

**Minutes of the WADA Executive Committee Meeting
16 November 2007
Madrid, Spain**

The meeting began at 6.35 p.m.

1. Welcome, Roll Call and Observers

The following members attended the meeting: Mr Richard Pound, President and Chairman of WADA; Mr Brian Mikkelsen, Minister of Culture and Sport, Denmark; Professor Arne Ljungqvist, IOC Member and Chairman of the WADA Health, Medical and Research Committee; Ms Rania Elwani, Member of the IOC Athletes' Commission; Mr Kenshiro Matsunami, Senior Vice Minister of Education, Culture, Sports, Science and Technology, Japan; Mr Scott Burns, Deputy Director of the ONDCP; Sir Craig Reedie, IOC Member; Mr Makhenkesi A. Stofile, Minister of Sport and Recreation, South Africa; Mr Clayton Cosgrove, Minister for Sport and Recreation, New Zealand; Mr Gian Franco Kasper, IOC Member and President of the FIS; Mr Mustapha Larfaoui, IOC Member and President of FINA; Mr René Bouchard, representing Helena Guergis, Secretary of State (Foreign Affairs and International Trade) (Sport), Canada; Mr David Howman, WADA Director General; Mr Rune Andersen, Standards and Harmonisation Director, WADA; Mr Jean-Pierre Moser, Director of the WADA European Regional Office; Ms Elizabeth Hunter, Communications Director, WADA; Dr Alain Garnier, WADA Medical Director, European Regional Office; Dr Olivier Rabin, Science Director, WADA; Ms Julie Carter, Education Director, WADA; Mr Olivier Niggli, Finance and Legal Director, WADA; Mr Rodney Swigelaar, Cape Town Regional Office Director, WADA;

The following observers signed the roll call: Peter Schønning, Richard Young, Rob Koehler, David Gerrard, John Fahey, Andrew Fieldsend, Robyn Cubie, Carly M. Burns, Brian Blake, Bill Rowe, Torben Hoffeldt, Natsuki Omi, Mikio Hibino.

2. Code

THE CHAIRMAN noted that the members of the Executive Committee had had a chance to listen to the interventions that day, and they would undoubtedly have been able to separate the wheat from the chaff on their own, but he asked the Code Project Team to come forward with its recommendations. He thought that the Executive Committee needed to be in a position to leave the meeting with at least the policy decided as to what it would recommend the following day to the Foundation Board. He wished to ask the WADA staff to make sure that each Foundation Board member was advised that the meeting would start at 9.30 a.m. and not 10.00 a.m.

MR YOUNG said that he would deal with some of the simpler recommendations first. One change had already been made the previous day with regard to specified substances, so he would consider that done.

There had been an intervention by UNESCO, which had asked for a slight wording change in 23.4.1 to do with monitoring compliance. The slight change would read "compliance with the commitments reflected in the UNESCO convention will be monitored as determined by the Conference of Parties to the UNESCO convention after consultation with WADA and the applicable governments." This was a change that UNESCO had felt was important and he did not see that it made any difference.

THE CHAIRMAN asked whether the members were content with that recommendation. The meeting agreed.

MR YOUNG said that the next point was the team's attempt to be global by referencing the European Basketball League; apparently, this was regarded as offensive to the European National Basketball League, so the recommendation was just to go back to NBA.

THE CHAIRMAN did not think that the Executive Committee would care about that. The meeting agreed.

MR YOUNG said that the next one was the suggestion from Italy in relation to the fact that national anti-doping bodies had a right to appeal when their residents were involved in a case. He thought that their point had been well taken, that it should be not only residents, but also nationals, for example, a Swiss water polo player might be resident in Italy but the Swiss ought to be able to appeal the case because the athlete might be on the Swiss Olympic team.

THE CHAIRMAN thought that everybody was comfortable with that proposal. The meeting agreed.

MR YOUNG said that, in relation to the comments from the various team sports about the fear that they would have to have 20,000 people in their registered testing pool, the team could certainly put the language back in 5.1 and make it permissive for teams and team sports, but the team recommended that WADA should simply address this in the revised version of the International Standard for Testing to make it even clearer than it already was, that they were free to define their registered testing pool by members of a particular team as long as it was clear to those individuals that they were in the pool. If somebody wanted to die over that, he did not care if it were put back in the Code; however, he did not think it was necessary. The team would tell those concerned that this point would be addressed in the International Standard for Testing.

