

**Testimony of Scott M. Burns
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Before Senate Committee on Foreign Relations

**“Hearing on the International Convention Against Doping in Sport”
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I. Introduction

Chairman Biden, Ranking Member Lugar, members of the Committee, it is my pleasure to appear this morning before the Senate Committee on Foreign Relations and testify in strong support of the International Convention Against Doping in Sport (Treaty Doc. 110-4). The Convention transmitted by President Bush to the Senate on February 6, 2008, advances the interests of the United States in the fight against drug use and doping in sport. The Convention develops a common approach and harmonizes standards for equitable anti-doping controls in international competition. The Convention is not structured to change national law or regulation, but will continue commitments by parties to promote international collaboration on anti-doping research, education, and drug testing protocols. On behalf of John Walters, Director, National Drug Control Policy, I join the President in urging the timely ratification of this instrument.

II. Discussion

a. Doping in Sport

Doping is the use of a substance or method that artificially enhances athletic performance. Doping often poses a significant risk to the health and well-being of athletes. The use of performance enhancing drugs undermines the ideals of sport and devalues and debases the rewards of competition. The health and ethical consequences of doping particularly impact young people who often emulate the behaviors of elite athletes. As a result, the President highlighted the importance athletics play in our society and the pernicious nature of doping in his 2004 State of the Union Address. He observed that doping is dangerous and sends the wrong message to children that performance is more important than character.

Neither the United States, nor any other single nation, can adequately confront and tackle the multi-faceted challenges posed by doping alone. Sport continues to grow increasingly international in nature. Athletes and coaches compete and train internationally and are impacted by global trends. Recent high-profile steroid trafficking prosecutions in the United States confirm that the trafficking of performance-enhancing drugs is international in scope as well. The source of the steroids and the drug trafficking organizations involved in these prosecutions demonstrates the international nature of this problem. As a result, the 2008 National Drug Control Strategy identified international cooperation and partnership as a core element of the United States’ efforts in combating doping in sport.

b. The Creation of an International Body to Combat Doping

Governments from around the globe and the International Olympic Movement recognized the importance of international cooperation by creating the World Anti-Doping Agency (WADA) in 1999. WADA is the international, independent organization created to promote, coordinate, and monitor the fight against doping in sport in all its forms. The agency is composed and funded equally by the Olympic Movement and governments of the world. Its key activities include scientific research, education, out-of-competition drug testing, and development of anti-doping capacities.

The United States was a driving force in the conception and development of WADA. Per Executive Orders 13165 (August 9, 2000) and 13286 (February 28, 2003), the Office of National Drug Control Policy (ONDCP) serves as the United States representative to WADA. The United States has increasingly played a leadership role in the agency's governance. The United States has served as one of 18 nations on the agency's governing Foundation Board since WADA's inception. In 2004, the United States was elected to serve as one of five nations worldwide on WADA's Executive Committee. Moreover, a number of United States officials serve on various expert committees and technical working groups.

c. The World Anti-Doping Code

The immediate challenge WADA faced following its creation was the myriad of inconsistent and contradictory doping rules across nations and sport. Indeed, prior to 2000, anti-doping rules and regulations, to the extent they even existed, commonly varied or contradicted each other. Often these rules were inconsistently applied and enforced. Thus, depending on the sport or nationality of an athlete, the anti-doping framework varied.

The most important achievement of WADA has been the drafting, acceptance, and implementation of a consistent set of anti-doping rules -- the World Anti-Doping Code (Code). The Code is the core document that provides the basis for harmonized anti-doping rules and regulations within Olympic sport organizations and among governments. The Code also addresses the problems that previously arose from the disjointed and uncoordinated efforts in areas such as testing, adjudications, sanctions, anti-doping prevention and education.

The Code's development was the result of an unprecedented collaboration between governments and the Olympic Movement. The drafting and consultations lasted nearly two years. In fact, the United States and more than 80 governments actively participated in the World Conference on Doping in Copenhagen, Denmark in 2003 during which the Code was approved. The process culminated when the document entered into force on January 1, 2004.

