

THE GATHERING STORM – ORGANISED CRIME AND SPORTS CORRUPTION

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During the 2010 FIFA World Cup in South Africa, Interpol conducted 'Operation Soga III' with a number of Asian governments to crackdown on illegal soccer gambling in Asia. Interpol raided more than 800 illegal gambling dens and made more than 5,000 arrests. Investigations are currently being carried out to determine whether results on the pitch were influenced by the illegal gambling operations. This article explores the connection between organised crime and sports corruption. With the arrival of the Rugby World Cup next year, we review the adequacy of the existing legal framework to deal with sports corruption and seek comment on how we might prepare for it.

Introduction

This article explores the murky world of corruption in sport, in particular through what is known as match-fixing. The recent spot-fixing scandal involving players of the Pakistan cricket team and the Interpol crackdown on illegal gambling in Asia serve as a timely reminder of its presence and threat to sport. With the arrival of the Rugby World Cup in New Zealand next year, this paper examines the nature of match-fixing and sets out the two separate levels of governance in New Zealand of dealing with match-fixing: first, on the sports level by the rules of the particular sport and enforced by the particular sports body; second, whether match-fixing conduct might be caught by the criminal law. Further, this paper discusses the ability of our sports bodies and government authorities to deal with match-fixing, in particular the new wave of corruption in sport that will hit our shores: Asian gambling syndicates.

What is 'Match-fixing'?

The essence of match-fixing involves improperly influencing the outcome or any dimension of a sports event for financial or personal benefit.¹ The most common case of match-fixing is the acceptance of money by a player to underperform. A notable case of this was the 1919 Chicago 'Black Sox' scandal,

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¹ Note that influencing the outcome of an event for strategic reasons is unlikely to be match-fixing. For example, in the VB cricket tri-series in 2002, the Black Caps intentionally lost to South Africa in order to make it harder for Australia to reach the finals (and so to improve New Zealand's chance of reaching the finals).

where eight members of the Chicago White Sox accepted bribes from mob boss Arnold Rothstein to throw the American baseball World Series.² All of the eight members involved in the scandal received life bans from Major League Baseball.

The acceptance of financial or personal benefit by support staff, ie coaches, officials and administrators, to influence the result of a match is common. A prominent case of a corrupt official was NBA referee Tim Donaghy. It was revealed in 2007 that Donaghy bet on games in which he officiated and made calls affecting the point spread in those games. Police investigations linked Donaghy to a bookmaking operation associated with the Gambino crime family of Brooklyn.³ Subsequently Donaghy received 15 months imprisonment for participation in a gambling scandal.

More creative ways of influencing match results have been devised. In 1999, a Malaysian-based betting syndicate was caught attempting to install a remote-control device, with the aid of a corrupt security officer, in order to disable the floodlights in a game between Charlton Athletic and Liverpool.⁴ If the match had been abandoned before full time, bets would have been honoured and would have netted an estimated £30m for the criminals who operated Asia's illegal betting industry.⁵ Subsequent investigations revealed that the same syndicate had been responsible for masterminding two previous abandoned matches: the West Ham ground in November 1997 and Crystal Palace's ground in December 1997.⁶

There have been instances where players and support staff have accepted money for passing on confidential match information to gamblers or bookmakers. While this is not match-fixing per se, it nevertheless amounts to serious sports corruption. An example of this type of conduct was a scandal involving Australian cricketers Shane Warne and Mark Waugh. It transpired in 1998 that both players had revealed pitch and weather conditions to an Indian bookmaker

² Stephen Mallory, 'Gambling and Organised Crime' in JW Lee and JC Lee (eds) *Sport and Criminal Behaviour* (Carolina Academic Press, Durham, North Carolina, 2009) 107, 122.

³ 'Donaghy sentenced to 15 months in prison in gambling scandal' (30 July 2008) ESPN <www.espn.com> retrieved at 27 October 2010. A professional gambler received 15 months in prison for making bets based on Donaghy's inside tips. The scheme's middleman was sentenced to a year and one day for paying Donaghy thousands of dollars for tips.

⁴ 'UK Football guard 'bribed for sabotage' (17 August 1999) BBC News <www.bbc.co.uk/news> retrieved at 27 October 2010. All four conspirators were found guilty (three pleaded guilty) of the charge of conspiracy to cause a public nuisance. See also Jason Bennetto, 'Gambler guilty of football sabotage' (21 August 1999) *The Independent* <www.independent.co.uk> retrieved at 27 October 2010. One of the conspirators sought leave to appeal his sentence, which was dismissed: *R v Ong* [2000] EWCA Crim 92.

⁵ 'UK Bad bets and blown lights' (20 August 1999) BBC News <www.bbc.co.uk/news> retrieved at 27 October 2010.

