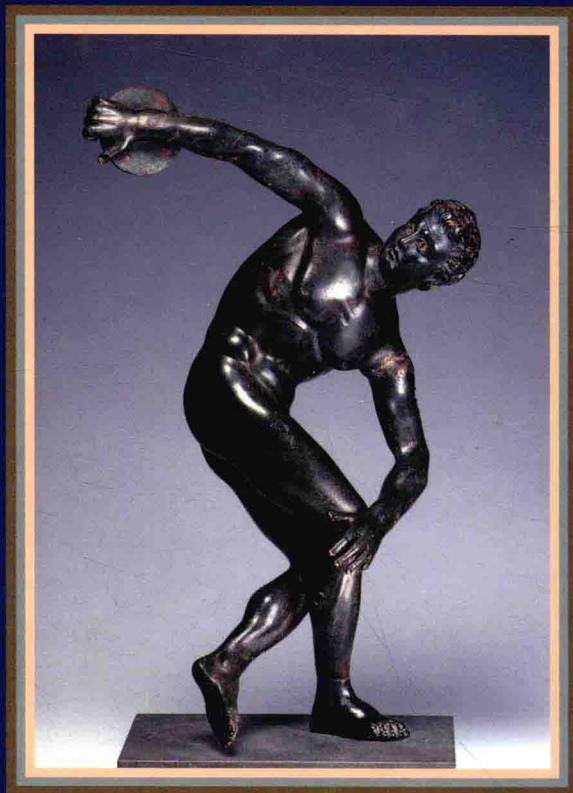


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THE LAW OF THE OLYMPIC GAMES

Alexandre Miguel Mestre



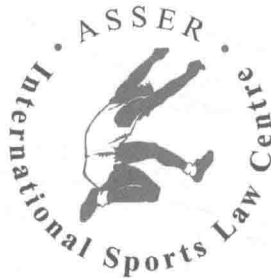
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T.M.C. ASSER INSTITUUT
ASSER INTERNATIONAL SPORTS LAW CENTRE

THE LAW OF THE OLYMPIC GAMES

by

Alexandre Miguel MESTRE



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The Portuguese edition of this monograph, entitled "Direito e Jogos Olímpicos", was published by Editora Almedina (Coimbra) in July 2008, with a Foreword by Dr José Miguel Júdice and a commentary by Dr José Luis da Cruz Vilaça.

**T.M.C. Asser Instituut – Institute for Private and Public International Law,
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Over forty years, the T.M.C. Asser Institute has developed into a leading scientific research institute in the field of international law. It covers private international law, public international law, including international humanitarian law, the law of the European Union, the law of international commercial arbitration and increasingly, also, international economic law, the law of international commerce and international sports law.

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FOREWORD

I am deeply honoured and very pleased indeed to have been invited to write the Foreword to this book, especially as the great success of and excitement generated by the Beijing Olympics last Summer is still fresh in all our minds!

This is the first work on this important subject – the Olympic Games having been well described as ‘the greatest sporting show on earth’ – and the author, Alexandre Miguel Mestre, a distinguished Portuguese international sports lawyer, is to be warmly congratulated on producing it.

The book covers the historical development of ‘Olympic Law’ and the current legal status of the International Olympic Committee (IOC) as an NGO (non-governmental organisation) under Public International Law, and its various constituent members and organs. The UN resolutions on the Olympic Truce of which the latest one is published in the book, are of a recommendatory nature (‘soft law’), but well illustrate the wide range of international legal instruments, which constitute the corpus of so-called ‘Olympic Law’, including the inter-State Nairobi Treaty on the Protection of the Olympic Symbol – the famous five interconnected rings.

The book also addresses some contemporary legal issues affecting the Olympic Movement, including eligibility criteria, dual participation in the Olympics and the Paralympics as well as environmental concerns and the protection of the so-called ‘Olympic Properties’ – in other words the valuable intellectual property rights of the IOC including TV rights – without which the Olympic Games could not be financed and staged.

