



32 C/50
18 July 2003
Original: English/French

Item 5.9 of the provisional agenda

**FOLLOW-UP TO THE ROUND TABLE OF MINISTERS AND SENIOR OFFICIALS
RESPONSIBLE FOR PHYSICAL EDUCATION AND SPORT**

**Preliminary study of the technical and legal aspects
of an international anti-doping convention in sport**

OUTLINE

Source: 166 EX/Decision 3.2.2.

Background: At its 166th session, during which Members discussed the preliminary study of the technical and legal aspects of an anti-doping convention in sport (Annex II), the Executive Board adopted 166 EX/Dec.3.2.2 by which it endorsed the proposal made by the Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport (Paris, 9-10 January 2003) for the preparation of an international anti-doping convention in sport. Stressing the fact that doping “threatens to kill sport as surely as it kills athletes”, the ministers and representatives of 103 Member States recognized “a need for increased coordination of efforts at the international level ...through the harmonizing of regulations and practices”.

Purpose: The participants underlined the urgency of preparing an international convention. The Executive Board therefore invited the Director-General, in consultation with the Bureau of the Intergovernmental Committee for Physical Education and Sport (CIGEPE), to set up a group of experts to be responsible for putting into practice the recommendations made by the above-mentioned Round Table and decided to include this item in the provisional agenda of the 32nd session of the General Conference.

Decision required: paragraph 12.

I. HISTORICAL OVERVIEW

1. The Third International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport of UNESCO (MINEPS III), held in Punta del Este, Uruguay, in December 1999, adopted a recommendation on doping and violence in sport. In the Declaration of Punta del Este, the ministers and senior officials responsible for physical education and sport emphasized “the ethical values of sport and urged all countries, both developed and developing, to work together to combat unethical behaviour, including doping in sport”.

MINEPS III invited the Member States of UNESCO and sports organizations: “to take the necessary measures to protect all those practising sport from doping; to develop and implement national anti-doping policies; to encourage States from all regions to accede to the Anti-Doping Convention of the Council of Europe; and to give full support to the newly established World Anti-Doping Agency (WADA) and to participate in its activities”.

2. The Intergovernmental Committee for Physical Education and Sport (CIGEPE), in accordance with Article 8 of its Statutes, at its session in Olympia, Greece, in April 2000, established five working groups, including one on “Doping: education and information”, the main aim of which was to “assess the current impact, and the feasibility of broadening the European Anti-Doping Convention into an international standard-setting instrument in order to guarantee the existence of a recognized international public standard on prevention, information and education with regard to doping”.

3. At the Round Table of Ministers and Senior Officials responsible for Physical Education and Sport, held by UNESCO in January 2003, which brought together 103 Member States and 20 intergovernmental and non-governmental organizations, nearly all participants stressed the problem of doping, seemingly the most serious current threat to sport activities since it endangers the physical integrity of athletes. In that regard the ministers noted a lack of intergovernmental and universal anti-doping regulations. The International Olympic Charter Against Doping in Sport was adopted by a body which is not a governmental organization and its provisions apply only to Olympic sport. The Anti-Doping Convention has, for the time being, been ratified by some 40 States. The World Anti-Doping Agency (WADA), a foundation under Swiss private law set up on the initiative of the International Olympic Committee, adopted, in March 2003, a world anti-doping code. In that regard the ministers noted that owing to the mixed composition of WADA (half intergovernmental and half voluntary athletic organizations), the World Anti-Doping Code could not be legally binding under public law. This observation led them to insist on the importance of preparing an international legal instrument under public law.

4. The Round Table participants requested that UNESCO, in cooperation with the United Nations, other competent United Nations system agencies and the Council of Europe, in close collaboration with other concerned bodies such as the International Olympic Committee, the World Anti-Doping Agency and the International Intergovernmental Consultative Group on Anti-Doping in Sport, coordinate the preparation and the adoption, if possible before the Winter Olympic Games of 2006, of a universal international instrument for this purpose. Consequently, the Director-General of UNESCO was invited “to bring the conclusions of this Round Table to the knowledge of the Secretary-General of the United Nations, drawing his particular attention to ... the desirability of debating this topic in the General Assembly, and asking for the collaboration of the United Nations and other competent United Nations system agencies in the elaboration of an international convention on doping in sport”. On that occasion, Mr Adolf Ogi, Special Adviser to the Secretary-General of the United Nations on Sport for Development and Peace, pledged to support that effort.

