SA (although it was written with SA in mind). Article 10.5 states “The provisions of the present article re specifically to SA shall cease to apply when the system of apartheid is abolished in that country.” Therefore its blanket nature ensured it would not become obsolete should SA abolish apartheid. As already shown, this differed to IOC practice. Reddy, n. 31.

<sup>227</sup> Article 3 states that “State Parties shall not permit sports contact with a country practising apartheid and shall take appropriate action to ensure that their sports bodies, teams, and individual sportsmen do not have such contact.” Article 4 asks State Parties to ensure that there are effective means for doing this, ICAAS 1085.

<sup>228</sup> Including team members of teams, individual sportsmen and sports bodies, Article 10 ICAAS 1985.

Furthermore, Article 10 requested that signatory states use best endeavours to comply with Olympic principles.<sup>229</sup>

ICAAS therefore appears to fall into the well-fed Movement structural trap, as its parties are states and not the INGO sub-state actors that organise international sport.<sup>230</sup> This is why the Convention requires its signatory states to advise their ISF individuals to abide by the Convention's terms.<sup>231</sup> The Convention specifically directs governments to influence, ISFs, NOCs and the Movement. It therefore is incidentally trying to target the non-international law subjects that organise international sports.<sup>232</sup> This again shows Olympic singularity by way of their unusual treatment under international law. The Convention attempts to lump them together. This shows that a singular Movement must be considered, due to Olympic singularity, as on a par with IGOs and states in this field of peace and security.

ICAAS's recognition of this lacuna between the state and sport system is further evidenced by Article 10 which specifically calls for SA's ISF expulsion. ICAAS recommends specific action, and it rectifies the historic problem of resolutions leaving states to decide what anti-apartheid measures they should take.<sup>233</sup>

#### 7.8.6.2 *Repercussions of Breaching the Convention*

ICAAS has no explicit sanctioning provisions for its breach, making it somewhat toothless. This omission likens ICAAS to the IOC's practical stance of the time.<sup>234</sup> Therefore despite ICAAS, the UN's practical stance is no different to the IOC's. Its lack of bite could be due to the divide between sporting INGOs and governments. It seems unfair to hold an INGO responsible for its governments policies. However, as already seen with SA, the two were

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<sup>229</sup> Article 10.1 ICAAS states that "State Parties shall use best endeavours to ensure universal compliance with the Olympic principle of non-discrimination and the Convention." Again suggesting that Charter principles have become customary law.

<sup>230</sup> ICAAS 1985 in Article 17 specifically mentions that only states shall be a party to it.

<sup>231</sup> Article 3 and 10, ICAAS 1985.

<sup>232</sup> For example, Article 10.3 ICAAS 1985 states that "State Parties shall advise their ... ISFs to take all possible and practical steps to prevent the participation of the sports bodies.... in international sports competitions and shall, through their representatives in international sports organisations, take every possible measure: a) To ensure the expulsion of SA from all federations in which it still holds membership and to deny SA reinstatement ....; b) In case of NSFs condoning sports exchanges with a country practising apartheid, to impose sanctions against such NSFs including expulsion from the relevant I[SF] and exclusion of their reps from participation in international sports competitions." Furthermore, Article 10.4 proscribed for ICAAS violations: "State Parties shall take appropriate action as they deem fit, including ... steps aimed at the exclusion of the responsible [NSFs] or sportsmen of the countries concerned from international sports competition."

<sup>233</sup> Although many already had done this.

<sup>234</sup> I.e. ICAAS would not sanction those that competed against SA, such as NZ and its rugby teams.

merged here, each reflecting and reinforcing the others views, policies and behaviours.<sup>235</sup> This, alongside the precedent set by *ekecheiria*, shows why a single collective Movement should be able to sanction NOC's for their state's Truce breach.

ICAAS does provide for its monitoring via the Commission Against Apartheid in Sports.<sup>236</sup> The UN identified that this area was sufficiently problematic to consequently warrant a Commission, in addition to its general anti-apartheid UN Committee Against Apartheid. The Commission Against Apartheid in Sports considered reports made to it by signatory States on the "legislative, judicial, administrative or other measures" which they adopted to give ICAAS effect.<sup>237</sup> Hence the UN did provide for monitoring and feedback of ICAAS observance, albeit there were no official sanctions.

#### 7.8.6.3 *Olympic and Non-Olympic Sports*

ICAAS goes further than the IOC's Olympic expulsion. This is because the IOC could only influence SA's participation in Olympic sports.<sup>238</sup> Whereas ICAAS dealt with all sports, whether or not on the Olympic programme. ICAAS therefore included sports that were extremely popular in SA.<sup>239</sup> Exclusion from which would be sorely felt within SA.

#### 7.8.6.4 *Observations on UN involvement in Sporting Apartheid*

ICAAS's goals was SA's universal sporting isolation. It drew together the multitude of actors in international sports, whilst appreciating that these bodies are not its signatories. And that SA's sporting organisations were not its government. It attempted to address the inherent dual problems of the UN and the IOC regarding sport and peace:- the IOC's inability to function in the international state system due to its lack of status; and the UN's inability to function sub-state in the international sporting system. Therefore, this shows that a Convention was needed in this area that specifically draws these actors together, as a Truce Treaty could do today. It too would have the ability to sanction on a par with ICAAS, by way of sanctions and isolation

The UN would claim that it was ICAAS that finally helped end apartheid within a few years of its passing. That ICAAS, reflecting UN backed universal state condemnation, was the decisive factor in ending apartheid. However, this ignores the fact that it took the UN and the

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<sup>235</sup> Some states were concerned ICAAS's obligation would disrupt international sport. The USSR was vocal in its fear of it affecting the 1980 Moscow Olympics, hence, negotiations were drawn out over seven years, which proved misdirected considering the blanket Western boycott that occurred then, Reddy, n. 31.

<sup>236</sup> Article 11 ICAAS 1985.

<sup>237</sup> Article 12.1, ICAAS 1985.

<sup>238</sup> As shown by the IOC's refusal to become involved in SA competing against NZ at rugby.

<sup>239</sup> Such as rugby, cricket, and golf.

international community forty-odd years to achieve this. It also does not address why this occurred in the mid-1980s and not earlier. The answer to this could be that such political pressures and boycotts take time to be effective.

It is more likely that ICAAS was a catalyst in ending apartheid. ICAAS itself arose due to the accumulation of a myriad of circumstantial factors. A turn of the screw. It was the UN and the IOC working together that helped create the right circumstances, and then create ICAAS, ultimately ending apartheid. If this template is applied to the modern Truce, it shows that the single collective Movement must be viewed as an extension of the UN, with UN level-powers, in order to achieve Truce goals. It was this UN-IOC collaboration with real sanctions, placed under the right circumstances that led to ICAAS's success.

The circumstances in which ICAAS appeared shall now be discussed below. However, it is worth noting here that ICAAS followed the political boycotts of the Games in 1980 (Moscow) and 1984 (Los Angeles) by the 'west' and the 'east'. Politicisation of sport and the Games was happening. The UN and the Movement would have been keen to ensure that either they did not reoccur, or if that if politicisation was to occur, then it happen within their auspices, and thus ICAAS was born. This shows that boycotts were acceptable if they were institutionally condoned.

Moreover, with regard to the UN as a whole, it was more profligate and forward thinking than the IOC in the early to mid-20<sup>th</sup> Century. However, following Olympic expulsion in 1970s, the two organisation's goals became closer. Yet the establishment of anti-apartheid bodies were still predominantly under UN auspices, although both were sanction-less, with the Register condemnation aside.

#### 7.8.7 Indian Involvement in Ending Apartheid

Undoubtedly the IOC and the UN together with the international community greatly influenced the end of (sporting) apartheid. However, this overlooks the other circumstances that brought about its end, such as the lobbying and work done by key individuals, groups and states in this regard.<sup>240</sup>

One key group in fighting apartheid were Indians, both within SA and in India itself. They were the first groups to vocalise objection to sporting apartheid. Indian groups within SA

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<sup>240</sup> For example it ended the 1980s with a similar declaration to the IOC's, but specifically targeted apartheid by calling for its end by the foundation of a non-racial democracy (Declaration on Apartheid and its Destructive Consequences in Southern Africa, 15<sup>th</sup> December 1980 A/Res/S-16/1). Although this Declaration is somewhat overshadowed by the previous Resolutions, Declarations and Conventions.

began to highlight the issue with the IOC in the early 1950s. For example, the Transvaal Indian Youth Congress (TIYC) wrote to the IOC (and all other international sporting organisations) in 1953 taking issue with the fact that only white South Africans were able to participate in international sports. TIYC called for the IOC and ISFs to prevent white South African participation and demanded that there be multi-racial representation in South African sports both domestically and internationally.<sup>241</sup> The TIYC eventually received a reply from the IOC in 1955 regarding its earlier call, where the IOC stated that:-

“we suppose that this text [Rule 1 of the OC] will give you satisfaction with what... the Olympic Games are concerned.”<sup>242</sup>

The IOC did not directly answer the call and as Mbaye stated, was making its position clear that it was not going to become embroiled in what it saw as South African local affairs.

