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### Judging the Judges: Dispute Resolution at the Olympic Games

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# JUDGING THE JUDGES: DISPUTE RESOLUTION AT THE OLYMPIC GAMES

## I. INTRODUCTION

During the men's gymnastics individual event final at the 2004 Athens Games, Russian gymnast Aleksei Nemov dismounted from the high bar to the cheers of the crowd.<sup>1</sup> Once Nemov's low scores were posted, those cheers turned to an angry roar that rocked the Olympic Indoor Hall, halting competition for ten minutes.<sup>2</sup> Then, suddenly, the scores changed.<sup>3</sup> In the midst of the chaos, two of the six judges had reconsidered their decisions in an apparent attempt to assuage the crowd.<sup>4</sup> Nemov went on to place fifth.<sup>5</sup>

Intense media coverage of such judging mishaps has overshadowed the athletics at recent Olympic Games.<sup>6</sup> Perhaps it is the inevitable result of the 2002 Salt Lake City Games, where a double gold medal was awarded after a French figure skating judge admitted accepting a bribe.<sup>7</sup> Perhaps it is the result of a

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1. Rachel Cohen, *Accountable Mistakes Happen, but Now Judges Hear it When They Mess Up*, DALLAS MORNING NEWS, Aug. 25, 2004, at 4CC.

2. *Id.*

3. *Id.*

4. *See id.* The fallout from such unprofessional conduct by the Malaysian and Canadian judges would have been worse had Nemov managed to win a medal with his inflated scores. Instead, he came in fifth. *See id.*

5. *Id.*

6. *See* Cohen, *supra* note 1; Jere Longman, *Olympics: The Scorekeepers*, N.Y. TIMES, Feb. 15, 2002, at D1 (profiling a Salt Lake City judge who withdrew, unnerved by charges of political and cultural biases aimed at competition judges); Candus Thomson & Randy Harvey, *An Abundance of Objections is Testing Games' Machinery for Settling Protests*, BALTIMORE SUN, Aug. 24, 2004, at 1A (noting the challenges to judging calls in gymnastics, swimming, equestrian and sailing competitions in Athens). *See also* Selena Roberts, Editorial, *IOC Leadership is Lacking a Pulse. Is There a Doctor in the House?*, N.Y. TIMES, Aug. 29, 2004, at Sports 8 (criticizing the International Olympic Committee for ignoring judging problems in order to avoid confrontation with the international sports federations).

7. *See* Christopher Clarey, *Skating Federation Turns Its Focus to Judging Judges*, N.Y. TIMES, Apr. 29, 2002, at D1. At the 2002 Salt Lake City Games, French figure skating judge Marie Reine Le Gougne confessed that she had been pressured by the president of her national skating federation to favor the Russians over the Canadians in the pairs figure skating event. In response, the International Olympic Committee made the unprecedented decision to

more litigious society in general; most delegations arrive at the Olympic Village with lawyers in tow.<sup>8</sup> Perhaps the focus has been sharpened because sporting stakes, especially at the Olympics, are higher: prize money, commercial endorsements and appearance fees can add up to millions of dollars for medalists.<sup>9</sup> Perhaps it is as simple as technology—judging errors are easy to spot thanks to video replay.<sup>10</sup> Whatever the reason, Olympic disputes are more heated and high profile than ever before.

The Athens Games was no exception. The fallout from the Nemov incident was quickly obscured by a more contentious controversy, the gold medal fight between American Paul Hamm and South Korean Yang Tae Young.<sup>11</sup> Yang was mistakenly docked one-tenth of a point at the start of his parallel bars routine during the men's gymnastics all-around competition.<sup>12</sup> Had he been given the proper starting score—and had

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award a duplicate set of gold medals to the Canadian team. *Id.* The controversy prompted the International Skating Union to implement an improved scoring system. Selena Roberts, *Skating Group Proposes a New System of Judging*, N.Y. TIMES, Feb. 19, 2002, at A1.

8. See Peta Bee, Editorial, *Olympic Ideals Taken Over by Tantrums and Tears*, GUARDIAN (London), Aug. 30, 2004, at 25 (criticizing “sore-loser athletes” for accusing judges of cheating, rule-breaking and favoritism). In recent years, with doping, performance-enhancing drugs, videotaping of events, etc., athletes have become more aware of their rights and the ways to protect them. JAMES A.R. NAFZIGER, INTERNATIONAL SPORTS LAW 64 (2d ed. 2004).

9. See Melissa R. Bitting, *Mandatory, Binding Arbitration for Olympic Athletes: Is the Process Better or Worse for ‘Job Security’?*, 25 FLA. ST. U. L. REV. 655, 664 (1998) (noting that gymnast Kerri Strug and sprinter Michael Johnson were projected to make \$2 million each in 1996, based on their performances in the Atlanta Games).

10. The use of technology to resolve controversial field-of-play calls in international competition is less common than in professional sports, but it is growing, especially in track-and-field, international wrestling and cricket. In contrast, the international football and tennis federations have banned the use of video replay. NAFZIGER, *supra* note 8, at 116–20.

11. See Bee, *supra* note 8.

12. Candus Thomson, *Arbiters Hear Appeal of Men’s All-Around*, BALTIMORE SUN, Sept. 28, 2004, at 2E. In gymnastics, the highest possible point value of a routine is determined at the outset, based on the level of difficulty of the planned routine, in accordance with the International Gymnastics Federation’s Code of Points. See *id.* Yang’s routine should have been given a higher point value due to its difficult elements. See Alan Abrahamson & Diane Pucin, *Hamm Takes Issue with Medal Dispute*, L.A. TIMES, Aug. 23, 2004, at D1.

the rest of the evening's competition played out the same—Yang would have beaten Hamm to take the gold by 0.051 of a point.<sup>13</sup> The controversy stemmed not only from the judging error made during the competition, but also from the International Gymnastics Federation's response to the aftermath.<sup>14</sup>

Since 1996, all Olympic disputes have been submitted to an independent arbitral tribunal, the International Court of Arbitration for Sport (CAS), for mandatory, binding arbitration.<sup>15</sup> The International Olympic Committee (IOC), which organizes the Games, instituted this policy after a rash of lengthy multi-million dollar battles in various domestic courts in the 1990s.<sup>16</sup> One notorious example was the case of American track star and Olympic gold medallist Harry "Butch" Reynolds.<sup>17</sup> The governing body of international track-and-field competitions, the International Amateur Athletic Federation (IAAF), suspended Reynolds for two years in 1990 for alleged steroid use, effectively ending his chance to compete in the 1992 Olympic Games.<sup>18</sup> Reynolds filed an appeal in a U.S. court—a move that

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13. Thomson, *supra* note 12.

14. The Yang case is discussed in depth, *infra* Part III.A. For now it is enough to note that the International Gymnastics Federation did not handle the situation in accordance with its own rules and regulations. The much-publicized controversy did not subside until months later, when the Court of Arbitration for Sport issued a ruling denying South Korea's appeal. See *CAS Turns Down Yang's Petition*, KOREA TIMES, Oct. 23, 2004.

15. OLYMPIC CHARTER R. 74, available at [http://multimedia.olympic.org/pdf/en\\_report\\_122.pdf](http://multimedia.olympic.org/pdf/en_report_122.pdf) (in force as of Sept. 1, 2004). Rule 74 mandates that all Olympic participants submit disputes to the CAS, an international organization of sports arbiters that hears both Olympic and non-Olympic sporting disputes, including private commercial claims. Matthieu Reeb, *The Court of Arbitration for Sport*, History, CAS website, at <http://www.tas-cas.org/en/histoire/frmhist.htm> (last visited Apr. 14, 2005).

16. See Anthony T. Polvino, *Arbitration as Preventative Medicine for Olympic Ailments: The International Olympic Committee's Court of Arbitration for Sport and the Future for the Settlement of International Sporting Disputes*, 8 EMORY INT'L L. REV. 347, 347 (1994). See also Steve Buffery, *Atlanta '96 Column*, TORONTO SUN, June 9, 1996, at 16 ("It seems any time an American athlete tests positive, a local court instantly reinstates them and then they launch a multi-million dollar lawsuit."). Just before the 1996 Atlanta Games, American heptathlete Gea Johnson filed a \$12 million lawsuit against the international track-and-field federation for banning her for steroid use. *Id.*

17. See Polvino, *supra* note 16, at 347.

18. See Bitting, *supra* note 9, at 660.

sparked jurisdictional conflicts between the U.S. Olympic Committee and the IAAF and led to fifteen different stages of litigation and arbitration.<sup>19</sup> Despite the IAAF's refusal to acknowledge U.S. jurisdiction, even after the Supreme Court intervened, a district court finally ruled in Reynolds' favor and awarded him a \$27.3 million default judgment that the IAAF refused to pay.<sup>20</sup> Reynolds' victory, however, came too late. The 1992 Olympic Games had come and gone in the four years it took for him to get through litigation.<sup>21</sup>

The Reynolds saga illustrates the problem of bringing suit in domestic courts in matters that implicate the entire Olympic Movement, an interconnected web of international, national, governmental and non-governmental institutions, each with its own statutes, jurisdiction and procedures.<sup>22</sup> The IOC had recognized the need for a tribunal equipped to handle such complexity when it created the CAS in the early 1980s to arbitrate disputes voluntarily submitted to it by international sports bodies; however, in the wake of the Reynolds debacle, the IOC recruited the CAS to be the official arbiter of the Olympics.<sup>23</sup> To meet the special needs of the Games, the CAS created an ad hoc Division, a small group of arbiters installed in each Olympic Village to issue final, binding decisions within twenty-four hours of the complaint.<sup>24</sup> Forcing Olympic participants to ac-

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19. See James A.R. Nafziger, *Dispute Resolution in the Arena of International Sports Competition*, 50 AM. J. COMP. L. 161, 172 (2002). See also Bitting, *supra* note 9, at 661.