5. At its 166th session, the Executive Board examined the question of the follow-up to the Round Table and adopted 166 EX/Decision 3.2.2 (Annex I).¹ Pursuant to that decision, the Director-General convened a meeting of a group of experts at UNESCO Headquarters on 24 and 25 June 2003 for the purpose of considering, and giving their opinion on, the preparation of an international legal instrument relating to the combat against doping in sport. All the experts considered that although a number of instruments have been adopted to combat doping at the national, regional and international levels, none of them has intergovernmental legal force worldwide. As a result, the group of experts stressed the need to prepare an international convention to which there was at present no political, technical or legal opposition” (Recommendations of the Group of Experts).

6. The group of experts also stressed that the drafting of the future international convention should be based on standard texts such as the 1989 Convention of the Council of Europe (STE 135) and its additional protocol, the Copenhagen Declaration of 5 March 2003, the World Anti-Doping Code, and the draft “Global convention against doping” of 14-15 November 2002 (CIGEPS-UNESCO-follow-up group-Council of Europe). On the basis of the above-mentioned texts and the timetable adopted by the Executive Board at its 166th session, the group of experts considered that the preparation of a draft convention could reasonably be expected to be completed on time. They therefore expressed the hope that the preparation of a first draft of the convention could be started rapidly so that it could be submitted to the category II intergovernmental meeting to be convened in early 2004 by the Director-General and to the Fourth International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport (MINEPS IV, Athens, August 2004).

EXISTING INSTRUMENTS AGAINST DOPING IN SPORT

7. With respect to national legislation, a number of countries – primarily European – have been prompted to adopt anti-doping legislation: Belgium, France and Greece in 1965, Italy and Turkey in 1971. In 1984 the Council of Europe adopted the European Anti-Doping Charter for Sport, recommending that Member States and national sporting institutions develop anti-doping regulations, educational programmes and analysis and research laboratories.

On the whole, national legislation has not enabled the problem to be resolved through traditional repressive methods, as courts are reluctant to hand down prison sentences, and fines are not a sufficient deterrent. Competence for disciplining sports competitors belongs to sports organizations. Nevertheless, States do have an essential role to play in prevention, training, education, information and the harmonization of regulations and disciplinary sanctions.

8. At the international level:

- The Canadian Government hosted the first Permanent World Conference on Anti-Doping in Sport in June 1988 in Ottawa, which led to the drafting and adoption of an International Charter on Anti-Doping in Sport, renamed the International Olympic Charter against Doping in Sport in September 1988.
- The Permanent World Conference on Anti-Doping in Sport, which became permanent after the first Conference in Ottawa in June 1988, enables concerned governmental organizations, sports non-governmental organizations and specialist medical organizations and structures to meet once every two years to discuss doping-related themes.

¹ The Executive Board examined in that framework the preliminary study on the technical and legal aspects of an international anti-doping convention in sport (Annex II). The observations made in the Executive Board during examination of this item are summarized in Annex III of this document.

- The International Olympic Committee (IOC) adopted the International Olympic Charter against Doping in Sport in September 1988. This text acted as a reference for the sporting world for the anti-doping struggle by establishing a set of rules and procedural standards for anti-doping controls and the accreditation of laboratories. The action carried out at this level does not appear to have been convincing.
- Cooperation agreements between States, which include the following:

9. The Nordic Anti-Doping Convention is an agreement for cooperation and harmonization of the rules for anti-doping controls during competitions and training sessions. It is applied in the five Nordic countries (Sweden, Norway, Denmark, Finland, Iceland). It was adopted on 20 September 1985 and ratified by all five countries. The American-Soviet agreement signed in November 1988 organizes procedures that are common to the two States with a view to reciprocal controls at training sessions. A cooperation agreement was also signed in December 1990 by Australia, Canada and the United Kingdom.

- The Resolution of the Council of the European Communities and of the representatives of the Governments of the Member States, meeting within the Council, of 3 December 1990 on Community action to combat the use of drugs, including the abuse of medicinal products, particularly in sport (Official Journal of the European Communities, C 329/4).
- The European Anti-Doping Charter for Sport of 25 September 1984 (Recommendation No. R (84) (19) of the Council of Europe). This Recommendation of the Committee of Ministers of the Council of Europe invited Member States and their sports institutions to introduce regulations, set up educational programmes, and establish analysis and research laboratories in order to combat doping.
- The Anti-Doping Convention, adopted in Strasbourg by the Council of Europe on 16 November 1989. This Convention has the particular feature of being open to signature by non-member States of the Council of Europe. To date, it has been signed and ratified by 40 States; in addition to European countries, others including Canada and Australia have acceded to the Convention. The instrument aims to combat doping through the adoption of legislative and practical measures in each country with the assistance of sports organizations. A group has been established under the Convention to monitor the implementation of the measures decided upon.
- The Code of Conduct against Doping in Sport, adopted by the Council of the European Communities (resolution of 19 February 1992 – Official Journal of the European Communities, C 44/1). This is an information and education document aimed at alerting those in the world of sport to their individual responsibilities regarding the problem of doping.
- Declarations issued by the International Summit on Drugs in Sport and subsequent meetings of the International Intergovernmental Consultative Group on Anti-Doping in Sport (IICGADS) (the Sydney Communiqué, and the Montreal, Oslo and Cape Town Declarations).
- The World Anti-Doping Code, Copenhagen Declaration and Resolution, March 2003. The World Anti-Doping Code is the first document to harmonize regulations regarding anti-doping across all sports and all countries of the world. It was developed in several stages under the auspices of the World Anti-Doping Agency. The main sports federations and almost 80 governments approved the World Anti-Doping Code on 5 March 2003 in

