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Olympic Judging and Scoring is Far from a Perfect Ten: Why the International Olympic Committee Must Set Standards for Judging and Scoring to Save the Olympic Games

Jenny A. Urquhart*

I. Introduction

“The goal of Olympism is to place everywhere sport at the service of the harmonious development of man, with a view to encouraging the establishment of a peaceful society concerned with the preservation of human dignity.” (Fundamental Principles, Olympic Charter.) In this third millennium, the IOC is more convinced than ever of the positive role that sport can, and must, play as a catalyst in our society. It unites and teaches about respect and tolerance, two values that are essential in today’s world.¹

The role of the Olympic Games is to spread sport to all parts of the world and, through sport, promote fundamental principles of cooperation as catalysts for unity throughout our global society.² Beginning in the 9th Century, Ancient Greece laid the foundation for the Olympic Games. The bedrock of this foundation was the “Olympic Truce,” which served as an international agreement between nation-states that allowed athletes to travel safely for the sole purpose of participation in the Olympic Games.³

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1. International Olympic Committee, *The Olympic Truce: Mission*, 1 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

2. *Id.*

3. *Id.* The Olympic Truce was created in the 9th Century B.C. by treaty. Three kings, Iphitos of Elis, Cleosthenes of Pisa, and Lycurgus of Sparta, signed the treaty to establish the Truce. Eventually, the remaining Greek cities ratified the treaty, which resulted in a:

The purpose of this Comment is to explore the current role of the International Olympic Committee (IOC) and examine its effectiveness as the facilitator of the original Olympic Truce. In Part III, an examination of the 2000 Salt Lake City Games will demonstrate that the IOC is not only capable, but must be willing to interfere during the Games to ensure fairness against the corruption of an International Federation. Part IV of this Comment will highlight some of the scandals and disputes that emerged during the 2002 Athens Games, due, in part, to the IOC's unwillingness to intervene. Part IV will also demonstrate that the international federations for each sport lack adequate judging and scoring standards that would preempt the eruption of scandal and dispute between athletes and nations.

This Comment will demonstrate the need for the IOC to aggressively reform judging and scoring standards for the Olympic Games. The IOC needs to develop standard guidelines for judging procedures and qualifications for judges to be enforced on the international federations for each sport. The IOC also must rein in and eliminate the corruption of the international federations in order to resurrect the original spirit of fairness and competition that began with the Olympic Truce in Ancient Greece.

In modern times, an effort to maintain the spirit of the original Olympic Truce continues.⁴ Even the United Nations recognizes the

permanent, recognized immunity of the sanctuary of Olympia and the region of Elis became a reality. During the Truce period, the athletes, artists and their families, as well as ordinary pilgrims, could travel in total safety to participate in or attend the Olympic Games and return afterwards to their respective countries.

Id. There is ample evidence that the Truce was respected by all. In Olympia, the Greeks never built walls for protection, as they did in all their other cities. *Id.*

4. The modern Olympic Games employs the use of a symbol to maintain the original spirit of the Olympic movement. The importance of this spirit can be seen in the description of the symbol, explained in the Olympic Truce document:

The Olympic Truce is symbolized by the dove of peace with the traditional Olympic flame in the background. In a world that is plagued by wars and animosity, the peace-dove symbol represents of the IOC's ideals to build a peaceful and better world through sport and the Olympic ideal. The Olympic flame has brought warm friendship to all the people of the world through sharing and global togetherness. In the symbol, the flame is made up of colourful [sic] effervescent elements—reminiscent of festivities experienced in the celebration of the human spirit. These elements represent people of all races coming together for the observance of the Truce.

International Olympic Committee, *The Olympic Truce: The Symbol*, 1 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

In order to ensure the continuance of the Olympic Truce in the modern Games, the IOC founded the International Olympic Truce Foundation (IOTF) in July 2000. The IOTF has a symbolic office located in Olympia, the birthplace of the Olympics. The IOTF works to further two main objectives:

The first is "to promote the Olympic ideals to serve peace, friendship and

potential of the Games to inspire the “peaceful settling of all international conflicts.”⁵ Every year before the Olympic Games are held, the U.N. General Assembly passes a resolution urging nation-states to continue adhering to the Olympic Truce.⁶ The latest edition of the Games was no exception. On November 18, 2003, the UN General Assembly passed a resolution for the Athens Games urging the “building [of a] peaceful and better world through sport and the Olympic ideal.”⁷ The U.N. resolution specifically asked that member-states cooperate with the IOC and work toward reconciliation should any conflicts arise.⁸ It is clear that the U.N. supports the Games because it believes that the Games foster a spirit of cooperation between nation-states, rather than bitter disagreement.⁹ The entire global community depends on the Olympic Games to be an important source for strengthening international relationships through the promulgation of the original Olympic Truce.

II. The International Olympic Committee

The International Olympic Committee (IOC) was created in order to facilitate a transfer of the spirit of the original Olympic Truce to modern times. The IOC is the sole owner of the Games and was created to serve as the “ultimate authority on any question related to the Games.”¹⁰

understanding in the world, and in particular, to promote the ancient Greek tradition of the Olympic Truce.” The second is “to initiate conflict prevention and resolution through sport, culture and the Olympic ideals, by cooperating with all inter- and non-governmental organizations specialized in this field, by developing educational and research programmes [sic], and by launching communications campaigns to promote the Olympic Truce.”

International Olympic Committee, *The Olympic Truce: More Than 10 Years of United Nations Support*, 2 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

5. International Olympic Committee, *The Olympic Truce: Mission*, 2 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

6. *Id.* The UN flag flew at the Olympic Village during the Athens Olympic Games to enforce the idea that the UN approves of the Games as a means of promoting world peace. *Id.*

7. G.A. Res. 10201, U.N. GAOR, 58th Sess., U.N. Doc. A/Res/58/6 (2003). This tradition of having the UN General Assembly pass this resolution began in 1993. Through each resolution:

The UN invites its member States to observe the Olympic Truce individually or collectively, and to seek, in conformity with the goals and principles of the United Nations Charter, the peaceful settling of all international conflicts through peaceful and diplomatic means, and recognize the importance of the IOC initiatives for human well-being and international understanding.