Clearly, WADA could conduct out-of-competition testing; he thought it was adequate that the Foundation Board or Executive Committee determine on an annual basis whether it would conduct out-of-competition testing and how much. That appeared to be a hot topic. It would be very easy as a drafting matter to address that in the Code, but it struck him that this was more of a Foundation Board issue and he would hope that that would be acceptable to the sports movement, but that was a decision for the Executive Committee to take.

THE CHAIRMAN said that it seemed to him that WADA had to determine as an organisation what its priorities were and then do as many priority activities as it had funds to perform and then, if people wanted WADA to do more tests, WADA would have to have an increased budget. WADA could say that it had determined that there would be an out-of-competition testing programme for 2008 but the extent would depend on who knew what.

MR REEDIE thought that the Executive Committee had decided that it would do that and he thought that the Foundation Board simply had to ratify the following day that that was what WADA was going to do. There was a budgeted figure for 3,000 out-of-competition tests. Nobody had said that they wanted to do more or less; they just wanted to do them. He thought that all of the information was there to keep the sports movement happy, full stop.

THE CHAIRMAN thought that their concern was that WADA might do it one year and then, for 2009, it would not have any out-of-competition testing.

MR REEDIE said that he would be happy if WADA said that it would do it until it decided not to.

THE CHAIRMAN remarked that this would give him zero comfort, but it might comfort somebody who did not think carefully.

MR LARFAOUI thought that WADA should continue with its out-of-competition testing, which was very important for the IFs. He added that this should be done in close cooperation with the IFs, as it had been noted that some athletes had been tested simultaneously by the IFs and WADA, and he thought that good coordination would avoid duplication of testing.

THE CHAIRMAN said that he did not think that there was an issue with that; the whole purpose of ADAMS was to get good coverage without too many duplications.

PROFESSOR LJUNGOVIST noted that it was important that it appeared somewhere or was made clear that WADA would do out-of-competition testing, and that was all. He thought that WADA should avoid giving any figure, as WADA might one year do more and another year do less testing. It was a WADA obligation to conduct out-of-competition testing when it felt that it was necessary.

THE CHAIRMAN said that his sense was that what they had been looking for was language that obliged WADA to perform out-of-competition testing, whereas WADA said that it was prepared to do it but did not want to be compelled to do it. What was the recommendation? Should the text be left as it was, with some explanations accompanying it?

MR KASPER asked whether it might not be possible to state that the Executive Committee would decide on the number of tests per year. There might be only one test, but the obligation would be included and then the Executive Committee would be free. That had been the Olympic Movement idea.

THE CHAIRMAN asked whether that would work.

MR YOUNG replied that, if that was the will of the Executive Committee, the team would simply add the old language back in, under roles and responsibilities, and it would be up to the Executive Committee to decide how many. The meeting agreed.

The next issue was what the Executive Committee should do as far as membership on the Foundation Board was concerned when the country of the Foundation Board member had not ratified the UNESCO convention. While the team certainly could put language to accomplish that in the Code, and that would be easy enough to do if that was what was necessary, he would put it under *Roles and Responsibilities of WADA* rather than under Article 20.2.5, but the more logical way of dealing with that would be through an amendment of the WADA constitution. As the members would recall, one was not allowed to sit on the Foundation Board when one's country had not paid its dues, and Mr Niggli had some language to accomplish that.

MR NIGGLI said that the Executive Committee could recommend the following solution to the Foundation Board the following day. Article 6 of the constitution currently said that "government representatives from a country that had not paid its due [sic] would not be eligible to sit on the Foundation Board or the Executive Committee". The modification proposed would be "government representatives from a country that had not paid its due [sic] or whose country had not adhered to the UNESCO International Convention on Doping in Sport would not be eligible to sit on the Foundation Board or the Executive Committee". It would be very simple to add the UNESCO part to the existing condition.

THE CHAIRMAN questioned the use of the term "due".

MR NIGGLI replied that the French version prevailed, but that was what was in the English version at present.

THE CHAIRMAN suggested hiring a different translator, because that did not make sense in English. That was the structural change that the Executive Committee was prepared to make. The Executive Committee had to agree that it would recommend that statute change to the Foundation Board for adoption the following day so that it could report that that issue had been closed off.

MR BURNS asked whether that would be by 2010.

MR NIGGLI replied that he had not set a date.

THE CHAIRMAN thought that WADA should do, otherwise it would come into immediate effect. He suggested the addition of "countries that have not ratified prior to 1 January 2009". The meeting agreed.

