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# PASSING THE BATON: THE EFFECT OF THE INTERNATIONAL OLYMPIC COMMITTEE'S WEAK ANTI-DOPING LAWS IN DEALING WITH THE 2016 RUSSIAN OLYMPIC TEAM

## INTRODUCTION

As technology advances, getting away with the consumption of performance-enhancing drugs becomes more difficult.<sup>1</sup> With greater advancements in detecting performance-enhancing drugs (PEDs), however, come more creative methods and advancements in undetectable PEDs.<sup>2</sup> The temptation to take performance-enhancing drugs is heightened as major sporting events allow athletes to become worldwide superstars. For many, the Olympics is the Holy Mecca of athletic competition. Since this opportunity only comes around every four years, some athletes feel as though this may be their only chance to become the best. Becoming the best may be achieved in the worst way, by doping.

In March 2016, Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland, an organization of German public-service broadcasters, “showed a three-part-documentary claiming systematic doping use by Russian athletes.”<sup>3</sup> This documentary showed that the Russian sports system has “achieved many of its success through large-scale fraud,” based on information provided by Vitaly Stepanov, an employee of the Russian Anti-Doping Agency, and his wife, Yuliya Stepanova, an 800-meter runner suspended because of

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1. Bonnie Berkowitz & Tim Meko, *Stronger. Faster. Longer. And Higher*, WASH. POST (June 28, 2016), <https://www.washingtonpost.com/graphics/sports/olympics/doping/>.

2. David Epstein, Propublica & Michael J. Joyner, *How Do Drug Cheats in Sports Get Away With It?*, NEWSWEEK (Aug. 20, 2015, 5:33 PM), <http://www.newsweek.com/how-do-drug-cheats-sports-get-away-it-364691>.

3. *German ARD to Show New Documentary About Alleged Russian Doping Abuse*, (Mar. 30, 2016, 2:28 PM), <https://sputniknews.com/sport/20160530/1040478676/doping-germany-russia-documentary.html>.

doping.<sup>4</sup> In proving the truth of these allegations, Yuliya secretly recorded Alexei Melnikov, one of the head coaches of the Russian team, and Sergey Portugalov, a Russian leading sports physician.<sup>5</sup> The recordings documented how the drugs were procured and how positive doping tests were covered up.<sup>6</sup>

Following the release of the film, the World Anti-Doping Agency (WADA) launched an investigation into the allegations of doping abuse in Russian sports.<sup>7</sup> Upon completion of the investigation, WADA identified Grigory Rodchenkov, the director of Russia's anti-doping laboratory, as a major actor in the doping cover-up.<sup>8</sup> Rodchenkov would later admit to developing a three-drug mixture of banned substances that he provided to dozens of Russian athletes, replacing thousands of PED contaminated urine samples and passing these samples through a circular hole cut through the wall, concealed by a cabinet during the day.<sup>9</sup> His acts, as well as those of others working in the Russian anti-doping laboratory, helped to "facilitate one of the most elaborate—and successful—doping ploys in sports history."<sup>10</sup>

In November 2015, the International Association of Athletics Federation (IAAF) provisionally suspended all Russian track and field athletes from international competitions.<sup>11</sup> After much debate and investigation, nations from around the world called for a blanket Russian ban from the Olympics.<sup>12</sup> The International Olympic Committee (IOC) decided against a blanket ban,

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4. *Top Secret Doping: How Russia Makes its Winners*, AUTENTIC DISTRIBUTION, <http://www.autentic-distribution.com/en/product/do/detail.html?id=3845> (last visited Jan. 19, 2018).

5. *Id.*

6. *Id.*

7. *German ARD to Show New Documentary About Alleged Russian Doping Abuse*, *supra* note 3.

8. Rebecca R. Ruiz & Michael Shewirtz, *Russian Insider Says State-Run Doping Fueled Olympic Gold*, N.Y. TIMES (May 12, 2016), at A1.

9. *Id.*

10. *Id.*

11. *Athletics Doping: Russia Provisionally Suspended By IAAF*, BBC (Nov. 13, 2015), <http://www.bbc.com/sport/athletics/34811896>.

12. Sean Ingle, *Russia's Athletes Escape Blanket IOC Ban for Rio Olympic Games*, GUARDIAN (July 24, 2016, 10:02 AM), <https://www.theguardian.com/sport/2016/jul/24/russia-team-escape-blanket-ban-ioc-rio-olympic-games>; *Anti-Doping Groups and Athletes Ready to Call for Olympics Ban on Russia*, TELEGRAPH (July 17, 2016, 3:16 AM), <http://www.telegraph.co.uk/news/2016/07/17/anti-doping-groups-and-athletes-ready-to-call-for-russian-olympi/>.

instead allowing athletes' respective IFs to decide on the competitor's eligibility.<sup>13</sup> In addition to being approved by their own sport's governing body, these Russian athletes, who could not have any history of doping, had to abide by strict rules and regulations.<sup>14</sup>

The IOC's decision not to go through with a blanket ban of the Russian team from the Olympics left many nations and athletes angry and dissatisfied.<sup>15</sup> The President of the IOC, Thomas Bach, said in response to the IOC's decision that he knew that many would not be satisfied, but that this was the best way to protect and give justice to clean athletes.<sup>16</sup> Due to the highly contested views surrounding the Russian National Team's participation in the 2016 Olympics, as well as the IOC's interest in promoting a drug-free sport, the IOC should adopt a comprehensive and universal anti-doping law. This will prevent backlash from a scandal like this from happening in future Olympics.

This Note will examine the IOC's current role, or lack thereof, in providing punishment to athletes caught doping, as well as explore what can be done to improve anti-doping laws to limit controversy in a future scandal. Part I will address the development of the IOC and how it has dealt with anti-doping efforts in the past. Part II will discuss the opposition to the IOC's decision not to create a blanket ban of the Russian Olympic team. It will also detail why such a controversy surrounded the issue. Part III will then examine what anti-doping laws the IOC has in place, how many wanted the Russian doping scandal to be handled, and why the current system is ineffective. Finally, Part IV will address potential solutions, such as giving WADA a voice in the IOC's decision-making process, implementing stricter anti-doping rules, and giving International Federations (IFs) less power. These solutions will ensure that the IOC plays a greater role in punishing athletes found to have used performance-enhancing drugs. It will also deter performance-enhancing drug use by Olympic athletes in the future.

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13. Eoghan Macguire, *Olympics: No Blanket Ban on Russian Athletes, IOC Says*, CNN (July 24, 2016, 4:58 PM), <http://edition.cnn.com/2016/07/24/sport/russia-ioc-olympics-ban/>.

14. *Id.*

15. *Id.*

16. *Id.*

## I. HISTORY OF THE IOC

This Part will examine the creation of the IOC. It will address its goals as a committee, as well as its past efforts in dealing with performance-enhancing drug use by Olympic athletes.

