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United Nations Office on Drugs and Crime

SYMPOSIUM

of the Anti - Corruption Academic (ACAD) Initiative

Moscow, 30-31 October 2015

Compendium

of the papers submitted by the participants

**Vienna
2015**

Preface

From 30 to 31 October 2015, 109 academics and experts from 35 countries representing 79 institutions took part in the Symposium of the Anti-Corruption Academic (ACAD) Initiative, organized jointly by the United Nations Office on Drugs and Crime (UNODC), the Moscow State Institute of International Relations (MGIMO), and the Rule of Law and Anti-Corruption Centre (ROLAC), Doha, Qatar. During the Symposium, MGIMO announced the establishment of the MGIMO Academic and Research Anti-corruption Center.

The ACAD initiative is a collaborative academic project which seeks to support academics to teach and conduct research on corruption related issues. The initiative has developed a menu of academic resources, teaching modules, syllabi, case studies, educational tools and reference materials that can be used by universities and other academic institutions to develop or enhance their academic programmes. More information can be found here:

<http://www.track.unodc.org/Education/Pages/ACAD.aspx>

The participants of the Symposium of the ACAD initiative:

Highlighting the importance of anti-corruption, ethics and integrity training for all students, public officials and professionals, as recognized in article 13 of the UN Convention against Corruption;

Convinced of the important role of academia and education as an effective way to build integrity and to prevent and combat corruption using multidisciplinary and action learning approaches;

1. *Recommend* that UNODC and academic institutions, as a part of the Anti-Corruption Academic Initiative, and in cooperation with relevant partners, continue to develop and share academic materials in the field of anti-corruption related education for universities and other academic institutions;
2. *Recommend* that academic institutions develop and teach anti-corruption courses and programmes for a wide range of disciplines and students and to integrate anti-corruption elements into other academic courses;
3. *Encourage* competent educational authorities to facilitate accreditation of anti-corruption courses;
4. *Recommend* that relevant national, regional, international and civil society organizations work with academia to support the teaching of anti-corruption and the dissemination and promotion of academic materials to the fullest extent possible;

5. *Recommend* that ACAD members support and promote ethics and integrity learning in secondary and primary schools;
6. *Recommend* that ACAD members share experiences and expertise on anti-corruption education through academic exchanges, workshops and networks, at the regional level and/or on different thematic areas;
7. *Recommend* that the ACAD members continue updating and improving the resources available on the ACAD homepage, including the UNCAC Model Course and materials in different languages;
8. *Recommend* that ACAD members and relevant national, regional, international and civil society organizations promote in-depth research of the scope, causes and risks associated with corruption, and the effectiveness of anti-corruption measures;
9. *Recommend* that UNODC and other relevant stakeholders continue developing capacity-building initiatives, including new knowledge products and technical tools, subject to the availability of resources, to identify comparative good practices in the field of anti-corruption education and to facilitate the exchange of expertise and lessons learned among academics, universities and other academic institutions and stakeholders in the context of the ACAD initiative.

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SPORTS CORRUPTION: JUSTICE AND ACCOUNTABILITY THROUGH THE USE OF THE UNCAC AND THE UNTOC

By Nikos Passas

By Catherine Ordway

The corruption scandal currently engulfing football's international governing body, the Fédération Internationale de Football Association (FIFA), and the recent allegations of bribery in order to host the 2006 World Cup in Germany¹ raise a number of issues. Allegations in recent years of bribery, embezzlement, misappropriation, money-laundering, vote rigging and other abuses of power within several international sports federations demand that this type of misconduct be investigated and prosecuted. In the absence of a comparable international integrity oversight body similar to the World Anti-Doping Agency (WADA), it is timely to examine the applicability and potential usefulness of existing international instruments.²

Given that the United Nations Conventions against Corruption (UNCAC) and against Transnational Organized Crime (UNTOC) represent the most comprehensive global standards and have the highest number of States Parties (177 and 185 respectively, as of October 2015), this paper examines in detail the applicability of these instruments to the most prominent and challenging sports corruption instances revealed in recent times. The misconduct covered by these instruments and their mutual legal assistance frameworks, in addition to innovative provisions on dual criminality, asset recovery and the definition of an organized criminal group, can significantly enhance international cooperation and effective law enforcement. In this way, justice, accountability and greater transparency will be boosted on a global scale.