20. Polvino, *supra* note 16, at 354–56 (“When asked if the award to Reynolds would be paid, [IAAF President Primo] Nebiolo stated: ‘Never, never . . . he can live 200 years.’”). *Id.* at 356.

21. See *id.* at 347. This was the first time the U.S. Supreme Court had ever ruled on an Olympic matter involving competition. Justice Stevens, in his capacity as a circuit Justice, granted Reynolds' application for a stay of the Sixth Circuit's order barring the IAAF from interfering with Reynolds' eligibility for the 1992 U.S. Olympic Trials. The stay was later upheld by the entire Supreme Court. *Id.* at 353.

22. The Olympic Movement is the dominant international sports institution and provides the framework for world competitions. See Nafziger, *supra* note 19, at 162.

23. See Reeb, *supra* note 15, History of the CAS § 1.

24. *Id.* The CAS's ad hoc Division, explained in detail, *infra* Part II.C, is a decentralized, temporary branch of the CAS adapted to fit the needs of Olympic participants who want disputes resolved in time for the remedy to be of use during the Games. The CAS has ad hoc branches not only at the Olym-

cept the CAS as their final legal recourse was a novel, risky idea.<sup>25</sup> To effectuate the change at the 1996 Atlanta Games, the IOC required that all athletes, coaches and officials contractually waive their right to sue in civil courts.<sup>26</sup> It introduced a clause into the Eligibility Entry Form binding the signer to the arbitration scheme.<sup>27</sup> The version for the 2004 Athens Games reads:

I agree that any dispute, controversy or claim arising out of, in connection with, or on the occasion of, the Olympic Games, not resolved after exhaustion of the legal remedies established by . . . the International Federation governing my sport . . . and the IOC, shall be submitted exclusively to the Court of Arbitration for Sport (CAS) for final and binding arbitration . . . . The CAS shall rule on its jurisdiction and has the exclusive power to order provisional and conservatory measures. The decisions of the CAS shall be final and binding. I shall not institute any claim, arbitration or litigation, or seek any form of relief, in any other court or tribunal.<sup>28</sup>

Although there was doubt that the 11,000 athletes from 197 countries who showed up to compete in Atlanta would willingly sign away their right to sue, the implementation of the ad hoc Division was largely uneventful.<sup>29</sup> For most Olympic partici-

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pics, but also at the Commonwealth Games and the European Football Championships. *Id.*

25. The IOC amended the Olympic Charter to add Rule 74, which directs all disputes to arbitration by the CAS. OLYMPIC CHARTER R. 74.

26. See Urvashi Naidoo & Neil Sarin, *Dispute Resolution at Game Time*, 12 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 489, 492–93 (2002) (describing the contractual obligations of Olympic participants).

27. *Id.* at 493. However, the CAS allows for appeal of its decisions to the Swiss Federal Tribunal, a domestic Swiss court, on limited grounds. *See id.*

28. Eligibility Entry Form of the 2004 Athens Olympic Games, SPORTS ENTRIES AND QUALIFICATIONS SYSTEM 8, at [http://www.athens2004.com/Files/files/Pdf-Sports/SEQ\\_MASTER\\_1\\_EN.pdf](http://www.athens2004.com/Files/files/Pdf-Sports/SEQ_MASTER_1_EN.pdf) (last visited Apr. 14, 2005). In addition to the entry form, the CAS's jurisdiction is asserted in Rule 74 of the Olympic Charter; furthermore, many sports bodies have written CAS jurisdiction into their by-laws. GABRIELLE KAUFMANN-KOHLER, ARBITRATION AT THE OLYMPICS: ISSUES OF FAST-TRACK DISPUTE RESOLUTION AND SPORTS LAW 16, 24–25 (2001).

29. See Bitting, *supra* note 9, at 663; Buffery, *supra* note 16 (discussing the controversy over the newly-required waiver); Mike Fish, *Atlanta Grand Prix; Drug Testing; IAAF Talking Tough in Johnson Case*, ATL. J. & CONST., May 18, 1996, at 9E (quoting Butch Reynolds as agreeing to the waiver, along with

pants, there is no other viable option.<sup>30</sup> Contesting mandatory arbitration in a court of law, as either unconscionable or as a contract of adhesion, might mean a drawn-out court battle reminiscent of Reynolds'.<sup>31</sup> Furthermore, most athletes' financial support from their national committees to train and compete is contingent upon their Olympic eligibility.<sup>32</sup> For the serious medal contenders, the Olympic Games mean prize monies and lucrative endorsements, not to mention a chance to fulfill a dream.<sup>33</sup> With so much at stake, an athlete is unlikely to forfeit competition because of an unwillingness to submit to the CAS.

Because Olympic participants waive a powerful right to sue in domestic courts, the IOC's arbitration scheme must be a worthy substitute.<sup>34</sup> The introduction of the ad hoc Division has largely been a success, but problems persist.<sup>35</sup> The IOC has not devoted enough attention to the international federations' internal appeals systems—morasses of rules governing how members can protest decisions.<sup>36</sup> Internal appeals are integral to the IOC's larger arbitration scheme because a claimant cannot petition the CAS without first exhausting the offending federation's own remedies; furthermore, the CAS must consider the federation's applicable rules and regulations as part of the law governing the dispute.<sup>37</sup>

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eight-time gold medallist Carl Lewis, and noting track star Michael Johnson's hesitation to sign).

30. See Bitting, *supra* note 9, at 665 (discussing athletes' financial dependence on Olympic eligibility).

31. See *id.* at 669 (analogizing the eligibility clause to an employment contract, subject to common law defenses).

32. *Id.* at 665.

33. See *id.* at 664.

34. See NAFZIGER, *supra* note 8, at 35–36 (noting that most issues in international sports are procedural—how to expeditiously and fairly resolve disputes—not disagreements over fundamental values or public policy).

35. See *infra* Part III.

36. See HON. MICHAEL J. BELOFF ET AL., SPORTS LAW §§ 2.38–39 (1999) (noting that the notoriously murky rules of sports organizations are often drafted by non-lawyers and even those that are lawyer-drafted are not necessarily more clear); KAUFMANN-KOHLER, *supra* note 28, at 100 (Kaufmann-Kohler, an ad hoc arbiter in Atlanta, Nagano and Sydney, criticizes federation rules as being “incomplete, incoherent and badly drafted”).

37. The CAS's rules concerning the ad hoc Division are set forth in the ARBITRATION RULES FOR THE OLYMPIC GAMES, available at <http://www.tas-cas.org/en/pdf/reglementJO.pdf> (in force as of Dec. 17, 2003). Article 1 reads:

If a federation's internal remedies are inadequate, it becomes acutely obvious whenever an athlete challenges a decision to the CAS.<sup>38</sup> Although the CAS does not review technical determinations, it does evaluate whether the rule at issue, or its application, was arbitrary or illegal.<sup>39</sup> This requires analyzing the circumstances surrounding an alleged error, examining the federation's appeals mechanism, and determining whether it worked appropriately in the particular case.<sup>40</sup> More often than not, such an inquiry results in the CAS's criticism of the federation's rules, procedures or policies.<sup>41</sup> While the federations themselves used to be the final arbiters of their members' challenges, the CAS is now in that position; its independent review has exposed many internal failings, namely, appeals systems that are inefficient, unpredictable and inadequate.<sup>42</sup>

Part II of this Note describes the framework of the IOC's arbitration scheme, including the organization of the CAS and its specialized Olympic branch, the ad hoc Division. Part III looks at the persisting problem of the international federations'

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In the case of a request for arbitration against a decision pronounced by the IOC, [a National Olympic Committee], an International Federation or an Organizing Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS ad hoc Division ineffective.

*Id.* art. 1. "The Panel shall rule on the dispute pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate." *Id.* art. 17.

38. Judging challenges are the majority of cases brought to the CAS during the Olympic Games. Out of six ad hoc decisions from Athens, two involved doping suspensions and four involved field-of-play decisions. All pitted players and/or their national committees against international federations. The ad hoc Division's most recent cases are posted under Case Law, CAS website, at <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Apr. 14, 2005).

39. See Nafziger, *supra* note 19, at 173. See also KAUFMANN-KOHLER, *supra* note 28, at 25–26 (noting that arbitrators will refrain from interfering with the determinations made on the playing field by judges, referees, umpires, or other officials, unless the rules have been applied in bad faith or maliciously).

40. See BELOFF ET AL., *supra* note 36, §§ 7.116–.127, 8.108 (setting out the legal principles the CAS uses to evaluate disputes).

41. See *infra* Part III.

42. See *id.*



flawed appellate processes. Part IV suggests what might be done to improve the situation and to guarantee Olympic participants the best substitute possible for their waived right to sue. It proposes that the IOC create and implement a model internal appeals system for the federations to adopt, along the lines of the anti-doping rules promulgated by the IOC and the World Anti-Doping Agency. Part V posits that a uniform system would contribute to the developing body of *lex sportiva*, or sports law, as well as the IOC's and the CAS's positions as stewards of this movement.