### A. *The Creation of the IOC*

The IOC was formed on June 23, 1894, after Pierre de Coubertin's 1892 announcement that he wanted to revive the Olympic Games.<sup>17</sup> It acts as "an international non-governmental non-profit organisation, of unlimited duration, in the form of an association with the status of a legal person."<sup>18</sup> It is the main organizer of the Olympic Games, "acting as a catalyst for collaboration between all parties of the Olympic family. . . ." and leading the Olympic Movement.<sup>19</sup> The IOC is one of many actors in the Olympic Movement.<sup>20</sup> The other main constituents include IFs, international non-governmental organizations administering one or several sports at the world level, and National Olympic Committees, which develop, promote, and protect the Olympic Movement in their respective countries.<sup>21</sup> As stated in the Olympic Charter, "the goal of the Olympic Movement is to contribute to building a peaceful and better world by educating youth people through sport practised in accordance with Olympism and its values."<sup>22</sup> The IOC is one of three main constituents of the Olympic Movement, acting as the supreme authority.<sup>23</sup>

### B. *What are the Goals of the IOC?*

In order to maintain order in the organization, the IOC adopted the Olympic Charter, codifying and detailing

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17. *The Organisation*, INT'L OLYMPIC COMMITTEE, <https://www.olympic.org/about-ioc-institution> (last visited Jan. 19, 2018).

18. FACTSHEET: THE OLYMPIC MOVEMENT UPDATE—APRIL 2015, INT'L OLYMPIC COMMITTEE, [https://stillmed.olympic.org/Documents/Reference\\_documents\\_Factsheets/The\\_Olympic\\_Movement.pdf](https://stillmed.olympic.org/Documents/Reference_documents_Factsheets/The_Olympic_Movement.pdf).

19. *What We Do*, INT'L OLYMPIC COMMITTEE, <https://www.olympic.org/the-ioc/what-we-do> (last visited Jan. 19, 2018).

20. *Id.*

21. *Id.*

22. Olympic Charter, *entered into force* Aug. 2, 2016, <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf>.

23. *The Organisation*, INT'L OLYMPIC COMMITTEE, <https://www.olympic.org/about-ioc-institution> (last visited Jan. 19, 2018).

Fundamental Principles, Rules, and Bylaws.<sup>24</sup> The Olympic Charter “governs the organisation, action and operation of the Olympic Movement and sets forth conditions for the celebration of the Olympic Games.”<sup>25</sup> The Olympic Charter details the mission of the IOC and lists sixteen of its roles.<sup>26</sup> These roles include encouraging and supporting the promotion of ethics and good governance in sport, educating youth through sport, ensuring that the spirit of fair play prevails over violence, and maintaining the regular celebration of the Olympic Games.<sup>27</sup> As of late, however, perhaps one of the most important roles of the IOC is in regards to performance-enhancing drugs.<sup>28</sup>

As outlined by the Olympic Charter, one of the IOC’s main roles is to “protect clean athletes and the integrity of sport, by leading the fight against doping and by taking action against all forms of manipulation of competitions and related corruption.”<sup>29</sup> In fact, the IOC’s role in dealing with anti-doping efforts is stated throughout the Olympic Charter. For example, “[t]he IOC Executive Board determines the number and the method for selection of competitors for doping tests and all other anti-doping measures during the period of the Olympic Games after consultation with each IF.”<sup>30</sup> The Olympic Charter also discusses sanctions, disciplinary procedures, and dispute resolution with respect to any violation of the Olympic Charter, as well as anti-doping rules.<sup>31</sup>

### *C. History of the IOC’s Past Efforts in Dealing with Performance-Enhancing Drug Use by Olympic Athletes*

The IOC has a history of imposing strict punishments on Olympic athletes caught doping.<sup>32</sup> This “zero-tolerance” policy has been exhibited in Olympics of the past.<sup>33</sup> After an Olympic year, doping samples are frozen for an eight-year period,

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24. *Id.*

25. *Id.*

26. Olympic Charter, *supra* note 22, at 18.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 88.

31. *Id.* at 99.

32. Associated Press, *Athletes Sense a Witch Hunt in Sydney*, ESPN SYDNEY (Sept. 27, 2000), <http://a.espn.com/oly/summer00/news/2000/0927/781868.html>.

33. *Id.*

ensuring that the IOC has the ability to retroactively test samples, in an attempt to catch athletes who may have gotten away with doping during the time of the Olympics.<sup>34</sup> The samples are stored so that they can be retested with improved technology.<sup>35</sup> A notable example of this was seen in the 2004 Olympics, which were held in Athens.<sup>36</sup> The Athens Games had a reputation for being “the dirtiest on record, producing 26 doping cases and catching six medalists—including two gold winners—at the time.”<sup>37</sup> After retroactive testing, however, the number of doping cases in Athens has increased to thirty-one, with eleven of these athletes being medal winners, three being gold medalists.<sup>38</sup> Not only were these athletes disqualified from participating in the next Olympic Games, but any athletes who medaled during the Olympics were stripped of the medals they won.<sup>39</sup>

The 2004 Olympics in Athens were not the only Olympic Games where heavy performance-enhancing drug use occurred. After a retest of samples from both the 2008 Olympics in China and the 2012 Olympics in London, the IOC found an additional forty-five positive cases of doping. Athletes were again banned from competing in the Olympic Games in Rio 2016 and ordered to return any medals they won.<sup>40</sup>

## II. OPPOSITION TO THE IOC'S DECISION ABOUT THE RUSSIAN OLYMPIC TEAM

This Part will examine the IOC's decision against a blanket ban of the Russian Olympic team. It will then address why it differed from the IOC's actions in the past, as well as why controversy surrounded the issue.

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34. *IOC Considers Retesting Doping Samples from 2004 Games in Athens*, GUARDIAN (May 8, 2002, 5:03 PM), <https://www.theguardian.com/sport/2012/may/08/ioc-retest-2004-athens-games>.

35. *Id.*

36. *Athletes Sense a Witch Hunt in Sydney*, *supra* note 32.

37. Stephen Wilson, *IOC Strips 4 Medals from 2004 Athens Olympics*, U.S. NEWS (Dec. 5, 2012, 6:35 PM), <http://www.usnews.com/news/sports/articles/2012/12/05/ioc-strips-4-medals-from-2004-athens-olympics>.

38. *Id.*

39. *Id.*

40. *IOC: 45 More Positive Cases in Retests of Samples from 2008 and 2012 Olympics*, USA TODAY (July 22, 2016, 6:59 AM), <http://www.usatoday.com/story/sports/olympics/2016/07/22/ioc-45-more-positive-cases-in-retests-of-2008-12-samples/87429370/>.