¹ Spiegel Online, "World Cup Scandal: Germany Appears to Have Bought Right to Host 2006 Tournament", 16 October 2015, <http://www.spiegel.de/international/world/documents-indicate-slush-fund-used-in-german-world-cup-bid-a-1058212.html> [last accessed 19 October 2015].

² Noting that the World Anti-Doping Agency (WADA) is also supported by the UNESCO International Convention Against Doping in Sport (2005), <http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/international-convention-against-doping-in-sport/> [last accessed 19 October 2015].

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The application of United Nations Convention Against Transnational Organized Crime (UNTOC)

The United Nations Convention Against Transnational Organized Crime (UNTOC) was adopted in November 2000 and came into force in 2003. As of October 2015, 185 states have ratified it and are parties to it. It constitutes an acknowledgement that cross-border misconduct requires close international cooperation to tackle it. States parties are mandated to introduce, if they do not already have, four basic criminal offences³. The UNTOC provides an extensive facilitative legal basis and framework for extradition, mutual legal assistance, international cooperation in law enforcement and capacity building through information exchanges, training and technical assistance. The four basic UNTOC offences are:

- participation in an organized criminal group (Art. 5)
- laundering of proceeds of crime (Art. 6)
- corruption (Art. 8)
- obstruction of justice (Art. 23)

States parties must criminalize all of these acts. It must be emphasized that transnationality and involvement in an organized criminal group need not and should not be elements of these offences in domestic law (Art. 34 (2)).

³ **Art. 5. Criminalization of participation in an organized criminal group**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: (a) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity: (i) Agreeing with one or more other persons to commit a serious crime for a purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group; (ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes an active part in: a. Criminal activities of the organized criminal group; b. Other activities of the organized criminal group in the knowledge that his or her participation will contribute to the achievement of the above described criminal aim; (b) Organizing, directing, aiding, abetting, facilitating or counseling the commission of serious crime involving an organized criminal group.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

3. States Parties whose domestic law requires involvement of an organized criminal group for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article shall ensure that their domestic law covers all serious crimes involving organized criminal groups. Such States Parties, as well as States Parties whose domestic law requires an act in furtherance of the agreement for purposes of the offences established in accordance with paragraph 1 (a) (i) of this article, shall so inform the Secretary-General of the United Nations at the time of their signature or of deposit of their instrument of ratification, acceptance or approval of or accession to this Convention.

The term “organized criminal group” is defined as a structured group of three or more persons that exists for a period of time, acts in concert and aims to commit serious crimes (i.e. crimes punishable by deprivation of liberty of at least four years or a more serious penalty – Art. 2(b)) or other offences covered by UNTOC, in order to obtain a direct or indirect financial or other material benefit (Art. 2)⁴. A structured group does not require a formal organization, membership or structure, but it has to be more than just: “...randomly formed for the immediate commission of an offence” (Art. 2(c)).

Participation in an organized criminal group is essentially agreeing to commit a *serious crime* for financial or material benefit or knowingly taking part in criminal or related activities of an *organized criminal group* to contribute to a given criminal aim. States Parties can adopt different approaches to conspiracy or association, but the important point is that domestic law is expected to ensure that all serious crimes committed by organized criminal groups are covered.⁵

In this context, it is interesting to consider the criminal prosecutions initiated by both the United States and Switzerland against high ranking members of the international football association. FIFA, based in Zurich, Switzerland, owns the rights to the men’s and women’s World Cups and is the custodian of what is known as ‘the world game’. On 27 May 2015, the US Department of Justice announced that it had indicted nine FIFA officials and five sports marketing executives for criminal enrichment, conspiracy and corruption through racketeering, bribery, wire fraud and money laundering.⁶ The 47-count indictment alleges that the co-conspirators systematically paid, and agreed to pay, well over US\$150 million in bribes and kickbacks to obtain lucrative media and marketing rights to international football tournaments over a 24-year period. The highest ranking FIFA official named is the previous President of the football association for the

⁴ Ideologically motivated offences are thus not covered.

⁵ One non sport benefit of this clause is that it addresses inchoate offences, such as those relating to piracy, which is not otherwise covered by the United Nations Convention on the Law of the Sea (UNCLOS).