## II. THE PLAYERS IN THE IOC'S SCHEME

### A. *The International Olympic Committee and the Olympic Movement*

The IOC, a non-governmental, non-profit international organization, was founded in 1894 by French educator Pierre de Coubertin, who wished to revive the ancient Olympic Games in the modern world.<sup>43</sup> More than a century later, the IOC leads the Olympic Movement, which is comprised of international sports federations, national Olympic committees,<sup>44</sup> organizing committees of the Olympic Games, national athletic associations, and "other organizations and institutions as recognized by the IOC," such as the World Anti-Doping Agency.<sup>45</sup> The IOC

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43. OLYMPIC CHARTER pmb1. In 1896, the first modern Olympics was held in Athens. *Id.*

44. The national Olympic committees (NOC's) are composed of national sports organizations affiliated with international federations. They oversee sports activity on the national level and represent their delegations at IOC-sponsored world competitions. The NOC's are entrusted with deciding which athletes will compete from those nominated by various national federations; they ensure that athletes comply with all provisions of the Olympic Charter; they provide for equipment, transportation and accommodation of athletes; and they determine the clothing and uniforms to be worn. OLYMPIC CHARTER R. 28–29.

45. The World Anti-Doping Agency, discussed *infra* Part IV.A, is an independent agency that oversees and administers the IOC-sponsored anti-doping policy. Other examples of sports institutions recognized by the IOC as Olympic partners are the CAS, the International Committee for Fair Play, the International Paralympic Committee, and the World Olympians Association, to name a few. For a list of all the Olympic partners, see the IOC website at [http://www.olympic.org/uk/organisation/actions/index\\_uk.asp](http://www.olympic.org/uk/organisation/actions/index_uk.asp) (last visited Apr. 14, 2005).

coordinates and monitors all of these diverse bodies in its efforts to organize elite sporting events and to promote ethics in sports.<sup>46</sup> In order to be recognized by the IOC—a requirement of participation in IOC-sanctioned events including the Games—these entities must ensure that their statutes, practices and activities conform to the Olympic Charter.<sup>47</sup> They must also comply with the obligations imposed upon them by other governing umbrella organizations.<sup>48</sup> For example, the German Equestrian Association has contractual obligations to the International Equestrian Federation, and both entities are bound to the IOC through the Olympic Charter.<sup>49</sup> Beyond observing the reciprocal rights and duties created by these obligations, the sports bodies operate autonomously.<sup>50</sup> Therefore, the rights and obligations of any participant in world sports, including clubs, athletes, judges, referees, coaches and sports technicians, are determined by overlapping contracts, codes and statutes.<sup>51</sup>

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46. OLYMPIC CHARTER R. 2. The IOC is recognized in international law as a corporation with perpetual succession; therefore, it can act as a legal person on the international plane. C. Christine Ansley, *International Athletic Dispute Resolution: Tarnishing the Olympic Dream*, 12 ARIZ. J. INT'L & COMP. LAW 277, 283 (1995). It maintains its authority by retaining all rights relating to the organization, marketing, broadcasting and reproduction of the Olympic Games, the high visibility of which places the IOC at the forefront of the international sports world. See OLYMPIC CHARTER R. 6–14; NAFZIGER, *supra* note 8, at 4. However, the IOC is a non-governmental organization with no real method of compelling governmental compliance. It influences the development of international sports law through “rules, regulations and decisions [that] help determine state practice and best articulate the accepted regime of international sports law.” *Id.* at 5.

47. “Any person or organisation belonging in any capacity whatsoever to the Olympic Movement is bound by the provisions of the Olympic Charter and shall abide by the decisions of the IOC.” OLYMPIC CHARTER R. 1(2).

48. See BELOFF ET AL., *supra* note 36, §§ 2.31–.32.

49. *Id.*

50. See Polvino, *supra* note 16, at 348–52; BELOFF ET AL., *supra* note 36, §§ 1.10, 2.32. See also NAFZIGER, *supra* note 8, at 66 (comparing domestic suits with private international lawsuits that raise complicated questions of jurisdiction, choice of law, and recognition of judgments).

51. See BELOFF ET AL., *supra* note 36, § 2.32.

*B. The International Sports Federations*

The IOC leaves the administration of each Olympic event to the international federation governing that particular sport.<sup>52</sup> These powerful non-governmental bodies run competitions at the world level.<sup>53</sup> Each federation has its own set of technical rules governing the sport, procedural rules for internal appeals, and sanctions for athletes, coaches and officials.<sup>54</sup> The federations select judges, referees and other technical persons, establish the rules of judging and timing, set the results standards, and certify the final results and rankings.<sup>55</sup> There are currently thirty-five federations that comply with the Olympic Charter and are allowed to participate in the Olympic Games, other IOC-sponsored events, and the annual meeting of the IOC Executive Board.<sup>56</sup> In addition, the federations form various associations that meet to discuss common problems, to work out calendars of events and to combine forces when dealing with the IOC.<sup>57</sup>

*C. The Court of Arbitration for Sport and its ad hoc Division*

The CAS was formally established as an international sports tribunal in 1983, but it underwent a defining reformation in 1994 after the Swiss Federal Tribunal drew attention to the CAS's dependence on the IOC and potential problems of impartiality.<sup>58</sup> In response, the IOC developed an independent body,

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52. OLYMPIC CHARTER R. 27.

53. See Bitting, *supra* note 9, at 659.

54. *Id.*

55. See OLYMPIC CHARTER R. 27.

56. International Sports Federations, IOC website, at [http://www.olympic.org/uk/organisation/if/index\\_uk.asp](http://www.olympic.org/uk/organisation/if/index_uk.asp) (last visited Apr. 14, 2005). There are over 100 international federations, however, only thirty-five are IOC-recognized as Olympic participants. See *id.* For a list of all the international federations, see the General Association of International Sports Federations website, at <http://www.agfisonline.com/en/members.phtml> (last visited Apr. 14, 2005).

57. The Olympic Charter gives the federations the right to "formulate proposals addressed to the IOC concerning the Olympic Charter and the Olympic Movement; collaborate in the preparation of Olympic Congresses; and participate, on request from the IOC, in the activities of the IOC Commissions." OLYMPIC CHARTER R. 27.

58. Reeb, *supra* note 15, History of the CAS § 2. In its original form, the CAS was almost entirely financed by the IOC; the IOC executive board was

the International Council of Arbitration for Sport (ICAS), to control the CAS's operations and financing in place of the IOC.<sup>59</sup> This change went far in establishing the CAS's credibility as it continued to expand.<sup>60</sup> In 1996 the CAS created two offices in Denver and Sydney, in addition to its permanent seat in Lausanne, Switzerland.<sup>61</sup> In its short existence, the CAS has heard some 576 cases, resulting in more than 314 awards and sixteen advisory opinions.<sup>62</sup> It has become a central mechanism for resolving international sports disputes brought by individuals, federations and national governing bodies, ranging from contractual (the validity of vendor contracts) to fundamental (the eligibility or suspension of athletes).<sup>63</sup> One of the reasons for its rapid growth is that many federations have granted the

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the only body with the power to change the CAS statute; and the IOC and its president could together appoint thirty members of the CAS. *Id.*

59. *See id.* § 4. However, it should be noted that the CAS and ICAS still have a connection to the IOC and other sports organizations. The twenty members of ICAS, a mix of international jurists who are independent of sports organizations, are appointed by the associations of international federations, the NOC's and the IOC. Furthermore, as of 2001, about seventy-five percent of the budget of ICAS and CAS was funded in equal shares by the same organizations. The rest was paid by private companies using the CAS to arbitrate contract-based disputes. KAUFMANN-KOHLER, *supra* note 28, at 41–42.

60. The CAS solidified its two main arbitration divisions, one for ordinary arbitration, where the CAS acts as the court in the sole instance, and the other division for appeals arbitration where the CAS hears appeals of final rulings. *See Reeb, supra* note 15, Organisation and Structure of ICAS and CAS § 3. In addition to this growth, the CAS has been approved by several domestic courts. The Court of Appeals of Munich, Germany, the Swiss Supreme Court and the New South Wales Court of Appeals, among others, have held that the CAS is a "true" arbitral tribunal, i.e., a tribunal with a constitution over which no party exercises an overreaching influence, in contrast with the internal tribunals of sports federations. KAUFMANN-KOHLER, *supra* note 28, at 3–4, 16 n.42.

61. *Reeb, supra* note 15, Organisation and Structure of ICAS and CAS § 3. The decentralized locations were created to provide sports participants from around the world with greater accessibility to the CAS. *Id.*

62. These statistics reflect the complaints submitted to the CAS as of December 2003. Statistics, CAS website, at <http://www.tas-cas.org/en/stat/frmstat.htm> (last visited Apr. 14, 2005).

63. Nafziger, *supra* note 19, at 167. The CAS also provides for mediation services, where the parties choose their own mediator who does not craft a solution like an arbitrator does, but instead facilitates an environment where the parties can reach their own compromise position. *See Reeb, supra* note 15, Organisation and Structure of the ICAS and CAS § 1.

CAS compulsory jurisdiction by including mandatory arbitration clauses in their business contracts.<sup>64</sup>

The ad hoc Division, the twenty-four hour arbiter of Olympic disputes, has been tailored to fit the needs of the Olympic Games, i.e., to be “simple, flexible and free of charge.”<sup>65</sup> A claimant disputing a decision by the IOC, a federation or a national committee, who has exhausted the organization’s internal remedies,<sup>66</sup> must present a written complaint to the Division stating the claim, legal arguments and requested relief.<sup>67</sup> There is then a hearing before a panel of three Division arbiters.<sup>68</sup> They are all neutral third parties with legal training and proven expertise in sports law.<sup>69</sup> The Division considers the organization’s constitution, its powers over the claimant’s person or property, its adherence to the principles of good faith and general contract law, and its compliance with procedural fairness.<sup>70</sup> It resolves the dispute “pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate.”<sup>71</sup>

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64. See Nafziger, *supra* note 19, at 166–68. Like the IOC, many federations have provisions in their contracts binding participants in federation-sanctioned events to arbitration. *Id.*

65. Reeb, *supra* note 15, Decentralised CAS Offices and the Ad Hoc Divisions para. 2. The Division’s jurisdiction includes “any disputes covered by Rule 74 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.” ARBITRATION RULES FOR THE OLYMPIC GAMES art. 1.