MR YOUNG said that the next provision was the trump article, Article 24.6, where the Code trumped the rules of the IF or other anti-doping agency. The comments received from lawyers throughout the consultation process had been that this would never be upheld in the CAS and that the goals of using that to try to force harmonisation were laudable; however, the team thought that, from an athlete's point of view, if WADA tried to nail an athlete with tougher Code rules when the athlete's IF said something else, WADA would be unsuccessful and it was probably not a good idea to put something in the Code that would probably not work; therefore, the Code Project Team recommended taking that out.

THE CHAIRMAN asked how WADA would get to where it wanted to be, so that the rules would be the same as the Code rules.

MR YOUNG replied that WADA would exercise its monitoring responsibility and, if an IF had rules that were not Code-compliant, WADA would tell that IF and it would face the consequences of non-compliance.

THE CHAIRMAN thought that he could live with that, but thought that WADA should make it clear that this would be active monitoring.

PROFESSOR LJUNGQVIST agreed fully and supported the proposal made by Mr Young. Was this not sort of hypothetical after all, as he believed that WADA had to monitor the rules and certainly the adoption of the new amended Code as it would appear in the rules of the individual federations? Once they were regarded as being in compliance, there should be no problem. He agreed that the athlete had to know that he or she competed under the rules of the IF and that those were the rules by which the athlete had to abide. He supported the proposal made by Mr Young.

THE CHAIRMAN said that, in all fairness, everybody knew what the anti-doping rules were. Nobody got to national or international level who did not know about the World Anti-Doping Code and the need to be compliant with that. The only reason somebody would be invoking this would be to try to get some diminished responsibility under the rule of the IF, which was not something he thought WADA would want to be seen to be encouraging. If WADA were to accede to this in an apparent effort to be flexible, it had to be followed up in action taken rigorously and soon, and not necessarily be part of the two-year monitoring exercise. This was a gut issue for WADA and, therefore, if federations were not Code-compliant, WADA could encourage them to be Code-compliant or report them as non-compliant.

MR LARFAOUI said that he agreed; however, he also thought that, immediately after the adoption of the Code, WADA could invite all of the IFs to get their statutes in conformity with the Code. This would be possible because the majority of IFs would have their congresses the following year or at the beginning of 2009.

THE DIRECTOR GENERAL said that WADA, when it had introduced the Code in 2003, had had many discussions with many IFs and other signatories about the slight changes that they had made to the way in which they had prepared their rules. This would mean that WADA would have to be very strict on the way in which it interpreted the rules, and would provide a report to the IFs. If there were any argument, he could see that the only route possible would be to go to the CAS for advisory opinions. He could see a rise in legal costs as a result; these would have to be shouldered, but it would be inevitable, because he already knew of federations that had slightly different rules, and WADA had almost let them get away with it to date. Now, WADA would have to be much stricter.

THE CHAIRMAN asked whether the Code Project Team thought that this was a legal issue or a testosterone issue.

MR YOUNG replied that this was a legal issue.

THE CHAIRMAN asked whether the Code Project Team's advice was to bail out and resolve the issue through the monitoring.

MR YOUNG replied that the Chairman was correct.

THE CHAIRMAN asked the Executive Committee members whether they wished to take that advice. The meeting agreed.

MR YOUNG said that that concluded the list of recommended changes. He simply highlighted a couple of the additional issues. Obviously, the members had heard all of the interventions, and this was not an exhaustive list, but the three that would appear to be policy questions for the Executive Committee were the issue of world championships in countries that had not ratified the Code and if there was to be a compromise or any number of possible compromises, be these flagship events (which had been included in version 2, associated with an earlier start date of January 2009 as opposed to January 2010), and there were other possible suggestions.

The second was the implementation date and whether WADA, in the interest of harmony, held to a common implementation date of 1 January 2009, or whether it let different sporting bodies implement as soon as they could get their rules changed and live with the disharmony that national bodies and IFs might have, with different rules, for some period of time, whether before or after the Olympic Games.

The third issue, about which there had not been much comment, was that change that said that, if ineligible, an athlete could not participate in any activity of a member or a member of a member, which meant that an athlete could not train with his or her member club.