⁶ US Office of Public Affairs, Department of Justice, Press Release, “Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering, Conspiracy and Corruption”, 27 May 2015, <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>, [last accessed 3 October 2015]. Note that some jurisdictions, such as Russia which was awarded the rights to host the 2018 FIFA men’s World Cup, have criticised the actions taken by the US: S Rainsford, “Russia cries foul: Fifa arrests ‘a conspiracy’ says Moscow”, *BBC News*, 28 May 2015, <http://www.bbc.com/news/world-europe-32925637> [last accessed 18 October 2015]

Americas (CONCACAF), and President of the Caribbean Football Federation, Jack Warner.

It is clear that the fourteen-man conspiracy alleged by the US can be considered to be an *organized criminal group* for these purposes, even though many of those involved are not US citizens.⁷ On 25 September 2015, the Swiss Office of the Attorney General (OAG) commenced criminal proceedings against FIFA President Joseph S. Blatter on ‘suspicion of criminal mismanagement’ and on ‘suspicion of misappropriation’ (Arts. 158 and 138 of the Swiss Criminal Code). These proceedings relate to a broadcasting agreement between Blatter and Warner in 2005, and a 2011 payment made by Blatter to Michel Platini, President of the Union of European Football Associations (UEFA).⁸ It is not yet clear whether the purpose for making these corrupt payments was for Blatter to secure his presidential position (vote rigging), or whether it had other criminal motivations, such as money laundering.

The offence of money laundering includes acts designed to obscure the criminal source of assets through conversion or transfers (‘layering’). The offence covers the concealment of the nature, source, location, disposition, movement or ownership of crime proceeds. To the extent that this is consistent with the fundamental legal principles of States Parties, the offence covers also the knowing acquisition of crime proceeds as well as participation, association, conspiracy, attempts, aiding, abetting and facilitation of money laundering (Art. 6).

The mandatory offence of corruption covers the promise, offer, giving, solicitation or acceptance of any undue advantage to/by a public official in order to act or refrain from acting in any matter relating to the official’s public duties (Art. 8). UNTOC

⁷ The jurisdictional link with the US here is the use of US bank accounts, and meetings held in the US between co-conspirators: P Blake, “Fifa scandal: Why the US is policing a global game”, *BBC News*, 28 May 2015, <http://www.bbc.com/news/world-us-canada-32889845> [last accessed 18 October 2015].

⁸ Office of the Attorney General of Switzerland, Press Release, “Criminal proceedings against the President of FIFA”, 25.09.2015, <https://www.news.admin.ch/message/index.html?lang=en&msg-id=58891> [last accessed 3 October 2015]. See also the discussion by A Brown, “Swiss Open Criminal Proceedings Against Blatter”, *Sport Integrity Initiative*, 27 September 2015, http://www.sportsintegrityinitiative.com/swiss-open-criminal-proceedings-against-blatter/?utm_content=buffera2d6b&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer [last accessed 3 October 2015].

also provides for the optional offence of bribery of foreign public officials or officials of international organizations – which is mandatory under the OECD convention on Combating Bribery of Foreign Public Officials in International Business Transactions – and other types of corruption, such as the abuse of power, abuse of function, illicit enrichment, etc.⁹ (See the discussion on the UNCAC below).

It is interesting to consider in this context whether the definition of “officials of international organizations” could apply to paid or unpaid representatives of bodies such as FIFA, WADA or the International Olympic Committee (IOC) for example. An obvious application of this in a sports context relates to allegations that the self-confessed doper and seven time Tour de France winner, Lance Armstrong, paid a bribe to the international cycling federation (UCI).¹⁰ While doping is not a criminal offence in Switzerland, unlike some other jurisdictions, the claim made by fellow team members Floyd Landis and Tyler Hamilton, to the United States Anti-Doping Agency that Armstrong bragged that he had made a ‘donation’ to the UCI to make the positive drug test from the 2001 Tour de Swiss “go away” could theoretically fall within this Art. 8.¹¹ In this case however, the Cycling Independent Reform Commission examined these claims and ultimately found that, while Armstrong had made a US\$25,000 donation to the UCI in 2002, and that accepting this donation may not have been a prudent course of action for the UCI given the allegations surrounding Armstrong at the time, there was no evidence of a ‘positive’ drug test from this event, and the UCI had not committed any offence.¹²

In addition, the UNTOC can be applied to any offences that are:

- transnational

⁹ The last mandatory UNTOC offence is obstruction of justice: the use of force, threats or intimidation or promise, offer or giving of undue advantages, in order to interfere with giving of evidence or testimony or to interfere with exercise of duties of judicial or law-enforcement official in connection with proceedings on any UNTOC offence.

