



International Convention against Doping in Sport

Paul Marriott-Lloyd

On 1 February 2007, the International Convention against Doping in Sport entered into force. This landmark occasion signified the most successful international convention in the history of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in terms of the speed of its development and entry into force. Important as this achievement might be, the enactment of the Convention is of greater significance to the future of sport. Never before have global anti-doping efforts been stronger and more focused on providing an honest and equitable playing environment for athletes. The Convention provides the hitherto absent legal framework with which all governments can address the growing prevalence and increasingly insidious use of performance-enhancing substances and methods in sport. This is significant because there are specific areas where only governments can progress anti-doping efforts. It is no coincidence that all of the major doping scandals, for example Festina in 1998, BALCO in 2003 or Operation Puerto, were uncovered by government agencies. Further action is required to target athlete support personnel, to curtail trafficking and to regulate dietary or nutritional supplements which all fall under the aegis of governments. The Convention also helps ensure coordination of testing and the development of education, training and research programmes. This chapter discusses the development of the Convention, outlines the obligations it imposes on governments and examines why doping in sport has become relevant to the international system.

Rationale for action

It was natural for UNESCO, an organisation that stands on principles of equality and justice, to have facilitated the development of the Convention, particularly given its education and sport mandate. UNESCO was deeply concerned about the erosion of ethics and the gross inequity created by the use of performance-enhancing drugs by athletes. Doping poses one of the biggest threats to sport today. It harms athletes, destroys fair play and equitable competition and does irreparable damage to the credibility of sport. However, the impact of doping goes far beyond the athletes concerned or sport itself. It is a problem that affects all of society by undermining the intrinsic value of sport.

Sport can be a powerful vehicle for peace by forging social ties and networks, mutual respect and understanding between peoples. Sport contributes to development, drawing individuals together, providing facilities and access to community services. It is also an important learning tool for young people. During the playing of games and sport children learn about fair play, teamwork and cooperation. These lessons help to shape attitudes and values, and provide models of good conduct that last a lifetime. "That is why the United Nations is turning more and more often to the world of sport for help in our work for peace and our efforts to achieve the Millennium Development Goals" (United Nations, 2006). It also explains why the unanimous adoption of the Convention by the UNESCO General Conference in 2005 was considered one of the triumphs of the International Year for Sport and Physical Education.

Doping seriously threatens the ethics and values upon which sport is based. These principles are embodied in the 1978 International Charter of Physical Education, which was amended in 1991 to make reference to the doping problem:

“No effort must be spared to highlight the harmful affects of doping, which is both injurious to health and contrary to the sporting ethic, or to protect the physical and mental health of athletes, the virtues of fair play and competition, the integrity of the sporting community and the rights of people participating in it at any level whatsoever” (UNESCO, 1978).

Anti-doping programmes, therefore, seek to preserve the essence of sport characterised by values such as honesty, fairness, respect, courage, commitment and solidarity.

The potential for athletes to act as role models should not be underestimated. Sportspersons are held in high regard in modern society. Young people in particular are fascinated by athletes and often seek to emulate their deeds. Perhaps this helps to explain why 6.1 percent of American teenagers have taken steroids without a prescription one or more times during their lifetime (National Center for Disease Control and Prevention, 2003). Research in other countries also indicates growing use of doping substances, perhaps for image enhancing purposes, across society but particularly among the young (Laure, 2006).

The harm caused by the use of performance-enhancing drugs and methods is a compelling rationale for action. There is incontrovertible scientific evidence about the biomedical side effects of doping on the cardiovascular, musculoskeletal, reproductive, endocrine, immune and respiratory systems. The impacts on the gastrointestinal tract, liver, kidneys and electrolyte metabolism as well as psychological effects are evident. One of the three criteria for the inclusion of a substance or method on the Prohibited List maintained by the World Anti-Doping Agency (WADA) is “medical or other scientific evidence, pharmacological effect, or experience that the use of the substance or method represents an actual or potential health risk to the athlete” (WADA, 2003).

