

## **The Case for the inclusion of Squash and Karate in the London 2012 Games.**

The two sports of Squash and Karate were validly voted onto the 2012 Programme by a proper voting procedure of a full session of IoC Members conducted by IoC Chair, Jaques Rogge, on July 11<sup>th</sup> 2005.

Disquiet ensued in the chamber when Rogge sought to “ratify” this vote by a show of hands. After some discussion at the podium a second vote was taken, by secret ballot. The purpose of this second vote was to determine whether or not to confer “Olympic Sport” status on either or both of the two sports. The IoC’s interpretation of the 2004 Charter was that because:

- i) only Olympic Sports can feature in any Olympic Programme (agreed – rule 47); and
- ii) Rule 46 lists the 28 sports comprising the Athens Olympiad and states that they are “Olympic Sports”

it therefore follows that the two new sports voted into the two slots created when baseball and softball were voted off the 2012 programme had to qualify as Olympic Sports.

England Squash agree that new sports had to be recognized as Olympic Sports, but believe that the first vote (onto the 2012 programme) completed the process of conferment of such status.

The IoC charter specifies voting rules and procedures on a wide variety of matters. It also sets out the responsibilities of delegates and a variety of voting procedures.

The IoC subjugate themselves to the authority of the Court of Arbitration for Sports. England Squash believe that the “second vote” procedure on the matter of Olympic Sport status was improper and would be discarded by the CAS:

- a) The process of applying to become an Olympic Sport, the vetting procedure by the Olympic Programme Commission, and the first vote that put the two sports on the 2012 programme automatically qualify both as Olympic Sports. If a separate vote on this matter had been necessary then the Charter would have so specified or at a minimum strongly implied. The Charter spells out in some detail the criteria for recognition as an Olympic sport. It is simply not credible that there could be any shortcoming in the claims of the two sports after their case was presented in such detail, so thoroughly evaluated over 2.5 years, and accepted by the IoC session.
- b) The Charter specifies the process for electing Members ( rule 16) and empowers an IoC session to vote on 10 other matters, including an umbrella “any other matters assigned to it by law or by the Olympic Charter” (rule 18.2). There was ample opportunity for the Charter to specify or imply that, once voted on to an Olympic programme, new sports not listed in rule 46 required endorsement by way of a vote on this status. No such reference appears in the Charter for the simple reason that the authors of that constitutional document never considered that such status should require any second vote. The 2.5 year examination process which squash and karate underwent, evaluation by the Olympic Programme Commission against the detailed Olympic Sport criteria set out in the Charter, examination of reams of information submitted by the two sports global governing bodies, final examination by the IoC Executive Board, appearance on the short list of 5 sports and then the vote onto the 2012 Programme, were enough. Any sports which survived that thorough process and were voted onto an Olympic Programme were intended automatically to attain “Olympic Sport” status, and the invocation of the second voting process was an error of interpretation.
- c) The list of sports contained in Rule 46 is the complete list of the 28 Sports comprising the Athens 04 Olympiad. At no point does Rule 46 say or imply that the list restricts future programme amendments as envisaged by the surrounding clauses, or refer to constitutional change in these circumstances.

The counter argument is that rule 18.3 must be invoked since any change to a comma of the 04 Charter requires a 2/3 majority. This argument is weak:

- i) the relevant section of the Charter contemplates that the programme of the games should constantly change and no reference appears to the requirement for a separate vote on Olympic Sport status, and
- ii) The overarching principles behind the constitution are expressed on the opening pages – the Fundamental Principles of Olympism (FPO). FPRs 4 and 5 emphasise the rights of all athletes and sportsmen to compete without fear of discrimination of any kind, so the protectionism of the listed Athens 04 sports implied by this counter argument would be at odds with the Fundamental Principles of Olympism.

Gordon Kerr  
August 15, 2009

## Detailed Analysis

### Definitions and Abbreviations:

CAS- Court of Arbitration for Sports in Lausanne

IF – International Federation (each sport’s global governing body)

Member – IOC Members as defined by Charter 2004

Memo – A memorandum dated June 13<sup>th</sup> 2005 from Jacques Rogge to various parties entitled “Procedure for the Vote on the Olympic Programme for the 2012 Olympic Games”

- First Stage - the process set out in the antepenultimate paragraph (labelled para a) of the Memo
- Second Stage – the process set out in the penultimate paragraph (labelled para b) of the Memo
- Third Stage- the process set out in the last paragraph (labelled para c) of the Memo

Minute – Official IOC Minute of the events of IOC Session of July 11<sup>th</sup>

### Timing and Process:

The IOC subjugates itself to the jurisdiction of the CAS under the IOC Charter of September 1 2004 (“the 2004 Charter”)<sup>1</sup> as modified by the September 1 2007 version. References to Clauses (or Rules) in this document are of the 2004 Charter save as specified. “Clause” and “Rule” are used interchangeably.