¹⁰ Affidavit of Floyd Landis, p. 4, and Affidavit of Tyler Hamilton, pp. 13-14. See United States Anti-Doping Agency v. Lance Armstrong, Reasoned Decision on Disqualification and Ineligibility (10 October 2012), <http://cyclinginvestigation.usada.org/> [last accessed 18 October 2015]

¹¹ Paragraph 2.4.1.1 “Disappearance of Lance Armstrong’s positive test result at the 2001 Tour de Suisse”, Cycling Independent Reform Commission Report (2015) pp161-166, http://www.uci.ch/mm/Document/News/CleanSport/16/87/99/CIRCReport2015_Neutral.pdf [last accessed 18 October 2015]

¹² Cycling Independent Reform Commission Report (2015) p166 http://www.uci.ch/mm/Document/News/CleanSport/16/87/99/CIRCReport2015_Neutral.pdf [last accessed 18 October 2015]

- constitute serious crimes; and
- are committed by an organized criminal group

A crime is considered transnational when it is committed (a) “...in more than one State”; or (b) “...in one State but a substantial part of its preparation, planning, direction or control takes place in another State”; (c) “in one State but involves an organized criminal group that engages in criminal activities in more than one State” or (d) “...in one State but has substantial effects in another State” (Art. 3(2)).

Thus, sports crime and corruption can be addressed through the UNTOC in multiple ways. The most straightforward ones would be whenever offenders act as or participate in an organized criminal group, launder the proceeds of their crime, bribe public officials or obstruct justice. These are quite likely scenarios given the social organization of different types of sports misconduct as outlined above. Unless profits from these offences are recycled into criminal enterprises or informal economies, proceeds of crime would have to be laundered before they can be enjoyed in open and legitimate transactions. Public officials in different positions may play a role in receiving or giving bribes, turning a blind eye or facilitating the commission of sports crimes, tampering with evidence, obstructing justice, assisting in the disposal of assets, money laundering or resisting investigation of alleged offences.

Examples of such misconduct in the sport setting include allegations that national or state government officials bribed members of international sports organizations to obtain the right to host major events in their cities. The scandal relating to the IOC awarding the rights to host the 2002 Olympic Winter Games to Salt Lake City rocked the Olympic movement. In exchange for their votes, IOC members were found to have been variously bribed through the provision of medical care for relatives, workplace internships or scholarships at major universities for their children, expensive guns and majorly reduced land deals.¹³

¹³ B Mallon, “The Olympic Bribery Scandal”, *Journal Of Olympic History*, May 2000, <http://library.la84.org/SportsLibrary/JOH/JOHv8n2/johv8n2f.pdf> [last accessed 16 October 2015]

The UNTOC can also apply to any ‘serious crime’ that is transnational and committed by an organized criminal group. This is at the discretion of States parties, which need to make sure that sports-related offences are criminalized and punishable by four years of imprisonment or more severe penalties. This means these offences could equally apply to ‘cheating to win’ (for those jurisdictions which criminalize sport doping offences¹⁴), and to ‘cheating to lose’ (match-fixing offences, such as those criminalized by Australian states¹⁵), as well as to corruption and fraud offences. Therefore, not only does the UNTOC provide for the main offences but it also affords a framework for dealing with the proceeds and instrumentalities of these crimes. This is a central issue for control, as the international community will be able to reduce or remove the incentives for sports-related crime when it can be established where the money or advantages go, who makes illicit payments, and who benefits from them.

One case study which can be considered in this context is the public funding sponsorship of the US Postal Service cycling team and the admission of systemic doping by Lance Armstrong and the team.¹⁶ This involved what is being termed ‘sporting fraud’ over a number of years from 1998 and implicated 12 athletes and five support staff.¹⁷ This can also be considered to be *trans-national* in the sense that the US Postal team competed internationally, and received prize money and sponsorships fraudulently outside of the US, including using Swiss bank accounts and other devices intended to avoid detection.