International Olympic Committee, *The Olympic Truce: Mission*, 2 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

8. *Id.*

9. *See id.*

10. International Olympic Committee, *The Role of the IOC in the Olympic Games: The Games*, (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

However, due to recent judging and scoring scandals, the leadership of the IOC and its control over the Games has come into question.¹¹

Although the IOC is meant to serve as the “ultimate authority” on conflicts that arise at the Games, the Olympic Charter gives all responsibility for the “technical control and direction” of each sport to the respective international federation for that sport.¹² An international federation is a non-governmental organization that administers a particular sport at a global level by encapsulating the many national organizations in charge of that sport in each particular country.¹³ The IOC gives each international federation “independence and autonomy in the administration of its sport.”¹⁴ Each international federation sets its own judging and scoring standards. This includes selection of judges and any decisions involving the implementation of scoring systems.¹⁵ A striking absence of any overall requirements for judging and scoring administration in the Olympic Charter highlights the fact that there is no formal oversight of the international federation’s administration of their particular sports by the IOC.

Historically, the IOC rarely became involved in judging and scoring controversies, leaving the applicable international federation to settle any disputes.¹⁶ Thus, the international federations are essentially self-policed. This grant of “unconditional autonomy” to international federations has led critics to conclude that the IOC has created “thugs” out of the very organizations that are meant to keep the peace within their sport.¹⁷ Critics believe that the IOC’s “selective detachment” has allowed the international federations to become breeding grounds for corruption, bribery, and intimidation.¹⁸

Some argue that only the National Olympic Committees (NOC) have worked against the apparent failure of the international federations to maintain objective judging and scoring standards for their sports. The Olympic Charter declares the mission of the NOCs to be the promotion of the Olympic spirit in their own countries.¹⁹ However, in recent

11. See Christine Brennan, *Just Like Drug Scandal, Judging Controversies Need Major IOC Intervention*, USA TODAY, Aug. 26, 2004, at D06.

12. International Olympic Committee, *The Olympic Charter*, 38 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

13. *Id.*

14. *Id.*

15. See, e.g., Federation Internationale de Gymnastique, *Technical Regulations 2005, Section 1 General Regulations*, 7, (July 2004).

16. See Vicki Michaelis, *Judging Gets Low Marks*, USA TODAY, Aug. 25, 2004, at D01.

17. Selena Roberts, *Sports of The Times; IOC Leadership is Lacking a Pulse. Is there a Doctor in the House?*, N.Y. TIMES, Aug. 29, 2004 at § 8, p.8.

18. *Id.*

19. International Olympic Committee, *The Olympic Charter*, 40 (July 2004), at

Games, the role of NOCs seems to be the financing of court battles to settle disputed results of their athletes.²⁰ The Olympic Charter defines the roles of the NOCs as the active work of fostering a hospitable environment for their athletes, implementing the Anti-Doping Code, and maintaining rules for whom may represent their country at the Games.²¹ While the Charter declares that the NOCs have a right to “benefit from the assistance of Olympic Solidarity,” the recent role of the NOCs has boiled down to actively advocating for their athletes in court battles.²² Parts IV and V of this comment will demonstrate that, rather than promoting the spirit of the Olympic Truce in their countries, the NOCs have been forced into competition with one another in order to protect their own athletes from the apparent corruption of the international federations and the absence of any IOC intervention.

These controversies are set against a backdrop of general international distrust of the IOC. In 1999, the United States Congress expressed its distrust of the IOC President, Juan Antonio Samaranch, by publicly threatening legislative action, including “revoking [the IOC’s] tax-exempt status, tightening anti-bribery statutes, and barring American companies from financially supporting the Games.”²³ This distrust stemmed from allegations that, for at least 19 years, members of the IOC accepted “cushy trips, pricey gifts, and allegedly even sexual favors from the cities vying to host the Olympics.”²⁴ Even writers for *Sports Illustrated* urged its own parent company, Time Incorporated, to stop its sponsorship of the Games as a way to encourage reform of the corruption within the IOC.²⁵ Amid the controversy, the IOC demonstrated its ability to change by imposing 50 reforms, including opening meetings to the press and limiting leadership terms within the IOC.²⁶ The recent disputes that have arisen due to the corruption within the international federations make it increasingly clear that the IOC not only has the capacity, but the obligation, to reform the Olympic Games and take a stronger role in enforcing new general standards for judging and scoring.

<http://www.olympic.org> (last visited Sept. 10, 2005).

20. See Jill Lieber, *Going for Gold Again, This Time with Lawyers, Hearing Threatens Hamm’s Olympic Title*, USA TODAY, Sept. 24, 2004, at A1.

21. *Id.*

22. *Id.*

23. Jeff Glasser, *Reformed Olympics But Congress is Wary*, U.S. NEWS & WORLD REP., Dec. 27, 1999, at 30.

24. *Id.*

25. Rick Reilly, *Time for Us to Check Out of the Olympics*, SPORTS ILLUSTRATED, Feb. 22, 1999, at 98.

26. Jeff Glasser, *Reformed Olympics But Congress is Wary*, U.S. NEWS & WORLD REP., Dec. 27, 1999, at 30.

III. The Anomaly of the Salt Lake City Games in 2000

A. *The Scandal*

Against this backdrop of a hands-off IOC, corrupt international federations (IFs), and competitive NOCs, the figure skating scandal of the Salt Lake Games in 2000 played out. This scandal became the clear point of breakdown for judging and scoring in the Olympic Games.²⁷ A history of corruption within the International Skating Union (ISU), the IF for figure skating, came to a head during the Pairs Figure Skating Competition, when the Canadian team was denied the Gold Medal despite a flawless performance.²⁸