Only WSF, as the recognized IF for squash, and WKF, IF for karate, may appeal. The limitations period is set out in Clause 6 of the 2004 Charter, but the provisions of the Swiss civil code also apply. [For brevity the limitations point is not now discussed].

### The Events of July 11<sup>th</sup> 2005 at the 117<sup>th</sup> IOC Session, Singapore

What actually happened is pretty important so I set out in full the Official Minute of the proceedings.

#### SINGAPORE 2005: 2012 OLYMPIC SPORT VOTE

11 July 2005

OLYMPIC  
PROGRAMME  
COMMISSION



The IOC acts as the guardian of the Olympic Games; this means not only ensuring the quality of this, the world's greatest sporting event, but also acting as a custodian to the inspirational values the Games convey to all those they touch.

In this role, the IOC follows a strategic policy to maintain and develop the excellence of the Games and to ensure they continue to inspire future generations.

#### Fresh and Relevant

A key element which makes the Olympic Games inspirational is the Olympic programme - that is, the menu of sports which make up the Games. The IOC has undertaken two years of in-depth study through the efforts of the Olympic Programme Commission, working in collaboration with the International Sports Federations and other Olympic stakeholders, to study the Olympic programme and to put in place a mechanism which allows the programme to be reviewed and, if necessary, changed, so that it remains fresh and relevant for the youth of tomorrow.

#### Landmark

The work of the Olympic Programme Commission reached a landmark in Singapore at the 117th IOC Session, when, for the first time in decades, the Olympic programme was reviewed. IOC members voted on each one of the 28 sports from the Athens 2004 Games to decide whether or not they should

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<sup>1</sup> Clause 61: *Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.*

be staged at the Games in London in 2012. The members made history by voting for change for the first time in almost 70 years. Twenty-six of the 28 sports from Athens 2004 were chosen for London 2012. Two sports, baseball and softball, did not receive the majority of votes needed, although they do remain on the list of Olympic sports and are therefore eligible for possible inclusion at future Olympic Games.

#### New Sports

The non-inclusion of baseball and softball allowed the IOC members to vote on the inclusion of two new sports for the 2012 Olympic Games, since a total of 28 sports can be accepted on the Olympic programme. Five "non-Olympic" sports - roller sports, squash, golf, karate and rugby sevens - had been studied by the Olympic Programme Commission as part of its two-year analysis. From these five "non-Olympic" sports, the IOC members selected karate and squash as the two sports which could potentially be chosen to join the Olympic programme for London 2012. For such a selection to be endorsed, however, a two-thirds majority is needed, since any "non-Olympic" sport must become an Olympic sport and listed as such in the Olympic Charter under Rule 46. Ultimately, neither squash nor karate obtained this two thirds majority and will therefore not be included for London 2012. Full figures of the rounds of voting are listed below:

#### Selection of Two Sports for Nomination

##### First Round

Karate: 23  
Roller Sports: 20  
Rugby: 17  
Squash: 16  
Golf: 14

##### Second Round

Karate: 27  
Rugby: 22  
Squash: 21  
Roller Sports: 20

##### Third Round

Karate: 33  
Squash: 29  
Rugby: 25

##### Fourth Round

Squash: 40  
Karate: 39

Squash is elected as one of the two nominees.

##### Fifth Round

Karate: 32  
Rugby: 23  
Roller Sports: 22  
Golf: 15

##### Sixth Round

Karate: 35  
Rugby: 33  
Roller Sports: 28

##### Seventh Round

Karate: 54

Rugby: 38

Karate is elected as one of the two nominees.

Vote on the Inclusion of Squash in Rule 46 of the Olympic Charter

Yes: 39

No: 63

Squash is not included in Rule 46 of the Olympic Charter

Vote on the Inclusion of Karate on Rule 46 of the Olympic Charter

Yes: 38

No: 63

Karate is not included in Rule 46 of the Olympic Charter

Now I invite you to compare the voting procedure recorded by this Official Minute with a document labeled "Olympicprocomm report" (attached) which is described in the covering letter as "the voting procedure, decided upon at the Berlin Executive Board meeting in April 2005".

The last three paragraphs are reproduced (referred to as a0 b:

The First Stage voting at the Session resulted in the removal of baseball and softball from the London 2012 Olympic Programme yet retaining the status of Olympic Sports and on the Rule 46 list.