66. ARBITRATION RULES FOR THE OLYMPIC GAMES art. 1.

67. *Id.* art. 10.

68. *Id.* arts. 11–12. In Atlanta, the ad hoc Division was composed of two co-presidents and twelve arbiters chosen from the more than 150 arbiters of the CAS, although the size varies with the competition. Reeb, *supra* note 15, Decentralised CAS Offices and the Ad Hoc Divisions para. 2. In Nagano, for example, the number of arbiters was reduced to six. *Id.* para. 3. However, to save time and reduce the risk of arbiters being challenged, the parties are not allowed to choose which arbiters will hear their particular case. KAUFMANN-KOHLER, *supra* note 28, at 43.

69. ARBITRATION RULES FOR THE OLYMPIC GAMES art. 12. An effort is made to choose an arbiter who is an expert in the particular sport in contention. Rt. Hon. Sir Philip Otton, *Sport–Private Grief or Public Prurience*, The Master of the Livery’s Annual Lecture before the Worshipful Company of Arbitrators ¶ 45 (Mar. 30, 2004), at [http://www.arbitratorscompany.org/pdfs/Masters\\_Lecture\\_2004.pdf](http://www.arbitratorscompany.org/pdfs/Masters_Lecture_2004.pdf).

70. Nafziger, *supra* note 19, at 168.

71. ARBITRATION RULES FOR THE OLYMPIC GAMES art. 17.

The Division has two options at the close of arbitration, either to make a final award or to refer the dispute to arbitration by the full CAS, in which case it will grant preliminary relief.<sup>72</sup> While this latter option works against the idea of the ad hoc Division as a quick arbiter,<sup>73</sup> some cases require removal to the CAS because of the claimant's "request for relief, the complexity of the dispute, the urgency of its resolution, the extent of the evidence required and of the legal issues to be resolved . . . ."<sup>74</sup> The Division's decisions are final and binding, with leave to appeal to the Swiss civil courts on very limited grounds, such as lack of jurisdiction, violation of elementary procedural rules, or incompatibility with public policy.<sup>75</sup>

### III. CAS VERSUS THE FEDERATIONS

While the CAS has carefully developed and maintained its rules and procedures in order to be seen as a fair and legitimate arbitral body, the federations have yet to conform to similar standards. The IOC needs to devote as much attention to the federations' appellate structures as it has to cultivating the credibility and effectiveness of the CAS. The current state of affairs was highlighted in two CAS decisions stemming from the 2004 Athens Games. The first was the aforementioned controversy between South Korea and the International Gymnastics Federation (FIG).<sup>76</sup> The second involved the United States, France, Germany and the United Kingdom in a dispute over the International Equestrian Federation's (FEI) medalling decision.<sup>77</sup> Not for the first time, the CAS drew attention to the flaws in the federations' internal processes, specifically the fail-

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72. *Id.* art. 20(a)–(b).

73. *Id.* art. 18 (requiring resolution within twenty-four hours of the complaint in all but exceptional cases).

74. *Id.* art. 20(a). For example, in the case of the South Korean gymnastics delegation's appeal to the CAS, the parties were not prepared to argue on such short notice. They wanted to collect affidavits, depositions, etc., so the Division referred the proceedings to the CAS. *See infra* Part III.A.

75. Presentation, CAS website, at <http://www.tas-cas.org/en/present/frmpres.htm> (last visited Apr. 14, 2005).

76. Yang Tae Young v. FIG, CAS 2004/A/704 (Oct. 21, 2004), at <http://www.tas-cas.org/en/pdf/yang.pdf>.

77. CNOSF, BOA, USOC v. FEI NOCG, CAS OG 04/007 (Aug. 21, 2004), at <http://www.tas-cas.org/en/pdf/hoy.pdf> [hereinafter Hoy].

ure of the FIG to respect its own procedures in the face of a much-publicized controversy and the FEI's ambiguous rules governing both judging standards and internal appeals.<sup>78</sup>

*A. The Case of Yang Tae Young*

To understand the CAS's criticism of the FIG, it is worth reviewing the events that transpired after the judges miscalculated the difficulty of Yang's routine. According to the FIG's rules, protests must be lodged on the competition floor before the next rotation begins, but the South Koreans did not enter their challenge until the next day.<sup>79</sup> The FIG ruled that the protest came too late to overturn the results.<sup>80</sup> The federation nevertheless immediately reviewed the competition tapes and suspended three judges for the remainder of the Athens Games—two from Spain and Colombia who determined the incorrect start value for Yang, and an American judge who over-

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78. See KAUFMANN-KOHLER, *supra* note 28, at 95–99. For example, at the 1998 Nagano Games, the ad hoc Division heard an appeal from Canadian snowboarder and gold medallist Ross Rebagliati, who disputed his post-competition disqualification by the IOC after traces of marijuana were found in his system. The Division had to examine the IOC's Medical Code governing use of drugs at the Games (replaced by the Olympic Movement Anti-Doping Code in 2000). It found that, according to the Medical Code, the IOC could treat marijuana as a prohibited substance and require sanctions only if the IOC reached an agreement to that effect with the sports federation concerned. The IOC had never reached such an agreement with the international ski federation, thereby nullifying the IOC's testing provision and exonerating Rebagliati. Also in Nagano, Ulf Samuelsson, an American citizen and NHL player who joined the Swedish Olympic hockey team, was revealed to be an American, and thus ineligible to play for the Swedes, two days before the quarterfinal game. The ad hoc Division had to issue a speedy decision: the easy part was agreeing to disqualify Samuelsson. The more difficult question was whether to forfeit Sweden's victories up to that point. The hockey federation's rules called for a sanction of forfeiture, but the provision was intended for championship tournaments, not the Olympic Games, which are structured differently. The Division decided not to disqualify Sweden because of the perverse effect it would have on other teams who were not involved, such as Russia who would then have to play a much stronger team in the quarterfinals. The CAS decision was lauded by the sports community, even though it contravened the hockey federation's rules. *Id.*

79. See Abrahamson & Pucin, *supra* note 12.

80. Alan Abrahamson, *Hamm Asked to Give Up Gold*, L.A. TIMES, Aug. 28, 2004, at D1.

saw the judging panel.<sup>81</sup> This move galvanized the South Korean delegation, which requested that the U.S. Olympic Committee (USOC) consider a shared gold medal along the lines of that awarded to the Canadian pairs skaters at the 2002 Salt Lake City Games after the bribery scandal came to light.<sup>82</sup> The South Korean delegation also threatened to appeal the FIG's ruling to the CAS.<sup>83</sup>

Throughout the proceedings, the IOC refused to enter the fray.<sup>84</sup> The FIG, however, responded to South Korea's persistence with a letter to the gold medallist American Paul Hamm.<sup>85</sup> Written by the FIG's President Bruno Grandi, the letter suggested that Hamm voluntarily relinquish his medal to Yang, since Yang was "the true winner of the all-around competition."<sup>86</sup> Grandi wrote that such a move "would be recognized as the ultimate demonstration of fair play by the whole world."<sup>87</sup> The USOC denounced Grandi's request as an attempt to deflect the FIG's own incompetence.<sup>88</sup>

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81. *Id.* See also Juliet Macur, *Hamm Ruling Stands, but Ire at Judges Rises*, N.Y. TIMES, Aug. 24, 2004, at A1.

82. See Abrahamson, *supra* note 80.

83. *Id.*

84. IOC President Jacques Rogge stated that because the FIG had already certified the results of the gymnastics competition, "For us that is final." Liz Robbins, *South Korean Gymnast Appeals to Top Sports Court*, N.Y. TIMES, Aug. 29, 2004, at D5.

85. Abrahamson, *supra* note 80.

86. The pertinent text of Bruno Grandi's letter read:

I wish to remind you that the FIG Executive Committee has admitted the error of judgment made on the Parallel Bars and suspended the three responsible judges, two from the A panel and the FIG Technical Committee member. Indeed, the start value of the Korean gymnast Yang Tae Young was given as 9.9 instead of 10. As a result, the true winner of the All-Around competition is Yang Tae Young. If, (according to your declarations to the press), you would return your medal to the Korean if the FIG requested it, then such an action would be recognized as the ultimate demonstration of fair play by the whole world. The FIG and the IOC would highly appreciate the magnitude of this gesture. At this moment in time, you are the only one who can make this decision.

Letter to Paul Hamm (Aug. 26, 2004), FIG website, at <http://www.fig-gymnastics.com/cache/html/9124-8151-10001.html>.

87. *Id.*

88. Bill Briggs & John Meyer, *USOC Rejects Plea to Forfeit Hamm's Gold*, DENV. POST, Aug. 29, 2004, at B-01.



South Korea lodged a complaint with the ad hoc Division on the second to last day of the Games, ten days after the disputed competition.<sup>89</sup> The Division scheduled a hearing for the next day, but both the FIG's and Hamm's lawyers asked for an extension so that they could better prepare and summon key witnesses.<sup>90</sup> The Division acquiesced, referring the matter to the full CAS.<sup>91</sup> On September 27, 2004, the hearing was held in Lausanne, and on October 21, 2004, the CAS issued its decision dismissing South Korea's challenge.<sup>92</sup>

In denying the appeal, the CAS looked to its own jurisprudence on field-of-play decisions.<sup>93</sup> It reiterated its well-developed rule, "[C]ourts may interfere only if an official's field-of-play decision is tainted by fraud or arbitrariness or corruption; otherwise although a Court may have jurisdiction it will abstain as a matter of policy from exercising it."<sup>94</sup> Since there was no evidence of judge coercion or malice, the CAS could do nothing about the judges' technical error, especially considering South Korea's late appeal.<sup>95</sup>

The CAS did take the opportunity to point out some patent flaws in the FIG's rules and procedures, as well as the federation's mishandling of the dispute.<sup>96</sup> First, the CAS acknowledged that the FIG's complex judging hierarchy<sup>97</sup> allowed for an

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89. *Yang*, CAS 2004/A/704 ¶ 1.1.