The Canadian team of Jamie Sale and David Pelletier skated a flawless performance during the Pairs Skating Competition.²⁹ The Russian team of Elena Berezhnaya and Anton Sikharulidze skated an excellent performance but with a crucial technical flaw that made the performance inferior to that of the Canadian team.³⁰ Despite this, the Russian team was awarded the Gold Medal and the Canadian team, the Silver Medal.³¹ After facing the outrage of the audience, the IOC launched into a four-day investigation. At the end of these four days, the IOC awarded dual Gold Medals to the Canadian and Russian teams, citing "misconduct" amid the ranks of judges and members of the ISU.³² The apparent misconduct involved pressure placed on certain judges to score a certain way, despite the actual performances.³³

Marie Reine Le Gouge, the French judge implicated in the Salt Lake City scandal, claimed that she was pressured by the ISU president to score in a certain way. She later retracted her claims after she was suspended from the ISU.³⁴ Investigators claimed that there was a

27. See Michaelis, *supra* note 17.

28. Amy Shipley, *Skating Judge Alleges More Misconduct; Former French Official Accuses Federation Head of Attempting to Manipulate Voting*, WASH. POST, Apr. 9, 2002, at D1. Francis Betsch, a French judge involved in several world championships, claimed that the ISU president had instructed him on how to vote for the 1994 and 1996 World Championships. Betsch claimed that he was instructed on whether to score German teams high or low, depending on what sort of "deal" they had struck with the ISU president. *Id.*

29. Karen Rosen, *Salt Lake City 2002: Justice is Golden, Canadian Figure Skaters Will Share Disputed Award*, ATLANTA J., Feb. 16 2002, at A1.

30. *Id.*

31. *Id.*

32. *Id.*

33. See Amy Shipley, *Skating Judge Alleges More Misconduct; Former French Official Accuses Federation Head of Attempting to Manipulate Voting*, WASH. POST, Apr. 9, 2002, at D1.

34. *Id.*

conspiracy for the French judge to vote for the Russian skaters in exchange for Russian support for the French Ice Dancing team.³⁵

IOC spokeswoman, Giselle Davies, said that the IOC only took the extraordinary step of involving itself in a judging scandal because "it was a case of clear corruption and manipulation."³⁶ However, many believe that it was really the fever pitch of public outcry that forced the IOC's hand in Salt Lake City.³⁷ The media and the audience took exception to the clear mistake of not awarding the Canadian team the Gold. Apparently, the IOC was heavily influenced, not only by the corruption that caused the mistake, but the public embarrassment suffered by the Games because of the scandal.³⁸

B. *The Attempted Reform*

After the Salt Lake City Games, it was blatantly obvious that the ISU needed to reform the judging and scoring system in order to regain credibility.³⁹ The ISU, as the sole administrators of international figure skating, began building a new judging and scoring system without IOC input but with heavy influence by individual NOCs.⁴⁰ The system that was put into place immediately following the 2000 Games was the product of the Canadian NOC.⁴¹ This system centers on the anonymity of judges, which is believed to keep pressure off the judging panel from outside forces.⁴²

The new judging and scoring system used by the ISU involves a mechanized system, utilizing computers to maintain judges' anonymity.⁴³ The new system requires that the judging panel consist of twelve judges. The scores of nine judges are chosen at random by the computer and

35. Vivek Chaudhary, *Mafia Drama puts Olympics in another Big Fix: Ringleader of Alleged Betting Coup Arrested as IOC Faces Another Damaging Scandal*, GUARDIAN (UK), Aug. 3, 2002, at 16.

36. *Id.*

37. *Id.*

38. *Id.*

39. See Christine Brennan, *Just like Drug Scandal, Judging Controversies Need Major IOC Intervention*, USA TODAY, Aug. 26, 2004, at D06.

40. See Amy Shipley, *Judging Still an Issue as a Sport Tries Again*, WASH. POST, Oct. 20, 2002, at D2.

41. *Id.*

42. *Id.*

43. International Skating Union, *ISU Judging System for Figure Skating and Ice Dancing 2004/5*, at <http://www.isu.org/vsite/vcontent/page/custom/0,8510,4844-152094-169310-31825-132302-custom-item,00.html> (last visited Sept. 10, 2005). The system also includes the elimination of the highest and lowest mark for each skater, a touch-screen computer to enter scores, and a requirement that judges not compare skaters against each other. *Id.*

these scores are used to determine the skater's score.⁴⁴

Despite the ISU's attempt to eliminate corruption with anonymous judging, many of those inside the figure skating community questioned whether secret voting would remedy the sport's tarnished reputation.⁴⁵ For example, the United States directly opposed the new system and believed that anonymity of judges would only further corrupt the judging system. The United States has long been concerned about apparent bloc judging by the former Soviet republics and the US believed the Canadian system would only increase the protection of this corruption from becoming public.⁴⁶ Dick Button, a veteran figure skating announcer, has described the anonymous judging system as "dreadful" and has opined that figure skating has not been able to "clean its own house yet."⁴⁷

The absence of the IOC's involvement in the ISU's attempts to reform its sport in the wake of Salt Lake City is palpable as individual nations feel frustrated by the apparent inadequacies of the new judging and scoring system.⁴⁸ Some of these countries believe that the cure is to adjust the system to fit its own needs during domestic competitions.⁴⁹ However, how these countries will find compromise when the system in its original, disputed form, is adopted for use during the 2006 Turin Olympic Games is questionable.

Additionally, the more unfortunate aftermath of the Salt Lake City scandal was the spillover of controversy and mistrust into the 2004 Athens Games. Olympic Historian John Lucas pointed out that the IOC's unprecedented step in interfering in the skating scandal opened a "Pandora's box" for all other Olympic Sports.⁵⁰ The IOC's actions in Salt Lake City make it impossible for the quiet settlements of judging and scoring disputes.⁵¹ However, the IOC's involvement was necessary so that significant reforms in the arena of judging and scoring could be made.⁵²

44. *Id.*

45. Amy Shipley, *Judging Still an Issue as a Sport Tries Again*, WASH. POST, Oct. 20, 2002, at D2.

46. *Id.*

47. *Id.*

48. *Id.*

49. See Helene Elliot, *A New Day in Skating Scoring: Cumulative Point System Prompted by Olympic Scandal Takes a Step Toward Broad Acceptance at Skate America*, L.A. TIMES, Oct. 21, 2004, at D7.