*A. The IOC's Decision against a Blanket Ban of the Russian Olympic Team*

Twelve days before the start of the Olympic Games in Rio 2016, the IOC released a statement regarding their decision about whether or not they would ban the Russian Olympic team from participating in the Olympics.<sup>41</sup> Prior to this decision being made, the IOC Executive Board gave the Russian Olympic Committee (ROC) an opportunity to present the case of Russian athletes.<sup>42</sup> Alexander Zhukov, the ROC President, guaranteed that the Russian Federation and the ROC would cooperate fully with all international organizations in the doping investigations, and that the ROC would restructure the Russian anti-doping system.<sup>43</sup> After hearing the ROC's arguments, the IOC's Executive Board decided against a blanket ban of the Russian Olympic team.<sup>44</sup>

In the released statement, the IOC outlined its decision, as well as how it would affect the Russian Olympic team. First, the IOC decided that it would not allow a Russian athlete to participate in the Olympic Games in Rio 2016 unless they abided by all of the conditions set forth.<sup>45</sup> Second, the IOC would accept entry of an athlete only if the athlete was able to provide evidence to the full satisfaction of his or her IF in relation to various criteria.<sup>46</sup> Third, the ROC would not be allowed to enter any athlete into the Olympic Games in Rio 2016 who had ever been sanctioned for doping, even if he or she served the punishment

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41. *Decision of the IOC Executive Board Concerning the Participation of Russian Athletes in the Olympic Games Rio 2016*, INT'L OLYMPIC COMMITTEE (July 24, 2016), <https://www.olympic.org/news/decision-of-the-ioc-executive-board-concerning-the-participation-of-russian-athletes-in-the-olympic-games-rio-2016>.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* The IFs must show the absence of a positive national anti-doping test, carry out an individual analysis of each athlete's anti-doping record, examine the information contained in the IP Report, seek from WADA the names of athletes and National Federations (NFs) implicated, and apply their respective rules in relation to the sanction of entire NFs. *Decision of the IOC Executive Board Concerning the Participation of Russian Athletes in the Olympic Games Rio 2016*, *supra* note 41. An athlete, official or an NF implicated in the IP Report may not be accepted for entry or accreditation for the Olympic Games. *Id.*



associated with the sanction.<sup>47</sup> Fourth, the IOC would accept an entry by the ROC only if the athlete's IF was satisfied that the evidence provided met conditions two and three listed above, and if it was upheld by an expert from the CAS list of arbitrators appointed by an ICAS Member, independent from any sports organization involved in the Olympic Games in Rio 2016.<sup>48</sup> Lastly, the entry of any Russian athlete ultimately accepted by the IOC would be subject to a rigorous additional out-of-competition testing program, in coordination with the relevant IF and WADA.<sup>49</sup> Any failure to complete this program would lead to the immediate withdrawal of accreditation by the IOC.<sup>50</sup>

In addition to these strict regulations, the IOC also addressed a potential for future ramifications.<sup>51</sup> The IOC determined that after WADA's final Independent Person Report ("IP Report"), additional sanctions might be imposed on Russian athletes found to be in violation of doping restrictions.<sup>52</sup> In addition, the IOC called on WADA to "fully review their anti-doping system."<sup>53</sup> Finally, the IOC made it clear that it will still be involved in the process "by proposing measures for clearer responsibilities, more transparency, better supervision procedures and more independence."<sup>54</sup>

### *B. Why was the Russian Doping Problem Different?*

Although the IOC has dealt with doping issues in the past, none of the rules and regulations they had in place could truly

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47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* Professor Richard H. McLaren was appointed by WADA's President as an Independent Person to conduct an investigation into the allegations of state-sponsored doping in Russia. Richard McLaren, *Independent Person WADA Investigation of Sochi Allegations*, (Dec. 9, 2016), [https://www.wadaama.org/sites/default/files/resources/files/mclaren\\_report\\_part\\_ii\\_2.pdf](https://www.wadaama.org/sites/default/files/resources/files/mclaren_report_part_ii_2.pdf). The mandate of the IP Report was to establish whether there was manipulation of the doping control process during the Sochi Games, including, but not limited to, acts of tampering with the samples within Sochi Laboratory, to identify the techniques involved in such manipulation, and to identify any athletes who benefited from the alleged manipulations to conceal positive doping tests. *Id.*

53. *Id.*

54. *Id.*

prepare them for the magnitude of the Russian doping ploy. This differed from past Olympic doping scandals, as never had there been such an intricate and successful system in which athletes were easily able to get away with doping.<sup>55</sup> Not even the preemptive tests by the IOC of these athletes were able to put a stop to what appeared to be a state-sanctioned campaign by Russia to ensure that their athletes would be the best.<sup>56</sup> If not for the Russian whistle-blower, Yuliya Stepanova, the IOC, to this day, may not have known of the intricacies of this scheme, leaving them unbeknownst to the issue at hand.<sup>57</sup> Because of the documentary detailing allegations of Russia's illegal doping ring, the IOC was forced to investigate the issue and come up with a plan that would protect the sanctity of the Olympics, so as to promote clean Olympic Games.<sup>58</sup>

Although the IOC has not dealt with a doping scandal of this magnitude before, many are wary that this is not the only case of state-sponsored doping.<sup>59</sup> Olivier Niggli, the new WADA director general, stated that “[i]t has happened in one country. I think it would be naïve to think it’s the only country . . . [w]e have to have our eyes really open and also make sure we act on intelligence and information we get.”<sup>60</sup>

### *C. Controversy and Opposition Regarding the IOC's Failure to Create a Blanket Ban of the Russian Olympic Team*

Following the release of the IOC's statement, there was widespread backlash, with many countries and athletes speaking out against the decision.<sup>61</sup> The CEO of the United States Anti-Doping Agency, Travis Tygart, spoke about the IOC dropping the

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55. Joe Shute, *Russia's Doping Scandal: Who's Telling the Truth?*, TELEGRAPH (May 28, 2016), <http://s.telegraph.co.uk/graphics/projects/russia-doping-scandal-london-2012-olympics/index.html>.

56. *Id.*

57. *Top Secret Doping: How Russia Makes its Winners*, *supra* note 4.

58. *Id.*

59. Ronald Blum, *AP Interview: WADA Anticipating More State-Sponsored Doping*, ASSOCIATED PRESS (Oct. 13, 2016, 11:35 PM), <https://summer-games.ap.org/article/ap-interview-wada-anticipating-more-state-sponsored-doping>.