90. *Id.* ¶¶ 1.2-4.

91. *Id.* ¶ 1.5.

92. *Id.* ¶ 1.8.

93. *Id.* ¶ 3.2.

94. *Id.*

95. *Id.* ¶ 3.8.

96. *Id.*

97. The Judges' Panel in artistic gymnastics consists of two groups of judges for each round of competition, one responsible for evaluating composition and content (technical values) and the other for evaluating execution. The Panel also has a Chairman and an expert appointed by that event's monitoring Technical Committee. The Panel reports to the Superior Jury, which consists of a Technical President and two experts appointed by the Technical Committee, whose duty it is to supervise the competition, to review the marks of judges, to deal with any error in judgment on the part of the judges, and to respond with "such action as they consider necessary." The Jury of Appeal consists of two members of the FIG's Executive Committee appointed by the Presidential Commission, a Technical President, one member of the Technical Committee (but not involved in the decision of the Superior Jury or the judging at the apparatus in question) or an expert judge designated by the rele-

oversight jury to alter an “extremely incorrect score” in extraordinary circumstances; however, it was unwilling to apply this provision to the Yang case because of the rule’s lack of guidance on what procedures were necessary to effect such a change.<sup>98</sup> The CAS wrote:

There is no doubt that a mechanism exists for reversing judging errors, *although there did not appear to be universal familiarity with it even among those responsible for its operation*, in particular, there was an unresolved issue as to whether special forms had to be used for the purposes of protest.<sup>99</sup>

Second, the CAS pointed out the confusion among the parties not only as to how, but also as to when precisely before the competition’s end a protest must be lodged.<sup>100</sup> It noted that the FIG’s previous version of the rules had clearly stated that written complaints had to be handed to the head of the oversight jury “at the latest fifteen minutes after the incident.”<sup>101</sup> The CAS commented that the FIG was “not able to enlighten us as to why the [Technical Rules] had been changed—or even when—although U.S. advocates informed us that the amendments appear to date from 1989.”<sup>102</sup> The CAS then remarked, “We were consoled to hear from FIG that, as a result of the focus which this dispute has placed on the limitation issue, the rules may be revised and thus attain their previous clarity.”<sup>103</sup>

The CAS also addressed the federation’s behavior in the aftermath of the competition, especially that of President Grandi:

We would respectfully suggest that FIG . . . made three mistakes, albeit, we are certain in entire good faith. Firstly, they publicly accepted without qualification that there was an error in the judging of their own officials. True it is that there was an error in the start value identifiable when Yang’s performance was analysed with the aid of the Technical Video. How-

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vant Technical Committee. Following the conclusion of each session, the Jury of Appeals deals with any protests lodged. It also ensures that the requirements of the statutes, technical regulations, rules and guidelines are observed. *Id.* ¶¶ 3.5–10.

98. *Id.* ¶¶ 3.10–14.

99. *Id.* (emphasis added).

100. *Id.* ¶ 3.10 (quoting the FIG’s 1982 technical rules).

101. *Id.*

102. *Id.* ¶ 3.11.

103. *Id.*

ever, an error identified only after a competition is complete is immaterial to the result of the competition under FIG's rules: only an error identified during it, and successfully appealed, can affect such a result. Secondly, they publicly said that, but for such error, Yang would have won the event. This, for reasons we have already discussed, is something in realm of speculation, not of certainty. Thirdly, they sought to persuade Hamm to surrender his gold medal to Yang when there was no reason for him to do so.<sup>104</sup>

The CAS specifically addressed Grandi's suggestion to Hamm to relinquish the gold as the "ultimate demonstration" of fair play:<sup>105</sup>

There was an instance drawn to our attention where in the World Trampoline Championship of 2001 an error in judging was made and the beneficiary of it, Ms. Ka Aaeva, gave her gold medal "in the spirit of friendship and fair play" to the runner up Ms. Dogonadze. She did so because there was, as was perceived, no way other than by an act of grace that the consequences of the error could be corrected. Hamm was invited to do the same by FIG. He declined to do so. He is, in our view, not to be criticized for this. He was not responsible for the judges' error; and, as we have already observed, he can be no more certain than we as to what the outcome would have been had the judges not made the mistake.<sup>106</sup>

While the CAS stressed Hamm's blamelessness, his Olympic achievement had already been tainted by the prolonged high-profile controversy.<sup>107</sup> Because the Athens Games ended with Hamm's gold medal in dispute, he was denied endorsement contracts, talk show appearances and other benefits that usually befall gold medallists.<sup>108</sup> Hamm was also criticized in the media for not relinquishing the gold to Yang.<sup>109</sup>

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104. *Id.* ¶ 4.9.

105. See Alan Abrahamson, *Worldwide Anti-Doping Code is Given Approval*, L.A. TIMES, Mar. 6, 2003, at 9.

106. *Yang*, CAS 2004/A/704 ¶ 4.10.

107. See Jill Lieber, *Despite Scoring Controversy, Gymnast Hamm Feels Golden*, USA TODAY, Aug. 31, 2004, at 15C (quoting Hamm as stating that some of the media has been "very hurtful").

108. See Filip Bondy, *Hamm Keeps Gold But Loses Charm*, DAILY NEWS, Oct. 22, 2004, at 142. Hamm's agent, Sheryl Shade, had been under the impression that he would get a Wheaties endorsement until a last minute call from the company, just a day after the FIG sent Hamm the letter suggesting

*B. The Case of Bettina Hoy*

The equestrian Eventing competition consists of three phases: dressage, cross-country and two rounds of show jumping where competitors navigate a course, peppered with approximately fifteen obstacles up to five-feet high and six-feet wide, in a limited amount of time.<sup>110</sup> Whichever combination of horse and rider earns the fewest penalties wins.<sup>111</sup> During the first round of show jumping at the Athens Games, German rider Bettina Hoy and her horse crossed the start line, thereby triggering both the official internal timing device and the stadium clock.<sup>112</sup> As Hoy approached the first jump, she turned her horse away and made a wide circle that brought her, once again, behind the start line.<sup>113</sup> Hoy then proceeded to cross a second time, upon which a judge reset the stadium clock to zero.<sup>114</sup> This led Hoy to believe that she had finished the course within the ninety-second time limit, while the internal timer clocked her performance at thirteen seconds exceeding the maximum.<sup>115</sup> The FEI's Ground Jury, after much deliberation, applied thirteen time penalties to Hoy, knocking her out of the gold medal position and allowing France, Britain and the United States to medal.<sup>116</sup>

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he relinquish the gold medal. According to Shade, Wheaties wanted no part of the controversy. *Id.*

109. See, e.g., Ian O'Connor, *Hamm Should Share Gold, not Wheaties Box*, USA TODAY, Aug. 21, 2004, at 3; Bondy, *supra* note 108 (suggesting that Hamm might have been more than a "disposable Olympic hero" had he reached out to Yang during the medal ceremony or campaigned for a shared gold medal).

110. For purposes of the Olympic competition in Eventing, all riders participate in dressage, cross-country and the first round of show jumping. Only the top twenty-five qualify for the individual competition and the second round of show jumping. Their scores in all four phases are used to determine their individual standings. *Hoy*, CAS OG 04/007 ¶ 3.1. It was during the first round of show jumping that Hoy crossed the start line twice. See *id.*

111. *Id.*

112. *Id.* ¶¶ 3.5, 7.1. The timing is crucial in show jumping because competitors must finish the course within ninety seconds. Riders must keep their eyes both on the course and on the clock to avoid being penalized one point per second. See *id.*

113. See *id.* ¶ 3.5.

114. *Id.*

115. *Id.* The internal computerized timing device, the official timer, clocked Hoy's performance at 103 seconds.

116. *Id.* ¶¶ 1.2, 3.6.

However, the Germans challenged the ruling to the FEI's Appeal Committee, which overruled the Ground Jury's decision on fairness grounds.<sup>117</sup>

France, Britain and the United States immediately appealed to the ad hoc Division, which issued a decision nullifying the Appeal Committee's ruling.<sup>118</sup> The Appeal Committee had based its jurisdiction to review the Ground Jury's decision on the fact that the case "constituted an issue of interpretation of the FEI Rules" and was, therefore, appealable.<sup>119</sup> The ad hoc Division overturned that holding, asserting that the Ground Jury's ruling was clearly a technical decision, i.e., whether or not to impose a time penalty, and that it was, therefore, final according to the FEI's rules.<sup>120</sup> The Division rebuked the Appeal Committee for providing a conclusory, erroneous opinion, unsubstantiated by any supporting evidence.<sup>121</sup> The Division offered the following criticism:

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117. *Id.* The Appeal Committee reasoned that the restarted stadium clock resulted "in a clear injustice to the rider concerned," who relied on the only clock that she could see. Frankie Sachs, *Success from the Jaws of Defeat*, JERUSALEM POST, Sept. 3, 2004, at 14.

118. *Hoy*, CAS OG 04/007 ¶ 6.1.