Whenever available, any of these options outlined above would allow States to establish jurisdiction and benefit from extensive possibilities with respect to extradition, mutual legal assistance (esp. regarding victims, witnesses, seizure and confiscation of proceeds and instrumentalities of the offence, evidence located in the requested State

¹⁴ C McKenzie (2007) “The use of criminal justice mechanisms to combat doping in sport”, Bond University, <http://epublications.bond.edu.au/slej/4> [last accessed 16 October 2015]

¹⁵ The majority of States and Territories in Australia have enacted legislation to create a crime a match-fixing, attracting a maximum penalty of 10 years in jail, in accordance with the National Policy on Match-Fixing in Sport, Australian Commonwealth Government, (June 2011) <http://www.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport> [last accessed 19 October 2015]

¹⁶ T Tygart, “Statement From USADA CEO Travis T. Tygart Regarding The U.S. Postal Service Pro Cycling Team Doping Conspiracy”, 10 October 2012, <http://cyclinginvestigation.usada.org/> [last accessed 18 October 2015]

¹⁷ “Report On Proceedings Under The World Anti-Doping Code and the USADA Protocol”, USADA, 10 October 2012, <http://d3epuodzu3wuis.cloudfront.net/ReasonedDecision.pdf> [last accessed 4 October 2015]

party, etc.), international cooperation, the use of special investigative techniques (e.g. undercover and proactive investigations), and joint investigations.

The UNTOC provisions harmonize extradition under existing treaties and other arrangements and make extradition available for all UNTOC offences. States Parties cannot refuse extradition solely on the basis of fiscal matters. The UNTOC also contains an *aut dedere aut iudicare* (extradite or prosecute) obligation (Art. 16(10)). It is noteworthy that the obligation to “submit the case without undue delay to its competent authorities for the purpose of prosecution” springs from “the request of the State Party seeking extradition”. Extradition may be refused when the requested State has “substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons”.

The UNTOC provisions on mutual legal assistance are comprehensive (see Art. 18) and quite useful. States Parties must “afford one another *the widest measure of mutual legal assistance* in investigations, prosecutions and judicial proceedings in relation to the offences covered” by UNTOC (Art. 18(1); emphasis added) and include (Art. 18 (3)):

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and asset freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items and expert evaluations;
- (f) Providing original or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

States Parties are able to rely on these UNTOC provisions and establish a legal basis for mutual legal assistance (MLA) as an alternative to other existing instruments or even in the absence of any bi-lateral or other arrangements. For the purposes of requesting and extending MLA, it suffices that the offence is one covered by UNTOC (see above) or that “the requesting State Party has reasonable grounds to suspect that the [serious] offence ..., is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group” (Art. 18(1)).

Most MLA requirements are operational, rather than legislative, but Parties must have in place the legal powers needed to produce and deliver assistance. Under UNTOC, States Parties are required to designate a central authority to receive, execute or transmit legal assistance requests and cannot refuse MLA on the grounds of bank secrecy. Further, more direct liaison arrangements are allowed for other forms of cooperation. For example, under Art. 27, States Parties can:

- establish and enhance channels of communication
- cooperate in inquiries concerning the identity, whereabouts and activities of suspects; the movement of proceeds of crime or instrumentalities
- exchange information on:
 - specific means and methods used by organized criminal groups
 - general trends, analytical techniques, definitions, standards and methodologies

Investigative measures are also supported by the UNTOC, including agreements on joint investigations (Art. 19), domestic and international/cooperative use of special investigative techniques - such as controlled deliveries, electronic or other forms of surveillance and undercover operations (Art. 20) – and measures to encourage those involved in transnational organized crime to cooperate with law enforcement authorities (Art.26). In the anti-doping setting, WADA encourages signatories to the World Anti-

Doping Code to enter into collaborative and information-sharing arrangements with law enforcement¹⁸. WADA itself has signed a Cooperation Agreement with the International Criminal Police Organization (INTERPOL)¹⁹ and a Memorandum of Understanding with the World Customs Organization (WCO).²⁰

UNTOC is replete with additional provisions regarding practical measures to enhance and facilitate international cooperation. For instance, provisions with application to piratical events include those regarding the confiscation of money, property or other assets deriving from UNTOC offences (Art. 12-14), as well as assistance and protection for witnesses and victims (Art. 24-25)²¹.

In short, the UNTOC may provide a common framework for States Parties around the world, when they wish to investigate, prosecute and generally control sports crime and corruption in a collaborative manner. On the other hand, this proposition is not simple in its execution due to a series of challenges in UNTOC's effective implementation.

