

# THE INTEGRITY OF SPORTING PERFORMANCE AT THE OLYMPIC GAMES AND AT OTHER ELITE SPORTS EVENTS

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The Olympic motto is *citius, altius, fortius* faster, higher, stronger. Baron Pierre de Coubertin was the moving force behind the revival of the Olympic Games and the first of the modern Olympic Games held in Athens in 1896 when 14 nations sent nearly 300 representatives to take part in 42 events and 10 different sports. King George 1 of Greece opened those Games on the afternoon of 6 April 1896. Baron de Coubertin would be surprised and disgusted that faster for Ben Johnson, the Canadian sprinter, meant that he won the 100 metres for men at the 1988 Olympic Games in Seoul in a world record time with the aid of Stanozolol, an anabolic steroid.

Higher is exemplified by the world record holder for the high jump, the Cuban high jumper Javier Sotomayor. He was suspended after testing positive for cocaine at the Pan American Games in Winnipeg Canada in August of 1999. He was banned for two years. That punishment was halved on "humanitarian grounds" by the International Amateur Athletic Federation on 2 August 2000, enabling Sotomayor, the 1992 Olympic champion, to compete at the Sydney Olympic Games in 2000. Sotomayor set the world record of 2.45 metres in 1993. He jumped 2.32 metres to earn the silver medal at Sydney, the Russian jumper Klliugin winning the gold medal with a height of 2.35 metres.

Stronger is represented by two athletes in different sports: the U.S. champion shot-putter C.J. Hunter, the former husband of the world's fastest woman Marion Jones, was suspended after arrival in the Games Village for the Sydney Olympics for failing pre-Games tests. Hunter, who was then aged 31 and weighed 144 kilograms, tested positive to the steroids nandrolone and testosterone at the Bizlet Games in Oslo on 28 July 2000. His reading for nandrolone was 1000 times the legal limit of 2 nanograms per millilitre of urine. He also tested positive to testosterone by recording a testosterone to epi-testosterone reading greater than 6:1. The Bulgarian weight-lifter, Izabela Dragneva, was disqualified and stripped of her gold medal in the 48 kilogram division for testing positive to the diuretic furosemide, which is used to help weight-lifters reduce weight to get into their weight category. Also stripped of gold at the Sydney Olympics was Rumanian gymnast, Andreea Raducan, after returning a positive test to pseudoephedrine.

*Citius, altius, fortius* gives a clue as to why synchronised swimming should not be part of the modern Olympics, nor should female pubescent gymnasts twirling ribbons. Nor, in my opinion, should any sport where success cannot be measured objectively, including by time, height or weight.

Faster, higher, stronger may be the Olympic motto, but do the means of achieving those results matter? And how can athletes who cheat be caught?

There can be no dispute that there is a very real financial incentive to cheat by the use of drugs. In the case of Ben Johnson, it was said that he was certain to lose at least \$10 million in the 12 months after being stripped of his gold medal. He won against his archrival, Carl Lewis, in world record time pumped up with banned anabolic steroids. He earned \$5.2 million from advertising endorsements in the 12 months prior to the Olympics after setting his first 100 metre world record in beating Lewis in the 1987 World Championships in Rome, and his endorsement potential was expected to double after he won the 100 metres Olympic final in Seoul. But after the doping scandal, his lucrative contracts were scrapped.

Sports sponsorship by corporations has increased at a remarkable rate. In Australia between 1996 and 2000, sports sponsorship expenditure almost doubled from \$459 million to \$907 million, and if TV rights to sport were included, the increase would be even larger. Corporate sponsorship generates 40% of the IOC's revenue, and licensing contributes 2%. The successful Sydney 2000 Olympic Games in part can be attributed to the marketing division of the Sydney Organising Committee, which provided 40% of SOCOG's net revenue through sponsorship. The complexity and conflicting rights of athletes and event sponsors provide even more scope for legal disputes, the Olympic Games being no exception.

When one has regard to the enormous amounts of money for elite sporting events, particularly the Summer Olympic Games, it is no wonder that there is intense pressure to cheat by taking performance-enhancing substances, the challenge for the organisers of these events and the athletes of the world being to prevent cheating by resort to doping.