The book also includes a section on the so-called ‘Satellite Organisations’ of the Olympic Movement, including the World Anti Doping Agency; the Court of Arbitration for Sport; the Olympic Congress and Commissions; and the International Foundation for the Olympic Truce.

The book, which is the latest edition to the Asser International Sports Law Series – General Editors, Dr. Robert Siekmann and Dr. Janwillem Soek, to whom congratulations are also due for publishing this ‘pilot study’, a first serious attempt to chart the ‘Olympic Law’ – is well researched, comprehensive and clearly written; and also reproduces several very useful source documents, including the Olympic Charter, the governing regulation of the Olympic Movement, and the all-important IOC Code of Ethics. To have these important documents in one place is an attractive feature of the Book. A Selected Writings section is added to the book.

I am very pleased to commend this book to all those involved in any way in the Olympic Movement and the Olympic Games themselves; and I am sure that the book will find its rightful place on the shelves of many sports lawyers, administrators, event managers and their professional advisers, throughout the world – not

least in China where Sports Law is an ever-developing subject of abiding interest and concern.

Beijing, April 2009

Professor Wang XIAOPING
*Executive Associate Director,
Research Center for Sports Law,
China University of Political
Science and Law (CUPSL)*

LIST OF ACRONYMS

AARRO	Afro-Asian Rural Reconstruction Organisation
AIBA	International Boxing Association
AIOWF	Association of the International Olympic Winter Sports Federations
ANOC	Association of National Olympic Committees
ANOCA	Association of National Olympic Committees of Africa
ASOIF	Association of Summer Olympic International Federations
ATHOC	Athens' Organising Committee for the Olympic Games
BOB	Beijing Olympic Broadcasting Company
BOCOG	Beijing Organizing Committee for the Games of the XXIX Olympiad
CAAC	Azores Council for High-Level Competition
CAS	Court of Arbitration for Sport
CNAD	National Anti-doping Council
CNVD	National Council Against Violence in Sport
COB	Brazilian Olympic Committee
CONI	Comitato Olimpico Nazionale Italiano
COP	Comité Olímpico de Portugal
CPP	Paralympic Committee of Portugal
ENGSO	European Non-Governmental Sports Organisation
EOC	The European Olympic Committees
FAQ	U.N. Food and Agriculture Organization
FEI	International Equestrian Federation
FIBA	International Basketball Federation
FIBT	International Bobsleigh and Tobogganing Federation
FIFA	International Association Football Federation
FIG	International Gymnastic Federation
FIH	International Hockey Federation
FIL	International Luge Federation
FILA	International Federation of Associated Wrestling Styles
FINA	International Swimming Federation
FIS	International Ski Federation
FISA	International Rowing Federation
FITA	International Archery Federation
FIVB	International Volleyball Federation
GAIFS	General Association of International Sports Federations
IAAF	International Association of Athletics Federations
IACF	International Amateur Cycling Federation
IAEA	International Atomic Energy Agency
IBAF	International Baseball Federation
IBF	International Badminton Federation
IBU	International Biathlon Union
ICAO	International Civil Aviation Organization
ICF	International Canoe Federation
ICU	International Cycling Union
ICU	International Professional Cycling Federation
IGOs	intergovernmental international organizations
IHF	International Handball Federation
IIHF	International Ice Hockey Federation
IJF	International Judo Federation
ICRC	International Committee of the Red Cross
ISFS	International Figure Skating Federation

