

# **Sovereignty Undermined?**

## **Sport & International Relations**

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# Sovereignty Undermined?

## Overview

- I. The Idea of Sport
- II. Sport in International Relations
- III. Sovereignty
- IV. The Legal Basis of Sports Participation
- V. Sport: Undermining Sovereignty?

# Sovereignty Undermined?

## Glossary of Abbreviations

- **ADRV** Anti-Doping Rule Violation
- **AHD** Ad-Hoc Division of the Court of Arbitration for Sport (Olympic Games)
- **CAS** Court of Arbitration for Sport
- **CAS Code** Court of Arbitration for Sport Code of Sports-related Arbitration
- **ECHR** European Convention on Human Rights
- **FCPIL** Federal Code on Private International Law 1987 (Switzerland)
- **ICADS** International Convention Against Doping in Sport 2005
- **ICAS** International Council of Arbitration for Sport
- **ICSS** International Centre for Sport Security
- **IF** International Sports Federation
- **IGO** Inter-Governmental Organisation
- **IOC** International Olympic Committee
- **NADO** National Anti-Doping Organisation
- **NOC** National Olympic Committee
- **NF** National Sports Federation
- **NGs** National Governments
- **NGO** Non-Government Organisation
- **OC** Olympic Charter
- **OGs** Olympic Games
- **RF** Regional Sports Federation
- **SFT** Swiss Federal Tribunal
- **TNC** Transnational Corporation
- **WADA** World Anti-Doping Agency
- **WADC** World Anti-Doping Code

# Sovereignty Undermined?

## I. The idea of sport

- The playing of games is one of the most intrinsically human things we can do – ie. ‘homo ludens’. (Huizinga, 1938)
- Games involve interaction with our fellow humans and provide an opportunity for us to socialise while enjoying the thrill and exhilaration of physical activity in the course of pitting ourselves against each other in contests of skill and/or athletic prowess. Games are naturally derived from primordial aspects of human behaviour such as hunting (and combat).

*The hunter-gatherer mode is central to our understanding of the origin of sports.* (Cashmore, 2000)

- Sport? A highly organised social activity comprised of persons voluntarily playing ‘games’ in accordance with an agreed set of rules to produce an outcome which results in a ‘winner’ of the game. Modern sport – a De Coubertin ‘Olympic’ construct?

# Sovereignty Undermined?

## II. Sport in International Relations

*For good or bad, few passions are as widely and as profoundly shared around the globe as the passion for sport. Its symbolism is often awesome. It brings out the noblest human qualities (good sportsmanship, the quest for excellence, a sense of community), and the basest (chicanery and mob violence). It is also big international business. Its capacity to motivate vast populations is nothing less than fabulous, and so naturally exercises a powerful attraction on those who would use its magic for their own ends.*

*The appetite for political influence and for money moves the heart inside the business suit with a force as primal as that of the dreams of glory that swell the distance runner's tunic. In a word, the realm of sport is that of a precious commodity. Therefore it is coveted. It is also an internationally significant resource which can be squandered or debased. Therefore the way it is controlled is not indifferent. And at the heart of the issue of control is that of ultimate authority to establish norms and settle disputes.*

Jan Paulsson (Court of Arbitration for Sport, Panel Arbitrator, 2006)

# Sovereignty Undermined?

## II. Sport in International Relations

- Throughout the twentieth century and into the new millennium, sport has played an increasingly prominent role in international relations, both in terms of political symbolism or projection of state identity, and as a means of promoting peace and dialogue between states.

*This is confirmation that the world is not unipolar. There are forces that support Russia. Russia is once again becoming a world leader.* (Boris Gryzlov, 2007, upon the announcement by the IOC of Sochi as the host for the 2014 OWGs)

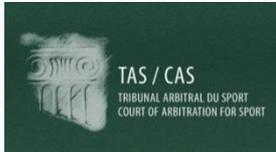
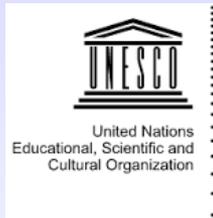
*What makes the Beijing 2008 Summer Olympics different from previous Olympic Games ... is that no other government has been quite as eager to use the Games to enhance its international prestige.* (Bao Tong, Senior Chinese Communist Party Official, 2008)

- Other examples: Berlin 1936 (Nazism); Montreal 1976 (African boycott); Moscow 1980 (Western boycott); Los Angeles 1984 (Eastern Bloc boycott); Biennial (summer/winter OGS) UN 'Olympic Truce' resolution.