The word "doping" is said to have its origin in the South African Kaffir dialect word "dop" which refers to a strong liquor used as a stimulant. It was first used in English in 1889 to describe the compound of narcotics and opium given to racehorses. Doping in horse racing and dog racing has been prohibited for more than 100 years, but until 1968 there were no rules in the Olympic Games against athletes using "abnormal" substances, or allowing their handlers to administer them.

Professor Max Howell, the well-respected Australian sports historian, records that the utilisation of external substances to enhance athletic performance can be traced to the third century BC. The winner of the marathon at the 1904 Olympic Games, Thomas Hicks, was fed strychnine laced with cognac during the course of the marathon race. Dazed, numbed and hallucinating, he finished the race the winner, but was hospitalised for three days afterwards. Because there were no medical controls, the use of drugs was common, particularly in long-distance events. Tom Longwode from Canada, and the favourite to win the 1908 Olympic marathon, collapsed during the race from an over-use of drugs. In the Melbourne Olympics in 1956 several cyclists exhibited strange physical and emotional symptoms, said to have been caused by artificial stimulants. At the 1960 Rome Olympic Games the Danish cyclist, Knut Jensen, died during the Olympic road race as a result of ingesting amphetamines and nicotinic acid. In the Tokyo Olympics in 1964 there were no specific procedures established, but spot checks were conducted on cyclists, which revealed that unidentified injections before competition had been used.

It was not until 1967 that the IOC Medical Commission was formed to combat doping at the Olympics, with dope control as one of its terms of reference. The following year, Hans Gunner Liljenwal of the Swedish modern pentathlon team, was disqualified for using alcohol. By the time full-scale drug testing began in 1972, the use of stimulants, sedatives, hormones and steroids was so common that doctors and coaches were already resorting to masking agents to beat the tests, and studying how close to competition an athlete could continue his or her drug programme without risking a positive test result.

The 1968 Winter Olympics in Grenoble France were the first Olympic Games with anti-doping controls. In 1972, four medallists were disqualified when seven out of more than 2,000 tests showed positive results. The most controversial was the American swimmer, Rick de Mont, a 17-year-old who had taken medication containing ephedrine for his asthma. He was stripped of the gold medal he won in the 400 metres freestyle.

By 1976 the list of banned substances had grown immensely, as had the complexity of the doping control regulations. I have set out as an appendix to this paper a list of the positive drug tests at the Summer Olympics since 1968 up until 2000.

The most egregious instance of doping has been that of the East German doping programmes from 1968 to 1989. Many East German athletes over many sports were given anabolic steroids. In 1998 the first trial of East German coaches and doctors took place, and the chief doctor of the East German Swimming Federation from 1975 to 1985 was convicted of causing bodily harm to 58 swimmers in January 2000. The fact is, that swimmers and other athletes who competed against, and were beaten by, the chemically augmented East Germans were cheated out of medals they should have earned. Perhaps, however, many of the East German athletes were also victims, because they will never know if they could have won medals without the drugs.

I want to turn shortly to how the International Olympic Committee is fighting the battle against doping in sport at the Olympic Games.

## History

The Olympic Games were held every four years between August 6<sup>th</sup> and September 9<sup>th</sup> at Olympia. There are records of the champions at Olympia from 776 BC to AD 217. The first Olympic champion listed in the records was Coroebus of Elis, a cook who won the sprint race in 776 BC. At that time the Games were probably at least 500 years old. The Games were abolished in AD 393 by the Roman Emperor Theodosius 1<sup>st</sup>, probably because of their pagan association.

In the final 100 years or so before the Games were discontinued, champions came from as far from Olympus as Antioch, Alexandria and Sydon. The competitors of the ancient games were amateur in the sense that the only prize was a wreath or garland, but eventually the contestants were true professionals. There were substantial prizes for winning, and the Olympic champion also received adulation and unlimited benefits from his city.

As David Wallechinsky tells us in his wonderful "The Complete History of the Olympic Games", (Hardie Grant) the ancient Olympics had more in common with the modern games than is commonly realised. Apart from the ample rewards when they returned to their home town, during the course of the ancient Olympics there were cases of cheating, bribery and even boycotts. He tells us that athletes came from all social classes, including slaves, and among the more famous competitors were Phillip II of Macedon and his son, Alexander the Great. Pythagoras the philosopher and mathematician served as team doctor for Kroton, a city of Greek settlers on the Italian coast. The most decorated champion of the ancient games was the runner, Diagoras of Rhodes, who won 12 championships between 164 BC and 152 BC. The most famous of the ancient athletes was the wrestler Milon of Kroton. The ancient games lasted for more than 1100 years, but it was another 1500 years before they were revived.