India as a richly resourced developing country, entirely independent of SA with sufficient South African emigrants to be concerned with their treatment made anti-apartheid moves on their behalf in the UNGA from the mid-1940s.<sup>243</sup> They had sufficient education, organised sport participation and contacts, to enable them to reach the ears of those in power when coloured and black populations did not.

One of the most notable names in this struggle is Sam Ramsamy, an Indian descendant born in SA, who started working against apartheid from the mid-1970s onwards. He promoted unity amongst non-whites, who suffered from being split into African, Indian and coloured groups with little cohesion and an abundance of internal rivalries.<sup>244</sup> However, his strong influence was due to the fact that he left SA after studying abroad. He carried out his campaign in the UK, enabling him to liaise with journalists, academics, sports administrators and politicians across the world.<sup>245</sup> As SANROC's Executive Chairman, a UN consultant, and later head of (I)NOCOSA, he was able to bring the boycott to international attention.

#### 7.8.8 Individual's Involvement in Ending Apartheid

There have been other key individuals who deserve mention in the fight to end apartheid in South African sport, either from their own or collaborative work.<sup>246</sup> They recognised and

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<sup>241</sup> The TIYC passed this Resolution at their Congress, and welcomed the work that the ITTF were doing in this regard which would amount to a ban in 1956, Mbaye, n. 24.

<sup>242</sup> Mbaye, n. 24.

<sup>243</sup> Ibid.

<sup>244</sup> Although SANOC from its 1962 establishment helped promote their unity, Mbaye, n. 24.

<sup>245</sup> He liaised and drew together SANROC and the exiled ANC, Reddy, n. 31.

<sup>246</sup> With anti-apartheid organisations such as SCSA or SASA.

took advantage of the fact that the Games are a unique platform where individuals can receive global attention. They used this stage to enforce SA's isolation and the anti-apartheid plight.

Mbaye applauds the work of ITTF President Ivor Montague who campaigned against apartheid sports as early as the 1950s. Under his steam, the ITTF was the first ISF to exclude an all-white South African federation and recognise the multi-racial one. He was a humanist who believed in the "universality of sport" and Mbaye said that if "a list is drawn up of great athletes who fought for the Olympic ideal, we should not forget Ivor Montague."<sup>247</sup> He was one of the earliest anti-sporting apartheid proponents and set a precedent for others, of all colours, to follow who were attempting to eradicate sporting apartheid.

Mbaye himself is another notable individual in the anti-sporting apartheid field. He was a notable jurist and International Court of Justice Vice President who brought a legal and human right slant to the cause. His background meant he could see the advantages of lobbying for change from within the existing Movement infrastructure.<sup>248</sup> He was a member of the IOC for almost 30 years and was also its Vice President.<sup>249</sup> Although he was a relative late comer to the fight against apartheid, with his hands being somewhat tied due to his IOC appointments, his independence and commitment to the cause was recognised. He was appointed Head of the Apartheid and Olympism Commission in 1989-1992, which covered the cessation of South African Apartheid and its return to the Movement.

Avery Brundage was IOC President for twenty years commencing in 1952 during which time the South African apartheid issue took centre stage. He would no doubt desire to be included as a leading light in the anti-apartheid sporting movement. However due to either a lack of personal conviction or a restraint placed upon him by his interpretation of his role, Brundage was tardy and hesitant in backing the anti-apartheid movement in South African sports.

There is inherently some conservatism in the IOC President's role. They will have to balance competing views.<sup>250</sup> This inherent conservatism was amplified in Brundage's case as he was vociferously against the politicisation of the Games. This resulted in him adopting an

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<sup>247</sup> Mbaye, n. 24.

<sup>248</sup> Lyberg, Wolf, 'Keba Mbaye Obituary', 15<sup>th</sup> March 2007, Journal of Olympic History, No. 1, <<http://library.la84.org/SportsLibrary/JOH/JOHv15n1/JOHv15n1za.pdf>> accessed 16<sup>th</sup> June 2015.

<sup>249</sup> He was Vice President from 1988-1992 and 1998-2001, 'Death of Judge Keba Mbaye, IOC Honorary Member since 2002', Olympic Movement, Ethics Commission, <[www.olympic.org/content/news/media-resources/manual-news/1999-2009/2007/01/12/death-of-judge-keba-mbaye-ioc-honorary-member-since-2002/](http://www.olympic.org/content/news/media-resources/manual-news/1999-2009/2007/01/12/death-of-judge-keba-mbaye-ioc-honorary-member-since-2002/)> accessed 11<sup>th</sup> February 2016.

<sup>250</sup> IOC, The Organisation – Presidents <[www.olympic.org/about-ioc-institution?tab=presidents](http://www.olympic.org/about-ioc-institution?tab=presidents)> accessed 4<sup>th</sup> February 2016.

inclusive stance towards SA and its Rhodesia (who also had discriminatory racial policies).<sup>251</sup> His interpretation of his Presidential role *sans* external pressure, was to tolerate NOCs who did not fulfil their commitment to Olympism's Fundamental Principles. He favoured the Olympic principle of inclusion. A theme already seen in the preamble to the 1958 Charter which states that, "the most important thing in the Games is not to win but to take part".<sup>252</sup>

Therefore, Brundage must have ranked Fundamental Principles. He thought it better that all NOCs participate, whatever the domestic policies and laws of their government (and whether or not they are complicit in these,) rather than have all NOCs uphold their Charter obligations of non-discrimination. In any event, Brundage's favouring of inclusion is artificial. He favoured wide NOC participation, despite NOC lack of full inclusion, which in SA's case meant a lack of ethnic diversity and for other teams, may have been a lack of female participation. This ranking and conservatism therefore prevented him taking early action against apartheid sports and from being considered a serious anti-apartheid advocate.

Aside from Mbaye, one of the biggest contributors to the sporting anti-apartheid movement within the Movement was the IOC Chancellor from 1946–1964, Otto Mayer.<sup>253</sup> It was Mayer who took an overt interest in dealing with the sporting apartheid issue and was the first on the Executive to give it more than a mere fleeting or token nod at their Meeting in Munich 1959 and later argued that the SA question contradicted the Fundamental Principles of Olympism.<sup>254</sup>

By 1963 he had examined and criticised a report by the Swiss Rudolf Balsiger on 'Racial Discrimination in South African Sport' where Balsiger denied its existence.<sup>255</sup> Mayer in turn questioned Balsiger and demanded answers to his difficult questions, such as why do all the races not train together and benefit from elite facilities, especially as sporting apartheid is not dictated by law?<sup>256</sup> Why was a non-white golfer insulted by being refused entry to an all-white clubhouse to receive his Championship winning prize? Mayer correctly added that such treatment would surely encourage a movement against white leaders. Mayer also asked

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<sup>251</sup> Rhodesia was excluded from the Games in 1972, BBC, On This Day, Rhodesia Out of the Olympics 1972 <[http://news.bbc.co.uk/onthisday/hi/dates/stories/august/22/newsid\\_3549000/3549444.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/august/22/newsid_3549000/3549444.stm)> accessed 4<sup>th</sup> February 2016.

<sup>252</sup> "[J]ust as the most important thing in life is not the triumph but the struggle. The essential thing is not to have conquered but to have fought well", 1958 Olympic Charter.

<sup>253</sup> IOC, Obituary – The Death of Otto Mayer, <<http://library.la84.org/OlympicInformationCenter/OlympicReview/1970/ore29/ore29f.pdf>> accessed 9<sup>th</sup> July 2015.

<sup>254</sup> Mbaye, n. 24.

<sup>255</sup> The report was published in 1963 following a trip by Balsiger to SA to examine SA, Lindfors, Bernth, 'The Dennis Brutus Tapes: Essays at Autobiography'.

<sup>256</sup> Mbaye, n. 24.

Balsiger why two faster qualifying black runners were excluded in favour of white athletes and called this oversight, racial discrimination. He questioned Balsiger on the imprisonment of Dennis Brutus following his expulsion from meetings and the opening of his mail.<sup>257</sup> Mayer stated that such examples of racial discrimination highlight the “state of mind that reign[s]” in SA.

Balsiger attempted to answer Mayer’s questions, but his answers were not robust, accurate or to the point.<sup>258</sup> Balsiger’s responses deliberately misinterpreted Mayer’s questions and addressed them from a practical rather than from an ethical perspective. Balsiger saw nothing wrong with the situation and accepted the status quo as a given. For example, in response to Mayer’s first question above, he said training was separate due to separate development. He added that the white South Africans were “safeguarding western civilisation” and that they were doing everything possible to “raise the blacks to our cultural level.” A striking statement that seems incongruous with the Movement suggesting a white benevolent superiority over other races.<sup>259</sup> Therefore Mayer, in the face of significant opposition, persisted in asking difficult questions and challenged the blind acceptance of South African sporting policy. He helped highlight the need for a solution at the Olympic table.