60. *Id.*

61. Karolos Grohmann, *Russia Escapes IOC Blanket Ban for Rio Olympics*, REUTERS (July 25, 2016, 3:48 PM), <http://www.reuters.com/article/us-sport-doping-russia-idUSKCN1040N7>.

ball.<sup>62</sup> He stated, “[m]any, including clean athletes and whistleblowers, have demonstrated courage and strength in confronting a culture of state-supported doping and corruption. Disappointingly, however, in response to the most important moment for clean athletes and the integrity of the Olympic Games, the IOC has refused to take decisive leadership.”<sup>63</sup> Tygart raised concerns that allowing Russian athletes to compete in the Olympics would be unfair and confusing to historically clean athletes competing.<sup>64</sup>

Tygart, however, was not the only person speaking out against the actions of the IOC.<sup>65</sup> Many people felt that the IOC simply did not want to get blood on their hands by allowing the IFs to make the ultimate decision on whether or not the Russian athletes would be able to compete in the Olympic Games in Rio 2016.<sup>66</sup> If the IOC did not make the ultimate decision, they could not be blamed for the outcome.<sup>67</sup> Shortly after the IOC’s decision, an Op-Ed titled “Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead,” was written.<sup>68</sup> It was endorsed by the heads of the following thirteen National Anti-Doping Organizations (NADOs) around the world: Austria, Canada, Denmark, Finland, Germany, Japan, Netherlands, New Zealand, Norway, Poland, Sweden, Switzerland, and the United States.<sup>69</sup> The heads of the NADOs complained about the IOC’s issuance of confusing, conflicting, and insufficient instructions, which were rested on the IFs’ shoulders.<sup>70</sup> The NADOs specifically stated that, “[b]y leaving to IFs the responsibility to exclude individual Russian athletes, the IOC ignored that most IFs do not have a ready legal framework for making these decisions.”<sup>71</sup> Since one of the main roles of the IOC is to protect clean athletes by leading the fight against doping, questions arose regarding whether

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62. *Id.*

63. *Id.*

64. *Id.*

65. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, GUARDIAN (July 31, 2016 10:30 AM), <https://www.theguardian.com/sport/2016/jul/31/russian-doping-scandal-ioc-failed-to-lead-national-anti-doping-organisations>.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

or not the IOC was taking initiative to ensure the protection of clean athletes and the punishment of those athletes taking performance-enhancing drugs.<sup>72</sup>

### III. CURRENT ANTI-DOPING LAWS AND THEIR EFFECTIVENESS IN DEALING WITH THE 2016 RUSSIAN OLYMPIC TEAM

This Part will outline the current universal anti-doping law. It will then address how the general public wanted the Russian doping scandal to be handled, as well as analyze the effectiveness of the IOC's response.

#### *A. Is there a Universal Anti-Doping Law?*

In 2003, the World Anti-Doping Code was first adopted, taking effect in 2004.<sup>73</sup> The World Anti-Doping Code was “the first global policy against banned performance-enhancing substances.”<sup>74</sup> Prior to its implementation, “every sport federation and country had its own rules and it was a chaotic situation. An athlete could be banned from participating in sports in one country but not in another.”<sup>75</sup> The World Anti-Doping Code has the following main purposes: (1) to protect the Athletes' fundamental right to participate in doping-free sport, thus promoting health, fairness, and equality for Athletes worldwide; and (2) to ensure harmonized, coordinated, and effective anti-doping programs at the international and national level with regard to detection, deterrence, and prevention of doping.<sup>76</sup> The World Anti-Doping Code works with the following five International Standards aimed at unifying anti-doping organizations: Prohibited List, Testing and investigations, Laboratories, Therapeutic Use Exemptions, and Protection of Privacy and Personal

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72. *Id.*

73. WORLD ANTI-DOPING CODE 2015, WORLD ANTI-DOPING AGENCY, <https://www.wada-ama.org/sites/default/files/resources/files/wada-2015-world-anti-doping-code.pdf>.

74. Susanna Loof, *IOC Adopts Global Anti-Doping Code*, USA TODAY (July 4, 2003 9:13 AM), [http://usatoday30.usatoday.com/sports/olympics/2003-07-04-doping-code\\_x.htm](http://usatoday30.usatoday.com/sports/olympics/2003-07-04-doping-code_x.htm).

75. *Interview with David Howman*, GLOBAL CITIZEN'S INITIATIVE, <http://www.theglobalcitizensinitiative.org/interview-with-david-howman-2/> (last visited Jan. 19, 2018).

76. WORLD ANTI-DOPING CODE 2015, *supra* note 73, at 11.

Information.<sup>77</sup> The World Anti-Doping Code defines what doping is, outlines anti-doping rule violations, and explains the scope of testing.<sup>78</sup> It also provides guidelines on the investigation of doping, and enumerates consequences, such as sanctions, for teams or individual athletes found to have been doping.<sup>79</sup> In the case of an individual athlete found to have violated WADA's doping rules, this use may "lead to disqualification of all of the athlete's individual results obtained in that event with all consequences, including forfeiture of all medals, points and prizes. . . ."<sup>80</sup> The individual athlete may also be subject to a period of ineligibility for either two or four years, depending on whether the anti-doping rule violation was intentional or not.<sup>81</sup> If members of a team commit an anti-doping rule violation during an Event Period, the ruling body of the event imposes sanctions on the team (e.g., loss of points, disqualification from a competition or event, or other sanction), in addition to any consequences imposed upon the individual athletes committing the anti-doping rule violation.<sup>82</sup>

The IOC formally approved the World Anti-Doping Code, following its creation in 2003.<sup>83</sup> In 2016, the IOC released Anti-Doping Rules for the Rio Olympics, outlining many aspects of anti-doping law.<sup>84</sup> Of these rules, the IOC writes, "[t]he IOC has established and adopted these IOC Anti-Doping Rules (Rules) in accordance with the [World Anti-Doping] Code, expecting that, in the spirit of sport, it will contribute to the fight against doping in the Olympic Movement."<sup>85</sup> Similar to the World Anti-Doping Code, the 2016 Rules outlined when performance-enhancing drug testing should be done, what the anti-doping rule violations

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77. *International Standards*, WORLD ANTI-DOPING CODE, <https://www.wada-ama.org/en/international-standards> (last visited Jan. 19, 2018).

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *IOC Formally Adopt World Anti-Doping Code*, WORLD SAILING (July 7, 2003, 10:04 AM), <http://www.sailing.org/news/11259.php#.WCfiXneZNp8>.

84. THE INTERNATIONAL OLYMPIC COMMITTEE ANTI-DOPING RULES APPLICABLE TO THE OLYMPIC GAMES RIO 2016, INT'L OLYMPIC COMMITTEE 3, [https://stillmed.olympic.org/Documents/Fight\\_against\\_doping/Rules\\_and\\_regulations/ioc\\_adr\\_final\\_rio\\_2016\\_games\\_of\\_the\\_xxxi\\_olympiad\\_ioc\\_anti-doping\\_rules.pdf](https://stillmed.olympic.org/Documents/Fight_against_doping/Rules_and_regulations/ioc_adr_final_rio_2016_games_of_the_xxxi_olympiad_ioc_anti-doping_rules.pdf).