The real hero of the 1896 Games, the first of the modern era was Spiridon Louis, a 24-year-old Greek shepherd who won the 40,000 metre marathon race created to honour the legend of Phidippides who is said to have carried the news of the Greek victory at Marathon in 490 BC by running from Marathon to Athens. Louis, to the great joy of the 10,000 spectators in and around the stadium, won the race by more than seven minutes.

At the Congress on International Sport in Paris in June 1894, the control and development of the Modern Olympic Games was

entrusted to the International Olympic Committee ("the IOC"), with headquarters to be established in Switzerland. The IOC is a permanent organisation that elects its own members. The present membership is about 70. The IOC elects its president for a period of eight years, at the end of which he is eligible for re-election. Juan Antonio Samaranch was elected in 1980. The present president, Dr Jacques Rogge, of Belgium was elected in 2000.

Each country that desires to participate in the Olympic Games must have an Olympic Committee accepted by the IOC. There are presently more than 170 such committees. A national Olympic Committee is composed of at least five national sporting federations, each affiliated to an appropriate international federation. National Olympic Committees that do not conform to IOC rules and regulations forfeit their recognition and their right to send participants to the Olympic Games.

In 1971 the IOC decided to eliminate the term "amateur" from the Olympic Charter. In 1986 the IOC adopted rules that permit the international federation governing each Olympic sport to decide whether to permit professional athletes into Olympic competition.

The 22<sup>nd</sup> Olympiad at Moscow in 1980 involved not only a boycott of about 60 eligible nations in protest against the Soviet Union's invasion of Afghanistan, but was the occasion of the discovery of widespread use of anabolic steroids by athletes to improve performance. Seven athletes caught the previous year were made eligible for the Olympics against the rules of the International Amateur Athletic Federation.

## **History of the Court of Arbitration for Sport**

At the beginning of the 1980s the regular increase in the number of international sports-related disputes, and the absence of any independent authority specialising in sports-related problems and authorised to pronounce binding decisions, spurred top sports organisations into action.

In 1981, soon after his election as IOC President, Juan Antonio Samaranch had the idea of creating a sport-specific jurisdiction. In 1982 at the IOC session held in Rome a member of the IOC, Judge Kéba Mbaye who was then a judge of the International Court of Justice in the Hague, chaired a working group tasked with preparing the statute of what would become the Court of Arbitration for Sport. There was a need for a specialised authority capable of settling international sporting disputes, and offering a flexible, quick and inexpensive procedure. Right from the start it was established that the jurisdiction of the CAS should in no way be imposed on athletes or federations, but remain freely available to the parties. In 1983 the IOC officially ratified the statute of the CAS, which came into force on 30 June 1984.

## **Organisation of CAS from its creation until 1994**

The procedural regulations of the CAS statute of 1984 provided that CAS was composed of 60 members appointed by the IOC, International Federations, National Olympic committees and the IOC President 15 members each. All the operating costs of CAS were borne by the IOC. Principally, proceedings were free of charge. The annual budget was approved by the CAS President alone. Whatever the nature of the dispute there was only one procedure, being arbitration.

In 1991 the CAS published a guide to arbitration, which included a model arbitration clause for inclusion in the statutes or regulations of sports federations or clubs. This clause read as follows

***"Any dispute arising from the present statutes and regulations of the Federation which cannot be settled amicably shall be settled finally by a tribunal composed in accordance with the statute and regulations of the Court of Arbitration for Sport to the exclusion of any recourse to the ordinary courts. The parties undertake to comply with the said statute and regulations and to accept in good faith the award rendered and in no way hinder its execution."***

The International Equestrian Federation was the first sports body to adopt this clause. Subsequently, other national and international sports federations adopted this appeals arbitration clause. Up to 1992 a wide variety of cases were submitted to the CAS involving issues such as the nationality of an athlete and contracts concerning employment, television rights, sponsorship and licensing. With the appearance of the appeals arbitration clause, numerous doping cases were subsequently brought before the CAS.