50. Michaelis, *supra* note 17.

51. *See id.*

52. The IOC has not hesitated to significantly intercede in other aspects of the Games. Unlike the arena of judging and scoring, the Olympic Charter sets out strict and specific guidelines for drug use and testing. Any athlete who wishes to participate in the Games must conform to the requirements. International Olympic Committee, *The Olympic Charter*, 38, at <http://www.olympic.org> (July 2004).

IV. The Athens Games: The Breakdown Continues

The breakdown of the judging and scoring systems continued throughout the 2004 Athens Games. Many sports, including fencing, swimming, equestrian, gymnastics, and boxing, saw controversy that resulted in public outcries, urging the IOC to step in and fix the results in the same way the IOC righted the Salt Lake City scandal.⁵³ The pandemonium culminated in the Men's All-Around gymnastics event when the audience's reaction to the scoring pressured judges to change their scores after the continued commotion of the audience.⁵⁴

Critics, summing up the ineffectiveness of the IOC at the Athens Games, labeled the IOC "passive-aggressive enablers" of the corrupt international federations' continual degradation of the Olympic Games.⁵⁵ It seemed to the Olympic audience that the IOC did not mediate and

The IOC Medical Commission was created in 1967 so that doping, which was on the increase in the world of sport, could be given appropriate attention. Rapidly, the structure put in place expanded so that the following three fundamental aims could be achieved: protecting the athlete's health, defending medical and sporting ethics, and maintaining equal opportunities for all at the time of competition.

International Olympic Committee, *Medical: The Fight Against Doping and Promotion of Athlete's Health*, 1, at http://multimedia.olympic.org/pdf/en_report_838.pdf (July 2004).

The fight against doping is the number one priority for the IOC. It works in close cooperation with the World Anti-Doping Agency (WADA), created in 1999 in Lausanne at the IOC's initiative, and with the support and participation of inter-governmental organisations [sic], governments, administrations and other public and private bodies involved in the fight against doping in sport. Under the terms of the Lausanne Declaration, WADA's aim is to promote and coordinate the fight against doping in sport internationally.

Id.

The World Anti-Doping Code, established by WADA, applies to all athletes, coaches, instructors, officials, and all medical and paramedical staff working or dealing with the athletes participating or preparing for the sports competitions organised [sic] in the framework of the Olympic Movement. All the National Olympic Committees (NOCs) and International Sports Federations (IFs) are obliged to sign the Code before the Games of the XXVIII Olympiad in Athens.

Id.

The Olympic oath sworn by the athletes during the Opening Ceremony of the Olympic Games was changed after the Lausanne Conference in 1999. The following passage was added: 'committing ourselves to a sport without doping and without drugs.'

Id.

On the occasion of the Olympic Games, the IOC Medical Commission implements all practical methods of collecting urine samples and sealing them; and fixes the number of tests to conduct in collaboration with the IFs concerned, the Organising [sic] Committee and the laboratory accredited for the Olympic Games, which works entirely under the IOC's authority.

Id.

53. *Id.*

54. *Id.*

55. Roberts, *supra* note 18.

resolve disputes that arose in several sports, but instead actually fueled these disputes through its complacency.⁵⁶ Further, the IOC's quick action against those who failed drug-testing requirements seemed to starkly contrast to its refusal to step in and resolve heated debates that tarnished the reputations of athletes, judges, and entire International Federations.⁵⁷ Critics also pointed out that the resolution of disputes was left to individual NOCs to work out amongst themselves, a rather dangerous proposition when the pride of political powers hung in the balance.⁵⁸

Perhaps most frustrating was that the problems common to all the disputes that arose during the Athens Games were the judging and scoring systems.⁵⁹ The Olympic audience, seeing the IOC's influence in Salt Lake City, believed that the IOC could have played a bigger role in resolving the disputes of the Athens Games and perhaps in reforming the state of judging and scoring, permanently.⁶⁰ Instead, the audience was confronted with numerous examples of the continued degradation of the Games in many events, including swimming, equestrian, and gymnastics.

A. *Swimming*

An example of a sport that was marred by a judging controversy during the Athens Games was swimming.⁶¹ During the 200-meter backstroke, American swimmer, Aaron Piersol appeared to have won the event, beating the field by almost two and one-half seconds. However, the scoreboard instead listed Piersol as disqualified.⁶² A judge ruled that

56. *Id.*

57. *Id.* The IOC has strict requirements in regards to drug-testing that must be obeyed by all international federations. See Medical, *supra* note 52. In Athens, for example, there was an anti-doping procedure that consisted of eight steps: notification, identification formalities, urine sample, doping control form, laboratory analysis, result of an abnormal analysis, disciplinary commission, and communication to the athletes. All these steps of the procedure are meant to serve as checks on the system to ensure compliance and fairness. The IOC states that their aim is to make the following system as transparent as possible:

In Athens, the tests implemented by the IOC Medical Commission are systematic and respect the rules which ensure their reliability. The top four competitors in each event are tested. Two other athletes are also selected at random. They are escorted to the doping control station to supply samples. The collected samples are then sent to the laboratory for analysis.

Doping Control Station: *Impartial Controls in Athens*. at http://www.olympic.org/uk/games/athens2004/antidoping/index_uk.asp (last visited Sept. 10, 2005).

58. Roberts, *supra* note 18.

59. *See id.*

60. *Id.*

61. Lisa Dillman, *Athens 2004: A Strange Turn of Events; First Aaron Piersol is Disqualified for an Illegal Turn during his Victory in the 200-meter Backstroke. Then His Win is Restored. But the Matter Isn't Closed.*, L.A. TIMES, Aug. 20, 2004, at D1.