85. *Id.* at 3.

are, and which substances are prohibited from the Olympic Games in Rio 2016.<sup>86</sup> It also outlined the right to be heard, automatic disqualification of individual results, sanctions on individuals, and consequences to teams.<sup>87</sup> In regards to individual athletes, the Rules state, “[s]hould an Athlete . . . be found to have committed an anti-doping rule violation, the CAS Anti-Doping Division may declare the athlete . . . ineligible for such Competitions at the Olympic Games in Rio 2016 . . . along with other sanctions and measures.”<sup>88</sup> Of team sports, the Rules state, “[i]f more than one member of a team in a Team Sport is found to have committed an anti-doping rule violation during the Period of the Olympic Games in Rio 2016, the CAS Anti-Doping Division may impose an appropriate sanction on the team. . . .”<sup>89</sup> Similar to the IOC Anti-Doping Rules, the Olympic Charter also notes the sanctions that can be placed on athletes, as well as any other disciplinary action that can be taken by the IOC against athletes caught doping.<sup>90</sup> Importantly, the Olympic Charter notes that the IOC can pass off the responsibility of dealing with athletes caught doping to their respective IFs.<sup>91</sup>

*B. Proposed Suggestions on how the Russian Doping Scandal Should be Dealt with*

When the heads of the NADOs wrote and endorsed the Op-ed, claiming that the IOC failed to lead when it was confronted with the Russian doping scandal, they outlined how they believed that the IOC should have dealt with the controversy.<sup>92</sup> In this Op-ed, the heads of these NADOs indicated that they wrote to IOC President Thomas Bach, suggesting a three-step plan for the IOC to implement to protect the integrity of the Olympics.<sup>93</sup> The Op-ed states:

We asked the IOC to: (1) Suspend and exclude the Russian Olympic Committee from Rio; (2) As a consequence of that suspension, provisionally deny entry to all Russian athletes

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86. *Id.* at 2.

87. *Id.*

88. *Id.* at 25.

89. *Id.*

90. Olympic Charter, *supra* note 22 at 101.

91. *Id.* at 58.

92. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, *supra* note 65.

93. *Id.*

nominated by the ROC to participate in Rio; and (3) Mandate the existing joint World Anti-Doping Agency-IOC pre-Games testing taskforce to apply a uniform set of criteria to determine whether individual Russian athletes should be permitted to participate in the Rio Olympic Games under a neutral flag.<sup>94</sup>

The heads of the NADOs felt as though the proposed three-step plan was “fully consistent with WADA’s recommendations . . . and could have been easily implemented by the IOC.”<sup>95</sup> The IOC, however, did not implement the NADOs three-step plan, instead acquiescing their power to the athletes’ respective IFs.<sup>96</sup> Although the IOC acted within their rights to pass off their responsibility to the athletes’ respective IFs, many were left dissatisfied, arguing that current anti-doping rules are ineffective.<sup>97</sup>

### *C. Why are the Current Anti-Doping Rules Ineffective?*

It is evident that under the Olympic Charter, as well as WADA’s rules, there are anti-doping laws and punishments if athletes are caught doping.<sup>98</sup> What remains unclear is the effectiveness of these rules, and if there is a true universal anti-doping law governing the Olympics as a whole.<sup>99</sup> The rules are ineffective for a number of reasons. First, the rules are too broad. Second, there are too many organizations with a say in what the rules are. Third, the rules give too much power to IFs, rather than giving the watchdogs of the Olympics power. Fourth, the rules treat athletes caught cheating too leniently. Nothing in the rules can prevent a reprise of the Russian doping scandal of 2016.

#### 1. The Rules are too Broad

The rules set in place regarding anti-doping are too broad.<sup>100</sup> These broad definitions can lead to inconsistencies in how these

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94. *Id.*

95. *Id.*

96. Macguire, *supra* note 13.

97. *Id.*

98. Olympic Charter, *supra* note 22, at 81.

99. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, *supra* note 65.

100. *Id.*

laws are perceived.<sup>101</sup> WADA has created what appear to be completely arbitrary laws.<sup>102</sup> While certain performance-enhancing drugs are banned, others are banned without regard for whether or not they actually enhance athletic performance.<sup>103</sup> WADA must determine what its main purpose of the law is—to protect the athletes' health, to promote equality in sport, or to promote fairness in sport.<sup>104</sup> In determining the goal of sanctions and laws, the laws themselves may gain credibility, as they do not seem to be subjective and haphazard.<sup>105</sup>

## 2. There are too Many Organizations with a Say in the Rules

In addition to the fact that WADA's anti-doping laws are relatively broad, there are also too many referees on the field determining what the rules are and how the rules should be followed.<sup>106</sup> Although more than 630 sports organizations have accepted the World Anti-Doping Code,<sup>107</sup> the World Anti-Doping Agency cannot prevent athletes from "non-compliant" countries competing, as this decision is made by organizations such as the IAAF and the IOC.<sup>108</sup>

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101. Matthew Hard, *Caught in the Net: Athletes' Rights and the World Anti-Doping Agency*, 19 S. CAL. INTERDIS. L.J. 533, 534 (2010). WADA has justified an exhaustive list of banned substances under the name of fairness, health, and the spirit of sport. *Id.* These goals, however, make it difficult for WADA to rationalize why some substances are banned while others are not, regardless of whether there is actual performance enhancement. *Id.* This leads to the argument that "if anti-doping laws are seen as arbitrary, hypocritical, and over-inclusive they will lose credibility, thus making the burden they place on athletes questionable." *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. THOMAS M. HUNT, *DRUG GAMES: THE INTERNATIONAL OLYMPIC COMMITTEE AND THE POLITICS OF DOPING* 5 (2011). The governance structure of the Olympic Movement has been fragmented from its creation, not allowing for an effective, centralized approach to anti-doping. *Id.* Complicating this is the IOC's anti-doping practices in relation to those of other national and international sport institutions, as well as governments. *Id.*

107. *World Anti-Doping Code (WADA)*, U.S. ANTI-DOPING CODE, <http://www.usada.org/about/world-anti-doping-code/> (last visited Feb. 21, 2018).

108. *Athletics Doping Scandal: Russia Ruled in Breach of Wada Code*, BBC (Nov. 19, 2015), <http://www.bbc.com/sport/athletics/34860136>.



WADA can investigate claims, such as the state-sponsored Russian doping accusation. This, however, presents a strange condition in which the creators of the universal anti-doping law are not the ultimate enforcers.<sup>109</sup> Rather, the ultimate decision maker is the IOC.<sup>110</sup> WADA does, however, have the ability to recommend a solution to the IOC in dealing with doping violations.<sup>111</sup> Following investigations of the alleged state-sponsored Russian doping, WADA made three recommendations. First, it recommended that the IOC and the International Paralympic Committee consider, under their respective Charters, declining entries for Rio 2016 submitted by the Russian Olympic Committee and the Russian Paralympic Committee.<sup>112</sup> Second, it recommended that IFs from sports implicated in the IP Report consider their responsibilities under the World Anti-Doping Code, as far as their Russian National Federations are concerned.<sup>113</sup> Third, it recommended that Russian government officials be denied access to international competitions, including Rio 2016.<sup>114</sup> The IOC, however, did not accept WADA's recommendation, leaving them disappointed.<sup>115</sup> WADA President, Sir Craig Reedie, said investigators had "exposed, beyond a reasonable doubt, a state-run doping program in Russia that seriously undermines the principles of clean sport embodied within the World Anti-Doping Code."<sup>116</sup> WADA Chief, Olivier Niggli, stated, "the IOC's decision will inevitably mean lesser protection for clean athletes."<sup>117</sup> It becomes a great issue when the creators of the universal anti-doping law do not agree with the enforcers of the law, as this leads to disunity amongst anti-doping organizations.<sup>118</sup>

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109. *Id.*

110. *Id.*

111. *Independent Investigation Confirms Russian State Manipulation of the Doping Control Process*, WORLD ANTI-DOPING AGENCY (July 18, 2016), <https://www.wada-ama.org/en/media/news/2016-07/wada-statement-independent-investigation-confirms-russian-state-manipulation-of>.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Rio Olympics 2016: Wada Criticises IOC for Failing to Ban Russian Team*, BBC (July 25, 2016), <http://www.bbc.com/sport/olympics/36879353>.