In February 1992 a horse rider lodged an appeal for arbitration with CAS following a horse doping case, where the rider was disqualified, suspended and fined. The award rendered by CAS in October 1992 found partly in favour of the rider, reducing the suspension from three months to one month. The rider filed a public law appeal with the Swiss Federal Tribunal, primarily disputing the validity of the award, which he claimed was rendered by a court, which did not meet the conditions of impartiality and independence.

The Federal Tribunal recognised CAS as a true court of arbitration. CAS was not an organ of the International Equestrian Federation, and that Federation placed at the disposal of CAS only three out of a maximum of 60 members of which CAS was

composed. However, the Federal Tribunal indicated that the independence of CAS, in the event of the IOC being a party to proceedings before it, would be seriously questioned, having regard to the organisational and financial links between the IOC and CAS.

As a consequence, in September 1993 there was an International Conference of Law and Sport held in Lausanne, which presented planned CAS reforms. The biggest change was the creation of the International Council of Arbitration for Sport (ICAS) to look after the running and financing of the sport, thereby taking the place of the IOC. There were two arbitration divisions created: the ordinary arbitration division and the appeals arbitration division, and a new code of sports-related arbitration which came into force on 22 November 1994.

The Paris agreement signed on 22 June 1994 was signed by the Presidents of the IOC, the Association of Summer Olympic International Federations, the Association of International Winter Sports Federations, and the Association of National Olympic Committees. Since the Paris agreement was signed the majority of the International Federation and the National Olympic committees have included in their statutes an arbitration clause referring disputes to the CAS.

The ICAS is composed of 20 members who must all be high-level jurists well acquainted with the issues of arbitration and sports law. ICAS appoints the CAS administrators and approves the budget and accounts of the CAS. The CAS performs its functions through the intermediary of arbitrators, of whom there are more than 200 now in over 61 countries, with the aid of its court office, which is headed by the Secretary-General. There are two divisions: the ordinary arbitration division for sole-instance disputes submitted to CAS, and an appeals arbitration division for disputes resulting from final assistance decisions taken by sports organisations. CAS arbitrators are appointed by ICAS for a renewable term of four years. The CAS's jurisdiction is solely to rule on disputes connected with sport.

In 1996 two permanent decentralised offices were established, the first in Sydney and the second in Denver. Late in 1996 the ICAS created a CAS ad hoc division with the task of settling finally and within a 24-hour time limit any disputes arising during the Olympic Games in Atlanta. There were two co-presidents and twelve arbitrators. A total of six cases were submitted in Atlanta. The success of the ad hoc divisions has played a large part in making the CAS known among athletes, sports organisations and media all over the world. The resolution of sports disputes within the CAS has encouraged harmonisation of major legal principles which were applied haphazardly by the top sports bodies, such as a right to a fair hearing, and of some federation regulations, particularly rules on the fight against doping, thanks to uniform judicial practice.

What, then, is the present position? It would be foolish to underestimate the extent of the problem and the need for a worldwide co-ordinated attack. Nutritional supplements represent a \$5 billion business in the United States alone, and the Internet has made performance-enhancing drugs readily available. The use of banned substances has plagued modern sport in recent years. We have had the controversy involving Shane Warne and Ben Tune in Australia.

The Chief of the Australian Sports Drug Agency, John Mendoza said that his group had completed 1395 drug tests for the quarter ending 31 December 2002, and from that, 14 athletes returned positive results. Three of those 14 were rugby league players, two of whom tested positive to nandrolone, which promotes rapid muscle and bone growth. The other was using stimulants. All were banned from rugby league until 2005.

In the United States Mark Maguire, who holds the all-time baseball home run record, endorsed the drug Androstenedione during his record home run season. This drug is a pro-hormone that can give a short-term increase in testosterone. The manufacturers claim it can help build muscle, but scientific tests are inconclusive. Users would be banned from Olympic competition.

Nandrolone is a banned substance, which is frequently not fully described on the label of dietary supplements. A test of dietary supplements in Cologne Germany showed that 94 out of 634 samples were found to contain anabolic - androgenic steroids not listed on the label. Athletes using them, perhaps unaware of the ingredients, would be banned under IOC rules.