THE CHAIRMAN thought that WADA had allowed itself to have this issue mischaracterised. It was not punishing athletes; it was a question of whether WADA would reward bad behaviour by a country that had promised to ratify the convention. He thought that the sports representatives who had raised that issue were trying to suck and whistle at the same time; they wanted strong action and so forth, unless it affected them, of course, in which case they could go to a country that was non-compliant. He did not think that that was punishing athletes as a result of bad behaviour at all. He might be alone in that view, but he thought that it had been mischaracterised.

MR LARFAOUI said that he thought that WADA could leave this to the discretion of the IFs. The IF could be informed as to the government's position, and then left to decide what to do.

THE CHAIRMAN said that he heard the point; he could probably live with language that said that IFs should make all reasonable efforts to avoid awarding events to such countries, but it had to be more than "may refrain from"; it had to be made clear that the objective was to get the countries to ratify.

MR MIKKELSEN did not agree with that, because WADA wanted to send a strong signal that it would not allow countries that had not ratified the convention to host world championships. If WADA only wrote this down, he trusted the IFs, but there was a possibility that there would be an IF that did not have the same point of view as WADA did, so he suggested writing this explicitly; it should not be up to the IFs to decide.

MR BOUCHARD said that he thought the same thing as Mr Mikkelsen, as there was sufficient time given to the countries to ratify the convention in order to be able to hold a sports event, and he thought that this would be good initiative for those governments that had not yet ratified as he thought that the IFs would put pressure on the countries to ratify the convention. It was a good initiative and he thought that it should remain as it was.

MR KASPER thought that everybody had to think about the small IFs that existed only in poor countries that had not signed the convention. Why should WADA penalise the athletes? Then there would be no more world championships. WADA could perhaps find a compromise saying that the Olympic IFs or the major federations could not do that; however, it should leave the Non-Olympic IFs (such as the tug-of-war federation) out of it. He would agree with only the Olympic IFs and, eventually, the Recognised IFs, but the Non-Olympic IFs should have the possibility to host events in countries that had not ratified the convention.

MR BURNS concurred with Mr Mikkelsen; if WADA was going to do it, it should do it. If WADA was going to be serious about asking for compliance, and he said that from a country that had a long arduous process in passing anything, his country was motivated to do that. It sent a clear message; otherwise, what was the point?

MR STOFILÉ said that his experience on hosting matters was that there were very few sports federations that could host international events. He had listened to FIFA saying that there were associations that did this, but this was not accurate. The truth was that, outside Europe, where federations were very strong financially, in any country that applied to host an international event (including FINA, which had just had its world championships in Durban the previous month), before making a bid, the IFs came to the government to ask for support in all manner of areas, including money. The hosting of international events was a major drive by government entities, especially the local government communities; it was not just a sporting activity, but he was very sympathetic to Mr Kasper's views, and maybe WADA needed to listen to these; he was not conversant with the mountain and skiing situation, but he was conversant with tug-of-war. Perhaps WADA should listen and ask the drafting team to find a compromise draft that captured the "shall" or the "may", but made it very clear that, for some of the mega events, the football, rugby and cricket world cups, the countries, not the IFs, benefited. The athletes did not benefit. WADA would not really be punishing them, but would punish the financial beneficiaries of the events. Perhaps that should be refined, but the Executive Committee members should remember the real fundamentals.

MR REEDIE said, with sympathy for that type of view, that instant legislation was almost always bad legislation. The Executive Committee did have 12 hours to think about this. Logically, he was very uncomfortable with having a proposal that meant that an IF could not hold an event somewhere because of something at the end of an anti-doping paper, so he thought that WADA should be as firm as it could be and perhaps put in an explanatory paragraph explaining that it wanted the major events to take place in the countries that had ratified and, for a short period of time (because the governments would all be ratifying sooner rather than later) have a potential exemption permission so that the poor old tug-of-war people could go wherever they wanted to go and WADA would not actually spoil the world of sport.

PROFESSOR LJUNGOVIST fully understood what Messrs Mikkelsen and Burns were saying. There had been a clear message from the sports movement that there was frustration among the sports movement about what it felt was a slow process in ratification of the convention and it would like to use any means possible to speed up the process. He felt that this particular means was in some cases not right, because it would affect the wrong people and the wrong bodies. His own federation, and Lamine Diack had confirmed this earlier, would be happy to exercise the rule, and most of the Olympic IFs would be if that put more pressure on the governments, but it was necessary to find a compromise that satisfied those small sports that did not have the ability to exercise pressure as they had only a limited number of potential host countries. He was sure that the drafting team would be able to come up with a wise solution that satisfied what everybody wanted, namely pressure on the governments to move faster with ratification.