Copenhagen (Denmark). The purpose of the Copenhagen Declaration is to forge a political and moral understanding among participants so as to recognize the role of WADA, support the World Anti-Doping Code, and support international intergovernmental cooperation.

THE RELEVANCE AND UTILITY OF A NEW INTERNATIONAL INSTRUMENT

10. Although a number of instruments have been adopted to combat doping at the national, regional and international levels, none of them has intergovernmental legal force worldwide.

11. Thus far anti-doping measures have mainly taken the form of controls and crackdowns. Only a small number of countries have provisions to educate and inform professionals and other persons involved in sport. Here again, the information is generally confined to sports organizations and the medical professions. Existing instruments, except for the Council of Europe's Convention and, to a lesser extent, the Code of Conduct of the European Communities, need to pay more attention to education and information as a means of combating doping. Since anti-doping crackdowns and controls have proved, in the opinion of experts, relatively ineffective (because of the need for random testing, and the lead taken by doping agents ahead of detection techniques), information and education are important ways of effectively preventing the spread of the problem, notably by ensuring the dissemination, safeguarding and promotion of the ethical values of sport.

12. After examining this document, the General Conference may wish to adopt the following draft resolution:

The General Conference,

1. Taking note of the report submitted by the Director-General in accordance with 166 EX/Decision 3.2.2,
2. Thanking the Director-General for his considerable efforts with a view to putting into practice the recommendations made by the Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport,
3. Reaffirms its belief that UNESCO should play a major role in the preparation of an international convention against doping in sport;
4. Decides that the question of combating doping in sport should be regulated by means of an international convention;
5. Invites the Director-General to convene one or more category II intergovernmental meetings to draw up such a convention;
6. Invites the Director-General to submit to it at its 33rd session a final report on the question and a draft convention.

ANNEX I

166 EX/Decision 3.2.2

3.2.2 Follow-up to the Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport (Paris, 9-10 January 2003) (166 EX/42 and 166 EX/47 Part II)

The Executive Board,

A. Follow-up to the Round Table

1. Recalling the recommendations of the Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport held at UNESCO in Paris on 9 and 10 January 2003,
2. Endorsing the proposal for the preparation by UNESCO of an international anti-doping convention in sport,
3. Invites the Director-General, in consultation with the Bureau of the Intergovernmental Committee for Physical Education and Sport (CIGEPS), to set up a group of experts to be responsible for putting into practice the recommendations made by the above-mentioned Round Table;
4. Also invites the Director-General to seek the necessary human and financial resources;
5. Decides to include this item in the provisional agenda of the 32nd session of the General Conference;

B. International Year for Physical Education and Sport

6. Recalling the recommendations of the Round Table, and in particular those concerning the reinforcement of physical education and sport within education systems,
7. Decides to include in the agenda of the 32nd session of the General Conference an item concerning the proclamation by the United Nations General Assembly of an international year for physical education and sport.

ANNEX II

PRELIMINARY STUDY OF THE TECHNICAL AND LEGAL ASPECTS OF AN ANTI-DOPING CONVENTION

“The Ministers emphasize the ethical values of sport and urge all countries, both developed and developing, to work together to combat unethical behaviour, including doping in sport. They appreciate the initiative of the International Olympic Committee (IOC) in establishing the World Anti-Doping Agency (WADA) and emphasize the important role of all governments in WADA and in eliminating doping in sport in general. They further encourage this agency to assist developing countries in their efforts to fight against doping in sport. UNESCO’s role in this field should concentrate on information and education in particular” (cf. Declaration of Punta del Este, adopted by the Third International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport of UNESCO (MINEPS III), held in Uruguay in December 1999).