ILO	International Labour Organisation
IOA	International Olympic Academy
IOC	International Olympic Committee
IPC	International Paralympic Committee
IRCRCM	International Red Cross and Red Crescent Movement
ISAF	International Sailing Federation
ISF	International Softball Federation
ISSF	International Shooting Sport Federation
ISU	International Skating Union
ITF	International Tennis Federation
ITKF	International Traditional Karate Federation
ITTF	International Table Tennis Federation
ITU	International Triathlon Union
IUCN	International Union for the Conservation of Nature and Natural Resources
IWF	International Weightlifting Federation
LBAFD	Law on Physical Activity and Sport
LBD	Basic Law on Sport
LBSD	Basic Law of the Sports System
LOCOG	London Organizing Committee for the Olympic Games
NGO	Non Governmental Organisation
NGOs	non-governmental international organizations
NOA	National Olympic Academies
NOC	National Olympic Committee
NPCs	National Paralympic Committees
OBO	Official Broadcaster for the Olympics
OBS	Olympic Broadcasting Service
OC	Olympic Charter
OCA	Olympic Council of Asia
OCOG	Organising Committee of the Olympic Games
OECD	Organisation for Economic Co-operation and Development
OGKS	Olympic Games Knowledge Services
OGOG	Organising Committee for the Olympic Games
OM	Olympic Movement
ONOC	Oceania National Olympic Committees
OPIC	Overseas Private Investment Corporation
OTAB	Olympic Television Archive Bureau
PASO	Pan-American Sports Organisation
PG	Paralympic Games
PM	Paralympic Movement
RJFD	Legal Regime for Sports Federations
SFRY	Socialist Federal Republic of Yugoslavia
SOCOG	Sydney Organising Committee for the Olympic Games
TOP	The Olympic Partner
TOROC	Turin's Organising Committee for the Olympic Games
UCI	International Cycling Union
UEFA	Union of European Football Associations
UIPM	International Union of the Modern Pentathlon
UN	United Nations
UNEP	United Nations Specialised Agency for the Environment
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNRPR	United Nations Relief for Palestine Refugees
USOC	United States Olympic Committee
WADA	World Anti-Doping Agency
WCF	World Curling Federation
WTF	World Taekwondo Federation
WTO	World Tourism Organisation
WUKO	World Union of Karate-Do Organization

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Chapter 1

Introduction

The Olympic Games of Antiquity, the origins of which go back to 776 BC, were organised and played out in the Sanctuary of Olympia, in Greece, governed by a very strict set of rules. The 'Fundamental Laws of Olympia,' stratified into a hierarchy of 'Olympic Laws,' 'Olympic Regulations' and 'Competition rules,' formed the basis for a kind of 'Olympic Law' which was then beginning to take shape.

Progressively, over tens of centuries and threehundred sessions of Olympic Games, the Olympic Games of Antiquity were without doubt not only an unparalleled sporting and educational event, but also a model of the primacy of Law, of the need to structure a competition or a settled society according to principles and rules, through organised bodies, in the name of Justice.

The Olympic Games of Antiquity were abolished by an Edict of Ambrosio, Bishop of Milan in 393, but this was fortunately not enough to extinguish their great legacy. Aware of this, and making full and visionary use of his abilities as a historian and teacher, the French Baron, Pierre de Coubertin, set the re-establishment of the Olympic Games in motion in 1894, and so the first Games of the Modern Era took place in Athens in 1896.

Rather surprisingly, in this entire rich heritage that Pierre de Coubertin successfully revived, there was no 'Olympic Law.' Indeed, the founder of the Olympic Games of the Modern Era was actually against a proliferation of rules, and on this point proclaimed as follows: 'the more regulations we adopt, the more we are fettered. Let us allow the Olympic organisations some flexibility.'¹

On the controversial issue of amateurism, Pierre de Coubertin even called attention to the fact that most countries had introduced 'complicated legislation, full of compromises and contradictions.'²

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

Kéba Mbaye,³ without doubt the jurist who has contributed most both to the study and practical application of 'Olympic Law,' stated that

¹ Monique Berlioux, 'The International Olympic Committee,' *Report of the Tenth Session of the IOA at Olympia* (Athens, IOA 1970) p. 2.

² Quoted by Salomé Marivoet, *Ética do Desporto – Princípios, Práticas e Conflitos – Análise Sociológica do caso Português durante o Estado Democrático do Século XX*, Doctoral Thesis, May 2007, copy provided by the author, p. 44.