MR MIKKELSEN said that he was happy that he had not studied law at university; he had studied economics, as he could not find any paragraph in Danish law that gave exemptions for some people and not for others. Any rule in WADA had to be for everybody and he did not agree that it penalised athletes. WADA was sending a strong

signal that it would like the countries to ratify the convention and, listening to the governments that morning, a lot of governments had said that they would ratify the convention within the two years, so he did not think that there was a big problem. This would put great pressure on the governments; everybody agreed that all the countries should ratify, and the best way to put pressure on the governments would be to say that under no circumstances should they be allowed to host any high-level competitions if they did not ratify. He still proposed that this should apply to everybody.

THE CHAIRMAN said that he was concerned about a provision that would create a fault line right down the centre of the organisation, with the governments on one side and the sports movement on the other. He thought that WADA had to give on either side and there had to be responsibility on an IF that wanted to take an event to a country that had not ratified to have done everything possible to avoid doing it, and it would have to be able to demonstrate that. The governments should perhaps realise that there would be that kind of pressure created by the sports movement on governments as well. They would be doing their own work, of course. If he had to break a tie, he would go for the governments, but that would mean getting put on the IOC Cultural Commission as of 1 January. He was a little worried about that!

MR LARFAOUI agreed with what the Chairman had said, but he wanted to tell Mr Mikkelsen that the pressure was not exercised by using athletes; it could be exercised by the policies themselves on other governments. WADA should not use athletes in this case.

THE CHAIRMAN asked Mr Young if he felt that he had been authoritatively instructed at that point.

MR YOUNG said that he appreciated the confidence expressed by Professor Ljungqvist, but this was a political issue and not a drafting issue, and he needed guidance on whether it would be all reasonable efforts, flagship events, or whatever, because this was an issue on which there were strong feelings both ways. There were other potential compromises that could be thrown into the mix; for example, a government could get an exception only if the IOC said that it would get an exception (exceptional circumstances). There were many ways to skin the cat but, at the end of the day, the team needed the Executive Committee to tell it what to do. The team could draft it if the Executive Committee told it what its political decision was.

MS ELWANI said that she was not a politician, but she was having a hard time understanding. WADA had a Code, and everybody was supposed to have ratified it; everybody had ratified it, except for the governments, and now the people that had to ratify it were putting pressure on others to accept their rules. WADA would be punishing IFs and athletes, people who had ratified. There had already been a deadline in 2006. She did not trust the two-year deadline any more. The only thing that could be done was to get a compromise with which the sports movement, and not the governments, was happy, because the sports movement had waited long enough.

THE CHAIRMAN observed that the nature of a compromise was that everybody had to be equally unhappy. Were the public authorities happy with that as a way of resolving this issue? Otherwise, the Foundation Board meeting should begin at 4 a.m. He did not want to have the same discussion the following day with three times as many people round the table. Was the suggestion he had made acceptable? His suggestion was that an IF would not go to a country that had not ratified the convention unless it could show that all reasonable efforts had been made to find another possible location for an event. If two countries had made a bid and one had ratified and one had not, the IF would go to the one that had. He was really concerned about the fact that the tail was very much wagging the dog. WADA was talking about tiny federations at the very bottom end of the feeding chain, and was letting their problems determine a global approach. That said, it seemed to him that WADA could throw a bone to those raising the issue and say that WADA had responded positively to it but that there was an obligation on both sides.

MR REEDIE thought that that was about as close as WADA was going to get to an agreement. He took some issue with the tail wagging the dog analogy, because WADA could not say that it had a Code that brought everybody together if WADA then penalised the people at the tail end of the chain.

THE CHAIRMAN said that the members had to get away from the view that WADA was penalising somebody at the end of the chain. It was not. It was rewarding bad behaviour by allowing this to happen. The sports side had to accept that obligation first.

PROFESSOR LJUNGOVIST moved that the Executive Committee accept the Chairman's proposal as a compromise. The meeting agreed.

THE CHAIRMAN referred to the implementation date and the views that some IFs might like and be able to have a date prior to 1 January 2009. He thought that, since it could not be done until the international standards were out anyway, in May or whenever there was a decision, WADA was talking about a period of possible disharmony of six or seven months at most, and he should have thought that it would be off message to prevent somebody from implementing improvements that everybody recognised sooner rather than later. Nevertheless, he sought the members' views on that because the drafters had to be instructed on the policy. WADA would be saying at the latest on 1 January 2009 or language to that effect.