62. *Id.*

Piersol had performed an illegal kick-turn at the 150-meter mark.⁶³ However, a technical committee within the Federation Internationale De Natation Amateur (FINA), swimming's international federation, reversed the disqualification and reinstated Piersol's Gold Medal.⁶⁴

Under FINA rules, a turning judge must "record any infringement of the turn procedures on the record sheets provided."⁶⁵ In the case of Piersol's turn, FINA said that the judge's record of the infringement was "inadequate" and not in the "working language of FINA."⁶⁶ After the NOCs of Great Britain and Austria appealed the decision, FINA stated that the judge's report "did not show any violation of the FINA Swimming Rules by the swimmer Mr. Aaron Piersol."⁶⁷ The appealing countries found the ambiguous FINA's rulings unsatisfactory; Britain threatened to appeal the matter to the Court of Arbitration for Sport (CAS).⁶⁸

The initial report of the infraction had suspicions surrounding it, as well. Many within the sport suspected that Piersol was the target of retaliation for speaking out against illegal turns that were performed by his competitor, Kosuke Kitajima, earlier at the Games.⁶⁹ The suspicious way in which the report of the infraction came about and was then reversed, left many wondering if objectivity and fairness were at the core of the decisions or if something else was at work.⁷⁰

B. Equestrian

Another example of the judging disputes that arose at the Athens Games occurred at the equestrian event. During the show jumping event, Germany's Bettina Hoy, took her horse across the starting line two different times, causing her to receive two different times for her performance.⁷¹ The judges on the field, known as the Ground Jury, allocated Hoy 13 different time penalties, resulting in France winning the

63. *Id.*

64. *Id.*

65. FINA-Open Water Swimming Rule #3, Duties of Officials, New Rules 2002-2005, Other Rules & Regulations, at http://www.fina.org/rules/OWS/rules_ows3.htm (last visited Sept. 10, 2005).

66. Dillman, *supra* note 62.

67. FINA Press Release No. 58, at http://www.fina.org/press_04_no58.html (Aug. 19, 2004).

68. *Id.*

69. Dillman, *supra* note 62.

70. *See id.*

71. Comité National Olympique et Sportif Français, et al. & Federation Equestre Internationale, N° CAS OG 04/007, Court of Arbitration for Sport, at <http://www.tas-cas.org/en/recherche/firmrech.htm> (last visited Jan. 22, 2005) [hereinafter "Comité National Olympique et Sportif Français"].

Gold, Britain the Silver, and the U.S. the Bronze.⁷² However, Germany appealed the decision to the Federation Equestre Internationale's (FEI) Appeal Committee. The FEI Appeal Committee reversed the Ground Jury's decision, giving Germany the Gold, leaving France and Britain with lesser medals and the U.S. empty-handed.⁷³

France, Britain, and the U.S. filed a joint appeal with the CAS, claiming that the FEI's Appeal Committee did not have jurisdiction to overturn the Ground Jury's original ruling.⁷⁴ The CAS agreed, stating that the "Ground Jury's ruling was clearly not appealable and the Appeal Committee [of the FEI] at no stage had the power, authority, competence or jurisdiction to entertain the appeal by Ms. Hoy."⁷⁵ CAS's ruling reinstated the original medals to France, Britain, and the U.S.⁷⁶

However, many observers of the equestrian event were left questioning the apparent competency of the FEI to facilitate its own event. The FEI appoints members to both the Ground Jury and to the Appeal Committee, and yet, the FEI could not determine the boundaries of their own bodies within the realm of judging and scoring.⁷⁷ The decision was left up to the CAS, a third party. This meant that a decision could not be made immediately and all parties were left to ponder their dissatisfaction, as was the case for those involved in the gymnastics controversy.

C. *Gymnastics*

The Athens Games most public example of the instability came out of the gymnastics arena in Athens. The dispute involved a judging mistake that led to an altercation about who won the Men's All-Around Gold Medal.

The dispute arose when Korea's Yang Tae Young received an incorrect start value for his parallel bar routine.⁷⁸ Because of this mistake, his score was lower than it should have been, resulting in American Paul Hamm winning the Gold. This caused the Korean team to appeal the determination.⁷⁹ The International Gymnastics Federation (FIG) stated that they would not reverse the designation of medals but

72. *Id.*

73. *Summer 2004 Games: Notebook; Ottey Finding Her Seventh Olympics is the Toughest*, N.Y. TIMES, Aug. 21, 2004, at D2.

74. *Id.*

75. *Comite' National Olympique et Sportif Francais*, *supra* note 72.

76. *Summer 2004 Games*, *supra* note 74.

77. *See* Federation Equestre Internationale, Regulations for Equestrian Events at the Olympic Games, 21st ed. at http://62.2.231.126/PDFS/FEI/06_01/olympic-2004.pdf (last visited Jan. 22, 2005).

78. Lieber, *supra* note 21.

79. *Id.*

later, sent a letter to Hamm through the United States Olympic Committee (USOC), asking him to give up the medal to Yang voluntarily.⁸⁰

In the meantime, the Korean National Olympic Committee appealed the matter to the CAS. After Hamm and the USOC refused to relinquish the Gold Medal voluntarily, the CAS heard the matter.⁸¹ The CAS determined that according to the FIG rules, the Korean team did not file their appeal in a timely manner.⁸² The CAS also determined that the medals should not have been reassigned because Yang's proper score for the parallel bars did not automatically mean that he would have won the other later event.⁸³ The CAS also criticized the FIG for its treatment of Hamm and its request for Hamm to turn over the Gold Medal.⁸⁴

Once again, a third party, the CAS, was forced to look into the Games and found fault with the international federation in charge of that sport. Even more disturbingly, the CAS was in a position to settle heated disputes between countries through the representation of their National Olympic Committees. The culmination of events created a tense situation for the United States and Korea as they waited for a decision from the CAS but felt obligated to continue firmly defending their respective athletes.