³ 'La nature juridique du CIO,' *Sport, Droit et Relations Internationales* (Paris, Economica 1988) p. 69.

'those who ran the Olympics have always wished to free themselves from the political influence of States but never managed to find an effective legal framework that would allow them to clearly differentiate between the formulae employed by the IOC and the legal reality by which it was governed.'

This clash was gradually mitigated in the decades that followed. The Olympic Movement (OM) is today built on broad and solid institutional structures, the principal pillars or elements of which are the IOC, the National Olympic Committees (NOCs) and the International Sports Federations (IFs).

There are also various 'satellite organisations'⁴ of the Olympic Movement and there is now a Paralympic Movement (PM). Those that have contributed most to the development and consolidation of 'Olympic Law' include the Court of Arbitration for Sport (CAS), which bases its proceedings largely on the strict application and a wide dissemination of the Olympic Charter, and a special contribution has been made also by the IOC bodies – the Session, the Executive Board and the President – and by the Legal Commission of the IOC.

The Olympic Charter is today indubitably a legal body which, along with the IOC out of which it arose, has raised many legal issues, which are interesting from a theoretical, and particularly from a practical, point of view, curiously, or perhaps not, some of the OM's present-day legal problems have been 'inherited' from the Olympic Games of Antiquity. Others are inevitably and entirely contemporary.

In this mix that arises out of the umbilical relationship between the Olympic Games of Antiquity and those of the Modern Era, the new problems proliferate exponentially. This is inevitable: the growth and internationalisation of the Olympic phenomenon, and the accompanying media attention, increase the number of disputes connected with the Games, so issues of a legal and/or institutional nature become increasingly relevant, and many of these can be resolved within the terms of the OC,⁵ while others are still without accepted solutions.

This inevitably suggests interesting issues of legal construction, and these have proved challenging enough for us to embark on the kind of study that has resulted in this book.

In Portugal, legal doctrine and case law on this topic are extremely limited, and it is clear that the vast collection of foreign language documents that we have amassed consist essentially of scattered, individual, and sectorial analyses. It is understandable that this should be so. But we think that the time is ripe for a codification, a unified treatment of the relationship between Olympic Games and Law. And this is also why we feel motivated to go ahead with this brief study that is now being published.

⁴ Expression used by Colin Miège and Jean-Christophe Lapouble, *Sport & Organisations Internationales* (Paris, Economica 2004) p. 201.

⁵ Holger Preuss refers to the increasing legalisation of the Olympic Games and the corresponding loss of the emotional nature of the Olympic Charter; see *The Economics of Staging the Olympics: A Comparison of the Games 1972-2008* (Northampton, Edward Elgar Publishing 2004) p. 29.

We make no higher claim, however, than to contribute in a modest way to stimulating the debate. Our contribution is of an introductory or still embryonic nature and necessarily brief and incomplete, but addresses an overdue need to identify, codify and comment on some of the major legal and/or institutional issues emerging from the Olympic Movement in general and the Olympic Games in particular.

To this end, we shall examine issues related to the Olympic Games of antiquity particularly those we believe are some of the major legal problems facing the contemporary Olympic Movement, namely:

1. eligibility criteria for participation in the Olympic Games;
2. legal protection of Olympic property rights;
3. protection of the environment;
4. advertising;
5. freedom of expression;
6. NOC boycotts of the Olympic Games.

Our perspective will be above all based on the following sources: the Olympic Charter, cases decided by CAS insofar as 'Olympic Law' is involved, and within the ambit of State Law we shall consider Portuguese law, Community Law and International Law.

In embarking on our enquiry we shall set out to find answers to the questions of when, how and why the law is to apply to the Games.

We hope that this brief study will help to clarify how the rules and institutions enmeshed in the relationship between the Law and the Games are articulated and reconciled, and to stimulate the development of legal doctrine and case law in this area.