116. *Id.*

117. *Id.*

118. *Id.*

### 3. The Rules Give Too Much Power to IFs

The IOC's rules give too much power to IFs, rather than giving themselves the majority of power. The Olympic Charter notes that the IOC can pass off the responsibility of dealing with athletes caught doping to their respective IFs.<sup>119</sup> This is exactly what the IOC decided to do.<sup>120</sup> On July 24, the IOC said that it would not impose a blanket ban on Russian athletes at the 2016 Olympics, but would leave the ultimate decision to the athletes' IFs.<sup>121</sup> The IOC said "international sporting federations should carry out an individual analysis of each athlete's anti-doping record, taking into account only reliable adequate international tests, and the specificities of the athlete's sport and its rules, in order to ensure a level playing field."<sup>122</sup> In order for Russian athletes to be able to participate in the Olympics, they had to prove to their respective IFs that they were clean.<sup>123</sup> The conditions included the absence of a positive national anti-doping test, individual analysis of each athlete's anti-doping record (taking into account only reliable and adequate international tests), and the particularities of the athlete's sport and its rules.<sup>124</sup> Further, the twenty athletes named in the IP Report, issued by Richard McLaren, were barred from competing.<sup>125</sup>

The IOC passed off its power to IFs, with limited time and resources.<sup>126</sup> In giving IFs decision-making power "without clear guidance and without requiring a minimum level of evidence to demonstrate that Russian athletes have been subject to an adequate advance testing programme, the IOC has violated the athletes' fundamental rights to participate in Games that meet the stringent requirements of the World Anti-Doping Code."<sup>127</sup>

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119. Olympic Charter, *supra* note 22, at 58.

120. *IOC: No Blanket Ban on Russian Athletes; Federations to Decide*, RADIOFREE EUR. (July 25, 2016, 12:42 PM), <http://www.rferl.org/a/russia-ioc-olympics-no-blanket-ban-doping/27877669.html>.

121. *Id.*

122. *Id.*

123. *Rio 2016: Russian Team Will Not Face Blanket Ban From Olympics After Doping Scandal, IOC Says*, ABC NEWS AUS. (July 24, 2016, 4:08 PM), <http://www.abc.net.au/news/2016-07-25/russian-team-will-not-face-blanket-ban-in-rio:-ioc/7656416>.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Russian Doping Scandal: 'When it Mattered Most, the IOC Failed to Lead,' supra* note 65.

Given the time restraints, the IOC could not guarantee that Russian athletes were properly drug tested or that they did not benefit from doping, as these benefits can persist for months and even years after banned substances are no longer detectable.”<sup>128</sup>

Another major issue with the IOC giving decision-making power to individual IFs is that there is a lack of consistency with how punishments and sanctions are imposed.<sup>129</sup> Rather than having one controlling organization impose a uniform rule on how the athletes on the Russian Olympic team should be dealt with, the IOC allowed for the IFs to follow whatever standards they had in place. This led to “an uneven and incomplete response from IFs.”<sup>130</sup> Under the IOC’s approach, Russian athletes compete based on an inconsistent standard, as some have a clean recent test, while others may not have had any screenings at all.<sup>131</sup> Coupled with the lack of transparency with how each IF was making its decisions, the passing off of power by the IOC to the IFs gave them too much power.<sup>132</sup>

#### 4. The Rules are Too Easy on Athletes Caught Doping

The IOC was too easy on the Russian Olympic team. With one of the main roles of the IOC being to protect the sanctity of a clean sport, their actions failed to support this cause. Through its response to the Russian doping problem, the IOC departed from its “zero tolerance” stance, despite the “unprecedented level of criminality.”<sup>133</sup> The IOC appeared to show weakness in tackling this important issue.<sup>134</sup> The Olympics had never seen such a successful doping ring before, as not only was it intricate, but also state-sponsored.<sup>135</sup> This was a major shock to the Olympic community.<sup>136</sup> Rather than setting an example for other countries to deter them from participating in state-sponsored doping

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128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *IOC Chief Thomas Bach Feels ‘Inner Rage’ at Extent of Russian Doping Scandal*, ESPN (Dec. 16, 2016), [http://www.espn.com/olympics/story/\\_/id/18294012/ioc-president-thomas-bach-feels-inner-rage-extent-russian-doping-scandal](http://www.espn.com/olympics/story/_/id/18294012/ioc-president-thomas-bach-feels-inner-rage-extent-russian-doping-scandal).

135. *Id.*

136. *Russian Doping Scandal: ‘When it Mattered Most, the IOC Failed to Lead,’ supra* note 65.

initiatives, the IOC still allowed Russian athletes to compete if they followed certain guidelines.<sup>137</sup> In response to the decision, the President of the IOC stated:

In this way, we protect these clean athletes because of the high criteria we set for all the Russian athletes. This may not please everybody on either side. . . . The result today is one which is respecting the rules of justice and which is respecting the right of all the clean athletes all over the world.<sup>138</sup>

This decision, however, has led many anti-doping organizations to question when, if ever, a blanket ban will be imposed on an Olympic team.<sup>139</sup> If state-sponsored doping is not serious enough to warrant a blanket ban on an Olympic team, what is?

### 5. No Preventative Rules

Never in the history of the Olympic Games has the IOC had to deal with a doping scandal of this magnitude.<sup>140</sup> While many of the rules set forth in WADA's World Anti-Doping Code include steps to be taken, either before or after an individual or team has been caught with performance-enhancing drugs in their system, there are no rules that even touch upon the situation presented to the IOC by the Russian Olympic team.<sup>141</sup> Roger Pielke, expert in sports governance, stated, "we're in uncharted territory. . . . The rules and procedures that govern organizations like the IOC and WADA give detailed directions on how to treat athletes who are caught doping. But there's no instruction on how to handle an entire country getting caught. The rules are being invented as this unfolds."<sup>142</sup> The fact that the universal anti-doping law did not address this issue is the most detrimental aspect of the Code, likely resulting in the other inefficacies.<sup>143</sup> The lack

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137. Rachel Axon, *IOC Declines to Issue Blanket Ban of Russian Athletes*, USA TODAY (July 24, 2016, 5:16 PM), <http://www.usatoday.com/story/sports/olympics/rio-2016/2016/07/24/ioc-declines-issue-blanket-ban-russian-athletes/87498940/>.