The aforementioned individuals could be said to have worked within the existing Movement parameters of the day in order to bring about change. Others out-with this system were more radical and became more personally involved, losing their liberty, freedom and domicile in so doing. Dennis Brutus became involved in the struggle to end sporting apartheid after it forced him to give-up elite level basketball due to government imposed segregation. He eventually helped create SASA in 1958, becoming its Honorary Secretary and later SANROC President.<sup>260</sup> His work to secure full sporting integration provoked hostile attention from the South African government<sup>261</sup> and he was placed under house arrest and forbidden under state security laws to attend any kind of meeting. Brutus was dedicated to his mission to the extent that he breached these sanctions to varying degrees of severity. One notable time was to meet a journalist at Olympic offices in SA to highlight the true situation of non-white sport in the

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<sup>257</sup> E.g. “Why was he forbidden from attending sports events to which he had been invited?” He also questioned why Theunis Theart was suspended from cycling for 3 months for following a race when he was using it for training. Mbaye, n. 24. See also, Lindfors, n. 255.

<sup>258</sup> On 28<sup>th</sup> September 1963.

<sup>259</sup> Balsiger avoided giving real answers and supported the South African decisions such as the non-white golfer should not be awarded a prize in an all-white clubhouse, and regarding the runners and cyclists he was unfamiliar with these cases and failed to properly address these, Mbaye, n. 24. See also Lindfors, n. 255.

<sup>260</sup> Brutus, Dennis, Dennis Brutus Papers 1970 - 1990, Schomburg Center for Research in Black Culture, The New York Public Library.

<sup>261</sup> Mbaye, n. 24.



country and this gained him international recognition as a player on the anti-apartheid sporting field.<sup>262</sup>

Another and more grievous occurrence where he breached these restrictive governmental orders, specifically his international travel ban, was his attempt to flee SA in 1963. He wished to leave SA to take a report he had written on SANROC's behalf, to the IOC October 1963 Baden-Baden Session and Executive Meeting. The Report 'whistle-blew' on the South African government and dismissed their claims that apartheid did not exist in their sport. Brutus managed to escape to Swaziland and Mozambique but was arrested and extradited by the South African government. In fear of his life from the South African authorities, he absconded from police custody by jumping out of a moving car. A shoot out ensued and he was seriously wounded from a police gunshot wound to the back and lay on the road for half an hour for a 'coloured' ambulance to attend him.<sup>263</sup>

The South African authorities commuted him to a sixteen month jail sentence in Robben Island.<sup>264</sup> Nevertheless, his case was given serious attention by the IOC, particularly by Chancellor Mayer who publicly asked why Brutus was shot by the police and expressed extreme concern at not knowing whether his life was in danger or not. Brutus left a strong legacy amongst others one of which was the creation of SASA in 1958. His part in highlighting the indignity of sporting apartheid and its ultimate demise must be appreciated.

John Harris is another noteworthy and controversial name on a list of influential individuals in the fight to end sporting apartheid. He was SANROC Vice President. Harris initially bridged the gap between those working within and out-with the Movement system. On the 5<sup>th</sup> of June 1963, having been invited to speak at the IOC Executive Meeting in Lausanne 1964, he made a statement demonstrating SANROC's reasonableness and its lack of politicisation. He said that if SAONGA conformed "fully to the laws of the IOC" then SANROC would "categorically dissolve", which he hoped would place SAONGA in check position.<sup>265</sup> The South African government reacted to Harris' strong statement by removing his passport and eligibility to travel out with SA so that he would not pick up and deliver the poisoned and floundering SANROC report prepared by Brutus. His credibility as an acclaimed

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<sup>262</sup> At this meeting he was arrested prompting speculation by the report and Rudolph Balsiger that Brutus himself had tipped off the police in order to show that SA was a police state and that SANROC was being persecuted, Mbaye, n. 24. See also Lindfors, n. 255 and Brutus, n. 260.

<sup>263</sup> Martin, Douglas, Dennis Brutus Dies at 85: Fought Apartheid With Sports, *The New York Times*, 2<sup>nd</sup> January 2010.

<sup>264</sup> Lindfors, n. 255.

<sup>265</sup> Mbaye, n. 24.

actor in the anti-sporting apartheid movement is overshadowed by his conviction for terrorist activities and hanging in 1965.<sup>266</sup>

Harris' conviction left him unable to deliver Brutus' report and it was Robin Farquarson who successfully brought it to the IOC having to travel via Swaziland to deliver it. He had to live the remainder of his life in exile for his role in conveying the document.

It is evident that individuals had a great impact on bringing the issue of apartheid sports to the attention of the world's media and to the IOC. However, their main clout was through the support garnered from other actors and individuals across the world. This cumulatively, could pressure for change. It is difficult to see how the micro level of the individual could affect macro-international change in and of itself. Hence they can be considered a worthwhile addition to the turn of the screw that ended (sporting) apartheid.

#### 7.8.9 International Sporting Federation's Involvement in Ending Apartheid

The work and independence of ISFs in securing full racial inclusion in South African sports has been lauded by many, including Epsy.<sup>267</sup> However, prudence must be exercised when weighing their influence and work in helping to end apartheid. Only a few ISFs were notable here - most had their actions tempered.

The most significant ISF that categorically took a definitive and active early anti-apartheid stance was the ITTF led by the progressive Montague. The ITTF was the first ISF to ban SA in 1956. It took a far more decisive stance than the IOC did at this time.<sup>268</sup> Hence it was an outlier compared to other ISFs.

FIFA is another ISF credited as taking an early anti-apartheid stance. It suspended the all-white FASA in 1961 after several years of investigations and denials of recognition. However, Mbaye states that at first FIFA deferred resolutions and decisions on the matter. It thought initially that the South African football organisations should "work it out for themselves". Thus it did not act drastically differently to other organisations, such as the IOC at the time, who were also reluctant to become involved in what they saw as domestic matters.

It is also worth noting that although FIFA suspended FASA, FIFA adopted a less tolerant stance following its Executive re-shuffle – FASA were readmitted in 1963.<sup>269</sup> This shows that the anti-apartheid movement was not universal or permanent at the time. Backlashes

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<sup>266</sup> Reddy, n. 31.

<sup>267</sup> Epsy, n. 5.

<sup>268</sup> Mbaye, n. 24.

<sup>269</sup> Stanley Rous was appointed FIFA President. Alegi, Peter (2010). *African soccerescapes: how a continent changed the world's game* (1. publ. ed.). London: Hurst.

occurred with prominent networking done at a sports governance level to ensure white SA remained in the international sporting fold. Transience seems to characterise ISF and ISF attitudes towards SA in the early 1960s.<sup>270</sup> Although FIFA's plan was unlimited suspension, FASA's readmission within two years shows that their action was only marginally more categorical than the *ad hoc* single Game ban of around the same time in 1962.

Brundage, writing to SAOCGA Secretary-General Emery in October 1961 said that "following the action of FIFA, these protests will probably become stronger and more numerous." Brundage accepts that FIFA's actions acted as a catalyst or crucible to pressurise other bodies to act in a similar fashion. One body that would have been inspired by FIFA but yet praised them was the Transavaal Indian Youth Congress (TIYC).<sup>271</sup> TIYC were one of the earliest documented advocates against sporting apartheid. FIFA's power as one of the world's most popular sports and ISFs cannot be overlooked. Its potential influence to exact change being greater than that many other ISFs but is unlikely to be as great as that of the IOC itself.

SAAWBF was another vocal ISF that highlighted SA's racial discrimination in sports in the mid-20<sup>th</sup> century. SAAWBF acted a decade earlier than table tennis and football by seeking support from foreign (non-South African) national federations in the 1940s. In 1946 they sought recognition from the British Weightlifting Federation (BWF) but it adopted the same stance as the IOC at the time. The BWF said that it was not within their competence to grant recognition and that they had no power to force federations within SA to racially mix.<sup>272</sup> Both the IOC and the BWF washed their hands of the issue.

A decade later SAAWBF was facing the same closed door in 1956, when it applied to the IOC and the Melbourne OCOG to attend the Games. They were told to contact and liaise with the all-white South African weightlifting body, who in turn alongside SAOCGA, refused to admit them and called them political agitators who threatened SA's legitimacy and tenure within the IOC.<sup>273</sup> SAOCGA were categorically trying to marginalise black South African athletes as political agitators with unknown objectives to side-line their legitimacy. This constant 'buck-passing' was faced by others who tried to tackle sporting apartheid, such as SANROC. It also shows how the IOC were still the gatekeepers barring the way for change, compared to the stance of its component parts.

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<sup>270</sup> Including the IOC.

<sup>271</sup> They praised FIFA's work as early as 1953, alongside that of the Amateur International Boxing Association (AIBA), but they too failed to get involved stating that SA should work it out themselves. Mbaye, n. 24.