⁶ *Ibid.*

after accepting money from him.⁷ The Australian Cricket Board dealt with the issue internally and imposed fines on both players.⁸

Organised Crime and Sport

Organised crime and sports gambling in the United States

In Stephen Mallory's article 'Gambling and Organized Crime', the author claimed that the histories of organised crime and gambling in the United States have been and continue to be intertwined.⁹ Mallory stated that sports bookmaking is a multi-billion dollar industry in North America, and as a result, it is a major target for organised crime and has become a major profit producer for these criminal organisations. Large scale match-fixing operations can generate in excess of four to five million dollars over a 90-day period,¹⁰ and illegal sports wagering is estimated to range from \$80 to \$380 billion annually in the United States.¹¹ Accordingly to Mallory, these criminal organisations are diversified in their operations and are often involved in drugs distribution, murder for hire, major frauds, and theft along with their bookmaking operations.¹²

Further, with the growth of online betting, on websites such as Bet365.com and sportingbet.com, sports-betting has become much more accessible worldwide. Mallory believes that with the growth of illegal online gaming and related activities, the impact of organised crime is likely to become more critical to national security and the business community.¹³

Asian organised crime and match-fixing

*The Fix: Soccer and Organised Crime*¹⁴ is Declan Hill's explosive expose on match-fixing in soccer, and its relationship with organised crime. Hill's investigations took him from the Chinese Super League, which effectively collapsed due to match-fixing scandals in its inaugural season in 2004, to corruption in European soccer. In particular, Hill studied the link between the expansion of Asian criminal operations into European soccer, and the criminal syndicates' making of enormous profits in the illegal gambling markets of Asia.

⁷ Mark Ray, Greg Baum and Martin Blake, 'Warne, Mark Waugh took bookie's cash' (9 December 1998) *The Age* <www.theage.com.au> retrieved at 27 October 2010.

⁸ Simon Gardiner et al (eds) *Sports Law* (Cavendish publishing, 3rd edition, 2006) 327.

⁹ Mallory, above n 2, 111.

¹⁰ *Ibid* 122.

¹¹ *Ibid* 128.

¹² The 'Black-Sox' scandal, the Tim Donaghy scandal and the *Burke* case all uncovered criminal organisations behind the fixes.

¹³ *Ibid* 126.

¹⁴ Declan Hill, *The Fix: Soccer and Organized Crime* (McClelland & Stewart, Toronto, 2008).

Hill investigated the case of Ye Zheyun, a mysterious Chinese businessman, who in 2004 moved into the Belgium soccer league as a 'soccer investor'.¹⁵ According to Hill, Ye bought interests in two teams in the Belgian league and successfully fixed at least a dozen matches. A year later (in 2005), Ye moved to the Finnish league and purchased the Finnish club Allianssi, a team high up in the league but deeply in debt. In one of his first matches after taking over the club, Ye brought in five new players from Belgium and insisted that they all play in the match. The match was meant to be a tough game against Allianssi's rival's Haka. Instead, Allianssi lost 8-0. The odds on the Finnish state gambling site of this exact 8-0 score was 8787 to one. It was revealed a few months later that a number of players had either been approached or had taken money over the years to fix matches. According to Hill, Ye himself disappeared soon after.

Hill believes that the reason why Ye was able to operate so successfully was because there existed in the Belgium and Finnish leagues perfect conditions for Asian fixers to enter. First, the leagues were in Western Europe, so they had a reputation for honest play among gamblers in Asia's illegal gambling markets. Second, despite this apparent honesty, the players and clubs were often so badly paid that they could be bribed or influenced easily. Finally, these leagues have long been complacent about corruption in soccer. Hill believes that Asian fixers scan the European leagues trying to find these conditions and then move in. These include early Champions League, UEFA Cup, and Intertoto Cup matches. In fact, in 2007 UEFA issued a 96 page dossier addressed to Europol that identified 26 cases of high profile European matches alleged to have been influenced by betting syndicates in Asia.¹⁶

Recent European crackdowns

In November 2009, German authorities, backed by UEFA, investigated about 200 European football matches played in 2009 in a match-fixing inquiry.¹⁷ The football matches investigated varied from the UEFA Champions League to the under-21 European Championship.¹⁸ In March 2010, Turkish police arrested 46 people in connection with the German match-fixing investigations.¹⁹ Among the detained were a number of well-known players and coaches, including Arif Erdem, one of Turkey's most renowned international stars until his retirement

¹⁵ Ibid see Chapter 8 'The Arrival of the Locusts', 91.

¹⁶ Andrew Warshaw, 'Uefa probe to investigate illegal betting syndicates' (3 December 2007) The Independent <www.independent.co.uk> retrieved at 27 October 2010.

¹⁷ 'UEFA statement on match-fixing case' (22 November 2009) UEFA <www.uefa.com> retrieved at 27 October 2010. Earlier in 2006, top Italian soccer clubs Juventus, Fiorentina, Lazio and AC Milan were all implicated in a match-fixing scandal. Juventus was relegated while Fiorentina, Lazio and AC Milan had competition points deducted.