Thereafter the process was flawed. On a literal reading of the Memo the President (Rogge) should have halted proceedings temporarily to call a brief meeting of the Executive Board to recommend two sports or rank all 5. He did not, but moved immediately to invite the Session to decide by secret ballot which of the 5, if any, were to be admitted to fill the vacant slots at London 2012<sup>2</sup>.

Squash and karate won these two slots by simple voting majority, achieved by "whittling" the candidates in a 7 stage voting process<sup>3</sup>. This process was more or less identical to the process employed two days beforehand to "whittle" the [5] candidate cities down to London.

From the "Official Minute" it appears that Rogge then invited the Delegates to vote again on these two sports, this time to ratify them as "Olympic Sports", because in order to feature in any Olympic programme the sport must be an "Olympic Sport" as listed in Rule 46. He suggested a show of hands. However, certain Members approached him and, presumably referring to the Memo, pointed out that there should be a secret ballot. The "Official Minute" then records that a further vote was taken on each of the sports of squash and karate. The Minute records that neither were included in the London games because both sports failed to secure a 2/3 majority of the votes cast.

#### Argument for Squash and karate's inclusion in London 2012 programme

The Memo (specifying the voting procedure) provided that the Members should have taken only two votes. The first vote on expulsions (baseball and softball were removed from the 2012 menu) followed the procedure set out in the Memo.

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<sup>2</sup> Memo para b and Minute

<sup>3</sup> see Minute

Following the precise wording of the Memo, Rogge should then have presented the 5 sports to the Members with a recommendation from the IOC Executive Board.

He presented no such recommendation, and it therefore follows that as a matter of procedure the second actual vote taken should be construed as the Third Stage vote – namely a vote on the range of 5 candidate sports. The only question remains as to whether the 50% simple majorities achieved by those two sports were sufficient to qualify them as Olympic Sports. All 5 sports were “proposed to the Session for admission” by Rogge, ie Stage 2 was effectively discharged by the invitation to consider all 5. The actual vote recorded by the Minute as the Third Stage vote by way of “ratification as Olympic Sports<sup>4</sup>” was simply an unconstitutional invitation to IOC Members to vote on the sports again, this time exposing the two sports to a 2/3 majority requirement. Not only is a second vote on the same issue by the same forum as a general matter of judicial process questionable, but here it had no status since the 2004 Charter (ie the Memo) specifies only one such vote.

One counterargument to this analysis would be based on a narrow interpretation of para b – since the Executive Board made no proposal the Second Stage vote was not a “vote by secret ballot on the proposal of the Executive Board”<sup>5</sup>. But if this is accepted it surely follows that the result minuted as the Third Stage vote cannot stand because the same point applies.

The better view (subject to my comments below on the 2/3 majority point) is that the Executive Board made no ranking recommendation and therefore the Members voted once on the sports, the second actual vote taken (Third Stage Vote). Accordingly and the third actual vote taken was a ‘fourth stage’ and should be struck out as having no constitutional or procedural status.

A further counterargument is that the second actual vote taken was a procedure merely to select two candidates to be submitted for “endorsement” or “ratification”<sup>6</sup>. This argument fails on three grounds:

- i) The 5 Candidates had already been approved as Candidate Sports by the IOC (detail?) after an exhaustive analysis of their qualifications by reference to constitutional criteria<sup>7</sup>
- ii) The Charter does not specify that Members should determine any such ranking list, it merely states that the Members will vote on whether they wish to admit any sport to London 2012. Abstentions are permitted<sup>8</sup>;
- iii) All IOC Members were copied on the Memo, a document of exceptional importance given the lack of detail in the Charter on the process. Members were aware of the voting

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<sup>4</sup> presented as a Constitutional amendment to the list of sports scheduled within Rule 46

<sup>5</sup> Memo para c

<sup>6</sup> See Minute

<sup>7</sup> Clause 47 2004 Charter:Olympic Sports included in the Programme of the Olympic Games:

To be included in the programme of the Olympic Games, an Olympic sport must conform to the following criteria:

1.1 only sports widely practised by men in at least seventy five countries and on four continents, and by women in at least forty countries and on three continents, may be included in the programme of the Games of the Olympiad;

1.2 only sports widely practised in at least twenty-five countries and on three continents may be included in the programme of the Olympic Winter Games;

1.3 only sports that adopt and implement the World Anti- Doping Code can be included and remain in the programme of the Olympic Games;

1.4 sports are admitted to the programme of the Olympic Games at least seven years before specific Olympic Games in respect of which no change shall thereafter be permitted, subject to paragraph 6 below.