Competitiveness and the fixation on records in elite sport incite doping. Drug use may help to deliver results as a complement to dedicated training programmes and natural sporting prowess. For an athlete attuned to continual improvement (*stronger, higher, faster*), performance-enhancing drugs allow for an extension of the physical strength ceiling and greater adaptation (Sale, 1992). The use of ergogenic agents can therefore mean the difference between a first place finish, where lucrative prizes and endorsements accrue to the winners, or otherwise. While some athletes are willing to take considerable risks to achieve sporting fame and fortune, this practice constrains the choice of others to remain drug free. Use by one athlete often forces others to follow in order to remain competitive, resulting in a form of sporting brinksmanship. The impact of doping is therefore not only limited to the athletes that consume the substances.

International response

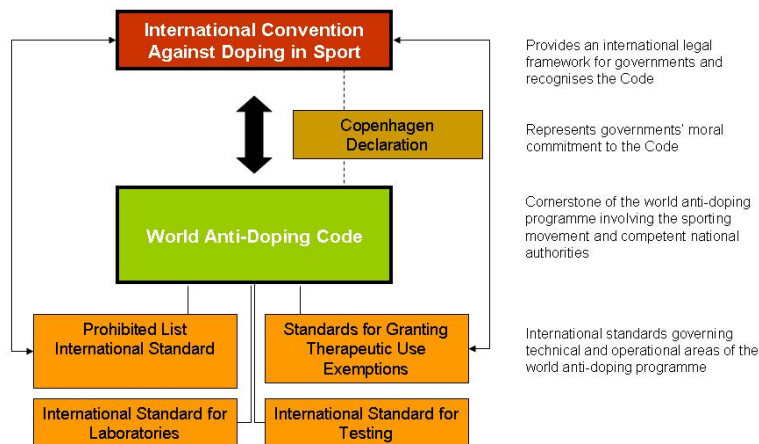
In developing the Convention, UNESCO responded to calls from the international community. Concern was expressed at the dearth of ethical values in sport, manifested by doping, by the Third International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS III) in 1999. Countries were urged to take concerted action. Sports Ministers also endorsed the outcomes of the World Conference on Doping in Sport convened by the International Olympic Committee, which led to the establishment of WADA. This unique organisation, a partnership between governments and the sport movement which enshrines cooperation and collaboration, is charged with the elimination of doping in sport.

Doping was a key item during the UNESCO-initiated Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport in 2003. The final communiqué, issued on behalf of 103 Member States and 20 intergovernmental and non-governmental organisations, highlighted the danger posed by doping in sport, not only as a breach of sporting ethics but also as a danger to public health. The participants committed to the preparation of an

international convention focused on education, information, research, controls and sanctions before the 2004 Summer Olympic Games and no later than the 2006 Winter Olympic Games.

A critical juncture was the adoption of the World Anti-Doping Code (the Code) on 5 March 2003 during the 2nd World Conference on Doping in Sport. This document provides a comprehensive framework to protect the fundamental right of athletes to participate in doping-free sport and to ensure harmonised, coordinated and effective anti-doping programmes at the international and national levels with regard to the detection, deterrence and prevention of doping (WADA, 2003). While a large number of sporting organisations signed the Code and ensure its global application through a series of cascading relationships, it is not legally binding for governments. In fact, governments cannot be direct parties to the Code because of its legal status and that of WADA under whose authority it was elaborated. The Code is a non-governmental document that operates in the realm of private or contractual law and WADA, despite equal governmental involvement in its funding and management, was established as a private foundation. Therefore, governments could only give a moral commitment to the Code by signing the Copenhagen Declaration on Anti-Doping and Sport. Only an international convention can create binding obligations on governments.

These developments culminated in the decision by the UNESCO General Conference in 2003 to develop an international convention to remove doping from sport. The Convention was developed after extensive drafting and consultation meetings involving representatives from over 95 countries. It was the product of three meetings of an experts group and three intergovernmental meetings between 2004 and 2005. Further, the Fourth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS IV) considered the draft Convention and helped to resolve a number of outstanding issues. The final Convention, adopted on 19 October 2005, met the objectives of providing an internationally recognised legal framework to: (1) ensure that governments take actions against doping in sport that are complementary to those already being taken by the sporting movement, including anti-doping activities at the national level, international cooperation, education and training, and research; (2) provide support for the Code and for other international standards developed by WADA, recognising the importance of these documents in harmonising policy and practice worldwide.