¹⁸ Illegal gambling and match-fixing operate not only in high-profile sporting fixtures. In the United States, the problems associated with illegal gambling extends to intercollegiate athletics.

¹⁹ Jonathan Head, 'Turkish arrests over match-fixing' (24 March 2010) BBC News <www.bbc.co.uk/news> retrieved at 27 October 2010.

in 2005. At the time of his arrest, Erdem was an assistant coach for a Turkish premier league club.

The German prosecutors believed a 200-strong criminal gang had bribed players, coaches, referees, and officials to fix games and then made money by betting on the results.²⁰ Earlier, in 2005, German football had been rocked by a match-fixing scandal when referee Robert Hoyzer confessed to trying to manipulate games in the second division, third division and the German Cup. Hoyzer's testimony revealed a network of corruption linked to a Croatian gambling syndicate.²¹ In terms of the Turkish arrests, it is unclear what charges the suspects might face, but they are being investigated by the smuggling and organised crime department of the police.

The recent European soccer investigations were carried out with the assistance of UEFA's Betting Fraud Detection System,²² which monitors real-time betting and gives investigators an immediate idea of whether there are irregular patterns. According to UEFA, the detection system currently monitors some 29,000 games across Europe, including all UEFA competition fixtures as well as all first and second division, and national cup matches across all 53 member associations.²³ It also monitors betting markets all around the world 24 hours a day, seven days a week, 365 days a year.²⁴ However, the Betting Fraud Detection System does not and cannot monitor illegal gambling markets.

Interpol operations in Asia

Efforts have been made in Asia in recent years to crack-down on illegal gambling. In 2007, Interpol coordinated 'Operation Soga' in cooperation with eight national law enforcement agencies in Asia targeting illegal gambling syndicates.²⁵ Four hundred and twenty three arrests were made after raids on 272 illegal gambling dens that were estimated to have handled more than US\$680m worth of bets.²⁶ Jean-Michel Louboutin, Executive Director of Interpol Police Services stated that illegal soccer gambling was linked to other serious crimes:

'Illegal soccer gambling is not only a crime in itself, but is often linked with other serious offences such as corruption, money laundering and prostitution, which generate massive profits, all too

²⁰ 'UEFA statement', above n 17.

²¹ 'Match-fixing inquiry probes 200 European football games' (20 November 2009) BBC News <www.bbc.co.uk/news> retrieved at 27 October 2010.

²² UEFA statement, above n 17.

²³ 'UEFA determined to fight match-fixing' (11 December 2009) *UEFA* <www.uefa.com> retrieved at 27 October 2010.

²⁴ *Ibid.*

²⁵ 'INTERPOL helps smash illegal soccer gambling networks across Asia' (23 November 2007) INTERPOL <www.interpol.int> retrieved at 27 October 2010.

²⁶ *Ibid.*

often at the cost of public services and the safety of hardworking people.’

According to World-Check,²⁷ a betting syndicate uncovered during Operation Soga was a syndicate led by Tien Dung Ngo. This successful syndicate operated across Asia, Europe and Canada. The investigations revealed that besides running a lucrative betting operation that made an average of US\$1.5m per major international football game, this syndicate was also involved in narcotics trafficking and laundering the proceedings from its various criminal ventures.²⁸

In 2008, Interpol coordinated ‘Operation Soga II’ in Asia, timed to coincide with the UEFA 2008 soccer championships and the finals matches of major soccer leagues around the world.²⁹ ‘Operation Soga II’ resulted in 1,088 raids (compared to 272 in 2007), some 1,304 arrests (more than tripled from 423 in 2007) and seizure of over US\$16.8m (more than 25 times the amount seized in 2007).³⁰

Interpol and the participating countries (China, Malaysia, Singapore and Thailand) have recently mounted ‘Soga III’, which targeted illegal soccer gambling to coincide with the 2010 FIFA World Cup in South Africa.³¹ ‘Operation Soga III’ identified and raided nearly 800 illegal gambling dens, which handled more than \$155m in bets. More than 5,000 arrests were made during the crackdowns as well as seizure of almost \$10m.³²

During the operation, which ran from 11 June 2010 to 11 July 2010, officers also seized assets including cars, bank cards, computers and mobile phones. The information gathered will now be reviewed and analysed to determine the potential involvement of other individuals or gangs across the region and beyond. It is unclear at this stage whether the results on the pitch were influenced, as Interpol stated that that would form part of a wider probe.³³

²⁷ According to its website World-check is a leading global provider of highly structured risk intelligence. See *World-Check* <www.world-check.com>.

²⁸ BC Tan ‘Special Crime and Terror Series: Illegal Sports Betting’ (March 2010) World-Check <www.world-check.com> retrieved at 27 October 2010.