The upcoming World Cup in rugby union intends to crack down on performance enhancing drugs. Every player from the 20 competing nations will be required to provide urine samples ahead of the World Cup, but the ARU Managing Director, John O'Neill, has indicated that he also wants random blood testing.

Beta-blockers are used by athletes in shooting and archery events to lower blood pressure by slowing the output of blood from the heart. An Australian pistol shooter, Phillip Adams, tested positive to a diuretic before last year's Commonwealth Games in Manchester. He initially received a rap over the knuckles because the Australian Shooters' Association Appeals Tribunal accepted he had been using the medication for hypertension. The International Shooting Sports Federation overruled the decision and gave him a four-week ban. The Australian Olympic Committee went a step further, handing him an automatic two-year suspension under its guidelines. Phillip Adams appealed to the CAS, successfully arguing that the drug he was taking, Avapro HCT, did not appear on the Australian Sports Drug Agency banned list. His doping offence will stand, but he will not have any further time out of the sport. Adams is Australia's most successful pistol shooter, having competed in six Commonwealth Games and won 18 medals.

There are two facets to the current war on doping in sport. The World Anti-Doping Agency ("WADA") has posted on its website

the final version of the World Anti-Doping Code. This version was accepted by nearly 1,000 delegates at the World Anti-Doping Conference held in early March 2003 in Copenhagen Denmark. Also on the WADA website is the Copenhagen Declaration on Anti-Doping in Sport. This declaration is the means by which governments will recognise and support the World Anti-Doping Code. This code, for the first time, harmonises rules and regulations regarding doping across all sports and all countries. The code is expected to be in place prior to the Summer Olympics and Para-Olympic Games in Athens in 2004. The second aspect has been the steady development of multi-partite agreements between athletes, their National Federations, the National Organising Committees of the various countries, and the IOC, by which each of the parties to the interlocking agreements commit themselves to provisions which enable appeals to be lodged with the CAS against decisions rendered in application of the World Anti-Doping Code.

The way these agreements can result in a method of dispute resolution that is quick, inexpensive and impartial, is illustrated by the case during the Sydney Olympics of two Judokas. This was not a doping case, but a selection dispute. The case went before the Court of Appeal in New South Wales: *Ragusz v Sullivan* 2000. The Australian Olympic Committee and the Judo Federation of Australia entered into a selection agreement, which provided for an arbitration process in the event of disputes, and containing an exclusion agreement purporting to make the CAS the sole avenue of appeal. The seat of arbitration of the CAS's panels is Lausanne in Switzerland. Athletes provisionally selected for the Australian Olympic team were invited to adhere to the selection agreement through execution of nomination forms and team membership agreements, which reiterated the arbitration and exclusion provisions of the selection agreement. One of the athletes, whose nomination was overturned on appeal by a panel of the CAS sitting in Sydney, sought leave to appeal to the Supreme Court pursuant to s 38 of the *Commercial Arbitration Act 1984*. The Court of Appeal dismissed her application, saying that the umbrella selection agreement, together with the various nomination forms and team membership agreements, constituted a single, multi-partite arbitration and exclusion agreement. The court held that s 40 of the *Commercial Arbitration Act 1984* nominated Lausanne as the seat of arbitration, and therefore the arbitration agreement was not a "domestic arbitration agreement". The Court of Appeal, presided over by Chief Justice Spigelman, was extremely important for the status of CAS and for the broader role in the fight against drugs. The Court held:

***"By the various documents signed by them the two athletes, the Judo Federation of Australia and the Australian Olympic Committee severally committed themselves to the arbitral regime provided for in the selection agreement and the Code of Sports-related Arbitration."***

The court regarded the matter as a:

***"vehicle for resolving a test case of vital concern to the Court of Arbitration for Sport and the Olympic movement whose interests it serves that goes well beyond the interests of the two athletes."***

The purposes of the World Anti-Doping Programme and the Code are:

***To protect the athlete's fundamental right to participate in doping-free sport and thus promote health, fairness and equality for athletes worldwide; and***

***To ensure harmonised, co-ordinated and effective anti-doping programmes at the international and national level with regard to detection, deterrence and prevention of doping.***

The main elements of the programme are the Code, International Standards and Models of Best Practice. Adherence to the International Standards is mandatory for compliance with the Code. Models of Best Practice will be developed and made available to signatories upon request, but will not be mandatory. The Code baldly states:

***"Doping is fundamentally contrary to the spirit of sport."***

Part 1 of the Code specifies the Articles which must be incorporated into the rules of each anti-doping organisation without any substantive changes, namely:

Article: 1 (Definition of Doping)

2 (Anti-Doping Rule Violations)

3 (Proof of Doping)

9 (Automatic disqualification of individual results)

10 (Sanctions on Individuals)

11 (Consequences to Teams)

13 (Appeals) (with one exception)

17 (Statute of Limitations) and

## Definitions

These substantive rules must be the same whether hearing takes place before an international federation, at the national level, or before CAS.