PROFESSOR LJUNGOVIST supported that fully, as it was in WADA's interests to have the Code implemented as soon as possible by those who could do it. It would be good for everybody.

MR STOFIE said that he would like to implement the Code much earlier, but he was guided by Mr Young's comment that, until the tools for implementation were in place, it made no sense to want to implement the Code earlier than that. Therefore, if the Code Project Team thought that 2009 was a reasonable time, he would support that.

THE CHAIRMAN said that he did not think that the Code Project Team had a political issue one way or another. The question would be that one could not implement the Code until the international standards had been adopted. They would not be available until May.

MR NIGGLI thought that there was a practical issue with the List in particular, because the List would not be enforced until 1 January 2009, and this List would have to identify those stimulants that were non-specified, as agreed. Until this particular List was in place, one could not apply the new Code. It would be difficult to say that implementation could take place before 1 January 2009 unless WADA changed the entire schedule of the international standards.

PROFESSOR LJUNGOVIST did not think that this was a valid argument, as WADA lived with the List at the moment and used the amended Code with the current List.

MR NIGGLI objected that the new List was different.

PROFESSOR LJUNGOVIST said that he knew that, as he was Chairman of the List Committee.

MR NIGGLI said that it would not be possible to use the List with the new Code; for example, there was no identification of those stimulants that would not be specified.

PROFESSOR LJUNGOVIST retorted that they would then be used for the current purpose.

MR YOUNG stated that he did not think that that would work for the purposes of deciding which stimulant was a specified substance. If there was an athlete who tested positive for pemoline, for example, would that be a specified substance or would it not be a specified substance? WADA would not know that until the List Committee came out with a new List that said that one was a specified substance and the other was not. That was just one example, but it could be a very important example in a particular case. The other issue was more of a political issue, and it was up to the Executive Committee to

decide whether it was a good idea or not to go to the Olympic Games in Beijing with the IAAF, for example, having aggravating circumstances up to four years, FINA not having changed its rules and having aggravating circumstances at two years, some national anti-doping agencies having changed their rules with aggravating circumstances up to four years, and others not, and what the IOC would do before Beijing he did not know.

THE CHAIRMAN said that the Olympic Games issue was the Olympic Games issue. Assuming that the issue concerned an anabolic steroid, and the IAAF found somebody in July testing positive for an anabolic steroid and wanted to apply the new provision, would it be in a position to do it that way?

MR YOUNG replied that, if there were aggravating circumstances, as proposed, the answer would be no. Until January 2009, there would be only the existing Code. If the IAAF were allowed to apply aggravating circumstances in July, and the sanction was two years in a particular case and it was a Canadian athlete and Canada had not yet adopted the amendments to the Code and was bound by mutual recognition, was it four years that would be mutually recognised or two years? It was that kind of disharmony that had led to the Code in the first place. That was a policy issue. He was totally supportive of the notion that, if the amendments were a good idea, the sooner the better, but WADA would run into those kinds of practical problems.

PROFESSOR LJUNGQVIST said that this could be a lengthy debate. He had not understood the last argument because he believed that, whether Canadian or Swedish or whatever, the athlete would be competing under the IF rules at the time, not the national rules. He did not see why a sports federation that was ready to adopt the amended Code should not be in a position to do it if it found that it was compatible with existing rules. It would be in WADA's interest to have the Code implemented; the sooner the better.

THE CHAIRMAN suggested sleeping on it. If the legal advice was that it would be a complete and utter mess and disaster unless it all came on line at the same time, then the Executive Committee would consider that advice but, if it was merely inconvenient, that was a different issue.

The third issue was whether an athlete, if he or she had been suspended, could continue to practise and do everything with the team or sport other than play in games.

MR LARFAOUI said that, when sanctions were issued to suspend an athlete for a set period, the sanction involved participation in all official competitions and forbade all other athletes from competing against the suspended athlete. There were no rules regarding training; an athlete who had been suspended could continue to train and come back to compete after the end of the suspension period (this had happened in the past). Football or professional sports might be different.

MR STOFILÉ noted that he had been thinking very hard, having listened to the input from the plenary session. He could not imagine how not practising for seven days would kill the athlete's career, because it was a question of seven days, which was not an eternal delay; if there was a preliminary suspension, the time period would be seven days.

THE CHAIRMAN interrupted Mr Stofilé to inform him that the Executive Committee was talking about the two-year sanction. Could an athlete continue to practise with the team during the sanction period?