²⁹ ‘Police across Asia break up illegal soccer gambling networks in INTERPOL-led operation’ (10 July 2008) INTERPOL <www.interpol.int> retrieved at 27 October 2010.

³⁰ ‘2008 Interpol Annual Report’ (2008) INTERPOL <www.interpol.int> retrieved at 27 October 2010.

³¹ ‘Thousands arrested in INTERPOL-led operation against illegal soccer gambling networks across Asia’ (16 July 2010) INTERPOL <www.interpol.int> retrieved at 27 October 2010.

³² ‘Thousands in Asia held over World Cup bets’ (16 July 2010) BBC News <www.bbc.co.uk/news> retrieved at 27 October 2010.

³³ *Ibid.*

Implications for Australasia

At the Australian and New Zealand Sports Law Association ('ANZSLA') annual conference in 2009, Declan Hill warned that Asian crime syndicates will be targeting Australasia as they look to expand from their existing operations in Asia and Europe.³⁴ Hill believed that Australia and New Zealand's obsession with sport, the fact that our sports teams and players are not well paid, our shared time zone with Asia, the variety of sports codes, and the rise in sports gambling in these two countries make them obvious targets.

Hill also warned that match fixing has broader socio-economic ramifications: 'sport has become a de facto religion and a vehicle for our hopes, dreams and ideals... If you allow that to be corrupted, you really undercut your self-esteem as a nation'. Hill advocated for urgent action: 'The people who are doing this have targeted your country and will be destroying your sports within three to five years. You have a brief window of opportunity to stop them coming in or they will wreak havoc here.'³⁵

We share Hill's view. In New Zealand, our international teams and domestic competitions run on relatively small funding, are well publicised and have a reputation for honest play. Our sports bodies and our general public are perhaps naïve to the overseas experiences of match-fixing, and as a nation, we trust the honesty and integrity of our sports people. However, past experiences show that New Zealand sports icons are not immune to allegations of match-fixing.³⁶ The European experience indicates that even the most reputable sports leagues are susceptible to match-fixing. In particular, with the increase in monitoring, investigations and crackdowns in Europe and in Asia, there are strong reasons for Asian crime syndicates to target Australian and New Zealand sport, if they are not present here already.

³⁴ Yuko Narushima 'Australia a ripe target for match-fixing' (9 October 2009) Sydney Morning Herald <www.smh.com.au> retrieved at 27 October 2010.

³⁵ *Ibid.*

³⁶ Former Blackcaps player Chris Cairns was suspended from his team in the rebel Indian Cricket League on disciplinary grounds. There was speculation that Cairns was involved in match-fixing, which Cairns has denied. See Simon Briggs, 'Chris Cairns' lawyer denies alleged match-fixing in the Indian Cricket League' (29 October 2008) The Daily Telegraph <www.telegraph.co.uk> retrieved at 27 October 2010. In 1999 New Zealand captain Stephen Fleming alleged that he was approached by an Indian bookmaker to involve him in cricket corruption. See Sir Paul Condon QPM, 'Report on Corruption in International Cricket' (April 2001) ICC <icc-cricket.yahoo.net> retrieved at 27 October 2010. Earlier this year, Gary Lawson and three team mates were found guilty by Bowls NZ of throwing a match at the Asia-Pacific bowls tournament in Malaysia in August 2009. 'Gary Lawson guilty of match-fixing' (11 January 2010) Stuff <www.stuff.co.nz> retrieved at 27 October 2010. However, there was no allegation that the players had accepted any financial or personal benefit. The players have since withdrawn their appeals to the Sports Tribunal and accepted the decisions of the Bowls NZ Judicial Committee. Bowls NZ has agreed to waive the recovery of the fines imposed by the Bowls NZ Judicial Committee on all the players.

Rules of Sport

In terms of governance on the sports level, sports bodies around the world have comparable rules prohibiting and penalising match-fixing conduct. The penalties imposed by the relevant sports body for match-fixing are enforceable against its members, as membership of the sports organisation will include contracting to its rules and the disciplinary processes if those are breached.

The Sports Tribunal of New Zealand does not have inherent jurisdiction to hear match-fixing disputes – its jurisdiction derives from the agreement of the parties to submit their dispute to the Sports Tribunal and if the rules of the sports body specifically provide for an appeal to the Sports Tribunal.³⁷

New Zealand Cricket ('NZC')

At the turn of the last century, cricket was in crisis. The game's reputation and integrity was tarnished, particularly by the match-fixing scandals involving Hansie Cronje and Mohammad Azharuddin. In the late 1990s an estimated \$150 million was bet on the unlawful market on an average one-day international match anywhere in the world.³⁸ Match-fixing was dealt with differently by each country. In India, Pakistan and South Africa, the investigations were either judicial or led by the police.³⁹ In England, Australia and New Zealand, they were handled by cricket bodies that had no statutory powers.