To date, more than 570 sport organizations have become signatories and adopted the Code. All the sport entities in the United States' Olympic Movement, including United States Olympic Committee (USOC) and the United States Anti-Doping Agency (USADA), have signed the Code. Governments, including the United States, however, possess no legal ability to become signatories to a non-governmental, private legal instrument such as the Code.

Therefore, consistent with the ideals upon which WADA was established, governments agreed to include a provision in the Code whereby their commitment to the Code would be demonstrated by the signing of a non-binding political declaration. Thereafter, governments would pursue the development of an international anti-doping convention to be implemented as appropriate to the constitutional and regulatory contexts of each government. The purpose of the Convention was to enable governments to align their domestic legislation and policies, to the extent possible, with the Code in order to harmonize sport rules and public law in the fight against doping in sport.

Remarkably, 192 nations have signed the political statement (the so-called “Copenhagen Declaration on Anti-Doping in Sport”) expressing support for the principles contained in the Code. Governments subsequently concluded that the United Nations Education, Scientific, and Cultural Organization (UNESCO) – the UN agency with technical competence and responsibility in the areas of social and human science in addition to physical education and sport -- was the most appropriate international organization to host such a convention. In January, 2004, drafting of the international convention under the auspices of UNESCO was commenced.

d. The Drafting and Development of the International Convention

The United States Government played an active leadership role throughout the development of the Convention. The drafting process afforded the United States with an extremely fair opportunity to shape the contents and format of the instrument. Our government was represented by senior officials from the Department of State and ONDCP at each of the drafting sessions and inter-governmental meetings. In addition, the United States was selected to serve on UNESCO’s expert drafting group and chaired UNESCO’s International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport during which senior governmental officials from nearly 100 nations discussed the guiding principles of the Convention.

During the drafting process, the State Department and ONDCP regularly conferred with senior officials from a wide range of Federal agencies with technical experience on issues contained in the Convention, such as the Departments of Justice, Education, and Health and Human Services. ONDCP was also in close contact with USADA and the USOC regarding the Convention’s development. Moreover, in April, 2004, a consultation letter, along with a copy of the draft Convention, was sent by ONDCP to nearly 100 potentially impacted non-federal stakeholders. Not a single objection to a substantive provision of the Convention was received. The United States was pleased to support the Convention’s unanimous adoption by the UNESCO General Assembly in October, 2005.

Consistent with UNESCO protocol, thirty countries were required to ratify the document prior to it entering into legal force. The requisite number was reached in February, 2007. At present, 83 nations have become parties to the Convention.

Ratification of the Convention remains an Administration priority. As highlighted in the 2008 National Drug Control Strategy, while the Convention does not alter the manner in which sports operate and are regulated in the United States, ratification sends a clear message domestically and abroad about our commitment to eliminate doping in sport. To that end, we vigorously pursued the Department of State-led process to widely circulate the Convention for analysis on

the document's potential impact, any changes in law or policy that may be required by ratification, as well as any unintended consequences that may result following ratification by the United States.

The vetting process was complete in January, 2008, at which time Secretary of State Rice forwarded the Convention to the President. On February 6, 2008, the President transmitted the Convention to the Senate for its advice and consent to ratification. That same day, the White House issued a Public Statement noting the Administration's ongoing commitment to fighting the use of steroids and other performance-enhancing drugs in sport and urging speedy ratification of the Convention.

While I would be pleased to discuss any particular provision of the Convention in greater detail, I would like to highlight a number of its most fundamental concepts.

e. Noteworthy Aspects of the Convention

i. No Change to U.S. Law, Regulation or Policy Required

The purpose of the Convention was to harmonize the international anti-doping framework in order to promote public health and protect the integrity of sport. The instrument was drafted with a clear recognition, and included specific language, to ensure that regulation of sport remains within the purview of national law and policy. The Convention is careful to place obligations on particular governments only "where appropriate" in order to respect and retain the various ways in which nations regulate sport. The Convention's goal is to secure international commitments and collaboration on anti-doping subjects such as drug-related research, education, and testing. The Code is included as an appendix to the Convention for information purposes, but does not create any binding legal obligations on governments.