Doping: definition and effects

1. It is difficult to provide a precise definition of doping. The factors involved are too numerous and too open to a variety of individual interpretations. The legal definition of doping is restricted to the use of banned products or methods designed to enhance by “artificial” means an athlete’s performance in his or her chosen sport. Thus, the ingestion of products that stimulate or “artificially” modify physical capacities outside the context of federated sport does not qualify as doping.

2. Nevertheless, the term doping in common parlance refers to any use of stimulants, whether by professional athletes or schoolchildren. In this definition, it can be considered to be an abuse of pharmacological products for the purpose of enhancing a person’s physical capacities. Used to improve one’s chances of defeating one’s opponents in an organized sporting event, doping is unfair. It thus undermines the very concept of sport and ethics, as well as the health of the person concerned. Doping is considered to be the number one problem in the world of sport, but it is also a sociological phenomenon in industrial societies, where physical appearance has become increasingly important. The practice of doping is not restricted to an elite group of top-level athletes but is affecting younger and younger children, who follow the example of their elders.

3. In the 1960s, television coverage of major athletic events made public the first sports accidents caused by doping. Since 1988, a year particularly marked by doping incidents, there has been a broad mobilization within the world of sports and by governments to take action which is aimed at prohibiting doping, or at least at limiting it. The attention of international organizations has focused on three basic principles: protection of athletes’ health, respect for the ethics of sport and equal chances for all in sporting contests.

Development of national and international measures

4. A number of countries – primarily European – have been prompted to adopt anti-doping legislation: Belgium and France in 1965, Turkey and Italy in 1971 and Greece in 1965. In 1984 the Council of Europe adopted the European Anti-Doping Charter for Sport, recommending that Member States and national sporting institutions develop anti-doping regulations, educational programmes and analysis and research laboratories.

5. The Canadian Government hosted the first Permanent World Conference on Anti-Doping in Sport in June 1988 in Ottawa, which led to the drafting and adoption of an International Charter on

Anti-Doping in Sport, renamed the International Olympic Charter against Doping in Sport in September 1988. Other initiatives have been taken at the international level.

6. UNESCO highlighted the problem of doping by adopting a recommendation following the Second International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport of UNESCO (MINEPS II) held in Moscow in November 1988. In 25 C/Resolution 1.19, adopted by the General Conference of UNESCO at its 25th session in October 1989, the Conference “(affirmed) the need for coordinated action by governmental bodies and voluntary sports organizations, particularly the Olympic Movement, in the framework of an international campaign to combat doping”. The resolution stressed the importance of intensifying the fight against doping in sport at the national and international level and invited Member States to take into consideration existing international instruments against doping in sport, particularly the provisions of those instruments which relate to the role and responsibilities of governments and public authorities. The Council of Europe adopted on 16 November 1989 an anti-doping Convention to combat this scourge. The principal aim of the Convention is to promote, at the national and international levels, the harmonization of measures against doping. It establishes common standards in application of which all the Parties undertake to adopt legislative, financial, technical and other measures. The Convention entered into force on 1 March 1990, and has been opened to all States for signature.

7. The Third International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport of UNESCO (MINEPS III), held in Uruguay in December 1999 adopted recommendations on doping and violence in sport. In the Declaration of Punta del Este, the ministers and senior officials responsible for physical education and sport emphasized the ethical values of sport and urged all countries, both developed and developing, to work together to combat unethical behaviour, including doping in sport.

8. MINEPS III invited the Member States of UNESCO and sports organizations:

- to enhance systematic education and information concerning doping, especially among young people;
- to take the necessary measures to protect all those practising sport from doping;
- to develop and implement national anti-doping policies;
- to encourage States from all regions to accede to the anti-doping Convention of the Council of Europe;
- to give full support to the newly established World Anti-Doping Agency (WADA) and to participate in its activities.

9. Thus far, in addition to some 40 European countries, others, including Australia and Canada, have acceded to the Convention (of the 44 signatories, 39 have ratified it).

10. At the International Drugs in Sport Summit held in November 1999 in Sydney, Australia, 25 countries, the European Commission, and four observers including the International Olympic Committee, decided to establish an International Intergovernmental Consultative Group on Anti-Doping in Sport (IICGADS), which has met several times with a view to:

- fostering international harmonization of laws and regulations in the anti-doping field;
- studying the possibility of a change in the statutes of the World Anti-Doping Agency to improve its operational efficiency (Oslo Declaration, November 2000);

- studying the concept of an international treaty to facilitate government cooperation in support of the role of WADA (Cape Town Declaration, May 2001).