V. The Role of the National Olympic Committees in Disputes

The absence of the IOC in the mediation and resolution of these disputes leaves the job to the National Olympic Committees of each nation to defend its athletes. Clearly, any heated disputes between nations create a worrisome situation and is starkly in contrast to the mission of the Olympic Truce.⁸⁵ The response of several NOCs of their dissatisfaction with current judging standards poses a real threat to the continued success of the Games. In response to the gymnastics dispute of the Athens Games,⁸⁶ the Russian Olympic Committee opined that the "system of judge selection mandated by the International Gymnastics Federation testifies to their bias and obvious impunity and is doing irreparable harm to the entire international Olympic movement."⁸⁷

80. *Id.*

81. Yang v. International Gymnastics Federation, CAS 2004/A/704, Court of Arbitration for Sport, at <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Jan. 22, 2005).

82. *Id.*

83. *Id.*

84. *Id.*

85. See International Olympic Committee, *The Olympic Truce*, 1 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

86. See discussion *supra* Part III. C.

87. The Russian Olympic Committee was making reference to two judges changing

NOCs have been pitted against each other in these disputes.⁸⁸ As representative organizations of their nations, often their defense of their athletes begins to take on a patriotic tone of a fever pitch. This disconcerting trend toward more dramatic arguments between NOCs over judging and scoring disputes is demonstrated in the United States National Olympic Committee's (USOC) defense of Paul Hamm in the recent Athens Games.

A. USOC's Defense of Paul Hamm

Like no dispute in recent Olympic past, the controversy surrounding the Gold Medal for the Men's All-Around competition created a heated dispute between the USOC, various US Senators, and the Korean NOC. The controversy involved crowd participation, late-night talk show appearances, and various government officials who tried to intervene to set right the apparent wrongs of the controversy.⁸⁹

Members of the U.S. House Judiciary Committee have legislative and oversight responsibility over the USOC.⁹⁰ The Chairman of this Committee publicly stated that the USOC's role must center on defending Paul Hamm throughout the resolution of the dispute.⁹¹ USOC and the Korean Olympic Committee met several times to discuss the dispute before its eventual resolution in the Court of Arbitration for Sport (CAS).⁹² Also, the USOC paid for Hamm's legal defense and travel expenses, relating to the CAS case and decision.

This dispute took on a clearly political character. A comparison was even drawn between Hamm's fight to keep his medal and the 2004 United States presidential election.⁹³ Both the USOC and the Korean

their scores for Russian gymnast, Alexi Nemov, after the crowd booed the original scores. NBC Commentator, Tim Daggett, claimed that Nemov's scores would not have changed if the crowd had not protested so vocally. Michaelis, *supra* note 17.

88. See discussion *supra* Part III.

89. The response of some judges to the loud cries of distaste by the audience at the Men's All-Around competition have been called "American Idol-like." See Lieber, *supra* note 21. Congressman James Sensenbrenner, of Wisconsin, felt it was part of his job as a member of the House Judiciary Committee to demand answers and to ensure defense of Wisconsin resident Paul Hamm. See Jill Lieber, *Congressman Rips USOC in Hamm Controversy*, USA TODAY, Sept. 1, 2004, at C.02. Paul Hamm appeared on the *Late Show with David Letterman* to discuss the dispute before it was resolved. See Michaelis, *supra* note 17.

90. See Lieber, *supra* note 21.

91. Jill Lieber, *Congressman Rips USOC in Hamm Controversy*, USA TODAY, Sept. 1, 2004, at C02.

92. This meeting between the NOCs created a firestorm in the United States. Cong. Sensenbrenner felt that the USOC needed to consult with Paul Hamm before engaging in any conversations with the Koreans. See *id.*

93. See Lieber, *supra* note 21.

Olympic Committee argued their claims in front of the CAS with an army of attorneys and at great expense.⁹⁴ This created a hazardous environment where nations became engaged in political disputes with each other over Olympic events.

B. Could Olympic Disputes Lead to More Serious Conflicts Between Nations?

The ramifications of this type of negative environment have yet to be fully understood. However, many believe there is an extremely dangerous potential in the Games if these types of judging and scoring disputes are not resolved. Despite the expense of defending the case, both Congressional and USOC support remained behind defending Hamm to the end.⁹⁵ The same kind of unconditional support was devoted to the Korean defense of Yang.⁹⁶ Throughout the dispute, both sides used language including “outrage,” “anger,” and “unfair” to describe the situation.⁹⁷ Such dramatic language indicates how heated these disputes can become and how they fuel a patriotic movement to defend athletes at all costs.

VI. The Court of Arbitration for Sport: The Court of Last Resort?

In the Paul Hamm controversy, the Court of Arbitration for Sport (CAS) played a crucial role in resolving the issue. However, the decision did not come until October 21, 2004, two full months after the event.⁹⁸ This delay in the resolution allowed political posturing of the U.S. and Korea to reach angry and heated tones.⁹⁹ The fact that the CAS is not structured to give immediate resolution to disputes that arise during the Olympic Games raises the question as to whether the CAS is the appropriate place for these disputes to be resolved.

A. Purpose and Background

Even the rules set forth by the CAS seem to suggest that it is not the appropriate place to settle disputes that arise at the Olympic Games. The

94. There were six attorneys working for Paul Hamm’s defense. Legal fees and travel expenses for Hamm’s defense were estimated at \$500,000. *See id.*

95. *See id.*

96. *Id.*

97. *See id.*, see Michaelis, *supra* note 17.

98. Yang v. International Gymnastics Federation, CAS 2004/A/704, Court of Arbitration for Sport, at <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Jan. 22, 2005).

99. *See discussion supra* Part IV.B.