119. *Id.* ¶ 7.2. The Eventing competition is judged by a three-person Ground Jury. Among its responsibilities is to rule on all times and penalties in the show jumping events. The Ground Jury is "ultimately responsible for the jumping of the event and for settling all problems that may arise during its jurisdiction." *Id.* Any field-of-play decision by the Ground Jury is final, i.e., not reviewable by the Appeal Committee. *See id.*

120. *Id.* ¶¶ 8.2, 8.6.

121. The Appeal Committee's decision (written in the third-person) in its entirety:

The Appeal Committee started by considering whether they had jurisdiction to deal with the case presented. The Committee agreed that the case came under Art 163.6 as an interpretation of the rules and so agreed to proceed with the hearing.

The Appeal Committee considered the appeal of the German Federation against the time penalties awarded to Bettina Hoy during the Eventing Team Jumping and Individual Qualifier.

The Committee concluded that the countdown had been restarted resulting in a clear injustice to the rider concerned. The Committee therefore removed the time penalties.

*Id.* ¶ 3.6 (quoting the Appeal Committee decision).

If it had been an interpretation or construction issue, one would have expected, at the very least, an explicit reference to the rule or rules giving rise to such issue [in the Committee's decision]. No such reference occurs and none can be inferred. The mere assumption by the Appeal Committee, in deliberating the appeal, that it concerned an interpretation of rules could not have the effect of creating such issue or of converting a factual issue into a legal one . . . .<sup>122</sup>

The Division pointed to drafting problems within the FEI's rules that might have contributed to the Appeal Committee's error.<sup>123</sup> It questioned Article 163.6.1 of the FEI's General Regulations, which reads:

Art. 163. There . . . is no appeal against decisions of the Ground Jury in the following cases:

6.1. Where the question for decision was what in fact happened during a competition or where marks are awarded for performance; Examples (which are not exhaustive): whether an obstacle was knocked down, whether a horse was disobedient . . . what was the time taken for the round, or whether an obstacle was jumped within the time; whether, according to the Rules, the particular track followed by a competitor has caused him to incur a penalty. *Contrast questions involving interpretation of the Rules, which can be the subject of appeal.*<sup>124</sup>

The Division wrote of this rule:

It is clear that the ruling of the Ground Jury in deciding to impose a time penalty on Ms. Hoy was of a purely factual nature falling within its exclusive jurisdiction. There is no merit in the suggestion by the FEI . . . that this ruling involved an interpretation of rules as apparently envisaged, with no particular lucidity, in the last sentence appended, it would seem, to Article 163.6.1.<sup>125</sup>

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122. *Id.* ¶ 8.3.

123. *Id.* ¶ 7.2.

124. *Id.* ¶ 7.2 (alteration in original).

125. Although it found no need to reach this alternate claim, the Division noted that the Appeal Committee's decision also violated due process because the affected parties had not been notified of the appeal hearing. *Id.* ¶¶ 4.2, 8.2, 8.5.

The Division also addressed the German delegation's opposition to the CAS's jurisdiction based on a provision in the FEI statute forbidding challenges to Appeal Committee decisions.<sup>126</sup> Even though the Division dismissed the frivolous claim, it still had to address the rule's plain language denying the CAS's well-established jurisdiction.<sup>127</sup> Valuable time was wasted on an issue that should not have been in contention.<sup>128</sup> The FEI's own representative at the arbitration hearing did not bring the same jurisdictional challenge; presumably, he knew the FEI rules denying the CAS jurisdiction were outdated and irrelevant.<sup>129</sup>

#### IV. REWRITING THE RULES

There are two prevailing views on how courts of arbitration should treat the rules governing a sports body.<sup>130</sup> The first suggests construing the organization's rulebook sensibly, in accordance with the spirit of the activity to which it applies, rather than in an overly technical manner.<sup>131</sup> This view is countered by the idea that such rules are quasi-statutory at this point in the development of sports and they need to be predictable and clear, especially in the disciplinary context where athletes de-

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126. *Id.* ¶ 6.1. The Division wrote:

[The German team] submitted at the outset that the CAS ad hoc Division did not have jurisdiction to hear the present appeal by reason of the provisions of Article 170.2.2 of the FEI General Regulations. In accordance with this Article, appeals against decisions of the Appeal Committee on appeal from the Ground Jury were not appealable, regardless of whether the Appeal Committee had jurisdiction or not. There is no merit in this submission, which was not supported by [the FEI itself]. As mentioned before . . . Article 170.2.2 is in conflict with . . . a variety of other binding provisions relating to the jurisdiction of CAS.

*Id.* ¶¶ 2.5, 6.1.

127. *Id.*

128. The issue of the CAS's jurisdiction at the Olympic Games is well-settled. See KAUFMANN-KOHLER, *supra* note 28, at 24–25.

129. Leaving irrelevant, conflicting rules in the statutes of sports organizations leads to confusion and squandered effort. See *Hoy*, CAS OG 04/007 ¶¶ 2.5, 6.1.

130. BELOFF ET AL., *supra* note 36, § 2.40. See J. Paul McCutcheon, *Sports Discipline and the Rule of Law*, in LAW AND SPORT IN CONTEMPORARY SOCIETY 115, 116 (Steve Greenfield & Guy Osborn eds., 2000).

131. BELOFF ET AL., *supra* note 36, § 2.40.

serve fair notice of offenses and sanctions.<sup>132</sup> The CAS, like most tribunals, favors the former view, striving for purposive construction, i.e., to “discern the intention of the rule-makers, and not to frustrate it.”<sup>133</sup> However, this reasoned approach often falls apart: it is impossible to discern a drafter’s intent where the plain language contradicts itself and where additions and amendments have been made without an eye to the document as a whole.<sup>134</sup>

In the instant case, the rules detailing the appellate procedures of the FIG and the FEI did not provide adequate guidance to those obliged to follow, implement and interpret them.<sup>135</sup> The ambiguity caused the CAS—in an attempt at purposive construction—to vet the federations’ rulebooks.<sup>136</sup> This works against the quick and efficient resolution that the IOC envisioned when it authorized the CAS to arbitrate the Olympic Games.<sup>137</sup> To remedy the situation, the IOC could develop a model internal appeals system that each federation must adopt in order to maintain its IOC-recognized status. Instead of the various configurations of Ground Juries and Appeal Committees with convoluted jurisdictional and procedural rules, the

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132. See McCutcheon, *supra* note 130, at 121. McCutcheon argues that especially in the context of disciplinary rules, “offenses should be defined in advance and with sufficient clarity so as to put athletes on notice” of the prohibited conduct and sanctions. Broad, open-ended offenses such as “bringing the game into disrepute” or “misconduct” that are contained in many sports codes do not give reasonable notice of what is proscribed, and they are liable to place too much discretion in the hands of the decision-maker. *Id.*

133. BELOFF ET AL., *supra* note 36, §§ 2.40, 1.18 (the CAS’s decisions have reflected and promoted “the distinctive sporting principles of fair play and good sportsmanship in applying technical rules; the equality of athletes before the law; the construction of sporting rules so as not to distort their purpose; a respect for sporting decisions; and a flexible and pragmatic approach to entry deadlines.”).

134. See *id.* § 2.38 (noting the CAS’s recent criticism of “drafting that engenders controversy”).

135. See *id.* § 2.38 n.26 (citing previous CAS decisions that criticized federation rules).

136. See *supra* Part III.

137. The IOC’s vision for the ad hoc Division was that it would be “simple, flexible and free of charge.” See Reeb, *supra* note 15, Decentralised CAS Offices and the Ad Hoc Divisions para. 2. The CAS’s duty is to “ensure that the appropriate regulations have been observed and that the principles of due process and natural justice have been followed pursuant to the rules established for CAS.” *Id.*



IOC could establish a simple hierarchy, a single set of rules governing when and how a protest can be lodged, and a clear policy on how to deal fairly with challenges. The basic rules would be known to all and used by all participating in the Olympic Games.<sup>138</sup> Any CAS solution to problems that might arise would be disseminated for the benefit and strengthening of all similarly affected.<sup>139</sup> The federations would be able to tailor the model to their own particular needs and would retain independence in judgment-making, but a common structure would imbue the regime with an objectivity that it currently lacks.

#### A. *The WADA Precedent*

The IOC's successful implementation of an anti-doping regime throughout the Olympic Movement supplies strong evidence that it could introduce a similar initiative aimed at overhauling the federations' appeals systems. Its development of the Anti-Doping Code in 2000 led to the creation of the independent World Anti-Doping Agency (WADA) in 2003.<sup>140</sup> Not only has WADA set international standards for drug testing, it has also promulgated a set of model rules adopted by world sports organizations, including the federations, that cover testing, sanctions and appeals.<sup>141</sup> WADA was a solution born of

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138. See BELOFF ET AL., *supra* note 36, §§ 8.122–.124. Beloff suggests an even broader solution, i.e., that every nation adopt a unitary dispute resolution forum that would have final redress before the CAS. He criticizes sports bodies that continue to internally resolve their own disputes and sees the CAS's experience and pedigree as making it the best model for replication. *Id.*

139. Furthermore, having each federation follow a common model might help federation leaders adhere to the rules in the face of public pressures or, alternatively, give the IOC a reason to monitor the federations' leadership to make sure they remain uninfluenced by politics, media pressure and other considerations.

140. See About WADA, WADA website, at <http://www.wada-ama.org> (last visited Apr. 14, 2005). The Olympic Anti-Doping Code codified the disparate rules and procedures of the federations, CAS awards, and judicial decisions from various domestic courts. See NAFZIGER, *supra* note 8, at 161.