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## II. Sport in International Relations

*Sport is one of the relatively few avenues open for direct mass participation in international relations. (Hill, 2004)*



BRITISH  
ATHLETICS

**World of Sport:** NGs,  
IGOs, TNCs, NGOs,  
NOCs, IFs, NFs,  
Individuals.

# Sovereignty Undermined?

## III. Sovereignty

- The modern state as we know it, traces its origins back to the *Peace of Westphalia* in 1648 (ending the Thirty Years War in the Holy Roman Empire and the war between Spain and the Dutch Republic), which laid the basis for state self-determination and sovereignty (ie. state system).
- ‘Sovereignty’ in the Westphalian sense emerges from an established set of international norms which recognise the exclusivity of state authority or power over its geographic territory, subjects and domestic affairs and equality amongst mutually recognised states. It is a hallmark of the canon of international law. Sovereignty in the legal sense, rests upon the concept of ‘legitimacy’ of government (domestically and internationally).
- The idea of justice (relative as it might be) has long been axiomatic to English society, comprised of the monarch and the peoples of England.  
*To no one will we sell, to no one will we deny or delay the right to justice.*  
(Magna Carta, 1215)

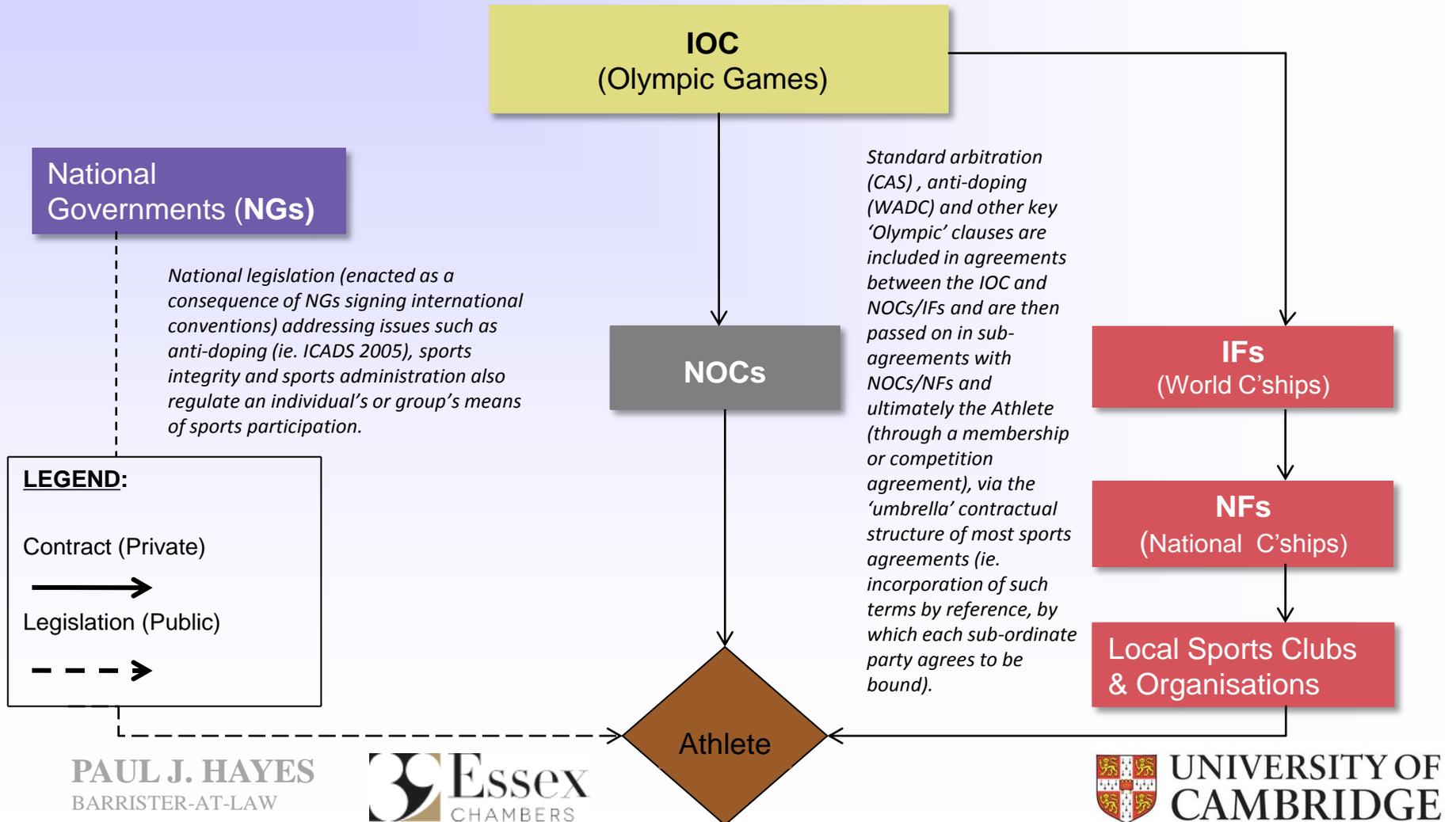
# Sovereignty Undermined?