The Convention was also drafted to keep pace with changes in the international anti-doping environment. There is a mechanism that allows the Conference of Parties, the sovereign body of the Convention, to approve changes made to the Prohibited List and the Standards for Granting Therapeutic Use Exemptions (TUE). Both documents are integral parts of the Convention because they are fundamental to international harmonisation. It is essential to

establish a single Prohibited List based on the latest scientific knowledge so that athletes and athlete support personnel are fully aware of the substances or methods prohibited in-competition, out-of-competition and by particular sports. Universal acceptance of therapeutic use exemptions is important so that athletes may be prescribed medicines contained on the Prohibited List for legitimate medical purposes. Any changes made by WADA to these two standards can be rapidly incorporated into Convention following approval by the Conference of Parties either in session or via written procedure. In this way the Convention can be seen as a living document.

Complying with the Convention

The purpose of the Convention is to promote the prevention of and the fight against doping in sport, with a view to its elimination. It has been designed to coordinate and compel government action in specific areas beyond the domain of the sports movement. Where the Code only applies to members of sports organisations, the reach of governments allows a systemic approach to anti-doping encompassing a broad range of actors.

The Convention outlines clear obligations required of governments. States Parties undertake to: (1) adopt appropriate measures at the national and international level consistent with the principles of the Code; (2) encourage all forms of international cooperation aimed at protecting athletes and ethics in sport and sharing the results of research; (3) foster international cooperation between States Parties and with WADA in particular. However, the Convention is a permissive document and it provides flexibility in the approach governments can take to implementation, either by way of legislation, regulation, policies or administrative practices.

Availability of performance-enhancing drugs

The first problem the Convention seeks to address is the availability of performance-enhancing drugs. Under Article 8 of the Convention, governments are obliged to limit the availability of prohibited substances and methods in order to restrict their use in sport. These include measures against production, movement, importation, distribution, sale and trafficking. At the same time there is the need to ensure that these measures do not impede the general availability of medicines or therapeutic products for legitimate purposes or to prevent their use by athletes who obtain therapeutic use exemptions. This balance can be achieved by separating use and possession from issues of supply.

The Code, Prohibited List and TUE Standard provide the framework to restrict the use of performance-enhancing substances and methods in a sporting context. It is an anti-doping rule violation to use, attempt to use, possess, administer or traffic substances or methods contained on the Prohibited List without a TUE. Governments are encouraged to reinforce these provisions. One such means is medicines-control legislation, which makes listed drugs prescription-only medicines to be dispensed by licensed medical practitioners for therapeutic purposes. Within this clinical setting athletes can also document legitimate medical conditions as the first step towards obtaining a TUE.

The issues of supply, trafficking (if a specific legal prohibition exists) and manufacture are more complicated and pressing. It makes a mockery of anti-doping efforts when an athlete incurs a two-year to lifetime ban, while those manufacturing and supplying the very same substances escape serious punishment. The BALCO and Operation Puerto investigations confirmed what had long been suspected - there are business networks operating on the margins of the law with the express purpose of furnishing athletes with performance-enhancing substances and methods. Moreover, these businesses are well frequented by athletes and derive substantial financial gains from this trade.

There is an expectation that governments will introduce concrete measures under the Convention to curtail the supply of performance-enhancing substances and methods. Tangible actions include the imposition of border controls and criminal penalties and for this matter to be afforded priority by enforcement agencies. Countries such as Italy, France and Spain have created criminal offences for the unauthorised or illicit supply of performance-enhancing drugs or methods. Others including Australia have successfully instituted border controls to stop trafficking. Finally, the United States, having amended the penalties for offences involving anabolic steroids under the Anabolic Steroid Control Act in 2006, have arrested a number of individuals involved in a steroid and prescription drug manufacturing operation. Further prosecutions are expected from increased government involvement in anti-doping.