No provisions in the Convention require any change to existing United States law, regulation, or policy. Moreover, no implementing legislation would be required. Upon ratification of the Convention, the United States would be compliant with our obligations as a party.

The Convention provides for minimum standards in order for nations to combat drug use in sport. While the Convention will not require changes in the United States, many other nations with less advanced and sophisticated anti-doping regimes will be required to enact and amend laws and regulations to become compliant with the Convention. An important result of the Convention, therefore, will be a global framework that provides more equitable treatment of U.S. athletes competing internationally. United States athletes will compete on a more level playing field as athletes from around the world become subject to more consistent and stringent doping rules.

ii. Professional Sport Leagues Not within the Convention's Scope

Ratification of the Convention will not impact the manner in which U.S. professional sports are regulated or athletes participating in professional leagues are tested or sanctioned. Consistent with its purpose, the definitions contained in the Convention create obligations solely with

respect to those individuals and entities engaged in internationally-regulated competition. We intend to apply the Convention accordingly.

By its explicit terms, the Convention defines which “athletes” fall under the instrument’s jurisdiction. For the purposes of doping control, “athlete” is defined as a person who participates in sport at the international or national level as defined by the relevant national anti-doping organization. Therefore, only athletes under USADA’s testing program would be impacted by the Convention’s doping control provisions. USADA has no authority to include athletes competing in non-Olympic professional sports without the consent and authorization of the professional player.

Further, the Convention only governs the anti-doping frameworks of “sport organizations” which are specifically defined as the “ruling body” for a particular event or sport. According to that term of art, leagues such as the National Football League, National Basketball League, National Hockey League and Major League Baseball would not be within the Convention’s scope. This limitation was intentionally included in the Convention.

iii. No Change in the Relationship Between the Government and USADA or USOC

Ratification of the Convention will not impact existing anti-doping policies in the United States. At present, pursuant to 21 U.S.C. 2001, USADA is the independent, non-governmental organization responsible for administering the anti-doping program for Olympic and Pan American sport in the United States. USADA is a signatory to the Code and fully compliant with its provisions. Ratifying this Convention will not change the relationship between the United States Government and USADA.

To the contrary, the Convention explicitly allows governments to utilize the efforts of anti-doping organization (such as USADA) or other sports authorities and organizations (such as the USOC) to meet any obligations under the Convention. This will avoid any duplication of effort by the Government and private stakeholders. In fact, the Convention will likely have the positive impact of serving to further synergize and coordinate the drug prevention, education, and anti-doping research efforts.

iv. Financing and Compliance Monitoring Mechanisms

Two administrative aspects of the Convention are worthy of note. First, the Convention does not impose any new financial obligations on the United States. Any costs incurred by UNESCO in the administration of the Convention will be derived from that organization’s existing operational budget. Further, we do not anticipate any additional costs to the United States Government as a result of ratification.

Secondly, compliance by parties to the Convention is monitored via a self-reporting mechanism. Nations provide a report to the Convention’s Conference of Parties every two years. The United States has already concluded that we are in compliance with all obligations in the Convention. In any event, the Convention does not set forth any formal action or sanctions that may be taken by UNESCO or the Convention’s Conference of Parties as a result of the compliance reports.

v. Practical Considerations Favoring Ratification

In addition to the aforementioned policy rationale, practical reasons exist to support the Convention. Pursuant to the terms of the Code, only representatives from sport organizations that are Code compliant and from national governments that have ratified the Convention by 2009 may continue to serve in WADA leadership positions. Consequently, failure to ratify the Convention jeopardizes our leadership standing internationally.