<sup>272</sup> Mbaye, n. 24.

<sup>273</sup> Alongside those in football, *ibid*.

An interesting question is why was there a lack of recognition of multi-racial bodies by ISFs in SA? Maintenance of the status quo is a reason. However, if this is laid aside, it seems more likely that non-racial NSFs were not ISF recognised because they were split over four racial groups.<sup>274</sup> This meant that there could be as many as four NSFs vying for recognition, with internal rivalries separating them. There was not united front from which to lobby for change. This restraint on positive change was domestically recognised in SA relatively early on, as in 1958 SASA recognised that its first battle was unification of all the non-white groups in order to effect change.

It was this split that SAOCGA blamed for its policies when called to account by the IOC. SACOGA denied it was racist but as South African NSFs were divided over four groups, only one NSF could be recognised.<sup>275</sup> Yet ISFs only recognised the all-white NSFs. SA therefore took advantage and hid its discriminatory policies behind the failure in the Olympics' framework. Hence if the Movement is to act in the international sphere it has to be viewed as a collective singular organ grouping together all Movement actors as one, so this cannot reoccur. The IOC's status here once again hindered its action. Hence for the Movement to engage in peace and security, the lessons from SA require remedying – the Movement needs to be viewed as a singular Movement with powers regarding the Truce on a par to that of the UN. Furthermore, it was the Movement collectively working here that effected change – the IOC dragging its heels was precipitated to change by the ISFs.

#### 7.8.10 African and Commonwealth Games/State Involvement in Ending Apartheid

To assessing the effectiveness of the Commonwealth of Nations (Commonwealth) and the Commonwealth Games (CG) on ending sporting apartheid, the historical setting must also be understood. SA's introduction of apartheid overlaps the demise of European imperialism and decolonisation.

The Commonwealth and its Games excluded SA on a political pre-text long before the Movement. This appeased Commonwealth states who were calling for SA's exclusion. SA having declared itself a republic in 1961 had to reapply for Commonwealth membership - it was not automatically eligible for inclusion in the 1962 Perth CGs. This political loophole meant that the Commonwealth and its Games could condemn SA and its previous participation

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<sup>274</sup> Mbaye, *ibid.*

<sup>275</sup> From which athletes could be selected.

in the Welsh Commonwealth Games of 1958. It took the Commonwealth and its Games, one games cycle to take decisive action, as opposed to the decades it took the Movement.<sup>276</sup>

The Commonwealth and its Games includes a huge diversity of nations across the globe, small and large. It is tempting to attribute the expediency of response here to this diversity and their obvious antipathy towards apartheid. However, in the 1950s and 1960s fewer Commonwealth states existed, and if they did, they often did not compete internationally in sport.<sup>277</sup> For example, only four African states competed in the 1962 CGs.<sup>278</sup> Decolonisation nevertheless meant a surge in new nations. So although only four nations from Africa competed in Perth 1962, the Commonwealth must have recognised that in the future, there would be far more nation states. They wished to keep these new states within the Commonwealth. It is this future prediction (and potential power) that guided it to exclude SA and to formulate the Singapore Declaration 1971 and GA77. Hence the Commonwealth and its Games were important to SA. Its exclusion from which must have been keenly felt. The Commonwealth and its Games were therefore effective in helping to end sporting apartheid.

However, the Commonwealth's influence here can be lessened because it contains smaller, poorer developing states than those who dominate the Movement. The Commonwealth Games are also on a smaller international stage than the Olympics. The three superpowers, Russia, China and the USA are not part of the Commonwealth and the CGs's contribution to athletic and social development must necessarily be hindered because of this. Furthermore, Anglo-Commonwealth countries did still interact sportingly with SA.<sup>279</sup> This potentially reduces the Commonwealth and its Games' impact on ending sporting apartheid.

However, SA had great affinity to the Commonwealth. Any sanction from it was keenly felt. This made it an appropriate forum in which to deal with SA, being a less visible stage without the heavy-weights to slow down action. Here, small individual states could enact global sporting change. This can be seen from the fact that the Kenyan government refused entry to SA's delegates for the Nairobi 1963 IOC Session, forcing the IOC to change the venue to Baden-Baden. Albeit this was only a minor hurdle, it shows that the Kenyan government backed the anti-apartheid supporters and would do what they could to aid in the struggle. In

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<sup>276</sup> The Commonwealth Games cycle is also four years.

<sup>277</sup> They lacked the financial and developmental capacity to do so, Reddy, n. 31. See also Mbaye, n. 24 and Nongogo, n. 2.

<sup>278</sup> Kenya, Rhodesia, Tanganyika and Uganda, which were traditionally wealthy African states with a large British presence. This was despite the African outcry regarding SA's inclusion in the Welsh 1958 CGs, Nongogo, n. 2.

<sup>279</sup> Such as Australia and NZ, although it was at times withdrawn and sporadic, Reddy, n. 31, Nongogo, n. 2 and Mbaye, n. 24.

addition to this, the influence of the USSR on the end of apartheid cannot be overlooked and necessitates a discussion in and of itself in section 7.8.11 below.

Nonetheless, the assessment of the Commonwealth and its Games attributes altruistic reasons for their struggle to end apartheid. However, Reddy cites a more functional and preservationist reason. He claims that one of the major reasons for SA's Commonwealth's exclusion was their concern that the Commonwealth Games would be boycotted hampering their endurance, following the 1958 Welsh Games outcry. The Commonwealth Games being smaller than the Games could not afford to offend or lose the (future) majority of its members. It had to keep these within the fold. The Games on the other hand, had no such need to appease small groups. It was only when the Games endurance was affected by another contender, influenced by communist politics that Movement action occurred.

Attention must be given here to the differences between the Commonwealth Games and the Games. Whilst both are run by international organisations with memberships comprising national outfits separate to their governments, the link between the Commonwealth Games and the Commonwealth cannot be overlooked. The Commonwealth as comprising states is inherently linked to its CGs, in a way that the Games is not to states or any IGO, such as the UN. The Commonwealth Games as the more 'political' of the Games had more clout than the less political Games. Which is again a lesson to be learned for the modern Movement and its dealing with the Truce. For the success of the Truce, it requires assumption into the power that the IGO system has, which could be done by giving a singular Movement power to sanction its breach.

Hence the Commonwealth and its Game's isolation was a further turn of the screw on SA. The real lessons from the Commonwealth example are that change occurs when the viability of an international sporting organisations is affected, provided it has the full backing of states. For the Commonwealth Games the threatened African boycott in 1958 achieved this. However, these same players did not pose a viable threat to the Games, when they threatened boycotts in the 1960s. It was only when the Games were threatened with a sufficient exodus towards rival GANEFO, and the potential threats of states such as Russia, that Olympic policy towards SA began to change.

#### 7.8.11 Communism, Russia and GANEFO Involvement in Ending Apartheid

The most decisive factors in prompting the IOC to deal with SA bringing about an end to apartheid is the politicisation of the Games, to Brundage's consternation. The rise of communism led by the USSR, the appearance of a South East Asian international games in

1962 (GANEFO), and the immediate turnaround in IOC policy, cannot be overlooked, or the causal link ignored.

The establishment of the Games by a Frenchman, based on English school sports in Switzerland, with English and French as its official languages, means that the Movement has always had an Anglo-European cultural dominance. These nations and their NOCs wished to preserve this genealogy as much as possible. The emergence of communist superpowers in the mid-20<sup>th</sup> Century meant that a balancing act between Euro-Anglo dominance and accommodation of the communist superpowers had to be achieved.<sup>280</sup> Both were keen to promote their ideologies, despite the Movement's claims of impartiality and non-politicisation. This balance is evident in the 'Host' elections. These had been dominated by Anglo-European countries.<sup>281</sup> Communist superpowers were given eventual nods and inclusions by way of having their cities elected as Hosts in 1980 and 2008.<sup>282</sup>

This somewhat explains why the threat of the USSR joining the Mexican Games boycott of 1968 was sufficient to change IOC policy.<sup>283</sup> Conversely the opposite has been tested, in 1976 when the USSR failed to lend her weight to the proposed Montreal 1976 boycott, the effectiveness of that boycott was rendered obsolete. Showing definitively that the USSR was considered a necessary key player by the IOC. The IOC wanted to keep the USSR on board rather than SA. However, it was not the importance of the USSR to the Movement in and of itself that effected change. The 'throwing of Soviet weight' could perhaps have been tolerated, if the USSR had no rival organisation to go to, albeit this is an unanswerable test. It was GANEFO's existence in the 1960s that meant that the USSR could depart from the IOC for South East Asian shores. The USSR could have used GANEFO for sporting and political demonstrations of superiority, rather than the Games.