11. At the initiative of States and of the International Olympic Committee, a World Conference on Doping in Sport was held in Lausanne from 2 to 4 February 1999, and led to the Lausanne Declaration on Doping in Sport. At the Conference, it was decided to create an independent International Anti-Doping Agency which should be fully operational for the games of the XXVII Olympiad in Sydney.

12. Cooperation among governments, the International Olympic Committee (IOC), the World Anti-Doping Agency (WADA) and other international and national sports organizations has become imperative if we wish to eliminate the causes of doping and keep the world of sports free of it.

The World Anti-Doping Agency (WADA)

13. Under the terms of the Lausanne Declaration, the World Anti-Doping Agency was founded on 10 November 1999 in Lausanne to promote and coordinate, internationally, the fight against doping in sport. WADA was set up as a foundation under Swiss private law on the initiative of IOC with the support and participation of intergovernmental organizations, governments, public authorities and other public and private bodies fighting against doping in sport. As a result of a ballot held in Tallinn, Estonia, in August 2001, the Foundation Board of the World Anti-Doping Agency (WADA) decided to move the headquarters to Montreal, Canada.

14. WADA's main thrusts are: anti-doping controls, research, education, the promotion of a world anti-doping code and the development of related legislation.

Drawing up an international legal instrument against doping

15. Although a number of instruments have been adopted to combat doping at the national, regional and international levels, none of them has intergovernmental legal force worldwide. The International Olympic Charter against Doping in Sport was adopted by an organization that is not governmental in nature, and it applies only to Olympic sports. It is not legally binding, simply stating and calling for the observance of ethical principles. As for the European Anti-Doping Convention, it is for the moment primarily European in scope.

16. The Anti-Doping Code developed by the World Anti-Doping Agency (WADA) and endorsed by all major sports federations and nearly 80 governments on 5 March 2003 in Copenhagen, is the first international instrument to harmonize rules regarding doping across all sports and nations. It is however based on voluntary adherence, without binding force. The declaration endorsed in Copenhagen by governments and sports federations took due note of the Final Communiqué of the UNESCO Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport (Paris, 9-10 January 2003) which stressed the urgency of elaborating an international convention against doping. At the meeting, the important role of UNESCO as an unbiased, consultative and consensus-building organization, that can play a key role in elaborating this convention was underscored.

17. The existing Council of Europe instrument is well developed and already serves as international law. It is an excellent basis on which to build an international convention, as noted in the above-mentioned Communiqué of the UNESCO Round Table.

18. Should the Executive Board and the General Conference agree that UNESCO takes the lead in preparing this instrument, it would serve when ratified as the legal framework of the agreed-upon anti-doping code.

ANNEX III

RESUME OF THE COMMENTARY OF THE 166th SESSION OF THE EXECUTIVE BOARD ON THE ELABORATION OF AN INTERNATIONAL CONVENTION ON DOPING IN SPORT

At its 166th session, the Executive Board decided to place the question of the development of an international convention against doping in sport on the preliminary agenda of the 32nd session of the General Conference. There was a very strong consensus among the speakers that there was an urgent need for an international convention against doping in sport. Speakers thanked the Director-General for the preparatory work, particularly the preliminary study and the Round Table of Ministers and Senior Officials Responsible for Physical Education and Sport, which enabled them to focus easily on the issues at hand.

The debate focused around three major issues: the importance of developing this convention, the need for the convention to be more than a punitive instrument, and the essential role of UNESCO. Almost every speaker emphasized that an international convention is essential because doping is a breach of ethics in sport, is a menace to public health, and has the potential to eliminate sport, as we know it now. There was strong support for ensuring that the convention would emphasize the importance of public information and education in relation to the use of dope in sport. This was seen, by a number of speakers, as equal in importance to punitive measures.

The majority of speakers underscored the necessity of UNESCO taking on this responsibility. UNESCO was described as an intergovernmental body that can provide a fair and open forum in which the difficult issues surrounding this subject can be discussed. Furthermore, it was argued that UNESCO could serve to ensure that three other areas were emphasized in the development of a convention: attention to physical education as a foundation for sport, promotion of the ethical values inherent in fair play, and promotion of education and information related to doping in sport.

Members of the Board recognized that the development of an international convention, by UNESCO, against doping in sport would require both human and financial resources. There was recognition that the Director-General would need to seek resources in addition to those that will be provided from the regular budget.

While there was recognition that the urgency of the issue would put enormous time pressures on UNESCO in relation to the desire to have a convention in place by the 2006 Olympic Games, speakers underscored the importance of building on existing work to facilitate this task. Key resources mentioned that can serve as a foundation are the convention of the Council of Europe and the Code and Declaration that have been developed by the World Anti-Doping Agency.