141. WADA: Model of Best Practice for International Federations, Draft version 2.0 (July 23, 2003), at [http://www.wada-ama.org/rtecontent/document/if\\_model\\_rules\\_v2.pdf](http://www.wada-ama.org/rtecontent/document/if_model_rules_v2.pdf). As it did with the CAS, the IOC encouraged and developed the creation of WADA, but stepped away from it in order to preserve its legitimacy and, presumably, to encourage sports organizations to adopt the

necessity.<sup>142</sup> In the late 1980s and throughout the 1990s, incidents of athlete doping continued to rise.<sup>143</sup> The IOC's attempts to create a comprehensive anti-doping policy were continually thwarted.<sup>144</sup> It already had jurisdiction over the problem through the Olympic Charter,<sup>145</sup> but it could not find a means of effective implementation.<sup>146</sup> Getting the sports bodies to agree on an official list of prohibited substances; developing acceptable, well-documented laboratory testing procedures; and securing the participation of all world sports organizations proved problematic.<sup>147</sup> Drug testing remained notoriously haphazard.<sup>148</sup> There was even evidence of state-administered doping

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Model Rules. WADA is now an independent organization, funded in equal parts by the Olympic Movement and various national governments. *See id.*

142. *See* NAFZIGER, *supra* note 8, at 152–53. At the 1983 Pan American Games, twelve athletes were disqualified for failing drug tests. At the 1984 Los Angeles Games, eleven athletes were expelled from competition. At the 1987 Pan American Games, six athletes were disqualified. *Id.*

143. *Id.*

144. *Id.*

145. OLYMPIC CHARTER R. 2(8) (stating the IOC's mission to lead the fight against doping in sports), R. 45 (eligibility code requiring participants to respect and comply with the World Anti-Doping Code), R. 48 (providing for a Medical Commission to implement it). *Id.* There are also IOC-accredited labs which conduct drug testing. NAFZIGER, *supra* note 8, at 148.

146. NAFZIGER, *supra* note 8, at 151–55. The IOC first instituted anti-doping rules in 1967, and it required each competition site to have testing facilities and each competitor to submit to testing in the 1970s. Then in 1987 the IOC's Medical Commission recommended to the international federations a two-tiered sanction plan in an effort to encourage uniform standards, and a comprehensive International Olympic Charter Against Doping in Sport. However, this accord overlapped, contradicted and conflicted with multiple other accords inspired at the same time, such as the U.S.-Soviet Mutual Doping Control Agreement, a multilateral agreement based on the U.S.-Soviet pact and supervised by the IOC's Medical Commission, the Council of Europe's Anti-Doping Convention, and a trilateral agreement between Australia, Canada and the United Kingdom. *Id.*

147. *Id.* at 149–55.

148. *Id.* at 152. For example, the Athletic Congress of the USA (TAC) refused to conduct extensive drug tests at its track-and-field trials leading up to the 1983 Pan American Games, despite heavy lobbying by the chair of TAC women's track-and-field committee, who felt that TAC's reluctance to test for illegal drugs was an implicit condonation. *Id.*

and passivity among sports administrators entrusted with the task of policing athletes.<sup>149</sup>

WADA was the compromise necessary to get the disparate organizations on board. The IOC-recognized federations, as well as those sports bodies who do not participate in the Olympic Games, have all signed on to WADA.<sup>150</sup> It is flexible enough to preserve each federation's decision-making autonomy, while providing a comprehensive common framework.<sup>151</sup> WADA offers training assistance in implementing the model rules and tailoring them to the needs of each organization.<sup>152</sup> Signatories (called "stakeholders") may modify the rules or develop their own, subject to review and approval by WADA.<sup>153</sup> All of these attributes can be carried over to a similar system targeting internal appeals.

### *B. Incentives for the Federations*

If the IOC could propose a model framework with both the flexibility and structure of WADA, the federations might embrace the idea as a more attractive option than being berated by CAS decisions and media criticisms after high-profile disputes. They struggle every time their internal flaws are caught in the

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149. *Id.* During the Cold War, massive sports programs, particularly in China, Eastern Europe and the Soviet Union, used doping as a performance enhancer in international competitions. *Id.*

150. Abrahamson, *supra* note 105. WADA has been approved by sixty-five sports federations and seventy-three national governments. *Id.* As with the arbitration clause, the IOC required all sports bodies participating in the Olympic Games to adopt WADA into their by-laws by the start of the 2004 Athens Games. Code Acceptance, WADA website, at [www.wada-ama.org](http://www.wada-ama.org) (last visited Apr. 14, 2005).

151. The federations have not relinquished their autonomy or control in the WADA regime. For example, they grant Therapeutic Use Exceptions (TUE's) to athletes who need to take prescribed medications that contain prohibited substances. While the IOC can review the TUE's to see if they are in compliance with the relevant rules and then inform the federations and WADA of its advisory opinion, it cannot overrule the federation's decision. Furthermore, if a federation sanctions an athlete for doping as a result of a federation-ordered test, the IOC must respect the decision as long as the procedures used were in accordance with WADA standards. See WADA Independent Observers Report, Olympic Summer Games Athens 2004, at 63, 80, at <http://www.wada-ama.org/rtecontent/document/AthensIOReport.pdf> (last visited Apr. 14, 2005).

152. NAFZIGER, *supra* note 8, at 162.

153. *Id.*

spotlight. After the Salt Lake City scandal, the International Skating Union scrambled to implement an improved judging system.<sup>154</sup> Shortly before the Yang hearing at the CAS, the FIG met in Turkey to revise its rules and structure.<sup>155</sup> Instituting a model appellate system might be a welcome alternative to such piecemeal and reactionary reform, especially since it would likely be developed through the money, expertise and support of both the IOC and the federations, as was the case with WADA.<sup>156</sup>

Furthermore, each time the CAS is forced to make basic sense out of a federation's conflicting, inarticulate rules, it detracts from the CAS's true role of deciding whether those rules were fairly applied.<sup>157</sup> The CAS has been criticizing the federations on this point for most of its short existence.<sup>158</sup> Those directly rebuked have scrambled to improve, but others have let comparable flaws persist. This lack of proactive response to CAS decisions undermines the CAS as an authoritative body when, ironically, the federations have largely embraced it.<sup>159</sup> Not only do they encounter the ad hoc Division during the Olympic Games, but many federations have voluntarily submitted to the CAS's compulsory jurisdiction in all their business dealings.<sup>160</sup> It is in the federations' own interest to further legitimize the CAS.<sup>161</sup>

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154. See Roberts, *supra* note 7 (describing the Salt Lake City bribery incident and subsequent changes to the skating federation's scoring system).

155. Thomson, *supra* note 12.

156. The WADA rules were developed through the collective efforts of the IOC, the federations, the NOC's and other world sports organizations. Funding, WADA website, at <http://www.wada-ama.org> (last visited Apr. 14, 2005).

157. See *supra* Part III.

158. See *supra* note 135.

159. See Nafziger, *supra* note 19, at 166.

160. *Id.*

161. *But see* the reprinted speech of Paul H. Haagen, Professor of Sports Law at Duke University, "Have the Wheels Already Been Invented? The Court of Arbitration for Sport as a Model of Dispute Resolution," at <http://www.law.duke.edu/sportscenter/haagen.pdf> (last visited Apr. 14, 2005). Professor Haagen expresses mixed feelings about the effectiveness of the CAS as the leading governing body of the sports world. He does not feel the CAS has shown its complete independence from the IOC, federations and NOC's. Furthermore, the CAS, like other arbitral bodies, is not tied to precedent. In his estimation, the CAS has all the "advantages that come with greater informality and all of the disadvantages of them as well." *Id.* at 7.

Those opposed to a model appeals system might cite issues of autonomy and argue that world sports bodies, especially the federations, have flourished under the current regime.<sup>162</sup> The federations have endured for decades with unique structures by building alliances and developing distinct cultures.<sup>163</sup> They have become powerful international institutions and serve as an important counterweight to the IOC.<sup>164</sup> Having the IOC dictate yet another far-reaching policy that impacts the federations' internal structures might damage the balance of power.<sup>165</sup> However, such "autonomy" can also be seen as a quagmire of rules, procedures, policies and politics, a most inadequate, confused system for an increasingly sophisticated sports world.<sup>166</sup> Having uniform appellate structures would not encroach on the federations' inherent discretion and would leave intact their oversight experts and technical criteria. There would be even less cause for alarm if the model rules were infused with the same flexibility as the WADA rules, allowing for reasonable modification to accommodate specific needs.<sup>167</sup>

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162. On the other hand, some would argue that improved internal appeals are not enough:

[B]rilliant athletes at the peak of their career can be destroyed by the absence of coherent and independent dispute resolution procedures which guarantee natural rights and fair process. Such a body must command respect, trust and confidence of participants, governing bodies and the public alike. It must be truly independent, not merely providing better conducted disciplinary committees and appeal panels within the respective National Associations and International Federations.

Otton, *supra* note 69, ¶ 17.

163. See *supra* Part II.B, describing the federations' duties and powers.

164. *Id.*

165. An argument could be made, however, that the federations' autonomy has always been limited by their contractual obligations to the IOC, and that the IOC has jurisdiction over the federations' internal appeals systems to the extent that the latter are integral to CAS arbitration. See OLYMPIC CHARTER R. 74.