In January 1999, the nine test-cricket nations agreed to cede aspects of their governance to the International Cricket Council ('ICC'), and from that point they were bound by the uniform penalties established and enforced by the ICC.⁴⁰ Match-fixing in international matches is currently governed by the ICC Anti-Corruption Code for Players and Player support Personnel.⁴¹ Broadly speaking, Article 2 of the Code sets out four types of offences by a player or a player support personnel: fixing or contriving to influence improperly the result or any other aspect of a match; betting in an international match; misuse of inside information; and accepting gifts or failing to disclose corrupt approaches by a third party.

³⁷ Sports Anti-Doping Act 2006 (NZ), section 38. See more generally Part 3 of the Act.

³⁸ See N Raja, 'Sports Gambling in Malaysia' (1997) 8(2) *For the Record – The Official Newsletter of the National Sports Law Institute* 3 and 5, in Gardiner et al (eds), above n8, 327.

³⁹ Mihir Bose, 'A Game in Shame' in *Wisden Cricketer's Almanack 2001* <www.cricinfo.com> retrieved at 27 October 2010.

⁴⁰ 'ICC Media Release' (1 January 1999) ICC <icc-cricket.yahoo.net>.

⁴¹ 'Player Support Personnel' refers 'to any coach, trainer, manager, selector, team official, doctor, physiotherapist or any other person employed by, representing or otherwise affiliated to a playing/touring team or squad that is chosen to represent a National Cricket Federation in any international Match or series of International Matches.' Note that all umpires and match referees that officiate in international matches are bound by the similar anti-corruption provisions set out in the ICC Code of Conduct for Umpires and Referees.

The ICC set up the Anti-Corruption Unit (now Anti-Corruption and Security Unit) under former London Metropolitan Police Commissioner Sir Paul Condon,⁴² to investigate any allegation or suspicion of a breach of the Anti-Corruption Code. However, as Sir Paul Condon himself admitted, he has no statutory powers.⁴³ Following an investigation, if the ACSU General Manager (in consultation with the ICC's CEO and the ICC's Head of Legal) determines there is a case to answer under Article 2, then they are to issue a Notice of Charge to the player or player support personnel. If a player or player personnel objects to the notice, then the matter should be referred to the Anti-Corruption Tribunal: Article 5.1. Note that the ACSU has the discretion to provisionally suspend the player or player support personnel pending the Anti-Corruption Tribunal's determination. If the Anti-Corruption Tribunal finds a player or a player support personnel guilty, it can issue sanctions ranging from two years to a life ban, as well as fines.⁴⁴

NZC has the power to impose sanctions for match-fixing, and will ultimately report to the ICC. The NZC Code of Conduct⁴⁵ provides comprehensive provisions in relation to match-fixing and corruption, and the associated penalties, which range from a fine to life-ban.⁴⁶ It covers match-fixing in general as well as players betting on matches they are involved in. The disclosure to outsiders of information about weather, the teams and match-conditions is also covered. The Code also obliges the players to report match-fixing conduct. We are not aware of examples of these rules having been applied to any particular situation and therefore the actual application of these rules is yet to be apparent.

The NZC Code of Conduct uses the phrase 'contriving or attempting to contrive the result of any Match or the *occurrence of any Event*' (emphasis added). This definition is wide and in our opinion would cover match-fixing in 'exotics' or 'spot-betting', which allows betting on unique events within a match, such as which player will score most runs in the match, which player will take the most wickets, or who will bowl the most wide deliveries in a match.⁴⁷ This type

⁴² 'Anti-Corruption Overview' (undated) ICC <icc-cricket.yahoo.net> retrieved at 27 October 2010. See also Urvashi Naidoo, 'On the front foot against corruption' (2004) ISLR 1 (Feb) 4. Note the ICC also set up the ICC Code of Conduct Commission as the ultimate authority sitting over the ICC and its member cricket boards. For example, in 2001 the Commission reviewed the reports of the King Commission in South Africa and the penalties imposed by the United Cricket Board of South Africa ('UCBSA') on Hansie Cronje, Herschelle Gibbs, and Henry Williams. See Gardiner et al (eds), above n8, 331.

⁴³ Ibid.

⁴⁴ After considering aggravating factors: Article 6.1.1 and mitigating factors: Article 6.1.2. The standard of proof shall be determined on a sliding scale from a mere balance of probability (for the least serious offences) up to proof beyond a reasonable doubt (for the most serious offences): Article 3.1.

⁴⁵ The NZC Code of Conduct governs matches administered by NZC, ie men's and women's domestic first class cricket, Plunket Shield, HRV Cup, provincial 'A' tournaments, provincial Under 19 tournaments etc.

⁴⁶ See Clause 15.

⁴⁷ As opposed to traditional fixed odds betting, where a gambler may only bet on the final result of the game.

of betting has been highlighted by the recent ‘spot-fixing’ scandal involving players in the Pakistan cricket team.