## IV. The Legal Basis for Sports Participation: Contract

- Most international (and domestic) sporting contests are private events.
- Participation in international sport (ie. the OGS) is governed by the law of contract: a series of umbrella agreements, which incorporate by reference, the OC, the WADC and the rules/regulations of each Olympic IF, which in turn through dispute resolution clauses, establish the jurisdiction of the CAS. (*Allen Fabrications Ltd v ASD Ltd* [2012] EWHC 2213; *Spurling v Bradshaw* [1956] EWCA Civ 3. Cf *Riverwood International Australia Pty Ltd v McCormick* (2000) 177 ALR 193; *Smythe v Thomas* (2008) 71 NSWLR 537)
- OGS participants are bound to the IOC (and OC) by NOC Team Agreements (which regulate on & off field conduct, doping, integrity, social media use, sponsor obligations, etc), which contain WADC anti-doping clauses and CAS arbitration clauses.
- Note: IOC control of WADA and CAS. No express or direct state involvement in OGS or other international sports participation.

# Sovereignty Undermined?

## IV. Legal Structure of International [Olympic] Sport



# Sovereignty Undermined?

## IV. Sporting Disputes

- Sporting Disputes? A distinct body of regulatory and case law unique to 'sport' (ie. Eligibility; Selection; Game Rule; Doping; On and Off-Field Conduct; Integrity). A *jus ludorem* (law of games) or *lex sportiva*. Genesis in the early 1980s. Cf. *lex mercatoria*?
- Sporting disputes arise under the 'sporting contract', which often import obligations created by international private agreements (ie. WADC, CAS).
- What are not 'sporting disputes': Legal actions primarily founded in contract, tort, or public law which involve sport, which are curially determined, save those disputes arising under the 'sporting contract' itself.
- 'Sports law' spans private and public, domestic and international law. Is primarily international in character, given the dominant roles of the IOC, WADA, IFs & NFs (regulation) and the CAS (case law).

# Sovereignty Undermined?

## IV. The CAS

- IOC establish the CAS in 1984 (due to rise in sporting disputes due to the internationalisation and commercialisation of sport). CAS is seated in Lausanne (SUI) and rules on sporting disputes through the publication of arbitral awards which are enforceable under the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, New York, 1958. ICAS (20 members) established in 1994.
- The CAS derives its ultimate jurisdiction from dispute resolution clauses in the 'sporting contract' and also under OC, Arts 15(4), 59 and WADC Art 22.3, which in turn often import the CAS Code. CAS Code allows for CAS to rule on its own jurisdiction. (*PAOK FC v HFF and Panathinakos FC CAS 2014*; *Hill v ASADA and Cycling Australia CAS 2013*)
- The CAS is the pre-eminent specialist international jurisdiction for the determination of sporting disputes. Final court of 'merit' appeals. 200+ CAS arbitrators world-wide (closed list) hear over 400 cases per annum.

# Sovereignty Undermined?

## V. Sport: Undermining Sovereignty?

- Should participation in sport be governed by [international] private law, or is it better characterised as ‘public’ activity (sport = culture = human right)? (*Universal Declaration of Human Rights* 1948, Art 27(1); *International Covenant on Economic, Social and Cultural Rights* 1966, Arts 2(1), 2(2), 5-8, Cf Art 25)
- All sports participants, international and domestic, are subject to a large body of private [and in some instances, oppressive] international sports regulation (ie. laws governing sports participation made by private non-state actors, such as the IOC, WADC, CAS, etc).
- In other words, state subjects’ sports participation is not being governed by laws made by their states, or developed in the international space via the agency of state, rather, their participation in sport is governed by laws made by the IOC, WADA, CAS, IFs, NOCs, NFs, etc – none of which have the domestic/international legitimacy of authority over individuals (ie. state subjects), in the same way states do.

# Sovereignty Undermined?

## V. Sport: Undermining Sovereignty?

- Most sporting disputes are not determined by state courts or international tribunals juridically rooted in public law, rather the means by which such disputes are determined is by private arbitration through the CAS, to which ultimate [limited] review rests with the Swiss courts.
- Appellate review of arbitral decisions (derived from a private process) under the FCPIIL is far narrower than that which is comparatively available for cases decided curially (determined publicly in state courts).
- Why have states informally ceded sovereignty (possibly though indifference) to non state actors over this aspect of their citizens lives?
  1. Higher domestic/international political priorities?
  2. Economic considerations?
  3. The incentive/perceived benefits to be derived from playing the 'Olympic Game' (ie. the right to host an OGS)? IOC has the power.

# Sovereignty Undermined?

## The Finishing Post...

- The whole idea of 'sport' rests on a stable foundation of fairness and transparency on and off the field of play. The integrity of sport has never been more vulnerable than it is now in the modern professional/commercial/political era (ie. doping; match fixing; etc).
- Individuals' participation in sport is now subject to an over-arching regulatory system of international private law, controlled by non-state actors.
- Perhaps the challenges of modern sports governance and regulation might be better met through a resumption by states of sovereignty over this area of 'public' endeavour, rather than by allowing sovereignty over this aspect of their subjects' lives to be exercised *de facto* by private, self-interested, interests.

*Sport has the power to change the world. It has the power to inspire, it has the power to unite people in a way that little else does.*

- Nelson Mandela, 2000.