UNTOC Implementation Challenges

In terms of implementation, the UNTOC is not a simple document. Because it is comprehensive and covers a lot of ground, its implementation relies not on a single government body, but rather multiple units and agencies, including Ministries of Justice, Finance, Foreign Affairs, as well as law enforcement, supervisory and other bodies. This has challenged the capacity of many countries that may have the political will to

¹⁸ WADA Guidelines, "Coordinating Investigations and Sharing Anti-Doping information and Evidence", 5 January 2011, <https://www.wada-ama.org/en/resources/world-anti-doping-program/coordinating-investigations-and-sharing-anti-doping-information> [last accessed 18 October 2015]

¹⁹ Cooperation Agreement between WADA and INTERPOL, 2 February 2009, http://www.interpol.int/content/download/9287/68584/version/2/file/INTERPOL_WADA.pdf [last accessed 18 October 2015]

²⁰ Memorandum of Understanding between WADA and WCO, 27 June 2011, <http://www.wcoomd.org/en/media/newsroom/2011/june/wco-and-world-antidoping-agency-sign-groundbreaking-partnership.aspx> [last accessed 18 October 2015]

²¹ A detailed outline of the UNTOC provisions can be found in the Legislative Guide for the Implementation of the UNTOC, which is available in all UN languages (<http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>).

implement but lack the means. As a consequence, States Parties need technical assistance, which may not always be available in a timely fashion.²²

The number and scope of different instruments that countries are called upon or required to implement and comply with have generated a ‘regulatory tsunami’. In addition to UNTOC, there are thirteen universal counter-terrorism instruments, the UNCAC, sanctions and counter-proliferation of weapons of mass destruction under Chapter VII of the UN Charter, Financial Task Force (FATF) Recommendations, just to mention a few. As a result, many governments are overwhelmed and severely stretched. Even at the level of reviewing requirements, progress, accomplishments and needs, several countries, including those in Southeast Asia (which in the sport environment have also been besieged with match-fixing scandals²³), have reported a need for technical assistance. Reports to the United Nations by States suggest that most technical assistance is needed for training and capacity-building (25 per cent), legal assistance (20 per cent), strengthening of international cooperation (16 per cent) and assistance in complying with reporting requirements (16 per cent).²⁴

In the cheating to lose, match-fixing, setting in sport, in the absence of a sport convention, similar calls for support could have been answered in part through the FIFA-Interpol training and capacity building center recently established in Singapore.²⁵ Instead of accepting money from implicated organizations such as FIFA however, the UNTOC could provide the mechanism to assist countries, such as Singapore and Malaysia, to implement novel witness protection solutions, such as that posed by journalist and

²² See for example the technical assistance and legal assistance needs illustrated in *Figures 1, 2 and 3* in UNODC, Overview of technical assistance needs identified by States in their responses to the questionnaires/checklist on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto 2009; CTOC/COP/WG.2/2009/2, http://www.unodc.org/documents/treaties/organized_crime/CTOC_COP_WG_2_2009_2_E_revised_Feb_2010.pdf [last accessed 18 October 2015]

²³ D Hill (2013), *The Insider's Guide to Match-Fixing in Football*, Anne McDermid & Associates, Toronto

²⁴ For example, see UNODC Overview of technical assistance requests made by States through the questionnaires/checklist on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, CTOC/COP/WG.2/2009/3, http://www.unodc.org/documents/treaties/organized_crime/CTOC_COP_WG2_2009_3_E.pdf [last accessed 18 October 2015]

²⁵ Except this agreement has now been suspended in light of the prosecutions currently underway against FIFA Executives (referred to above): O Gibson, “Interpol suspends €20m FIFA partnership to fight match-fixing”, *The Guardian*, 12 June 2015, <http://www.theguardian.com/football/2015/jun/12/interpol-suspends-fifa-match-fixing-partnership> [last accessed 18 October 2015]

academic, Declan Hill. In his blog post on 23 September 2015, Hill proposes that, instead of funding expensive conventions, such as the recent International Centre for Sport Security (ICSS) “Financial Integrity and Transparency in Sport Forum”²⁶ (which Hill characterizes as ‘dead catting’ and ‘image laundering’ exercises²⁷), the Qatari-funded organization could instead pay to house convicted match-fixers such as Singaporean match-fixer and inventor of the ghost game, Pal, or Malaysian national, Dan Tan, to give evidence against all sports (and public) officials involved in criminal offences.²⁸

Unfortunately, thus far, the identified needs of States Parties have not always been at the top of priority lists both by the donor community and governments. As has been pointed out, the strengthening of law enforcement and prosecutorial activities, services and institutions especially against serious organized crime and corruption is comparatively neglected (van Dijk, 2008). In addition to these issues, when available, the quality of technical assistance extended to different countries and agencies is quite diverse and occasionally leaves room for significant improvement.