Chapter 2

Law and the Olympic Games

2.1 LAW IN THE OLYMPIC GAMES IN ANTIQUITY

The Olympic Games of Antiquity, which go back as far as 776 BC and took place in the city of Olympia, in Greece,⁶ were prepared, organised and performed within a rigorous framework of rules.

This can be explained by the fact that at that time, the cultural unity of Greek civilisation was anchored in the deep significance attached to moral and social principles and to rules, written or unwritten, that were universally accepted.

This anchor of civilisation was also the anchor of the Games: respect for the individual, for his individuality, but also for his place in society and in the collectivity; the proclamation and defence of values such as virtue, tolerance, honesty, justice and equity. Ethics and morals, aesthetics and education were all widely valued.

Greek politicians and legislators were well versed in the values and founding elements of sport: competitions between athletes and debates about different philosophical concepts had one aim in common: to defeat one's opponent honestly, to dominate him by just and correct means.

It is no surprise that Plato and Aristotle were fine athletes, nor that the theories and convictions of the former should have influenced the definition of the criteria of eligibility for participation in the Olympic Games.⁷ On the other hand, the latter's conception of character, seeking the right balance between daring and prudence (the Aristotelian precept) was clearly a discipline adopted by the athletes.⁸

Heracles is credited with having created the rules of the Olympic Games of Antiquity; the first aim of these was to ensure equality of opportunity between all the competing athletes.

All athletes were required to comply strictly with the obligatory equal preliminary training regime in Olympia, both individually and when all the athletes

⁶ Olympia, located in the region of Elis, was characterised by its neutrality, which is the main reason it was chosen to host the Games of Antiquity. Basically, Olympia was a spiritual centre of the Greek world, uniting politics, culture and physical perfection.

⁷ Plato divided people into three distinct categories, based on the idea that the best way for them to co-exist was by a rational division depending on the characteristics and capabilities of individuals. This stratified vision of society, associated when the values advocated by the philosopher, meshed with the qualification criteria for the Games then adopted, including the ineligibility of slaves and of citizens convicted of a breach of certain rules and/or principles.

⁸ Salomé Marivoet, *Ética do Desporto – Princípios, Práticas e Conflitos: Análise Sociológica do caso Português durante o Estado Democrático do Século XX*, Doctoral Thesis in Sociology, May 2007, copy provided by the author, pp. 40-42.

trained together during the month and a half before the Games took place. Even the diet was the same for all the athletes.

All athletes submitted to the verdict of the referees, the *hellanodikes*, an expression which in Latin means ‘judges of the Greeks.’ These arbiters had a period of ten months to prepare themselves thoroughly for the event, by studying the applicable rules which, Herodotus tells us, were inherited from Egyptian sages. As well as this technical preparation, there was also a spiritual preparation.⁹ In the first phase they were chosen from among the rich families of Elis, but from 580 BC onwards they were chosen by lot, one in each city.

The ‘canons’ or ‘Fundamental Laws of Olympia’ were broken down into three categories: ‘Olympic Laws;’ ‘Olympic Regulations’ and ‘Competition rules.’ The ‘Olympic Laws,’ at the apex of the hierarchy of rules, were engraved on bronze tablets, deposited at the permanent seat of the Olympic Senate, the *Buleuterion*. Immediately beneath these, in hierarchical terms, were the ‘Olympic Regulations’ category, rules for the specific application of the ‘Olympic Laws.’ Finally, there were detailed rules governing the organisation and execution of each trial or competition, each specific to its field.