MR STOFILÉ responded that, if he were coaching the team, he would kick the athlete out himself.

THE CHAIRMAN observed that there were others without Mr Stofilé's strong moral views on that matter. The issue was whether it was really a sanction if nothing happened except that the athletes did not play in the games.

MR STOFILÉ said that retaining such an athlete within the collective was like keeping a rotten apple in a bag. That person was a bad influence and, even if the person showed

remorse, the mere presence of the athlete would be spreading the smell among other players.

MS ELWANI asked if this could be monitored. Would WADA go round fields and check on suspended athletes? She would not want the athlete to be on the team, but wondered whether this could be monitored.

THE CHAIRMAN responded that, if there was a rule, the team would be aware of it.

MR COSGROVE had been thinking along the same lines as the previous speaker. Where did WADA draw the line, and was it practical? Did not training with a team mean that an athlete could tour with the team, or be an advisor to the team? How would this be policed and what would the cost of doing that be?

THE CHAIRMAN suggested that the members deal with the principle first. Mr Larfaoui was right; the rules had always traditionally been that, if an athlete cheated and was caught, such athlete was not allowed to compete, but WADA had never really addressed the issue of training.

THE DIRECTOR GENERAL said that there had been examples of players (team players) who had been banned in the past from training with their teams. A good example was an Australian cricketer, Shane Warne, who had played for Australia and his state team, Victoria, and he had been banned from playing and training for one year, and that had been policed and implemented by his federation, state and club. It had been an effective ban from partaking in the team throughout the entire sanction period, so it was not impossible to police, because information about those who had cheated was always in the newspapers and individuals would tell WADA if that was being breached, and WADA knew that, in the team sports, there were not hundreds of athletes sanctioned, and it was not a hard issue to monitor.

THE CHAIRMAN asked the members to bear in mind that they were not dealing with somebody who had had chicken pox. This was somebody who had knowingly violated a doping rule. Was the message to be that one could continue to do everything one wished, including getting paid by a professional team, practising, appearing with the team, and being on the sidelines cheering the team on? Was that what WADA wanted or not?

MR BOUCHARD noted that the position of his government was that an athlete should not be able to train with the team, and that the government should not allow athletes to train with their team. Sport Canada ensured that an athlete could not train with his or her team.

MR LARFAOUI said that it was up to the country of the athlete to prevent the athlete from training, but the IF was not involved in that, so perhaps the solution was that, if the government wanted to prevent the athlete from training, it was up to the government to do so.

THE CHAIRMAN observed that WADA was trying to get harmonised rules and he would be concerned about that. It would certainly be an enforceable rule. This was one of the many interventions that had been heard that day, particularly from the team sports, of creating a different set of standards between what happened to the so-called individual sport athletes and the team sport athletes and, in every case, every intervention heard that day had been designed to reduce the impact of doping offences on team sports. The Executive Committee and the Foundation Board should think long and hard about that, but that was the trend, and this was part of that trend. This was one of those things about which the Code Project Team might say that it had heard a lot of interventions but there was no proposal to change. The Executive Committee could tell the Foundation Board that there were five or six things that it was willing to change, but that there were three or four suggestions on which the Executive Committee did not agree and would not change, and that the Code that the Executive Committee was asking the Foundation Board to approve would not contain those changes, for whatever reason the Executive Committee chose to advance.

MR SCHONNING said that he supported the point of view that the sanction should also include training. The meeting agreed.

PROFESSOR LJUNGOVIST said that there had been one further submission from FINA, which had asked for aggravating circumstances to be considered in cases in which sophisticated methods had been used; an example would be the very sophisticated machinery used at the Athens Olympic Games by those athletes found cheating.

THE CHAIRMAN asked whether that was not already covered.

PROFESSOR LJUNGOVIST replied that this was not covered. The problem was multiple methods. Page 39 stated that aggravating circumstances could be considered if the athlete or other person used or possessed multiple prohibited substances or multiple prohibited methods, or used or possessed multiple prohibited substances or methods on multiple occasions, but he thought that, for a single offence like the really ugly one that had been seen in Athens, the intention would be to have it incorporated under aggravating circumstances, so the singular was missing here.