Coordination of work conducted even within one capital city is another difficulty. This is partly because of the independent actions of the numerous implementing government agencies requesting and receiving assistance. Partly it is also due to the fact that most bi-lateral aid agencies do not work closely with those of other countries.

Finally, the political will – a *conditio sine qua non* for effective implementation – is not always strong enough, because the fight against the main UNTOC offences is not

²⁶ ICSS, FITS Forum, Lausanne (3-4 Sept 2015), <http://designsouq.com/news/read/us-experts-join-strong-international-field-for-fits-forum> [last accessed 18 October 2015]

²⁷ D Hill, “Dead catting, Image Laundering and why you should have nothing to do with the ICSS”, Blog, 15 September 2015,

<http://declanhill.com/dead-catting-image-laundering-and-why-you-should-have-nothing-to-do-with-the-icss/>

²⁸ D Hill, “Requiem for a Fixer”, Blog, 23 September 2015, <http://declanhill.com/requiem-for-a-fixer/> [last accessed 18 October 2015]: “Take the money they spend on one of their interminable conferences where they gather a group of people to speak nonsense to each other. Take the money for just one of those conferences and give it to Pal. Let him take his family and move to Sri Lanka. Give Pal enough money to be comfortable. Here is his one condition. He has to fly around the world and testify against *all* sports officials, players and referees that he bribed. All the league officials. All the FIFA-connected people. All the team owners who used to pay him to organize the fixes. All the internationally-ranked players and referees that he corrupted. If he is caught lying – even once – in his testimony, he goes back to Singaporean prison, this time for twenty years.

Pal’s potential testimony (like Dan Tan) would truly clean up the sport. It would strike a significant blow against the organized criminals inside football. However, it is a blow that the sporting establishment is desperate not to have happen. Better for them that fixers like Pal and Tan are shut up where no one can hear them. Now the sporting establishment can carry on with their nonsensical battle against fixing and the corrupt elements in their midst can continue to ruin the sport.”

everywhere considered as a top priority. For example, currently, criminalizing doping as defined via the Anti-Doping Rule Violations in the World Anti-Doping Code, is unlikely to attract significant support (except in some jurisdictions for those most serious or ‘aggravated’ doping offences such as seen in the Armstrong case above)²⁹ and match-fixing, even where distinguished from simply sports gambling or tanking, has very little legislative appetite internationally.³⁰ Nonetheless, provided the sports offences of concern are criminalized domestically with a penalty of four years or more, UNTOC may hold promise as a novel tool for controlling a whole range of sports misconduct primarily because it does not involve curtailing signatory States sovereignty (see Art. 4³¹).

United Nations Convention against Corruption (UNCAC)

The UN Convention Against Corruption could be another good option, if sports misconduct can be connected to any of its offences. The offences covered by the Convention are distinguished between those that are mandatory (States parties are obligated to establish domestic legislation criminalizing these) and those that are non-mandatory (which remain at the discretion of the States parties). Mandatory Offences include:

- Active bribery of public officials (Art. 15 [a])
- Passive bribery of public officials (Art. 15 [b])
- Active bribery of foreign officials and officials of international organizations (Art. 16 [a])
- Money laundering (Art. 23)
- Embezzlement, misappropriation and other diversion of public property (Art. 17)
- Obstruction of justice

²⁹ C McKenzie (2007) “The use of criminal justice mechanisms to combat doping in sport”, Bond University, <http://epublications.bond.edu.au/slej/4> [last accessed 16 October 2015]

³⁰ As set out above, Australia is an exception to this in the match-fixing setting, where a 10 year maximum jail penalty has been set in most States: National Policy on Match-Fixing in Sport, Australian Commonwealth Government, (June 2011), <http://www.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport> [last accessed 19 October 2015]

³¹ Art. 4. Protection of sovereignty.