CAS was originally created during the 1980's.¹⁰⁰ International sporting events were on the rise and consequentially, disputes involving international sports also increased.¹⁰¹ Because there was no independent body to hear these disputes, a member of the International Court of Justice suggested the establishment of the CAS.¹⁰²

The CAS is most widely recognized as "an appeals authority in disciplinary disputes."¹⁰³ To date, the international sports community rarely recognizes the purpose of the CAS and therefore rarely uses the CAS to settle a wide range of disputes.¹⁰⁴ Only disputes involving parties with an arbitration agreement may be submitted to the CAS.¹⁰⁵ The CAS lists two types of disputes that may be submitted.¹⁰⁶ The first are commercial disputes involving contractual executions or civil liberties.¹⁰⁷ The second are disciplinary cases.¹⁰⁸ However, even though the general international sports community does not utilize the CAS, the IOC has found itself as a party to many cases within the CAS. The CAS has even established a separate set of rules that are specifically for the Olympic Games.¹⁰⁹

B. *Role in Olympic Disputes*

However, the CAS does not seem to encourage disputes arising at the Games to be settled by the CAS. The CAS rules state that before a claimant can be heard by the CAS, the claimant must have exhausted all other internal remedies available.¹¹⁰ The CAS established an ad-hoc

100. Court of Arbitration for Sport, *History: Origins*, at <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Sept. 10, 2005).

101. *Id.*

102. *Id.*

103. Court of Arbitration for Sport, *History: CAS Objectives and the Future of the Institution*, at <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Sept. 10, 2005).

104. *Id.*

105. Court of Arbitration for Sport, *History: Types of Disputes Submitted to the CAS*, at <http://www.tas-cas.org/en/juris/frmjur.htm> (last visited Sept. 10, 2005).

106. *Id.*

107. Contractual executions typically involve sponsorship and television issues and relationships between athletes and coaches. Civil liberties cases typically involve circumstances surrounding an injury to an athlete. *Id.*

108. A large number of disciplinary cases involve drug use. *Id.*

109. See Court of Arbitration for Sport, *Arbitration Rules for the Olympic Games*, 1, at <http://www.tas-cas.org/en/present/frmpres.htm> (last visited Sept. 10, 2005).

110. See *id.* at 2. Article 1 of the Rules provides:

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, 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.

division to oversee any resolutions of disputes that arise during the Games.¹¹¹ Any decision made by the CAS is enforceable immediately and is final.¹¹² Although the facilities and services of the CAS are free, parties are responsible for all costs related to “legal representation, experts, witness, and interpreters.”¹¹³

Because of the necessity to adhere to the arbitration rules of the CAS, decisions are not usually made quickly.¹¹⁴ While the CAS’ decision resolves the dispute, the use of the CAS during the Games does not work to provide immediate resolution to sensitive political disputes between countries.¹¹⁵ In addition, while the actual services of the CAS are free to parties, in reality, arguing a case in front of the CAS can come at great expense to either individual athletes or the representative organizations of the nation of the athlete’s citizenship.¹¹⁶

VII. Reform is Necessary for the Future of the Games

The original Olympic Truce has served to provide a form of international solidarity since its inception in ancient Greece.¹¹⁷ However, in the face of modern litigation, strong judging and scoring standards must be available to protect the integrity of the Games. Unfortunately, the disputes that arise over judging and scoring create a more volatile environment of distrust at the Games. In addition, because audience reaction has become so influential in recent Games, the disputes are aired publicly.¹¹⁸ This environment of distrust permeates every aspect of the

Id.

111. *See id.* at 2. Article 2 of the Rules provides:

For the period fixed in Article 1, the ICAS shall establish an ad hoc Division of the CAS (hereinafter the “ad hoc Division”), the function of which is to provide for the resolution by arbitration of the disputes covered by Article 1 by means of Panels set up in accordance with the present rules. The ad hoc Division consists of arbitrators appearing on a special list, a President and a Court Office.

Id.

112. *See* Court of Arbitration for Sport, *Arbitration Rules for the Olympic Games*, Art. 21. at p.10.

113. *Id.*

114. *See* discussion *supra* Part V.

115. *See id.*

116. *See id.*; Lieber *supra* note 91.

117. International Olympic Committee, *The Olympic Truce*, 1 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005).

118. There are several examples of how the audience had a direct influence on the result of an event. Public outcry in the figure skating scandal pushed the IOC to award the Canadian pair a Gold Medal. Also, Russian gymnast Alexis Nемов received higher scores from two judges after the audience booed the original scores. Olympic delegates have come to recognize the power of public opinion and attempted to use it to their own advantage. Generally, “Olympic delegates no longer seem willing to address perceived injustices in a quiet manner, hoping to whip up the kind of media and public frenzy that

Games and infects the athletes, coaches, federations, national Olympic committees, and the audience.

If this distrust is not rectified, it will mark the end of the Games as we know it.¹¹⁹ The continuation of heated disputes between nations over Olympic events cannot be permitted to continue. The success of international relationships between nations must be preserved for economic, social, and military reasons. The preservation of peace and the continued stability of international relationships between nations is a universally held priority. If the heated disputes are allowed to continue, it may become necessary to eliminate the Olympic Games in order to preserve that peace.

However, the IOC can take positive steps to reverse the environment of distrust that has developed within the Games. The IOC has shown its ability and willingness to identify a problem and take steps to eliminate that problem. For example, the IOC, when faced with allegations of corruption within its own organization, took dramatic steps to restructure and reform its policies and procedures.¹²⁰ Additionally, the IOC has endeavored for approximately thirty years to eradicate the problem of drug use by athletes during the Games.¹²¹ Also, the example set by the IOC's involvement at the figure skating scandal of Salt Lake City Games demonstrates that the IOC can have a dramatic effect on reforming the Games' integrity and reputation.¹²² The IOC merely stepped in and assigned medals to the rightful recipients.¹²³ The IOC did not suggest that the International Skating Union reform its judging and scoring procedures.¹²⁴ However, the dramatic effect of the scandal and the necessity of the IOC's intervention showed the ISU that it must seek reforms in order to maintain credibility and accuracy. By establishing actual requirements for the international federations to reform their judging and scoring procedures, the IOC could have a significant impact on the future of the Olympic Games.