It was therefore the IOC's concern regarding the USSR's potential ship-jump that prompted it to act. The Games were faced with replacement and demise. The first GANEFO Games of 1964 in Jakarta contained 51 nations. There was the added worry that the 32 odd nations threatening to boycott Mexico, would defect to GANEFO. This would have made GANEFO, with Russian and boycotting countries support, a serious and viable alternative to the IOCs from nations that shared a political ideology. This threatened the IOC on two fronts:- one being abandonment; and the other showing how sport and politics could go hand in hand.

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<sup>280</sup> The communist superpowers were the USSR and the PR of China.

<sup>281</sup> Tokyo 1964 was the first Summer Games out-with this region.

<sup>282</sup> Moscow and Beijing respectively.

<sup>283</sup> The USSR and its communist allies, Nongogo, n. 2. See also Mbaye, n. 24.

However, in hindsight the IOC's worry was unfounded. GANEFO and its influence floundered after its first games. GANEFO's final games were held in 1966 and were open only to Asian states. This could however be due to the IOC's decisive action. If they had not, these states may have left and history could have been different.

Furthermore, the IOC should not have taken the Russian departure seriously as they, apparently, did not seriously consider leaving the IOC for GANEFO. They sent a sub-Olympic standard team to GANEFO and they preferred the bigger Game's stage, using it to demonstrate sporting dominance, and exacting more clout in the IOC Board room.

Moreover, the USSR had been given the 1980 games to host. It was therefore invested in Olympic success. The USSR would use these games for political and sporting purposes and wanted to ensure their success. Hence the clout they swung on potentially altruistic grounds in the 1950s and 1960s at the IOC that exacted change, now meant, that they towed the line, avoiding boycotts and committing to Game longevity. Hence it was the threat of a Soviet departure and ability of the IOC to ensure she stayed that opened a small window of time to allow change in. This was set against the back drop of GANEFO and the wider threat of communism to an Anglo-European organisation. This shows too, that it was in fact states (and politics) that ensured the turnaround and prompting of action by the IOC. A valuable lesson for today's Movement despite its desire to remain apolitical.



## 7.9 Conclusion

This Chapter has shown that the IOC had some involvement in ending apartheid, but its claim of it being ‘one of its key successes’, is an exaggeration. For a long time, the IOC was reluctant to become involved due to a general reticence of its Presidents and its adherence to its supposed politicism and independence. The IOC only became involved after a variety of actors and circumstances forced its hand.<sup>284</sup> Although tardy, this Chapter has shown that the IOC was part of a collegiate effort that turned the screw to end apartheid.

This Chapter has shown that the involved actors who were lobbying for change were manifold.<sup>285</sup> Their pressure on the IOC was also set against equally manifold anomalous circumstances. Together they provided the right, but fleeting window for change and produced boycotts, sanctions, UN Resolutions, Declarations and Conventions.<sup>286</sup>

From this myriad of actors and circumstances, ICAAS stands out as particularly significant in ending apartheid. Within a few years of its passing, this UN sponsored Convention was followed by apartheid’s end. This suggests apartheid ended when the UN passed a Convention, in addition to its involvement.<sup>287</sup> That binding international law with the UN at the helm was the significant factor in ending apartheid.

However, this suggestion is overly simplistic. This Chapter has shown that change occurred because ICAAS specifically utilised states *and* the Movement as a whole to fight apartheid.<sup>288</sup> ICAAS successfully drew together state and Movement actors and requested their action in a binding Treaty. The SA example therefore shows that success occurs due to the linking of the state and non-state sporting systems, when it is backed by Treaty law. This could be used as a template for the Truce today – codification of the Truce into a Treaty drawing together the Movement and UN state system. With the Movement having appropriate sanctioning ability. Therefore the SA example shows that the Movement and states cannot be considered as operating in different spheres.

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<sup>284</sup> Although the reasons and tardiness for IOC action do not necessarily hinder the effectiveness of its actions.

<sup>285</sup> The other actors lobbying for change were:- the ISFs; African, Asian and Communist states; the UN; the Commonwealth; political organisations such as the ANC; and key individual campaigners.

<sup>286</sup> These were all against the backdrop circumstances of:- the political climate; the political power of SA, other African states and the USSR (certain states were thought crucial to the Games, and SA was not one); the existence of GANEFO; the time span involved; the number of states against apartheid; and that apartheid was universally condemned behaviour. Other international agreements of the day reflected similar anti-discrimination principles such as Article 2 UDHR (full enjoyment of UDHR rights without discrimination) and apartheid’s later criminalisation under the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1973 (ICSPCA).

<sup>287</sup> The UN had been involved since the 1940s so it was not solely its tabling of apartheid that could have resulted in change.

<sup>288</sup> They were to influence ISFs and NOCs to exclude SA, refuse visas and passports, not compete with SA or host SA in competition on their soil.

Furthermore, the SA example and ICAAS's successes within it, also shows that success occurred when the Movement worked as a whole, alongside the UN and the other actors. 32 NOCs backed the 1960s boycotts and the ISFs were significant lobbyists for change. Hence it was the Movement's collective unity, and pairing to the UN and codified action in a binding Treaty that made it a rain-maker here.

The IOC's efforts were therefore only part of a collegiate effort alongside the rest of its Movement and the aforementioned actors and circumstances. The Movement as one organisation linked to the international UN state system is what effected change.

## CHAPTER EIGHT

### **Conclusion – Has Olympic Singularity created a new actor in international peace and security?**

#### 8.1 Introduction – Traditional Assumptions

The traditional assumption is that the ‘Olympic Movement’ is only a term for ease of use by the OC. It groups together the various Olympic actors who have a vested interest in staging the Games. The term has no legal weight attached to it. Thereafter, the traditional position has assumed that it has determined the status and capacities of the Movement’s individual actors correctly. It has categorised the IOC and ISFs as regular INGOs, and the NOCs and OCOGs as ordinary examples of whatever form is best as per the jurisdiction in which they are incorporated. These traditional assumptions tie into this thesis’s first general research question – *‘why should the Movement be viewed as a singular and special organisation?’* Traditional thinking has assumed that it should not be a singular extraordinary organisation with atypical subject status and *personality*.

Furthermore, the traditional assumption is that none of these Movement bodies can directly make international law in peace and security – this is reserved for states, and their IGOs. This means that the Movement can therefore only fulfil its 2<sup>nd</sup> Fundamental Principle of ‘promoting peaceful societies’ by grass-roots projects and acting as a complainer at the international level to those that can make laws - states and IGOs. However, this is not strictly accurate on two counts. Firstly, the specificity of sport has allowed the exemption of sport from law, meaning that there is now an element of legal dualism in sport. Sporting institutions are now regarded as making sports laws that apply internationally. This thesis has accepted this as true to an extent and consequently has briefly mentioned this debate. Secondly, the 20thC has shown that international law now has a myriad of new actors that have the potential to act extensively on the international legal stage, such as the ICRC with a partial amount of *personality* and recognised subject status. The potential of those who possess *personality* and subject status can evolve, meaning they can have an involvement in the making and

enforcement of international laws.<sup>1</sup> This assumption therefore ties into this thesis's second general research question – '*why should the singular Movement be able to act in international peace and security by way of custodianship of an Truce Treaty?*' Traditional thinking has assumed that it should not be able to so act.

## 8.2 Olympic Singularity's Challenge to Traditional Assumptions

Section 8.1 summarised the two traditional assumptions that this thesis has operated against. This thesis has challenged these assumptions by way of the two general research questions. It has answered these general research questions with the novel concept of Olympic Singularity, which has a basis in law by way of the EU law doctrine of the specificity of sport.

This Concluding section rebuts the traditional assumptions in the order of their appearance above and consequently deals with the eight cumulative factors of Olympic Singularity as they interlink, rather than sticking to the order that they appear in their Chapters. This adds to the idea of the Movement as a web, as the factors all link-up. The Chapter order stands for a detailed explanation of the concept of Olympic Singularity, rather than a concluding comparison showing the over-view of inter-linking ideas. The Chapters deal with Olympic Singularity ruthlessly by splitting it down and dealing with the factors as they build cumulatively on each other. The Chapter order is therefore valid and acts as a 'walk-through' to Olympic Singularity.

Working through the traditional assumptions above, this thesis has firstly successfully asserted that the Movement is not just an ease of use grouping term, with no legal meaning, as the Charter suggests. Its frequent usage has unintentionally created a new beast. This was the sixth factor of Olympic Singularity and was demonstrated in Chapter 4 as the Charter refers to it 61 times and bestows upon it rights and obligations.

Secondly, this thesis has shown that the individual actors of the Movement are not regular examples of their type, contrary to popular thinking, case law and the Charter's wording. It did this by examining the various involved actors:- the IOC, the NOCs, and the ISFS in Chapters 2 – 4 and showed the extent of their functions, purposes, powers and status.