Athlete support personnel

The Convention seeks to target all those who are complicit in the doping violations of athletes. Previously, it was difficult to deal with the coaches who used their privileged relationship with athletes to encourage the use performance-enhancing drugs or methods. For example, Kelli White has spoken publicly of the influence of her coach in her decision to take a range of drugs, including modafinil and tetrahydrogestrinone supplied by BALCO (White, 2005). This is not an isolated case. Behind every anti-doping rule violation committed by an athlete there are those who facilitated the doping. Some might play an intermediary role introducing the suppliers of ergogenic substances to athletes. Not to mention disreputable doctors that are willing to give blood transfusions or apply their knowledge of the pharmacopoeia - those who forget the Hippocratic Oath and put profit or prizes ahead of the health of the athlete. Anti-doping efforts had been constrained up until this point by the fact that these people could not be held accountable or penalised for their actions because they were not actual members of sporting organisations. This is one of the obvious limitations arising from the contractual basis on which the Code operates.

Under Article 9 of the Convention governments are obliged to adopt measures aimed at “athlete support personnel”. This term is broadly constructed to refer to all persons involved in sport, working with or treating athletes. It includes coaches, trainers, managers, team support staff, agents, administrators, officials, and medical or paramedical practitioners. Governments may need to extend those legislative changes outlined in the previous section to target those complicit athlete support personnel. Other approaches depend on the amount of leverage governments have over these persons, however, medical professionals present an obvious target. Their licences or practicing certificates should be revoked if they are found to be complicit in doping.

Nutritional supplements

Measures are required to deal with dietary or nutritional supplements, a key area of concern for the anti-doping movement. Questionable business practices abound in this highly unregulated industry. Products often vary between batches, are mislabelled, contaminated or contain prohibited substances in a deliberate attempt to circumvent food or drug legislation. Several studies have shown that common supplements available in a number of countries contain banned substances, including stimulants, hormones, pro-hormones (for example, nandrolone or testosterone) and anabolic androgenic steroids. It is estimated that 10-20 percent of these products may be contaminated (Schanzer, 2002; Geyer and al., 2004). This situation is problematic if we take into account the high prevalence of supplement use by athletes. Putting aside questions about the safety and efficacy of these products, their use by athletes poses significant risks to their careers. Taking a tainted supplement could result in a two-year or lifetime ban. This is because anti-doping violations under the Code are based on strict liability. The mere presence of a prohibited substance in a blood or urine sample provided by an athlete constitutes an anti-doping rule violation. The manner in which the substance was ingested by

the athlete, inadvertently or otherwise, might only impact on the length of the sanction imposed if no significant fault or negligence can be demonstrated.

Article 10 of the Convention attempts to deal with the problems concerning supplements. Governments are obliged to encourage producers and distributors of dietary or nutritional supplements to establish marketing best practices, including information regarding the analytic composition of their products and quality assurance. Effectively, this means self-regulation or the development of a certification scheme to improve labelling and production. It is doubtful if this alone provides sufficient certainty for athletes and the possibility of further government intervention remains. Some anti-doping organisations have taken to testing to determine the constituents of supplements. They are then in a position to provide assurances or to issue warnings if the products contain banned substances. Others strongly warn athletes against the use of any supplements.

Doping control

International efforts will be at their strongest if athletes can be drug tested anywhere in the world at anytime. Under Article 11 of the Convention, State Parties shall support or provide testing programmes. All doping controls shall be consistent with the Code and include no-advance notice, out-of-competition and in-competition testing (Article 12). Further, international cooperation between anti-doping organisations, public authorities and sports organisations is encouraged. Through coordination, the costly and unnecessary duplication of doping controls, not to mention the inconvenience for athletes, can be avoided.

It is fair to say that doping controls are the most developed and well-known aspects of the world anti-doping programme. In 2005, the WADA accredited laboratories analysed 183,337 blood or urine samples of athletes, which represented an 8.4 percent increase on the previous year (WADA, 2006). Having said that, there are still many countries where athletes are not tested at all. In order to expand the network of countries that undertake regular drug testing and to build capacity, WADA has developed Regional Anti-Doping Organisations (RADOs) composed of government and sport representatives. Their purpose is to establish effective anti-doping programmes among countries in a distinct geographical region through the coordination of testing as well as the training and funding of doping control officers. RADOs are also responsible for results management and appeals, as well as the dissemination of education and information materials. These regional organisations allow small or less developed countries to develop testing programmes whilst maximising economies of scale and the sharing of expertise and costs. To date, 15 RADOs have been established across 122 countries. The result is that there should be no place to hide from the all-essential drug testing.