The recent scandal involved the alleged bowling of no-balls to order by Pakistani players in the fourth cricket test against England. On 28 August 2010, The News of the World claimed that it paid a middleman £150,000 to arrange a fix involving Pakistan’s bowlers, Mohammad Amir and Mohammad Asif, whom the middleman allegedly asked to bowl no-balls at specific moments of the match.⁴⁸ In a video secretly recorded during the News of the World’s investigation, a middleman alleged to be Mazher Majee (who was a players’ agent) is clearly heard predicting that Amir would deliver a no-ball from the first ball of the third over, which was noted by match commentators as ‘an enormous no-ball, good half a metre over the line’.⁴⁹

The ICC has since provisionally suspended Amir, Asif, and the Pakistani captain Salman Butt for charges with various offences under Article 2 of the Anti-Corruption Code.⁵⁰ The London Metropolitan Police arrested Mazher Majee on suspicion of conspiracy to defraud bookmakers.

The involvement of the Police, the English Cricket Board, the Pakistan Cricket Board, and the ICC Anti-Corruption Unit in the recent scandal indicates that there needs to be cooperation between the various bodies in dealing with match-fixing. In our view, coordinated efforts are essential in any effective match-fixing investigation. We note that in India, the Central Bureau of Investigation has begun examining links between cricketers, bookmakers and the Indian underworld.⁵¹

New Zealand Rugby Union (‘NZRU’)

‘Match-fixing’ is similarly defined under the ‘misconduct’ provisions in the NZRU Black Book of Disciplinary Rules.⁵² The definition encompasses ‘seeking or accepting any bribe or other benefit to fix a Match or series of Matches’, as well as ‘otherwise influence improperly the outcome or any dimension or aspect of any Match or series of Matches’. Note that the NZRU’s obligations in relation to match-fixing are also set out in the International Rugby Boards’ (‘IRB’) Regulations Relating to the Game,⁵³ which are similar to the NZRU Rules.

⁴⁸ Mazher Mahmood and Amanda Evans, ‘Match-fixer pockets £150k as he rigs England Test at Lord’s: News of the World smashes multi-million pound cricket match-fixing scandal’ (29 August 2010) News of the World <www.newsoftheworld.co.uk> retrieved at 27 October 2010.

⁴⁹ ‘Lord’s test at centre of fixing allegations’ (28 August 2010) ESPN Cricinfo <www.cricinfo.com> retrieved at 27 October 2010.

⁵⁰ ‘ICC charge three players under Anti-Corruption code’ (3 September 2010) ICC Media Release <icc-cricket.yahoo.net> retrieved at 27 October 2010.

⁵¹ ‘CBI’s Report on Cricket Match Fixing and Related Malpractices’ (October 2000) EPSN Cricinfo <www.cricinfo.com> retrieved at 27 October 2010.

⁵² ‘NZRU Black Book of Disciplinary Rules’ (1 April 2008) NZRU <www.nzru.co.nz> retrieved at 27 October 2010. See section 1 Definitions and Interpretation, ‘Misconduct’ subsection (d).

⁵³ See Regulation 6 Wagering.

Under the NZRU Rules, anyone may make a complaint of 'misconduct'. The complaint must be made to the CEO of the Union in which the misconduct complained of occurred. The Union Complaints Review Officer will determine whether the misconduct complaint should proceed to a hearing before the Judicial Officer (or Judicial Committee). If misconduct is established at the hearing, sanctions may vary between two weeks and two years suspension depending on the seriousness of the misconduct. We are not aware of examples of these rules having been applied to any particular situation and therefore the actual application of them is uncertain.

Criminal Law

Match-fixing could be caught by the criminal law. The criminal law could be useful to capture those who are involved in match-fixing, but are not subject to the governance of sports bodies, eg illegal gambling syndicates, player's agents, and ex-players. Note that match-fixing itself has been criminalised in a small number of jurisdictions.

United States

In the United States, the state of Louisiana's Bribery of Sports Participants Law⁵⁴, for example, criminalises the bribery of sports participants. Penalties under this statute range from a fine to imprisonment. Further, in the United States sports betting is outlawed (excluding a few states)⁵⁵ under the Professional and Amateur Sports Protection Act of 1992,⁵⁶ also known as the 'Bradley Act'. Aside from gambling, racketeering and corruption legislation, money laundering laws and financial crimes laws may also capture aspects of a match-fixing operation in the United States.

A prominent case illustrating the application of the criminal law to match-fixing was *United States v Burke*.⁵⁷ In *Burke*, a number of underworld figures (including Henry Hill, an acknowledged drug dealer) recruited and bribed members of the Boston College Basketball team to 'shave points' or deliberately lose games.⁵⁸ The principal player involved, Rick Kuhn, was convicted on charges of racketeering by conspiring to fix at least six games, of sports bribery, and of violating the interstate travel and aid to racketeering statutes. Rick Kuhn was sentenced to 10 years' imprisonment.