138. *Id.*

139. *Id.*

140. *Id.*

141. Olympic Charter, *supra* note 22, at 101.

142. Alex Brokaw, *How Does the International Olympic Committee Solve a Problem Like Russian Doping?*, VERGE (July 19, 2016, 2:17 PM), <http://www.theverge.com/2016/7/19/12222086/international-olympics-committee-delays-decision-to-ban-russia>.

143. *Id.*

of rules on how to handle a country getting caught doping has led to anger and frustration.<sup>144</sup> With very little guidance on how to deal with this issue, mounting frustration has grown from different nations and organizations, who feel that the IOC was not tough enough on the Russian Olympic team. As a result, the IOC must take steps in the future to ensure that this does not happen again.<sup>145</sup>

#### IV. SOLUTIONS

This Part will provide potential solutions to deal with the problem posed by the anti-doping laws currently in place. It will then attempt to reconcile each inefficacy mentioned in Part III of this Note.

##### *A. WADA Should Have a Voice in the IOC's Decision-Making Process*

The World Anti-Doping Agency was created in response to a doping scandal in the summer of 1998, where the top three finishers of the Tour de France were found to have been taking the banned blood booster erythropoietin.<sup>146</sup> WADA was established, "to promote and coordinate the fight against doping in sport internationally."<sup>147</sup> Although WADA's creation was paramount to the anti-doping movement, it lacks certain powers to act on its findings.<sup>148</sup> For example, WADA can only make recommendations to the IOC regarding actions it should take to prohibit an athlete or a team found to have performance-enhancing drugs in their system from participating in the Olympic Games.<sup>149</sup> Despite creating the World Anti-Doping Code, which has been adopted by over 600 anti-doping organizations and federations, WADA does not have much say in how these rules are actually applied.<sup>150</sup>

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144. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, *supra* note 65.

145. Brokaw, *supra* note 142.

146. *Top Three in 1998 Tour de France 'Were Doping'*, FRANCE 24 (July 23, 2013), <http://www.france24.com/en/20130723-report-casts-doping-doubts-on-1998-tour-de-france-cycling>.

147. *Who We Are*, WORLD ANTI-DOPING AGENCY, <https://www.wadama.org/en/who-we-are> (last visited Jan. 19, 2018).

148. Olympic Charter, *supra* note 22, at 81.

149. *World Anti-Doping Code (WADA)*, *supra* note 107.

150. *Id.*

For there to be unity amongst the anti-doping organizations, WADA should have a role in the ultimate decision-making process. One way in which this could present itself is by allowing WADA to take part in a voting process, rather than simply a recommendation making process. In allowing for both WADA and the IOC to have power, this process could act as a check and balance. Because the IOC has complete say, it can abuse its power or make decisions that may not represent what it, as well as the anti-doping movement as a whole, stands for. This will not only benefit WADA, but also the IOC.<sup>151</sup> By allowing WADA to have a vote on the sanctions an athlete or team receive when caught using performance-enhancing drugs, WADA can be held accountable for its actions. There will be pressure on WADA to conduct investigations with ample time prior to the Olympics so that it is not simply passing off results to the IOC at the last minute.<sup>152</sup> This accountability would have been helpful in the Summer Olympics Rio 2016, as “the former top investigator for the World Anti-Doping Agency told *Pro Publica* that the WADA President delayed his efforts to investigate claims of widespread doping in Russia.”<sup>153</sup> In fact, “WADA first received allegations of doping in Russia in 2010,” but failed to act on it for some time.<sup>154</sup> This decision to delay investigations led to criticisms of WADA for “creating a time-crunch for the IOC’s decision on Russia within two weeks of the Olympics.”<sup>155</sup> It is clear that the IOC is not solely to blame for how the Russian doping controversy was handled. If WADA had a vote in whether an athlete involved in a doping scandal was able to participate in the Olympic Games, both WADA and the IOC would be able to hold each other accountable for their actions.

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151. Alexander Mercouris, *Russian Olympic Doping Scandal: McLaren Report ‘Sexed Up’, Implicated Clean Athletes*, DURAN (Aug. 5, 2016, 11:09 AM), <http://theduran.com/russian-olympic-doping-scandal-mclaren-report-sexed-implicated-clean-athletes/>.

152. Rachel Axon, *Investigator: WADA President Delayed Investigation of Russian Doping*, USA TODAY (Aug. 4, 2016, 10:50 AM), <http://www.usatoday.com/story/sports/olympics/rio-2016/2016/08/04/wada-drugs-russians-IOC-doping/88064832/>.

153. *Id.*

154. *Id.*

155. *Id.*

*B. IFs Should Not Have as Much Power*

IFs act to “establish and enforce, in accordance with the Olympic spirit, the rules concerning the practice of their respective sports and to ensure their application.”<sup>156</sup> The Olympic Charter explicitly states that the IOC has the ability to pass off some of its responsibilities to IFs and “IFs have the right to participate, on request from the IOC, in the activities of the IOC commissions.”<sup>157</sup> This, however, became an issue when the IOC passed off its power to decide which Russian athletes were able to participate in the Olympics just twelve days before the Olympics were set to begin.<sup>158</sup> The IOC entrusted IFs with too much responsibility, all while giving them minimal time to act on this responsibility.<sup>159</sup>

Actions are currently being taken to ensure that this does not happen again, as the President of the IOC, Thomas Bach, argued that “a spate of recent scandals proved international sports federations had far too much power in the anti-doping fight, with their effectiveness often limited by conflicts of interest.”<sup>160</sup> The IOC can address these issues by following two specific measures. First, it can choose not to rely on IFs to determine which athletes caught in doping scandals are able to participate and which are banned from the Olympics. Second, it can create a separate governing body that specifically deals simply with this issue. A governing body acting as the Olympics anti-doping watchdog will create more transparency, as it will not have a stake in athletes going to the Olympics.<sup>161</sup> In addition, by having a singular governing body, there would not be an issue of IFs using different standards to judge whether or not an athlete could compete in the Olympics.<sup>162</sup> By not giving IFs this power, the IOC could be confident that there would be a uniform response by the

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156. Olympic Charter, *supra* note 22, at 57.

157. *Id.*

158. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, *supra* note 65.

159. *Id.*

160. *Olympic Chiefs Call For Global Drug-Testing Body*, LOCAL (Oct. 8, 2016, 11:49 AM), <http://www.thelocal.ch/20161008/sports-heads-meet-in-lausanne-to-recast-doping-rules>.