Doping under the Code is defined as the occurrence of one or more of the anti-doping rule violations set out in the Code. The first of those is the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Specimen. The code provides:

***"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1."***

This involves the principle of strict liability. If the positive sample came from an In-Competition test, then the results of that competition are automatically invalidated (Article 9 Automatic disqualification of individual results). However, the athlete then has the possibility to avoid or reduce sanctions if the athlete can demonstrate that he or she was not at fault or significant fault. (Article 10.5 Elimination or reduction of period of ineligibility based on exceptional circumstances).

The rationale for the strict liability rule is well stated by the CAS in the case of Quigley v UIT:

***"It is true that a strict liability test is likely in some sense to be unfair in an individual case, such as that of Q., where the Athlete may have taken medication as the result of mislabelling or faulty advice for which he or she is not responsible particularly in the circumstances of sudden illness in a foreign country. But it is also in some sense "unfair" for an Athlete to get food poisoning on the eve of an important competition. Yet in neither case will the rules of the competition be altered to undo the unfairness. Just as the competition will not be postponed to await the Athlete's recovery, so the prohibition of banned substances will not be lifted in recognition of its accidental absorption. The vicissitudes of competition, like those of life generally, may create many types of unfairness, whether by accident or the negligence of unaccountable Persons, which the law cannot repair.***

***Furthermore, it appears to be a laudable policy objective not to repair an accidental unfairness to an individual by creating an intentional unfairness to the whole body of other competitors. This is what would happen if banned performance-enhancing substances were tolerated when absorbed inadvertently. Moreover, it is likely that even intentional abuse would in many cases escape sanction for lack of proof of guilty intent. And it is certain that a requirement of intent would invite costly litigation that may well cripple federations particularly those run on modest budgets in their fight against doping."***

The code provides that, excepting those substances for which a quantitative reporting threshold is specified, the detected presence of any quantity of a Prohibited Substance constitutes a rule violation, but the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can be produced endogenously. Failure or refusal to submit to sample collection after notification is another rule violation, as is possession of Prohibited Substances and Methods, unless the athlete establishes that the possession is pursuant to a therapeutic use exemption granted in accordance with Article 4.4 (Therapeutic Use) or other acceptable justification.

The burden of establishing an anti-doping rule violation is on the Anti-Doping Organisation, and the standard is whether that organisation has established a rule violation to the comfortable satisfaction of the hearing body, bearing in mind the seriousness of the allegation, which is made. Any onus on an athlete to prove anything is proof on the balance of probabilities. There are presumptions that a WADA-accredited laboratory is presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for laboratory analysis. The athlete may rebut this presumption by establishing that a departure from the International Standard occurred, and if the athlete does show a departure, the anti-doping organisation has to establish that such departure did not cause the adverse analytical finding.

The Prohibited List adopted by WADA will have occurred by 1 January 2004, and until the revised anti-doping rules adopting the Code come into effect, the Olympic Movement Anti-Doping Code will continue to be applicable until the Code is accepted by the IOC.

The Code specifies that:

**"WADA's determination of the Prohibited Substances and Prohibited Methods that will be included on the Prohibited List shall be final and shall not be subject to challenge by an athlete or other person based on an argument that the substance or method was not a masking agent or did not have the potential to enhance performance, represent a health risk, or violate the spirit of sport."**

The Code provides for the granting of therapeutic use exemptions and will promulgate an international standard for that purpose. The Code provides for testing, both In-Competition and Out of Competition tests. Controlled samples are to be analysed only in WADA-accredited laboratories, or as otherwise approved by WADA, and the Code has provisions for results management. Where there has been an anti-doping rule violation in connection with an In-Competition test, there is automatic disqualification including forfeiture of any medals, points and prizes.