The IOC must intervene and establish basic standards for judging

left the IOC little choice but to intervene in Salt Lake City." See Michaelis, *supra* note 17.

119. See Rick Reilly, *Time for Us to Check Out of the Olympics*, SPORTS ILLUSTRATED, Feb. 22, 1999, at 98. Reilly encourages top sponsors to eliminate their support of the Olympics due to ongoing corruption. *Id.*

120. See discussion *supra* Part II.

121. See Medical, *supra* note 53. With regard to anti-doping provisions, the IOC created guidelines that trumped any guidelines set forth by the international federations. The IOC also required formal acceptance by the international federations of the anti-doping provisions. In addition, the IOC retains power to make decisions on anti-doping cases during the Games.

122. See discussion, *supra* Part III.

123. See *id.*

124. See *id.*

and scoring. First, the IOC standards should include basic criteria for choosing judges. Although the international federations have their own requirements for judges, as the figure skating scandal demonstrated, these requirements do not prevent corruption.¹²⁵ IOC criteria for choosing judges would provide another check on corruption infecting the judging pool. It would also aid in re-establishing confidence in the impartiality of judges by all those who participate in and observe the Games.

The IOC standards should also include establishing clear rules for events. As several of the disputes that arose out of the Athens Games demonstrate, often event rules and appeals procedures are not clear to athletes or judges.¹²⁶ The IOC should establish requirements that a third party review event rules. The third party should be selected from outside the international federation to confirm the clarity of the rules. If a third party easily understands the event rules, it is likely that athletes, judges, and coaches will easily understand the rules.

In addition, the IOC should establish requirements that scoring procedures be transparent to all participants and observers of the event.¹²⁷ As both the figure skating and gymnastics scandals demonstrate, complex and opaque scoring procedures provide a breeding ground for inaccuracy and corruption.¹²⁸ However, as the ISU's reform of figure skating scoring demonstrates, even disputed attempts at reform go far to engender confidence in the sport by participants and observers. Transparent scoring procedures allow for easier review by third parties in case of the need for dispute resolution.

The IOC's general judging and scoring standards should take precedence over any rules of a particular international federation.¹²⁹ The IOC should have approval power over the international federation rules that are employed within the Games to ensure that the rules adhere to the IOC's general judging and scoring standards.

Finally, the IOC should establish its own judicial body to review disputes that arise throughout the course of the Games. This body should

125. See Amy Shipley, *Skating Judge Alleges More Misconduct; Former French Official Accuses Federation Head of Attempting to Manipulate Voting*, WASH. POST, Apr. 9, 2002, at D1.

126. See discussion, *supra* Part III.A.

127. Just as in the example of the anti-doping cases, transparency should be the main priority behind these scoring procedures. If the IOC creates requirements that scoring procedures be transparent, these scoring procedures would achieve the credibility of the drug-testing process carried out during the Games. See Medical, *supra* note 53.

128. See discussion, *supra* Part III. and VI.C.

129. This suggestion mirrors the requirement that all international federations must accept the anti-doping provisions set forth by the IOC. The case of the anti-doping provisions shows that clear precedence exists for allowing the IOC to take a role that supersedes the power of the international federations. See Medical, *supra* note 53.

exercise jurisdiction over all Olympic-related disputes. The IOC should use its own overarching judging and scoring standards and also the approved international federation rules to judge disputes. The IOC's judicial decisions should be immediately enforceable and final. This would provide for a more immediate method of dispute resolution, which would eliminate the lag time experienced by appeals to the CAS. This might help alleviate the tensions between countries that are defending their athletes by eliminating the waiting period when political posturing has time to heat up the argument.¹³⁰

These suggestions should be implemented immediately.¹³¹ The IOC can use its authority of patronage over the international federations to pass the judging and scoring standards.¹³² Within the Olympic Charter, international federations are bound to work to aid in the Olympic Movement.¹³³ In this spirit, the international federations should work to make the IOC's transition into an active role as smooth as possible. It is in the best interest of the IOC, international federations, national Olympic committees, nations, athletes, and the audience for the judging and scoring of the Games to be reformed.

In order for the spirit of the Olympic Movement to continue, trust and cooperation must prevail among participating nations. The recent escalation of judging and scoring disputes has pitted countries against each other in efforts to defend their athletes. The continuation of the Olympic Games rests on the IOC's ability to take control of the judging and scoring scandals. The IOC must work to repair the environment of the Games and encourage trust between participants and with the audience.

The Olympic Games is one of the oldest, most popular, and most loved expressions of the potential of international cooperation and peace. Despite war, economic strife, and political disagreement, the Olympic Games have served as a conduit for international cooperation and improvement. Immediate and effective reforms must be initiated in order to protect the original purpose of the Olympic Truce. The IOC is

130. For example, the gymnastics controversy, involving Paul Hamm, could have been decided during the Games by an ad hoc judicial body of the IOC, instead of three months later. Perhaps this would have relieved tensions that grew out of the United States and Korean governments.

131. These suggestions should be put in place before the 2006 Winter Games in Torino. Perhaps, these suggestions would save the entire Olympic Community, including athletes and the audience, from the scandals that were experienced during the last two editions of the Games in Athens and Salt Lake City.

132. See International Olympic Committee, *The Olympic Charter*, 38 (July 2004), at <http://www.olympic.org> (last visited Sept. 10, 2005). The IOC maintains "patronage" over the each event at the Games even though the international federation retains technical control over the event under the Charter. *Id.*

133. *Id.*

in a position to ensure that the Games remain a facilitator for peace, cooperation, and trust, throughout the world. It is vital that the IOC play an active role in reforming judging and scoring so that disputes will no longer serve as obstacles to the international relationships between nations that are so valuable to our global community.