161. *Id.*

162. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, *supra* note 65.

governing body on how to address athletes involved in doping controversies.<sup>163</sup>

### *C. The Rules Should be Stricter*

The IOC prides itself on having a zero-tolerance policy when it comes to performance-enhancing drug use.<sup>164</sup> It claims that if any athlete tests positive for performance-enhancing drugs, the applicable sanctions and punishments will be applied.<sup>165</sup> When given the chance, however, to create a blanket ban for the 2016 Russian Olympic team after investigations into this state-sponsored doping ploy began, the IOC decided against it.<sup>166</sup> Instead, the IOC delegated the task to the individual IFs.<sup>167</sup> Rather than protecting the rights of clean athletes and having a tough stance on doping, the rules are too lenient on these athletes, which portrays to Olympic athletes and the general public the IOC's weak approach in handling these issues.<sup>168</sup>

The IOC should adopt stricter anti-doping rules to deter nations from engaging in state-sponsored doping.<sup>169</sup> If state-sponsored doping is not a great enough issue to create a blanket ban of an Olympic team, what is?<sup>170</sup> Rather than allowing IFs to deal with the Russian athletes, the IOC should have enacted a blanket ban.<sup>171</sup> A blanket ban is controversial because "they risk punishing the innocent."<sup>172</sup> Although some argue that a blanket ban should be banned itself, this may likely be the best way to deter athletes and nations from engaging in or promoting

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163. *Id.*

164. Peter Walker & Robert Booth, *Mass Doping Claims: IOC Promises Zero Tolerance if Athletes are Found Guilty*, *GUARDIAN* (Aug. 3, 2015, 10:00 AM), <https://www.theguardian.com/sport/2015/aug/03/doping-claim-olympic-medal-athletics-redistribute-farce>.

165. *Id.*

166. Ingle, *supra* note 12; *Anti-Doping Groups and Athletes Ready to Call for Olympics Ban on Russia*, *supra* note 12.

167. *Id.*

168. *Russian Doping Scandal: When it Mattered Most, the IOC Failed to Lead*, *supra* note 65.

169. Walker & Booth, *supra* note 164.

170. *Id.*

171. *Id.*

172. Ron Katz, "Zero Tolerance" Doping Policies By International Sports Organizations Have Created Zero Certainty, *FORBES* (Aug. 18, 2016, 5:46 PM), <http://www.forbes.com/sites/rkatz/2016/08/18/zero-tolerance-doping-policies-by-international-sports-organizations-have-created-zero-certainty/#2c72f57fc9a4>.



performance-enhancing drug use.<sup>173</sup> While the sanctions and punishments currently put in place by WADA and the IOC may have prevented athletes from using performance-enhancing drugs, it is evident that there is still PED use going on today.<sup>174</sup> If there is greater deterrence, there will be less performance-enhancing drug use.<sup>175</sup>

*D. The World Anti-Doping Code Should be Amended to Include Preemptive Rules Regarding State-Sponsored Doping*

The state-sponsored doping by the Russian government was the first of its kind. There is always the possibility, however, that it will not be the last.<sup>176</sup> Because this was the first time in which the IOC was presented with this issue, it was difficult to determine what measures should be taken to ensure that the scandal was properly dealt with.<sup>177</sup> As a result of the lack of rules in place, there was much confusion, anger, and questioning of what the next steps of the IOC should be in determining how the anti-doping laws should deal with the 2016 Russian Olympic team.<sup>178</sup> Rather than making up rules to address future doping scandals as they come, the IOC should be prepared to address these issues.<sup>179</sup> The IOC can address these issues by working with WADA to amend the World Anti-Doping Code to include preemptive rules regarding state-sponsored doping. In having an amended Code to include sanctions and punishments for state-sponsored doping, there will be more solid anti-doping laws, resulting in less frustration from other countries who may not have liked the outcome with the 2016 Russian Olympic team.<sup>180</sup> WADA and the IOC can discuss which methods were successful and which were problematic when dealing with the 2016 Russian Olympic team, creating detailed instructions on

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173. Axon, *supra* note 137.

174. *Athletes Sense a Witch Hunt in Sydney*, ESPN SYDNEY (Sept. 27, 2000), <http://a.espn.com/oly/summer00/news/2000/0927/781868.html>.

175. *Id.*

176. Sean Ingle & Owen Gibson, *Wada Fears for Future As Olympic Chiefs Take Aim Over Russia's Ban At Rio 2016*, GUARDIAN (Sept. 20, 2016, 6:12 PM), <https://www.theguardian.com/sport/2016/sep/20/wada-ioc-olympics-russia-ban-rio-2016>.

177. *Id.*

178. *Russian Doping Scandal: 'When it Mattered Most, the IOC Failed to Lead,' supra* note 65.

179. *Id.*

180. *Id.*

what steps should be taken in the future.<sup>181</sup> In doing so, the IOC can have a system in which there will be greater control over any future state-sponsored doping schemes, with limited inefficiencies.<sup>182</sup>

#### CONCLUSION

The IOC has come under fire after its decision not to create a blanket ban of the 2016 Russian Olympic team.<sup>183</sup> Russia's Olympic team, however, was banned from attending the 2018 Winter Olympics in South Korea and instead, Russian athletes who received an exemption to compete wore a neutral uniform and were referred to as Olympic athletes from Russia.<sup>184</sup> Russian government officials were forbidden to attend and its flag was not displayed at the opening or closing ceremony.<sup>185</sup> In response to this ban, Russian legislators "are preparing retaliatory sanctions against international officials responsible. . . ."<sup>186</sup>

Due to the unpredictability of a largely successful state-sponsored doping ploy, the IOC and WADA must make changes to the anti-doping laws. These changes must be codified to prevent any confusion going forward in the fight against doping. This will give credibility to the laws, as well as protect athletes.<sup>187</sup> In doing so, athletes can feel more comfortable knowing that they, as well as the sanctity of the Olympic Games, are being protected.<sup>188</sup> Until changes are made to the anti-doping laws, however, there will be little progress moving forward. This will prevent the Olympic Games from achieving their intended goals, which are "to protect clean athletes and the integrity of sport, by leading the fight against doping and by taking action against all

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181. Brokaw, *supra* note 142.

182. *Id.*

183. Ingle, *supra* note 12; *Anti-Doping Groups and Athletes Ready to Call for Olympics Ban on Russia*, *supra* note 12.

184. Tariq Panja & Rebecca Ruiz, *Russia Banned from Winter Olympics by I.O.C.*, N.Y. TIMES (Dec. 5, 2017), at A1.

185. *Id.*

186. *Russia Prepares Sanctions in Retaliation for Olympics Doping Ban*, MOSCOW TIMES (Jan. 15, 2018, 4:18 PM), <https://themoscowtimes.com/news/russia-prepares-sanctions-retaliation-for-olympics-doping-ban-60184>.

187. Hard, *supra* note 101, at 534.

188. *Russian Doping Scandal: 'When it Mattered Most, the IOC Failed to Lead'*, *supra* note 65.

forms of manipulation of competitions and related corruption.”<sup>189</sup>

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189. *The Organisation*, *supra* note 17.

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