Clause 10.2 provides for two years ineligibility for a first violation, and lifetime ineligibility for a second.

The Code provides for the Prohibited List to identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products, or which are less likely to be successfully abused as doping agents. The sanctions in such a case where the athlete establishes that the use was not intended to enhance sport performance: for a first violation, at a minimum a warning and reprimand and no period of ineligibility from future events, and at a maximum, one year's ineligibility. For a second violation, two years ineligibility, and for a third violation, lifetime ineligibility.

The Code provides that where an athlete in an individual case establishes that:

**"he or she bears no fault or negligence for the violation, the otherwise applicable period of ineligibility shall be eliminated."**

Where the athlete establishes no significant fault or negligence:

**"the period of ineligibility may be reduced, but the reduced period of ineligibility may not be less than one half of the minimum period of ineligibility otherwise applicable."**

The period of ineligibility starts on the date of the hearing decision providing for ineligibility. The Code provides that an athlete who is made ineligible should not participate in any capacity in an authorised event or activity during the ineligibility period. Decisions made under the Code can be appealed in cases arising from competition in an international event exclusively to the CAS. Appeals involving national-level athletes that do not have an appeal to CAS may be appealed to an independent and impartial body in accordance with rules established by the national Anti-Doping Organisation. The Anti-Doping Organisation may elect to comply with the Article dealing with appeals, by giving its national-level athletes the right to appeal directly to CAS. Decisions remain in effect whilst under appeal, unless the appellate body otherwise orders. The Code provides that in any sport that includes animals in competition, the International Federation for that sport shall establish and implement anti-doping rules for the animals included in that sport, including a list of Prohibited Substances, appropriate testing procedures and a list of approved laboratories for sample analysis.

The Code provides that no action may be commenced against an athlete or other person for a violation of an anti-doping rule, unless such action is commenced within eight years from the date the violation occurred.

In respect of the implementation of the Code, it is indicated in Article 20 that:

the role and responsibility of the IOC is to adopt and implement anti-doping policies and rules for the Olympic Games which conform to the Code, and require as a condition of recognition by the IOC that International Federations within the Olympic movement are in compliance with the Code. Similarly, International Federations are:

**"to require as a condition of membership that the policies, rules and programs of National Federations are in compliance with the Code."**

So, too, for National Olympic Committees and National Anti-Doping Organisations, major event organisations and WADA. Importantly, Article 22 dealing with the involvement of governments provides:

**"Each government's commitment to the Code will be evidenced by its signing a Declaration on or before the first day of the Athens Olympic Games to be followed by a process leading to a convention or other obligation to be implemented as appropriate to the constitutional and administrative contexts of each government on or before the first day of the Turin Winter Olympic Games."**

## **Conclusion**

The WADA Code is a great progress to a harmonious and effective fight against doping in sport. It relies on related international and national organisations to commit themselves to the Code, which in turn provides for an independent, specialised, cheap and efficient mechanism for the resolution of disputes in CAS. The prospect is encouraging, but I am reminded of the comment of one of the erstwhile opponents of drugs in sport, who said at the time of the Sydney Olympics:

***"In the fight against doping in sport I thought the world sporting organisations were on the edge of a precipice, but in the next twelve months we will have taken a great step forward."***

## Appendix "A"

### Positive Drug Tests at the Summer Olympic Games

#### 1968

Hans-Gunnar Liijenwall	SWE	Modern pentathlon	Alcohol
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#### 1972

Bakhaava Buidaa	MGL	Judo 63 kg	Caffeine
Miguel Coll	PUR	Basketball	Ephedrine
Rick Du Mont	USA	Swimming 400 free	Ephedrine
Jaime Huelamo	SPA	Cycling road race	Coramine
Walter Legel	AUT	Weightlifting 67.5 kg	Ephedrine
Mohamad Nasehi Ar Jomand	IRN	Weightlifting 52 kg	Ephedrine
Aad van den Hoek	HOL	Cycling team time trial	Coramine