166. See BELOFF ET AL., *supra* note 36, §§ 2.38, 8.121.

167. See About WADA, WADA website, at <http://www.wada-ama.org> (last visited Apr. 14, 2005); BELOFF ET AL., *supra* note 36, §§ 1.18, 8.121 (arguing for a body of sports law, a unitary code of rules applicable to the resolution of sports disputes both domestic and international, spearheaded by CAS decisions); Otton, *supra* note 69, ¶ 47 ("I believe that the CAS process is the template for all competitive sports. If their procedures were adopted worldwide then there would be more harmonisation of the procedural rules of national

## V. LEX SPORTIVA

This proposed solution, the WADA model, the CAS's opinions, and even the creation of the CAS itself, all reflect a new phase in the development of sports, one that requires a cohesive body of sports law.<sup>168</sup> As competitions have become more sophisticated and commercialized, the customary ad hoc rules governing sports have transitioned into more formal, less flexible legalistic regimes.<sup>169</sup> Fifty years ago, sports were largely played by gentlemen and amateurs according to the Corinthian ethic ("It's not whether you win or lose . . .").<sup>170</sup> Referee and umpire decisions were final and inviolate; disciplinary standards were casual.<sup>171</sup> In contrast, today's sports participants are willing to seek courts and arbitrators to resolve their disputes.<sup>172</sup> Elite sports have become more of a business than a competitive recreational activity.<sup>173</sup> The financial stakes involved are so great that the conventions of the marketplace govern, rather than those of the clubhouse.<sup>174</sup>

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and international sports governing bodies and the legitimate interest of the sport, of sportsmen and sportswomen and the public would be satisfied.").

168. See McCutcheon, *supra* note 130, at 116. McCutcheon describes himself as a traditionalist who espouses a non-interventionist approach, so he sees the legalizing of sports to be regrettable; however, he recognizes that it is the inevitable result of sports' development. *Id.*

169. *Id.* McCutcheon writes:

[S]port by its nature is a rule-based activity that readily facilitates a disciplinary function. A myriad of rules—playing rules, eligibility rules, competition rules and the like—governs the regular conduct of sport and, in consequence, it is necessary to establish an apparatus to ensure the interpretation and enforcement of those rules. An inevitable result of the organization and codification of sports rules is the corresponding development of an adjudicative and interpretive function, thus, in effect, sports have developed their own internal "legal systems."

*Id.*

170. Otton, *supra* note 69, ¶ 1.

171. *Id.*

172. See McCutcheon, *supra* note 130, at 116. Perhaps an even more compelling change in society than its move toward litigiousness, is its expectation that sports should reflect the higher virtues of honesty and moral integrity. *Id.* at 118. "This demand is uniquely strong in the case of sport and is not made in respect of many other aspects of human activity." *Id.*

173. *Id.* at 116–17.

174. *Id.* at 117. See Bitting, *supra* note 9, at 664.

Those skeptical of the idea of recognizing an independent body of sports law might argue that it amounts to a series of cases arising in tort, contract law, administrative law, health law, etc., that happen to involve sports.<sup>175</sup> While this is undoubtedly true, the reality is that national and international laws are beginning to treat sports activity, sports organizations, and the resolution of sports disputes, differently from other areas of law.<sup>176</sup> Discrete sports doctrines are taking shape, as evidenced by the deference of many domestic courts toward decision-making bodies like the CAS.<sup>177</sup> Sports have assumed great political significance.<sup>178</sup> Many countries have sports ministries, and governmental involvement in sport at a variety of levels is normal.<sup>179</sup> Sports law is developing from a powerful mixture of commercial interests, international competition and public demand; growing, not from any treaty entered into by sovereign states, but from international agreements among independent

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175. See BELOFF ET AL., *supra* note 36, § 1.6. According to Beloff, the debate is between traditionally minded, purist lawyers who distrust activity-led “vertical” fields of law, preferring the surer, traditional ground of rule-led “horizontal” law. *Id.*

176. See *id.* § 1.7.

177. *Id.* Many domestic courts have firmly established a region of autonomy for decision-making sports bodies, within which the courts decline to intervene without a compelling reason. *Id.*

178. *Id.* § 1.4. Beloff writes:

In South Africa the effort to end apartheid was driven forward, with considerable success, by the sporting boycott. Rights of full citizenship for all aroused high passions in South Africa, but so did rugby, cricket, athletics and soccer, for access to which white South Africans were prepared to pay a high political price. When Georgia became an independent state after the dissolution of the Soviet Union, one of the first acts of its inaugural government was to apply to join FIFA, the world governing body of association football. To the Georgian people, this was probably just as much a badge of sovereign independence as formal recognition by other states, membership in the UN, or other conventional indicia of statehood.

*Id.*

179. McCutcheon, *supra* note 130, at 117. It has become the norm for governments to enthusiastically endorse bids to host the Olympic Games and other premiere sporting events. *Id.* See also BELOFF ET AL., *supra* note 36, § 1.10 n.8 (noting Malaysia as an example of a country where sports are heavily governed by statute).

bodies, in particular the Olympic Charter and the various organizations that form the Olympic Movement.<sup>180</sup>

This developing body of sports law has been variously defined as a “dynamic, although still incomplete process to avoid, manage and resolve disputes among athletes, national sports bodies, international sports organizations and governments,”<sup>181</sup> as well as a “loose but increasingly cohesive body of rules . . . an unusual form of international constitutional principle prescribing the limited autonomy of non-governmental decision making bodies in sport.”<sup>182</sup> The decisions of the CAS are seen as substantively guiding the movement:<sup>183</sup>

Arbitral awards are normally binding only in the cases and on the parties to which they are addressed. Unlike judicial decisions in common law systems, arbitral awards therefore have no currency as *stare decisis* . . . . In practice, however, the awards and opinions of the CAS provide guidance in later cases, strongly influence later awards, and often function as precedent. Also, by reinforcing and helping elaborate established rules and principles of international sports law, the accretion of CAS awards and opinions is gradually forming a

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180. BELOFF ET AL., *supra* note 36, § 1.10.

181. Polvino, *supra* note 16, at 364.

182. BELOFF ET AL., *supra* note 36, § 1.12.

183. See NAFZIGER, *supra* note 8, at 48. Furthermore, the Olympic Movement lies at the heart of the legal processes driving the development of international sports law. The movement is unique because it is non-governmental and well-organized, although “at present, the Olympic Charter falls well short of being a transnational constitution for sport. No one institution has a monopoly of jurisdiction over sport internationally.” *Id.* However, there are some normative trends in the hierarchy of world sports:

[N]ational sports bodies resolve disputes within their sports and within their borders; international federations review decisions of national bodies within a particular sport; National Olympic Committees operate across different sports and intervene in disputes at a national level; the organs of the International Olympic Committee or an international federation may review a decision of a National Olympic Committee; independent arbitration panels may deal with ad hoc disputes; and finally the courts of various countries may become involved, and in particular normally recognize and enforce foreign arbitration awards or court judgments to the extent that their national law so provides, in accordance with international agreements and principles of comity, reciprocity and judicial cooperation.

BELOFF ET AL., *supra* note 36, §§ 8.91–92.



source of that body of law. This source has been called the *lex sportiva*.<sup>184</sup>

CAS opinions have introduced some general legal principles into the arena of sports law, such as deference to field-of-play decisions; purposive interpretation of rules and regulations; protection of athletes' rights to due process, including the right to a fair hearing and notice; and the contractual norms of good faith,<sup>185</sup> benefit of the doubt<sup>186</sup> and legitimate expectations.<sup>187</sup>

The CAS has also focused on harmonizing the procedural and substantive rules used by national and international sports governing bodies.<sup>188</sup> This is a lofty goal, and it is unlikely that there will ever be complete uniformity. Nevertheless, as leaders of the sports law movement, the IOC, the CAS and the international federations have a duty to eliminate as many variables as possible.<sup>189</sup> Bolstering the IOC's arbitration scheme

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184. NAFZIGER, *supra* note 8, at 48. *But see* Haagen, *supra* note 161, at 7.

185. BELOFF ET AL., *supra* note 36, §§ 7.116–127. Beloff illustrates the legal principle of good faith with the case of a water-polo player who tested positive for salbutamol, a substance allowed by FINA, the international federation governing water sports, as long as it is disclosed prior to a doping test. The player had not disclosed the salbutamol; however, he was able to demonstrate that on his national federation's list of banned and permitted substances, the substance was listed as permitted, without any other indication or conditions. The CAS annulled the sanction, asserting that an athlete should be able to trust information given to him by his national federation. *Id.*

186. *Id.* § 7.122. In a horse-doping case where jars containing urine samples were not sealed in accordance with the FEI's regulations, it was impossible to formally exclude any possibility of manipulation or contamination of the jars. Therefore, the CAS considered this an element of doubt which had to benefit the athlete. *Id.*

187. *Id.* § 7.124. Where a sporting organization chooses to temporarily depart from its established rules in certain circumstances, athletes unaware of the change cannot be bound by such arbitrary moves. *Id.*

188. *See* Otton, *supra* note 69, ¶ 43 (“Its principal aim was and is to secure the settlement of sports related disputes with a longer term objective of harmonising the procedural rules of national and international sports governing bodies.”). *See also* NAFZIGER, *supra* note 8, at 51 (“It is true that one of the interests of [CAS] is to develop a jurisprudence that can be used as a reference by all the actors of world sport, thereby encouraging the harmonization of the judicial rules and principles applied within the sports world.”).

189. *See* Nafziger, *supra* note 19, at 179 (“Ongoing efforts to simplify and better coordinate the unwieldy structure for resolving disputes, in particular, and to improve the accountability of the pertinent institutions, will benefit athletes, sports organizations and the public alike.”).

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with a more precise and predictable federation-wide appellate system is an important step toward that harmonization.<sup>190</sup>

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190. *See id.* at 162.

\* B.A. Columbia University 2002; J.D. Brooklyn Law School (expected 2006). All errors and omissions are my own. Thanks to Professor Dana Brakman Reiser who got me thinking outside the box, and to everyone at the Journal whose help and kindness made this a wonderful year, especially Erin McMurray and Adrienne Oppenheim. This note is dedicated to my mother, Rosalie Savarese, who was always at hand with wee-hour coffee and welcome distractions.