Moreover, these same Chapters, and specifically Chapter 4, demonstrated that these Movement's actors were atypical because of their special treatments, rights and recognitions they receive under law by states and the international communities. This was the fifth aspect

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<sup>1</sup> E.g., individuals have some accountability under international law and there has been the development of international private and trans-national laws.

to Olympic Singularity. Therefore this thesis demonstrated that the Movement at its core, is not unique. Each of the Olympic actors possess some of the features that justify other atypical subjects' existence and personality. The NOCs have universalism and a link to the state system. The ISFs and IOC have the potential to be considered law makers. The IOC has the mandate in peace and security. And together they share a unique history and purpose of Games staging with a focus on peace. All of which (Games staging aside) the ICRC possesses justifying its atypical status and personality.

Taking firstly the IOC, it is as Rule 15.1 of the Charter states, an 'international not-governmental not-for-profit organisation'. Yet it is more than this. It is a specific and unique INGO, the fourth aspect to Olympic Singularity. Chapter 3 demonstrated this by showing how the IOC fulfils and then exceeds the UN's INGO checklist, more than any other INGO, with the potential exception of the ICRC. This therefore showed it was an atypical subject. The IOC's special status was also proven in Chapter 4 and incidentally in Chapter 2. Part I therefore cumulatively demonstrated that the IOC has rights, obligations and capacity for action far beyond those of a regular INGO. Moreover, Part I also demonstrated the IOC's extraordinariness attributable to its special treatments. The IOC receives almost unprecedented special treatments and recognitions by a variety of national and international actors. Swiss law gives the IOC many legal and fiscal privileges, and it is also a UNGA observer.<sup>2</sup> Whilst other organs may have special Swiss status, they do not possess it to the extent that the IOC. Therefore, it is the combination of the many special treatments of the Movement that make it extraordinary. The ICRC is the Movement's closest corollary and this thesis argues for similar recognition of the Movement as the ICRC under international law in terms of its status and personality, with regard to a governance and sanctioning of a Truce Treaty.

With regard to the powers, purposes, functions and treatments of the other Movement's actors (the various NOCs, ISFs and the OCOGs), they are alike after a fashion, but they vary as per the domestic legal systems in which they are incorporated. However, many of them, such as the ISFs, also have special status in Switzerland. Although this is to a lesser extent than the IOC as was shown in Chapter 4.

Thereafter, Part I of this thesis continued to challenge traditional assumptions by demonstrating that in addition to the Movement's core actor irregularity, these actors link together to form a unique international singular Movement.<sup>3</sup> The Movement is unique at its

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<sup>2</sup> Resolution A/RES/64/3.

<sup>3</sup> The core specificity adds to the potential for the cumulative specificity, but the latter does not rely on the former – Olympic Singularity has other reasons.

core *and* at the cumulative level. It is their web framework and the way in which it links that is unusual, and this was the first submission of Olympic Singularity and was shown in the first three core Chapters. Which is also a recognised justificatory reason for the doctrine of the specificity of sport.

This thesis has also submitted that the Movement's web is universal, which was the second aspect to Olympic Singularity and one that it shares with the specificity of sport. The Movement is universal because it operates nationally and internationally via its various actors. This was demonstrated by the examination of the various actors in Chapters 2 – 4 and their global reach. For example, the Movement has presence in all states around the world – 206 NOCs and scores of ISFs. They are one of the biggest events on earth with huge amounts of commercialism attached. However, a universal web framework is not exclusive in and of itself. Other organisations have webbed universality drawing from national and international actors, such as the individual ISFs. Although, they lack the Movement's full reach and are themselves part of the Movement. They also lack the Movement's other Singular features which shows that all Olympic Singularity factors are required – they are cumulative and work together, as is the case with the ICRC.

Part I demonstrated this universal web by showing that the Movement is held together by 'webbing', which this thesis considers to encompass several features. The webbing is the Charter and the legal dualism of the sporting system, the Movement's shared purpose of staging the Games and the checks and balances of the various Movement actors. Each of these factors shall be discussed briefly in turn here. This webbing compounds the unusual webbed framework into something more unique before law.

The entire Movement has agreed to be bound by the Charter, therefore they share a common set of rules, or 'law'. These Movement's actors have thereby created international sub-state 'law' and legal dualism via their rules, presided over by the Charter, and enforced by CAS. All based on volition of the involved parties. This is recognised in the EU doctrine of the specificity of sport.<sup>4</sup> This legal dualism and supremacy of the Charter is the seventh factor of Olympic Singularity and was shown in Chapter 4. It therefore accepts that states and IGOs are the entities that make international law, but submits that the doctrine of the specificity of sport allows exceptions to this. Therefore the Charter, which all Movement actors agree to, and the various ISF rules are law that unites all of those in the Movement.

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<sup>4</sup> This thesis accepts that these are 'law' to an extent although this debate is beyond its scope.

This thesis adds to the European doctrine. It asserts that the collective Movement grouping *is* an exception to the monopoly on international law-making by states and IGOs, and their resultant capacity for action when it comes to making their own ‘laws’ or ‘rules’. However, this thesis challenges the doctrine by saying that the specificity of sport is amplified when considered in an Olympic setting due to Olympic Singularity. Some of the factors of Olympic Singularity overlap with the reasons for specificity, but the latter does not go far enough or assess the reasons sufficiently. It is this Olympic amplification that permits legal dualism for its own rules, and as Part II demonstrated, sets the precedent for extension into the field of peace, specifically the Truce.

The Movement’s webbing was also shown in Chapter 2 as the entire Movement share the same purpose of facilitating the staging of the Games. This is the third aspect to Olympic Singularity and stands even if they have other non-Olympic purposes and roles, and are not directly involved in staging. All the actors, nevertheless, have a hand in facilitation of the Games.

The Movement’s web framework was also confirmed in Chapters 2 and 4 by their demonstration of the power check that the various actors can impose on each other, especially on the IOC. This means that the Movement is a separation of powers, where the powers are not entirely distinct of each other. Consequently, the Charter is inaccurate when it states that the IOC is the most supreme and powerful Movement actor. This was contained within the fourth aspect of Olympic Singularity – the web framework.

Part I, split over Chapters 2 – 4, showed that the first seven factors of Olympic Singularity were the reasons why the Movement should be viewed as a single organ, thereby answering the first research question, of ‘*why should the Movement be viewed as a single organ*’. These factors have shown that the Movement is a unique organisation because of the way its various atypical actors link up in a universal web brought together by a shared purpose under the umbrella of the Charter which has quasi-legal status. The actors are atypical because they receive special treatments giving them an elevated status and capacity for action, potentially on a par with states and IGOs and at least, the ICRC. The stage is therefore set for the Movement to be the suitable extraordinary actor to engage fully in the international sphere on a par with these heavyweight actors.

This leads into the second research question, of ‘*why should this singular Movement be given special dispensation to govern and sanction an Truce Treaty*’? This second question is therefore linked to and in part answered by the first and consequently Part I. It is because the Movement is the right actor due to its Singularity - its extraordinariness requires its

consideration here as a relevant actor. Yet it is not as simple as the Movement being ‘special’ which enables it to govern and sanction a Truce Treaty. It is because this ‘extraordinariness’ means that the Movement is attached to the state system that enables its consideration as an actor here. Olympic Singularity, particularly the Movement’s singular universal web construct sticks the Movement to the state system. It is only however, when the Movement is this singular web, and not when it is broken down into its various cog actors, that it is linked to the state system. This thesis has therefore shown in Part I and in Chapters 5 and 7 that the Movement is not entirely separate to the state system. The collective Movement is therefore the right organisation to tackle the failing Truce as it can reach the places that the existing international state system cannot, due to this single webbed universality.

The second general research question is also answered by the claim that precedent allows its action here. The Movement is involved in international peace and security, whether indirectly (Chapter 7 – South Africa) or to a lesser extent, directly (Chapters 5 and 6 – the Truce and *ekecheiria*).<sup>5</sup> This is because the Movement wishes to act in this sphere and has broadened its mandate via its 2<sup>nd</sup> Fundamental Principle and called for the Truce (Chapter 5).

Whilst the Movement’s desire to act here is no legitimisation for it to do so, this ignores the fact that the Movement is already extensively and to greater and lesser extents, successfully, involved in international peace and security. And this is the final aspect of Olympic Singularity – the Movement is special and should have a special licence for action here because it has a mandate and a precedent for successful action in this field. This is discussed in Part II split over Chapters 5 – 7.

Chapter 5 answered this second research question (why peace) by demonstrating the Movement’s already significant involvement in peace and security by its call for revival of the Truce. Such involvement is a near unprecedented mandate for a sports INGO.<sup>6</sup> Therefore the Movement hopes to achieve its 2<sup>nd</sup> Fundamental Principle of using sport to promote peaceful societies via the Truce, and also through a variety of other measures. However, Chapter 5 showed that the IOC was simply a complainer to the UN and it was the UN who actually revived the Truce by way of non-binding UNGA Resolutions. The Movement’s capacity for action here was limited by the traditional assumptions of it being an INGO and incapable of passing Resolutions or ‘law’.

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<sup>5</sup> Whether voluntarily or involuntarily.

<sup>6</sup> The Commonwealth and its Games were involved, as demonstrated in Chapter 7.