#### 1976

Blagoi Blagoev	BUL	Weightlifting 82.5 kg	Anabolic steroids
Mark Cameron	USA	Weightlifting 110 kg	Anabolic steroids
Paul Cerutti	MON	Shooting trap	Amphetamines
Valentin Hristov	BUL	Weightlifting 110 kg	Anabolic steroids
Dragomir Ciorosian	ROM	Weightlifting 75 kg	Fencanfamine
Phillip Grippaldi	USA	Weightlifting 90 kg	Anabolic steroids
Zbigniew Kaczmarek	POL	Weightlifting 67.5 kg	Anabolic steroids
Lorne Leibel	CAN	Sailing tempest	Phenypropanolmine
Arne Norback	SWE	Weightlifting 60 kg	Anabolic steroids
Pet_Pavla_ek	CZE	Weightlifting 110 kg	Anabolic steroids
Danuta Rosani	POL	Track & field shot put	Anabolic steroids

#### 1984

Stefan Grammatikopoulos	GRE	Weightlifting 110+ kg	Nandrolone
Vesteinn Hafsteinsson	ICE	Track & field discus	Nandrolone
Tomas Johansson	SWE	Greco-Roman wrestling superheavy	Methenolone
Stefan Laggner	AUT	Weightlifting 110+ kg	Nandrolone
Goran Pefferson	SWE	Weightlifting 100 kg	Nandrolone
Eiji Shimomura	JPN	Volleyball	Testosterone
Mikiyasu Tanaka	JPN	Volleyball	Ephedrine
Ahmed Tarbi	ALG	Weightlifting 56 kg	Nandrolone
Mahmoud Tarbi	LEG	Weightlifting 52 kg	Nandrolone
Gianpaolo Urlando	ITA	Track & field hammer	Testosterone
Martti Vainio	FIN	Track & field 10,000	Metersmethenolone
Anna Verouli	GRE	Track & field javelin	Nandrolone



**1988**

Alidad	AFG	Freestyle wrestling 62 kg	Furosemide
Kerrith Brown	GBR	Judo 71 kg	Furosemide
Mitko Grablev	BUL	Weightlifting 56 kg	Furosemide
Angel Genchev	BUL	Weightlifting 67.5 kg	Furosemide
Ben Johnson	CAN	Track 7 field 100meters	Stanozolol
Fernando Mariaca	SPA	Weightlifting 67.5 kg	Pemoline
Jorge Quesada	SPA	Modern pentathlon	Propranolol
Kalman Scengeri	HUN	Weightlifting 75 kg	Stanozolol
Andor Szanyi	HUN	Weightlifting 100 kg	Stanozolol
Alexander Watson	AUS	Modern pentathlon	Caffeine

**1992**

Madina Biktagirova	BLR	Track & field marathon	Norephedrine
Bonnie Dasse	USA	Track & field shot put	Clenbuterol
Jud Logan	USA	Track & field hammer	Clenbuterol
Nijole Medvedieva	LIT	Track & field long jump	Mesocarde
Wu Dan	CHN	Volleyball	Strychnine

**1996**

Natalya Shekhodanova	RUS	Track & field 100 meter hurdles	Stanozolol
Iva Prandzheva	BUL	Triple jump	Metadienone

**2000****Olympians suspended after arrival in Games Village for failing pre-Games drug tests:**

Chen Po-pu	TWN	Weightlifter	Steroids
Yevgeniya Yermakova	KZK	Swimmer	Furosemide
Traian Ciharean	ROM	Weightlifter	Steroids
Adrian Mateas	ROM	Weightlifter	Steroids
Stian Grimseth	NOR	Weightlifter	Steroids
Anosheravan Nourian	IRN	Boxer	Banned drugs
Simon Kemboi	KEN	Track & field 400 m relay	Anabolic steroids
C.J. Hunter	USA	Track & field - shot put	Nandrolone
Mihaela Melinte	ROM	Track & field - hammer	Nandrolone

**Olympians suspended during the Games:**

Ivan Ivanov	BUL	Weightlifter	Diuretic
Vadim Devyatovsky	BLR	Track & field hammer	Nandrolone
Jan Hruska	CZE	Cycling	Unspecified banned substance
Izabela Dragneva (won gold )	BUL	Weightlifter 48 kg	Furosemide
Sevdalin Minchev (won gold)	BUL	Weightlifter 62 kg	Furosemide
Andris Reinholds	LAT	Rower	Steroids
Andreea Raducan (won gold)	ROM	Gymnastics	Pseudoephedrine

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