⁵⁴ LSA - RS 14:118.1.

⁵⁵ It appears that sports betting is legal in Delaware, Montana, Nevada, and Oregon. See Mallory, above n2, 126.

⁵⁶ PubL 102-559.

⁵⁷ 700 f2d 70 (2d Cir 1983). Henry Hill and James Burke were responsible for creating a bookmaking syndicate to bet on Boston College games and arranging 'protection' for the conspirators.

⁵⁸ R Berry and GM Wong, *Law and business of the sports industries: Common issues in amateur and professional sports* (Westport, Connecticut, Praeger, 2nd edition, 1993), volume II, 697.

United Kingdom

The alleged middleman in the recent ‘spot-fix’ scandal was arrested by the London Metropolitan Police on suspicion of conspiracy to defraud bookmakers. Conspiracy to defraud is a common law offence in the United Kingdom, retained under the Fraud Act 2006 to deal with cases where the interest of justice cannot be achieved by charging a series of substantive offences or statutory provisions.⁵⁹ The statutory offence of conspiracy to defraud in New Zealand (s257 of the Crimes Act 1961) was repealed in 2003. So while the offence of conspiracy to defraud could be used to prosecute with match-fixing conduct in the UK, it is no longer available in New Zealand. The prosecution for conspiracy would need to be for conspiracy to commit a particular offence (s310 Crimes Act).

Section 42 of the Gambling Act 2005 (UK) provides that a person commits an offence if he cheats at gambling (s42(1)(a)) or assists another to cheat at gambling (s42(1)(b)). While the phrase ‘cheats at gambling’ is not defined under the Act, s42(3) states that:

- (3) Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connect with –
 - (a) the process by which gambling is conducted, or
 - (b) a real or virtual game, race or other event or process to which gambling relates.

Match-fixing conduct of fixers, players and support staff could amount to an actual or attempted deception or interference in connection with a sports game under s42(3)(b). This provision is much wider than the offence of ‘cheating’ under s351 of the Gambling Act 2003 in New Zealand, which only prohibits cheating in a casino venue.

New Zealand

Match-fixing is not a specific criminal offence in New Zealand. However, aspects of a match-fixing operation might be caught by the current New Zealand legislative framework.

⁵⁹ ‘Guidance on the use of the common law offence of conspiracy to defraud’ Attorney General’s Office <www.attorneygeneral.gov.uk> retrieved at 27 October 2010.

Gambling Act 2003

The *Gambling Act 2003* prohibits all gambling unless it is authorised under the Act.⁶⁰ Under s19, it is an offence to, among other things, participate in, conduct, obtain financial benefit from, promote, advertise, or knowingly provide equipment for the use of, illegal gambling (including bookmaking).⁶¹ The penalty for participation in illegal gambling is a fine not exceeding NZ\$1,000. The penalty for any other offence in respect of illegal gambling is 1 year imprisonment and a fine not exceeding NZ\$20,000 (or \$50,000 for a body corporate).⁶²

There are three exceptions to the prohibition on bookmaking: (i) private gambling (in a private residence under strict limits), (ii) casino gambling, and (iii) racing and sports betting offered by the New Zealand Racing Board under the *Racing Act 2003*.

The offence of ‘cheating’ under the Gambling Act only deals with cheating in a casino venue. The Gambling Act also has no jurisdiction to govern illegal overseas gambling,⁶³ the Pandora’s Box of present day sports corruption.

Racing Act 2003 (NZ)

Under the Racing Act the NZ Racing Board conducts totalisator and fixed-odds racing and sports betting under the ‘TAB’ brand, in accordance with the Betting Rules.⁶⁴ These rules are made by the Board, but are deemed to be government regulations.⁶⁵

The TAB currently monitors betting trends and has ‘risk limits’ on betting. For example, the TAB has to manually accept every bet that is put down to win over \$1,500. In relation to suspicious betting trends, the TAB can also reduce the price of odds or close betting altogether. According to the TAB, the odds/prices offered by the TAB are not attractive to overseas gambling syndicates, who largely operate as bookmakers, rather than punters. The TAB advised us that they have not come across any unusual betting patterns in recent times.⁶⁶

The TAB also has a policy of avoiding betting that is susceptible to the leaking of

⁶⁰ The GANZ authorises gaming where the total amount of prizes is below \$500 or where the event is conducted for charitable or non-commercial purposes. The GANZ also authorises lotteries conducted by the New Zealand Lotteries Commission.

⁶¹ See section 9(2). Bookmaking activities include taking bets, organising pool betting, matching gamblers, and laying or offering odds.

⁶² See section 19.

⁶³ Unless a prohibited relevant act occurs in New Zealand: see section 7 of the Crimes Act 1961 (NZ).

⁶⁴ ‘Betting Rules’ (9 June 2010) TAB <www.tab.co.nz> retrieved at 27 October 2010.