<sup>8</sup> Rule 18 (4)

procedure and all knew that they would be asked to vote only twice, once on potential expulsions (First Stage) and once on potential admissions (Third Stage).

### Two Thirds Majority Hurdle

The counter argument is the protection afforded by the 2/3 majority requirement. The Charter sets out at Rule 18:

3. The quorum required for a Session is half the total membership of the IOC plus one. Decisions of the Session are taken by a majority of the votes cast; however, a majority of two-thirds of the IOC members attending the Session is required for any modification of the Fundamental Principles of Olympism or the Rules of the Olympic Charter.

4. Each member has one vote. Abstentions and blank or spoiled votes are not taken into consideration in the calculation of the required majority. Voting by proxy is not allowed. Voting is held by secret ballot when so required by the Olympic Charter, or if the Chairman so decides or upon the request of at least a quarter of the members present. In the event of a tie, the Chairman shall decide.

5 The provisions of Rules 18.3 and 18.4 are applicable to elections, whether of persons or of host cities. However, when there are or remain only two candidates, the candidate obtaining the greater number of votes is declared elected.

6 The Session may delegate powers to the IOC Executive Board.

Rogge was mistaken in suggesting that a 2/3 majority was needed for squash and karate to achieve Olympic status:

- i) Although the 28 sports are listed within Rule 46 of the Charter, current “Olympic Sports” are given no constitutional protection nor special status under the Introduction or Preamble to the Charter, or anywhere else. Rule 46 exists both to record the present Olympic Sports<sup>9</sup> and to link the definition of such sports to the previous criteria. If this Rule were proposed to be modified by, for example, either its deletion or a change to its significance, then Rule 18 would apply and such a change would indeed require a 2/3 majority vote of an IOC Session.
- ii) Authority for changing the composition of any Olympic Programme is given to the IOC Session by Rule 47 with no suggestion that such a change is governed by Rule 18 save the wording: *The IOC establishes the programme of the Olympic Games, which only includes Olympic Sports*. The “Olympic Sports” listed under Rule 46 are only the 28 sports that featured at the Athens Olympiad 2004. No former Olympic sports (for example tug of war or rugby) are included in the present list of “Olympic Sports” under Rule 46.
- iii) Rule 47.1 is consistent with the construction that once a sport that satisfies all the previously laid out criteria has been voted on to the Olympic Programme it automatically becomes an Olympic Sport. [Note the possible typo at para 2 of 47.1 “Olympic sport”]. If the accession of any sport to Olympic Sport status were indeed to be deemed a change to the constitution there was ample opportunity for the Charter so to provide within Rule 47.
- iv) The argument set out in the Memo to justify the 2/3 majority amounts to protectionism of existing sports and constitutes political discrimination which offends the Fundamental Principles of Olympism, the overarching principles by which the Charter itself derives

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<sup>9</sup> Many sports that have previously featured at an Olympiad are absent – the Rule lists only the Athens 04 sports

authority<sup>10</sup>, and also the Olympic Oath<sup>11</sup>. Why should previous Olympic sports enjoy electoral advantage over sports that have not previously featured in an Olympiad?

- v) The points set out above appear to have been accepted by the IOC which, at its next session in Guatemala in 2007 amended the Charter to clarify that candidate sports become Olympic Sports under the relevant Rule the 2007 Charter by a simple majority vote only.

By voting to admit squash and karate after such an exhaustive candidacy process the IOC Session was also voting to add these sports to the list of Olympic Sports.

The first and second actual votes that took place were therefore the First and Third Stage votes as provided for in the Memo, to remove/ admit sports to London2012 and to confirm that all 4 sports remain/ become Olympic Sports.

The simple majority approvals secured by the second actual votes for squash and karate should now be recognized as sufficient constitutional authority to include them both in the list of Rule 46 Olympic Sports.

??Recommendation to Appeal to the Court of Arbitration for Sports, Appeals Arbitration Division, the IOC's failure to admit Squash (and Karate) to the Programme for the 2012 London Olympic Games ("London 2012").

#### Appended

- 1) The 2004 IOC Charter
- 2) Official minute of the July 11<sup>th</sup> 2005 Session
- 3) Jacques Rogge Memo dated June 13<sup>th</sup> 2005

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<sup>10</sup> 4. The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play. The organisation, administration and management of sport must be controlled by independent sports organisations.

<sup>5</sup> Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement.

<sup>11</sup> Clause 16.1.3