The United States currently serves on WADA's governing Executive Committee and Foundation Board. By virtue of these posts, the United States has been at the forefront in shaping global anti-doping policy and ensuring that our national interests are represented by this international agency. We have achieved a number of results that have positively impacted our efforts to reduce drug use in sport and ensure that our athletes compete on a level playing field in international competitions.

For example, we have fought vigorously to ensure global balance exists in WADA's governance. We were pleased that the Honorable John Fahey of Australia was elected the new President of WADA beginning in January, 2008. Mr. Fahey, the former Australian Finance Minister, has consistently and publicly recognized that the contributions the United States Government and our non-governmental stakeholders have made in the global fight against doping. Mr. Fahey brings a sound understanding and appreciation of the manner in which sport is regulated in our country.

In addition, our leadership positions have enabled us to successfully resist calls from some entities to weaken international drug control efforts by removing controlled illicit substances such as marijuana and MDMA from WADA's list of prohibited substances. Finally, the United States, consistent with the direction received from the Appropriations Committees, has also worked tirelessly to ensure that WADA utilized its funds in a prudent manner and increases to its operating budget are minimal.

In addition, the International Olympic Committee (IOC) has mandated that in order to host the Olympic Games, a nation must have ratified the UNESCO Anti-Doping Convention and the country's National Olympic Committee and National Anti-Doping Organization must be Code compliant. As you are aware, the City of Chicago is one of seven cities to have submitted an official bid to the IOC to host the 2016 Summer Olympics. Each of the other bidding nations (Azerbaijan, Brazil, Czech Republic, Japan, Qatar, and Spain) has already ratified the Convention. As President Bush stated in January, 2008 during his visit with the Chicago 2016 Bid Committee and USOC leaders, the country strongly supports Chicago's bid to bring the Olympic Games to the United States. Ratification of the Convention will be a positive step toward achieving that goal.

III. Conclusion

Mr. Chairman, it has been an honor to have represented the United State Government on the WADA Executive Committee and Foundation Board since 2004. I am pleased to report that the efforts of our Government have resulted in a dramatic and positive change in international

perception of our commitment to combating drugs in sport. Previously, some in the international community were skeptical of the intensity of our resolve to confront this issue. In recent years, however, we have gained the respect of governments worldwide and the International Olympic Movement based on an unwavering commitment to address doping in sport.

Our government has assumed an unprecedented leadership role in WADA and in the international community. The President has highlighted the dangers of doping on several high profile occasions. USADA, with the enthusiastic support and partnership of the USOC, has developed into one of the world's most respected national anti-doping agencies. Federal law enforcement agencies have successfully conducted criminal investigations into the illegal trafficking of steroids and other performance enhancing controlled substances. Operation Gear Grinder, Raw Deal, and BALCO are now part of the U.S. vernacular and symbolize our collective determination to combat steroid abuse and protect young people from the deleterious effects of these drugs.

Congress also deserves a significant amount of credit for its leadership, commitment, and vision. Congress has been an invaluable partner in raising the awareness of this public health issue, providing the resources to ONDCP and USADA to pursue the issue vigorously, and amending the Controlled Substance Act to ensure the law evolves with science and technology.

The efforts to combat doping in the United States truly have been a team effort. While much progress has been made, additional actions are necessary. The next step in our shared fight to protect the public health and integrity of sport is the ratification of the Convention Against Doping in Sport. Becoming a party to this instrument is in the U.S. national interest. It will further demonstrate our commitment to working in the international arena to reduce the incidence of drug use in sport. It will also enable the United States to continue to play a defining role within WADA and permit Chicago and the USOC the ability pursue its outstanding bid to bring the Summer Olympics back to our nation for the first time since Atlanta hosted the Games in 1996.

I urge the Committee to take favorable action with respect to the Convention as soon as practical. ONDCP greatly appreciates the Committee's interest in this topic. I would be pleased to answer any questions you may have.

Thank you.