Nevertheless, Chapter 5 showed that these traditional assumptions are failing as the Truce is frequently breached, especially by Host Nations. Chapter 5 demonstrated that this was primarily because it is framed as a non-binding UNGA Resolution with no real sanctions attached. This Chapter also showed that the Truce is failing because the UN cannot sanction the international sporting system as it is out-with its jurisdiction. Therefore Chapter 5 demonstrated that for the Truce to be successful, it firstly must be codified into binding Treaty law, limited in duration to an armistice, with real sanctions by a singular body that can act and sanction state and non-state actors alike. Therefore the body sanctioning this must have the power to bestow these sanctions. The UN is precluded from this as it lacks jurisdiction, but the Movement is not, if it receives UN legitimisation and state party consent via the Treaty, who would recognise it due to Olympic Singularity. The Movement would therefore be the right actor here as it can affect the sporting system and has stuck its web to the state system.

Chapter 6 emphasised the important of a number of these features in the success of an Truce – that a Truce be framed as binding international law with real sanctions and controlled by a powerful singular actor that was able to act unilaterally. Chapter 6 demonstrated that *ekecheiria* was almost universally observed because of these factors being under the control of the state of Elis. It overcame the obstacles of the questionability of states and international law existing at the time, and showed that in the ancient Greek world, both states and international law existed. Therefore *ekecheiria* and the ancient Games were valid comparisons to make.

Chapter 7 also answered the second research question of ‘*why peace*’ by again showing that the Movement’s has further established a precedent in such situations, and in turn again reinforces the eighth aspect of Olympic Singularity.<sup>7</sup> This Chapter gave the example of the Movement’s involvement in the South African apartheid situation. This Chapter demonstrated that the Movement was involved in ending apartheid to an extent by way of its banning of SA and its 1988 Declaration Against Apartheid in Sport. However, it showed that the Movement on its own (as a group of different actors), was ineffectual. This is because apartheid’s end could be attributed to the Movement’s collegiate effort with the UN, states and other individuals and actors, as well as because of the circumstances of the day. Not all of these factors can be replicated to ensure success of the modern Truce, such as the east-west political climate of the day, but the collective UN-Movement working, with real international clout by Treaty codification and attaching sanctions can be.

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<sup>7</sup> The UNSC deemed apartheid affected international peace and security.

The two research questions are therefore both linked to each other and are both answered by Olympic Singularity. *Why should the Movement be viewed as a singular actor capable of enforcing an Truce Treaty?*<sup>8</sup> The answer is because of Olympic Singularity - eight unique and cumulative features of the various Movement actors and Games requiring their special treatment under international and domestic laws.

Olympic Singularity groups these irregular core actors together due to the unique and universal web framework to form, unintentionally, a new and singular legal organisation – the Movement. This web then sticks this Movement to the international state system enabling it to govern and sanction an Truce Treaty and thus act in the field of international peace and security. Olympic Singularity is therefore that the Movement at the core and umbrella level is/are unique institutions.

### 8.3 Solution

This thesis has advocated and demonstrated that the way to solve the failings of Truce observance is to codify it into binding international Treaty law. Parties would know observation was mandatory and that a lukewarm commitment would not suffice. This codification and draw proved successful in the ancient Greek world where *ekecheiria* was written down and accepted by *poleis* as international law, and in the 20<sup>th</sup> Century where ICAAS was the final nail in the coffin against apartheid. However, in both of these examples, codification under international law was not sufficient in and of itself to ensure observance of their relevant Treaty. Indeed, today the number of Treaties that are not observed shows the inherent problem of international law – observance. Both historically and today, international law that deals with sport and peace requires something more in order to be observed.

This thesis has shown that observance of a binding Treaty occurred when the sporting system linked up to the state system. It was when the two systems and actors worked together to provide and implement real sanctions, whether in the form of Games fines or sporting exclusions, that the international law became effective. Each can reach and affect levels and actors that the other cannot. This is why the Movement requires singular treatment and sanctioning capacities under international law with regard to a Truce Treaty.

This means that the singular Movement should be recognised by the UN as a partner organisation in the formation and sanctioning of a Truce Treaty. The signatories would be states *and* the entire Movement and therefore both would agree to be bound by the terms of the Treaty

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<sup>8</sup> Rather than general legislative ability.

and the Movement's sanctioning authority. It would bind states and Movement actors alike. Of course many conflicts do not involve state actors, and they certainly do not involve the Movement, however, the grassroots operation of the various Movement actors mean that it can target these low level conflicts and spark dialogue and reconciliation ensuring that it remains relevant to these conflicts.

As mentioned, this Truce Treaty should have real Games related sanctions attached to it for its breach, either for conduct undertaken by states themselves or bodies within its territory.<sup>9</sup> This would take the form of Games fines or Games bans on NOCs. The problem with this in addition to the nature of warfare now being sub-state level, is that the Olympic signatories to the Truce Treaty are divided from both states and other warring actors, it could therefore seem unfair on NOCs. After all, SA's NOC was punished because it was practising sporting apartheid and not because its government did. But the suggestion of this problem is overly simplistic and naive – the two systems are not separate as this thesis has shown due to Olympic Singularity. This thesis has shown that the Olympic web unites the Movement together but also sticks it to the international state system. NOCs and certain ISFs cannot be considered and are not divided from the state in which they operate. They receive special recognitions and dispensations from them, legally and financially and often receive governmental funding. Hence it is submitted in this thesis that the liabilities and obligations of one be absorbed by the other, due to this linked web i.e. the notion of Olympic Singularity. This assumption of liability should be no truer than for Host Nations, where there is a direct rather than theoretical linking of the Host government to the Movement by way of the Host contract.

Therefore, bans should be placed on NOCs (and potentially ISFs). Any potential unfairness could be mitigated by affected athletes still being able to attend the Games by competing under the Olympic Flag - if they can show sufficient independence of their war-mongering state or groups.<sup>10</sup> Game's fines could be placed on any of the actors within the Movement, but is specifically mentioned as a disincentive to states. These sanctions are therefore a real deterrent to those contemplating a Truce breach, with Games participation being a sufficient corollary incentive. This has been proven in this thesis from ancient times, to the cold-war, to the more recent use of the Games to validate statehood. International actors

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<sup>9</sup> Which would still require the cessation of hostilities for the duration of the Games and a suitable time frame either side.

<sup>10</sup> Such as not receiving funding from the state.

wish to participate in the Games and its draw is a sufficient enticement to prompt a Truce Treaty's observance, if there are real sanctions for its breach.

As mentioned in Chapter 5, the UN and the Movement's reticence to commit to a binding Treaty must be considered. Both parties seem un-keen to move from non-binding Resolutions to binding international law. This thesis has demonstrated that this has been for a variety of legal and political reasons and has offered solutions to overcome these objections. Their legal objections comprise being constrained by traditional assumptions of international law, regarding jurisdiction, who its subjects are and who can act with regard to forming and sanctioning Treaties. This thesis has, under the concept of Olympic Singularity, challenged these traditional normative assumptions and justified the Movement's propulsion to the international system to be able to sign and sanction a Treaty. The Treaty would be able to affect both the UN and the Olympic sub-state system and all levels of potential conflicts - a worthwhile solution. The political objections to a binding Truce Treaty could be contained if the Treaty were drafted sufficiently narrowly, both in its terms (being an armistice) and for it and its sanctions to relate only to the Games. A Treaty, that was less onerous in its terms than the current non-binding Resolution, would ensure that the desire to attend the Games would encourage observance. Sanctions might contravene the two institution's recent trend of inclusivity, Chapters 6 and 7 have shown they are effective, especially when they operate inter and sub-nationally. Furthermore, removing the Treaty from UN to Movement control would lessen the 'political', albeit politicising the supposedly independent Movement. This thesis has also shown that the Movement is nevertheless, inherently politicised and linked to the state, and must therefore accept that it does not operate in a political vacuum if it is to move forward with this peace-building mandate.

## 8.4 Future

The 20<sup>th</sup> Century saw many developments in international law and in the Movement. Both have developed in institutional and magnitudinal terms. For example, the Games grew from a small competition of 14 nations where only men competed, to the 'greatest show on earth'. Alongside this growth, has been the paralleled mushrooming of the Movement's mandate under the Charter - at times this creep has been both deliberate and unintentional. Continued growth and development in the Movement's mandate can be expected.

With this historical growth and future potential growth of both the Movement and international law borne in mind, it is clear to see that the modern Truce Resolutions are failing.

If the international community are serious in their commitment to the Truce, then it must be accepted that a new solution is necessary, and this thesis offers one. There is historic precedent for codification into a Treaty, as sport and international law have in the past come together to produce binding international agreements before, and have attached sanctions – ICAAS 1985, GA77 and *ekecheiria*. These Treaties were successful in their aims, and *ekecheiria* was almost universally observed. Hence, 2000 years ago the Greeks recognised the necessity of a singular binding truce enforced by a single powerful actor. Yet the problem of combining sport and international law has been deliberately ignored today due to the difficulties involved in its rectification. There is now a need and a duty to formally accept the Olympic sporting system within the fold of (international) law.