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Non-Mandatory Offences are:

- Passive bribery of foreign officials and officials of international organizations (Art. 16 [b])
- Illicit enrichment (Art. 20)
- Abuse of function (Art. 19)
- Trading in influence (Art. 18)
- Private to private bribery – active and passive (Art. 21)
- Embezzlement in private sector (Art. 22)

The UNCAC elaborates much further the corruption-related offences which are also covered by UNTOC and provides for several additional offences, which have indeed proved very practical and popular in many countries, especially those which relate to illicit enrichment. The offence of the bribery of foreign public officials and that regarding officials of international organizations should be especially helpful in the sports environment. Everything stated above with respect to the linkages of sports crimes with UNTOC offences applies also to UNCAC, but some further advantages of applying UNCAC should be underlined.

As of October 2015, the UNCAC has 177 States parties and enjoys a great deal of momentum and genuine acceptance in the global South, thanks to its path-breaking chapter on asset recovery and repatriation. The anti-corruption agenda has been linked for obvious reasons to that of public procurement, development, rule of law and good governance. The implementation of the UNCAC thus benefits from significant activity and synergies with the development community, where the prevailing concerns are those of institutional reforms and economic growth. The goals of the anti-corruption and development communities are the same or entirely consistent (Passas, 2014), and as a result many more resources are devoted to UNCAC-related reforms than for other international legal instruments.

Another substantive advantage of the application of UNCAC is the advanced mutual legal assistance (MLA) and international cooperation framework it provides for willing States parties, which can make processes and exchanges even easier in practice. For example, dual criminality (which is required by UNTOC) is relaxed by allowing the

existence of different legal definitions, provided that the basic acts are the same in the jurisdictions concerned. Also States Parties are required to provide MLA even in the absence of dual criminality, if they are asked to apply non-coercive measures. Parties are also allowed to collaborate on their own initiative, even if there is no dual criminality and encouraged to exchange information informally and even without a previous request from another State party³².

However the challenges to the implementation of UNCAC are substantial. In addition to those challenges listed with respect to the implementation of the UNTOC, which are even more applicable to the broader and more comprehensive UNCAC. Its chapter on prevention chapter (Chapter II, Art. 5-14), which constitutes a blueprint for good governance in general, contains so many measures, policies and practices that the full and effective implementation of the UNCAC for most countries is a long-term project. By a long list of metrics (WBI, Global Integrity, TI CPI, etc.), despite substantial investment in resources, technical assistance and capacity building, the world can and should do a much better job at improving its response against corruption and lack of integrity in business, sport and government.

Conclusion

The main point of this paper is that the contemporary manifestations of sports crime and corruption are not adequately addressed by laws and frameworks developed with these offences in mind. Alternative approaches ought to be considered, including the resort to comprehensive, global instruments enjoying global consensus support, which can enable extensive international cooperation and practical solutions, as a range of crimes can be defined as convention offences or offences that can be tackled on the basis of these conventions. The UNTOC and the UNCAC hold pragmatic promise despite the serious implementation challenges on the ground, which make progress incremental and slow. One essential vital condition is that we develop genuine political will to activate the use of these Conventions for sports crime control.

³² See *Legislative Guide for the Implementation of the UNCAC*: <http://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html> [last accessed 18 October 2015].

The final points to raise here toward assisting with the planning of such creative applications and assisting with the good work of many donor organizations and government agencies are lessons drawn from international implementation practice and experience. Precisely because of the significant activity necessary for some time to come, three main guidelines should be taken into consideration.

First, countries and government bodies may express political will to implement these complex conventions, but the best results can be expected when officials are convinced about the concrete benefits they will derive in terms of their own priorities and policy objectives. Incentives are thus of paramount importance. When countries see for themselves the multiple applications and usefulness of these conventions (for example with respect to improved economic growth, foreign investment, rule of law and a criminal justice system that is better able to raise revenue and mete out justice), efforts will be better resourced and supported.

Second, efforts must revolve around a strategy. These projects are long term, while political necessities demand short-term accomplishments. A well-constructed strategy would set long-term objectives and ensure the smaller scale programs and projects meet their targets but are also instrumental and conducive to the attainment of ultimate goals. In this way, momentum and credibility will grow, legitimacy will be strengthened and the process will become sustainable.

Third, this strategic effort must be based on outreach and consensus that includes all stakeholders, including the private sector, sports governance institutions, civil society, academia, and quite importantly, the private sector. Where everyone participates and owns the overall project, the long-term success will be based on a more solid foundation and will benefit all contributors.

Sports crime and corruption could thus be tackled through these innovative UN instruments, but the best outcomes for all types of security and other serious crime threats will be achieved through the concerted and thoughtful efforts described above.

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