This is one possible reconstruction of the basic content of the ‘Fundamental Laws of Olympia’:

- The following were excluded from the Olympic Games: (i) slaves; (ii) all barbarians, that is, those who could not show that they were Greeks and free men; (iii) those pursued by the Law and those of dubious morality; (iv) those guilty of murder and manslaughter; (v) those who had committed sacrilege; (vi) citizens upon whom a fine had been imposed; (vii) married women.
- In order to qualify to take part in the Games, athletes were required to: (i) train for ten consecutive months; (ii) register themselves on a special list known as the *leukoma*, within a fixed time limit; (iii) not arrive late; (iv) stay at the Gymnasium at Elis for the stipulated period of time; (v) obtain specified sporting results in the classifying trials; (vi) take the ‘Olympic Oath,’¹⁰ by which, among other things, they swore that they had attained the optimum level of technical ability to achieve victory, (along with the required mental conviction and self-confidence so that they would not fail on account of nerves or panic) and that they would abide by rules laid down.
- During the Games athletes were forbidden to: (i) kill their opponent in the wrestling or boxing arena, whether intentionally or negligently, on pain of expulsion from the Games, loss of prizes and being stripped of victory, which would be awarded to the victim’s cadaver; (ii) push their opponent or resort to any other unfair tactics; (iii) attempt to corrupt or intimidate opponents or judges, on pain

⁹ *Tudo sobre Jogos Olímpicos, Atenas 1896 – Pequim 2008* (Matosinhos, Quidnovi 2007) p. 7.

¹⁰ The current Olympic Oath was written by Pierre de Coubertin and used for the first time in Antwerp in 1920. It reads: ‘In the name of all competitors, I promise that we shall take part in these Olympic Games, respecting and abiding by the rules that govern them, in the true spirit of sportsmanship, for the glory of sport and the honour of our teams.’

- of being lashed with whips, ropes or belts; (iv) publicly contest the judges' verdict.
- Any athlete wishing to contest a decision had the right to appeal to the Olympic Senate and, at his own initiative and risk, to seek the condemnation of judges, who were proved to have made an incorrect decision.
 - While contests were underway in the stadium, the trainers were obliged to remain, naked, in an enclosure specially set up for the purpose close to the running tracks.
 - Any athlete who was without an opponent for a particular contest was declared the winner.
 - Athletes, trainers, judges, referees and family members had to swear a solemn oath before an imposing statue of Zeus, the 'God of Gods,' 'Master of Olympus,' or 'God of the Oath,' and over the palpitating flesh of a sacrificed pig.

The main task of the *hellanodikes* was to ensure the strict observance of the rituals, ceremonies and rules of the Games, and had disciplinary powers at their disposal.

The guiding principle in the definition of offences and their corresponding penalties was the criterion, referred to above, of 'equality of opportunity.' The penalties, ranked in order of severity according to the seriousness of the offending conduct, were of four distinct kinds: political, economic, sporting and corporal. The logic behind them was essentially one of severe penalties for whoever treated victory as more important than abiding by the rules.

The *hellanodikes* were also known as *agonetas*, that is, organisers of the competitions, because running the Games was also among their responsibilities.

They began by inspecting the gymnasium and other infrastructures, the athletes, including both adults and adolescents,¹¹ the animals in the equestrian events (horses, ponies or mules), and only then did they draw up a definitive list of participants. At the end the Games, their duties were not complete until they had entered the names of the winners in the official roll of honour on display in the gymnasium, and they might also decide to erect a statue in honour of the victorious athlete, a priest or one of the special arbitrators, or 'magistrates.'

Another mark of the stress laid in the Olympic Games of Antiquity on abiding by rules and on the symbol of unity referred to above was the inauguration in 776 BC of the institution known as *Ekecheiria*, a concept equivalent to an armistice (abstaining from the use of arms) rather than, as is sometimes asserted, peace, though it fundamentally betokened a desire for peace and cessation of hostilities and so did in practice amount to a proclamation of peace.

At that time the Greek City-States were constantly at war with each other, and so, as mythology has it, Ifitos, King of Elis, in a search for peace, visited the Oracle at Delphi and was advised to break the cycle of conflict every four years, substituting friendly athletic competition for war. Subsequently, Ifitos, together with Lycurgus, the legendary Spartan law-giver, and Cleosthenes of Pisa, signed a long-term

¹¹ Their physical condition as well as their character was assessed.