The emphasis placed on out-of-competition testing is important. It is often at international competitions that athletes are tested for the first time. By then it may be too late. Many of those using performance-enhancing drugs would have long since completed their cycles, ceasing their use well in advance of competition to allow these drugs and their telltale metabolites to clear their system. As one commentator suggested, only stupid or careless athletes ever get caught during in-competition drug screens (Yesalis and Bahrke, 2001). Out-of-competition testing is a more constant threat to would-be cheats and the latest talk is of "intelligent testing". This refers to doping controls when the risk of doping may be increased, for example during training or immediately following an injury.

Financial leverage

As highlighted above, there is a clear expectation that all States Parties institute effective national testing programmes. Under the Convention (Article 11), governments shall, where appropriate, provide funding to support a national testing programme across all sports or assist sports organisations and anti-doping organisations in financing doping controls. The

Convention also seeks to maximise the leverage that governments have through the power of their financial contributions. This is considerable given that sport does not typically exist without some level of government funding, direct or indirect. Governments are required to withhold financial support to athletes and prevent their access to sporting facilities upon conviction of an anti-doping rule violation for the period of their ban. Clearly cheats should not prosper. Governments should also withhold financial or other support from sports organisations not in compliance with the Code. The public interest is not served by propping up those sporting organisations that do not commit to, or meet their obligations, in the fight against doping in sport.

Education and training

The Convention requires governments to support, devise or implement anti-doping education and training programmes (Articles 19-23). Athletes are the primary audience and at a minimum, should be informed of their rights and obligations, and made aware of prohibited substances and methods, doping control procedures and relevant aspects of Code. Education on the potential risks posed by the use of nutritional supplements is specifically listed. For the sporting community, these programmes should provide accurate and up-to-date information on the ethical or health consequences of doping. Moreover, all members of sports organisations, athletes and athlete support personnel should participate in ongoing education programmes. For this latter group, the Convention also calls for the establishment of professional codes of conduct based on best practice and ethics.

Prevention will be best achieved through the education of athletes and the wider sporting community. It is also important to sensitise the general public to the harm caused by doping. What place would it have if all spectators, participants, administrators and sponsors demand doping-free sport?

While the need for anti-doping education may be self-evident, it does not attract a commensurate level of attention or resourcing as is currently allocated to intervention. An increasing number of doping controls are being undertaken across the world, but truly effective education programmes remain sparse. However, before embarking on particular activities it is important to re-conceptualise education. It is much more than mere distribution of information resources; true education is lasting knowledge and the application of values. Education requires commitment, investment, constant reinforcement and time to take effect. While the provision of value and skill-based education programmes remains the mandate of governments, it should be informed and supported by the sports movement. A seamless application of anti-doping education from the classroom to the sports field is required.

Research

Finally, the promotion of research on anti-doping is another central component of the Convention (Articles 24-27). States Parties are encouraged to undertake, within their means, to encourage and promote anti-doping research. Specific areas of focus are articulated. Clearly research is needed to close the gap between those who seek to avoid detection and the methods at the disposal of the anti-doping movement. Research into prevention, behavioural and social aspects of doping and health consequences are also highlighted, as is sports science research that is consistent with the principles of the Code.

All research should conform to ethical practices and avoid the administration of performance-enhancing drugs or methods to athletes. Adequate precautions need to be taken to ensure that research results are not applied for doping purposes. It is an unfortunate fact that those who facilitate or partake in doping are well read. The latest scientific literature is scanned for any developments that might improve performance or increase the training load athletes can sustain, while the considerable evidence of harm is selectively ignored. Some athletes even

appear willing to trial drugs in the very early stages of development with no thought of contraindications.

Conclusion

As of 31 December 2009, 131 governments have become States Parties to the Convention. The rapid pace at which governments have adhered to this international instrument is without precedent. Lengthy constitutional processes involving a thorough treaty examination, consultation, parliamentary or presidential approval and in some cases, enactment of legislation need to be concluded before governments can ratify, approve, accept or accede to an international convention. The fact that so many have done so demonstrates a steadfast commitment to anti-doping. All of the provisions of the Convention, and those engaged in their implementation across the globe, share a single purpose - that future generations are able to enjoy and excel in doping-free sport.

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