MR YOUNG said that the list of examples of aggravating circumstances was only a list of examples; it had been intentionally left as an open list and whether the use of sophisticated deceptive techniques would raise to the level of an aggravating circumstance would depend on the particular case. Even if such language were to be included on the open list, there would be a debate over what was sophisticated, for example, blood transfusion or blood cleaning with an ultraviolet light or cases that had been seen previously. The Code Project Team had tried to make the list of aggravating circumstances longer, but had decided to leave it as an open list so that it would not have to address every single potential circumstance.

THE CHAIRMAN noted that he took the point but, as he had listened to the words read by Professor Ljungqvist, one got the impression that there had to be multiplicity of something.

MR YOUNG said that the illustrative list included part of a doping plan or scheme, deceptive or obstructing conduct to avoid detection or adjudication; whether in a particular case that was broad enough, he did not know. It was certainly not singular

PROFESSOR LJUNGOVIST said that the problem was exactly the one the Chairman had said. If it explicitly said multiple, it seemed to require a multiple action.

THE CHAIRMAN pointed out that Mr Young had just said that it did not say that.

PROFESSOR LJUNGOVIST said that, if one talked about methods, since methods were specified as methods in the List, and methods were referred to here, he was afraid that this could be taken as a requirement for multiple use before moving to aggravating circumstances. FINA had read it in the same way he had.

THE CHAIRMAN asked Mr Young if, should somebody be found with a device that had been used in Athens, he was saying that the WADA language was sufficiently broad to catch that.

MR YOUNG replied that that he would not be sure of that. It would depend on the circumstances and what the CAS panel decided on whether that was a deceptive practice or whether it was part of a scheme. If there had been a single transfusion with the device, maybe not.

THE CHAIRMAN asked whether Mr Young would have some doubt about a single balloon filled with somebody else's urine.

MR YOUNG replied that he would.

THE CHAIRMAN noted that that was something to think about overnight as well. For the kinds of cases that WADA knew about, disgusting as they were, it wanted to be able to deal with them as aggravated. He could not think of a more aggravating circumstance than that, so he suggested getting it.

Was there anything else on which Mr Young needed the Executive Committee's sage advice?

MR YOUNG replied that he did not seek further advice and thanked the Executive Committee members for their guidance.

DECISION

Code Project Team to make the necessary adjustments, in accordance with the proposals made by the Executive Committee, to the draft Code for submission to the Foundation Board the following day.

3. Any Other Business

THE CHAIRMAN said that somebody had asked a question about the WADA Foundation Board. Given the kind of bun fight that was likely to erupt the following day regarding the elections, was this a WADA Foundation Board that WADA might prefer to have in camera as opposed to in public? If that was the view, was WADA precluded by its statutes from making that decision? The Foundation Board meetings had traditionally been public. He would assume that WADA retained the discretion to have at least in camera portions but, knowing the level of eye gouging and nut kicking that had been going on, he did not want to do anything that was not defensible legally, because many of WADA's so-called "friends" would be looking for anything. There had been an in camera session of the Foundation Board when WADA had discussed the document loosely referred to as the Vrijman report on the basis that WADA needed to preserve legal privilege, but that was the only occasion, to his knowledge, on which there had been a closed Foundation Board meeting.

MR REEDIE pointed out that, unless there was a clear constitutional rule that said that WADA could not, surely the way to do it would be to do the bit in camera and then conduct the rest of the meeting in public in the normal form, but WADA should not commit Hara-kiri in public.

MR NIGGLI said that he did not think that there was anything in the constitution that ruled that the Foundation Board had to be public.

THE CHAIRMAN concluded that this was a policy decision that WADA had made. Was there anything under general Swiss law that prevented WADA from having an in camera Foundation Board meeting?

MR NIGGLI replied that normal practice would be to hold non-public Foundation Board meetings.

THE CHAIRMAN asked whether the members wished to have the election portion of the meeting in camera. That being the case, what did the members wish to do first? The Code? The public would be present in the morning to hear any discussions on the Code and then, in the afternoon, there would be an in camera portion dealing with the election.

MR COSGROVE said that he endorsed the view that there could be an in camera session the following morning if members wanted to raise those issues or attempt to raise those issues.

THE CHAIRMAN pointed out that the purpose of the meeting was solely to adopt the Code and amend the statutes. It was a single purpose meeting, and it was all Code-related.

THE CHAIRMAN thanked everybody and declared the meeting adjourned.

DECISION

Proposal to hold the election portion of the Foundation Board meeting on 17 November in camera approved.

The meeting adjourned at 7:40 p.m.

FOR APPROVAL

RICHARD W. POUND, QC
PRESIDENT AND CHAIRMAN OF WADA