The problem of addressing state action with regard to the Games has become even more pronounced and necessary. This is because recently the link between the state and Olympic system has been conclusively forged with the Russian state's knowledge and sanctioning of its athletes doping.

This thesis has advocated for an extension of international law by recognising a new subject only in the field of international peace and security. It has limited its field because a similar INGO, the ICRC designated itself such a mandate and was granted an atypical subject status and limited *personality*. This thesis uses the ICRC as a precedent for the Movement based on Movement-ICRC commonalities - justifying extension of ICRC special treatments to the Movement. This study has been limited by this but future international law developments may extend this to other areas of human endeavour.

## 8.5 Concluding Remarks

There are many ways in which the Movement could and does achieve its 2<sup>nd</sup> Fundamental Principle mandate of peace through sport, at a multitude of levels. The Movement fulfils this mandate through grass roots community projects *and* at the international state level, via its indirect involvement in the Truce. This mandate in peace (the eighth factor of Olympic Singularity), when combined with the first seven factors, demand that the Movement be given sufficient attention and governance by international law. Such attention, that accurately identifies the actors, is long over-due, and is wholly necessary to clarify the muddled waters left by the specificity of sport and lacklustre approach of the UN's Truce Resolutions.

This thesis therefore submits a new way forward in which the Movement can fulfil its 2<sup>nd</sup> Fundamental Principle mandate that is also an evolutionary step in tackling the failings of

adherence to and enforcement of the Truce.<sup>11</sup> It submits a three-pronged solution: a singular Movement; in control of a clearly drafted Truce Treaty comprising an armistice; with sanctioning capacity. This solution rests on the international community recognising the novel concept of Olympic Singularity, which groups the Movement as a singular unique INGO actor capable of possessing quasi-*personality* due to its extraordinary powers, purposes, treatments and recognitions.

*citius, altius, fortius, pacis*  
a new Olympic motto?

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<sup>11</sup> And of international law generally, of course the Truce Resolutions are not international 'law'.

## GLOSSARY OF TERMS

|                          |  |
|--------------------------|--|
| <i>alytarches</i>        | special police force of the ancient Olympic Games                                |
| <i>barbaros</i>          | a foreigner or non-Greek in the ancient Greek world                              |
| <i>demos</i>             | commoners or the majority in ancient Greece                                      |
| <i>dikastes</i>          | a judge in ancient Greece  |
| <i>dromos</i>            | the aisle of an ancient Greek temple   |
| <i>ecclesia</i>          | a plenary assembly in ancient Greece   |
| <i>eirene</i>            | peace, named after the ancient Greek goddess of peace                            |
| <i>ekecheiria</i>        | the ancient Olympic Truce  |
| <i>ephors</i>            | the executive political and judicial branch in Sparta                            |
| <i>hecatomb</i>          | a religious ceremony of the ancient Olympic Games where 100 oxen were sacrificed |
| <i>hellanodikai</i>      | judges of the ancient Olympic Games  |
| <i>homoioi</i>           | peer class in ancient Greece   |
| <i>hoplite</i>           | an ancient Greek foot soldier  |
| <i>hypomeiones</i>       | the lower classes in ancient Greece  |
| <i>koine eirene</i>      | the common peace of Philip II  |
| <i>lex sportiva</i>      | a sports law, a distinct branch  |
| <i>mastigophoroi</i>     | the scourge bearers, i.e. those who carried out punishments at the ancient Games |
| <i>nomophylakes</i>      | drafters and revisers of the Laws/Rules of the ancient Olympic Games             |
| <i>ouroboros</i>         | an ancient symbol of infinity: a snake eating its own tail                       |
| <i>pankration</i>        | an ancient mixed martial art combining boxing and wrestling                      |
| <i>philotes</i>          | affection  |
| <i>polis (pl poleis)</i> | an ancient Greek city state,   |
| <i>rabdouchoi</i>        | the rod bearers who helped dispense punishment at the ancient Games              |
| <i>spondophoroi</i>      | travelling Heralds who pronounced the Olympic Truce and Games                    |
| <i>stade</i>             | the ancient Games' stadium   |
| <i>synedrion</i>         | an ancient Greek council or senate with some judicial function                   |
| <i>xenos</i>             | a stranger or foreigner in the ancient Greek world                               |
| <i>xenophobia</i>        | a dislike or fear of foreigners  |
| <i>zanes</i>             | statutes of zeus at Olympia, often bronze  |

## LISTS OF TABLES

**Table 1 - List of Olympic Games Host Cities**

| <b>Year</b> | <b>Summer Games Host City/ State</b> | <b>Winter Games Host City/ State</b> |
|-------------|--------------------------------------|--------------------------------------|
| <b>1896</b> | Athens, Greece                       | -                                    |
| <b>1900</b> | Paris, France                        | -                                    |
| <b>1904</b> | St. Louis, USA                       | -                                    |
| <b>1908</b> | London, UK                           | -                                    |
| <b>1912</b> | Stockholm, Sweden                    | -                                    |
| <b>1916</b> | Cancelled (WWI)                      | -                                    |
| <b>1920</b> | Antwerp, Belgium                     | -                                    |
| <b>1924</b> | Paris, France                        | Chamonix, France                     |
| <b>1928</b> | Amsterdam, Netherlands               | St. Moritz, Switzerland              |
| <b>1932</b> | Los Angeles, USA                     | Lake Placid, USA                     |
| <b>1936</b> | Berlin, Germany                      | Garmisch-Partenkirchen, Germany      |
| <b>1940</b> | Cancelled (WWII)                     | Cancelled (WWII)                     |
| <b>1944</b> | Cancelled (WWII)                     | Cancelled (WWII)                     |
| <b>1948</b> | London, UK                           | St. Moritz, Switzerland              |
| <b>1952</b> | Helsinki, Finland                    | Oslo, Norway                         |
| <b>1956</b> | Melbourne, Australia                 | Cortina d'Ampezzo, Italy             |
| <b>1960</b> | Rome, Italy                          | Squaw Valley, USA                    |
| <b>1964</b> | Tokyo, Japan                         | Innsbruck, Austria                   |
| <b>1968</b> | Mexico City, Mexico                  | Grenoble, France                     |
| <b>1972</b> | Munich, West Germany                 | Sapporo, Japan                       |
| <b>1976</b> | Montreal, Canada                     | Innsbruck, Austria                   |
| <b>1980</b> | Moscow, USSR                         | Lake Placid, USA                     |
| <b>1984</b> | Los Angeles, USA                     | Sarajevo, Yugoslavia                 |
| <b>1988</b> | Seoul, Republic of Korea             | Calgary, Canada                      |
| <b>1992</b> | Barcelona, Spain                     | Albertville, France                  |
| <b>1994</b> | -                                    | Lillehammer, Norway                  |
| <b>1996</b> | Atlanta, USA                         | -                                    |
| <b>1998</b> | -                                    | Nagano, Japan                        |
| <b>2000</b> | Sydney, Australia                    | -                                    |
| <b>2002</b> | -                                    | Salt Lake City, USA                  |
| <b>2004</b> | Athens, Greece                       | -                                    |
| <b>2006</b> | -                                    | Turin, Italy                         |
| <b>2008</b> | Beijing, China                       | -                                    |
| <b>2010</b> | -                                    | Vancouver, Canada                    |
| <b>2012</b> | London, UK                           | -                                    |
| <b>2014</b> | -                                    | Sochi, Russia                        |
| <b>2016</b> | Rio de Janeiro, Brazil               | -                                    |
| <b>2018</b> | -                                    | PyeongChang, Republic of Korea       |
| <b>2020</b> | Tokyo, Japan                         | -                                    |
| <b>2022</b> | -                                    | Beijing, China                       |



**Table 2 – List of IOC Presidents**

| <b>Years Appointed</b> | <b>Name</b>             | <b>State</b> |
|------------------------|-------------------------|--------------|
| <b>1894 – 1896</b>     | Demetrius Vikelas       | Greece       |
| <b>1896 – 1925</b>     | Pierre de Coubertin     | France       |
| <b>1916 - 1919</b>     | Godefroy de Blonay*     | Switzerland  |
| <b>1925 – 1942</b>     | Henri de Baillet-Latour | Belgium      |
| <b>1942 – 1952</b>     | Sigfrid Edstrom         | Sweden       |
| <b>1952 – 1972</b>     | Avery Brundage          | USA          |
| <b>1972 – 1980</b>     | Lord Killanin           | Ireland      |
| <b>1980 – 2001</b>     | Juan Antonio Samaranch  | Spain        |
| <b>2001 – 2013</b>     | Jacques Rogge           | Belgium      |
| <b>2013 +</b>          | Thomas Bach             | Germany      |

\* Acting President during WWI when Coubertin was enlisted

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