⁶⁵ See section 54.

⁶⁶ Telephone conversation with Mark Stafford, fixed odds bookmaker at the TAB, 9 July 2010.

insider information.⁶⁷ The recent Melbourne Storm salary cap saga exemplifies this type of betting. On 22 April 2010, the NRL announced that it was stripping the Melbourne Storm of its premiership as well as any competition points this season for breaching its salary cap.⁶⁸ However, earlier on the day before the NRL made its announcement, a stream of bets were allegedly made on Melbourne Storm for the NRL wooden spoon, when the odds were 250 to one.⁶⁹ Several bookmakers suspended betting on the NRL wooden spoon.⁷⁰

The NRL is also currently investigating ‘spot-fixing’ allegations in the match between the Bulldogs and the Cowboys on 21 August 2010.⁷¹ During that match, Bulldogs player Ryan Tandy fumbled at the play-the-ball after the opening kickoff and then gave away a penalty for holding down Grant Rovelli 10 metres out from his own posts. It is alleged that the players involved attempted to engineer a first-scoring play of a Cowboys penalty goal. Odds on that outcome were slashed from \$13 to \$7 and then suspended after betting agency Betchoice received an unusually high volume of wagers.⁷²

Crimes Act 1961 (NZ)

Aspects of a match-fixing operation might be covered by offences under the Crimes Act.

Sections 105 and 105A – Corruption and bribery of an official

Section 105 creates the offence of offering, giving, accepting or agreeing to a bribe by a person in an official capacity. Section 105A makes it an offence for the corrupt use of information acquired by a person in his or her official capacity.

Whether or not ss105 and 105A apply to match-fixing turns on the meaning of an ‘official’. The definition of an ‘official’ under s99 includes ‘any member or employee of any local authority or public body’. Therefore, the question is whether a sports organisation could be a ‘public body’, a term not defined in the Act.⁷³ In *Hall v District Court at Wellington*⁷⁴, the High Court stated that the

⁶⁷ Ibid.

⁶⁸ Chris Barrett, ‘Melbourne Storm stripped of premierships for salary cap breaches’ (22 April 2010) Sydney Morning Herald <www.smh.com.au> retrieved at 27 October 2010.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Steve Deane, ‘NRL Investigates Spot Fixing Claims’ (1 September 2010) New Zealand Herald <www.nzherald.co.nz> retrieved at 27 October 2010.

⁷² Ibid the article noted that Sydney’s Daily Telegraph reported that punters stood to make \$250,000 from a Cowboys penalty. Tandy and several others were subsequently charged over these events. <http://www.smh.com.au/rugby-league/league-news/tandy-hit-with-more-false-evidence-charges-20110303-1bghc.html> 4 March 2011, retrieved 7 March 2011.

⁷³ *Adams on Criminal Law*, CA99.04.

⁷⁴ HC Wellington CP256/98, 25 September 1998.

term ‘public body’ must be considered in context and in terms of the nature of its functions. The Court further stated the fact that the activities of a particular organisation are confined to a section of the population does not necessarily suggest that it does not have the characteristics of a ‘public body’.

Our preliminary view is that a sports organisation, in particular a large sports body, might arguably be a ‘public body’ in light of the landmark decision of *Finnigan v New Zealand Rugby Football Union Inc*,⁷⁵ where the Court of Appeal stated that (albeit in a different context):

While technically a private and voluntary sporting association, the Rugby Union is in relation to this decision in a position of major national importance, for the reasons already outlined. In this particular case, therefore, we are not willing to apply to the question of standing the narrowest of criteria that might be drawn from private law fields. In truth the case has some analogy with public law issues. This is not to be pressed too far. We are not holding that, nor even discussing whether, the decision is the exercise of a statutory power – although that was argued. We are saying simply that it falls into a special area where, in the New Zealand context, a sharp boundary between public and private law cannot realistically be drawn.

Section 240 – Obtaining by deception or causing loss by deception

Section 240 creates two distinct offences of obtaining by deception and/or causing loss by deception. ‘Deception’ as defined under s240(2) includes a false representation intended to deceive any person, or a fraudulent device, trick or stratagem used with intent to deceive.

Match-fixing invariably involves a scheme of dishonesty (for financial gain or benefit) operated by players and support staff on the one hand, and gambling syndicates on the other. This is analogous to false representations intended to deceive any person, or a fraudulent device, trick or stratagem used with intent to deceive. Therefore match-fixing could amount to ‘deception’ under s240.

For s240 to be established it must be proved that the deception led to acquisition or retention of property, or caused loss. In a match-fixing operation, the fixer usually obtain profits from punters, the corollary being that it causes loss to punters. Players on the other hand, have obtained from the fixers as well as causing loss to punters and causing financial and reputational loss to the sports organisation they represent (although the loss is less certain and perhaps indirect). Our preliminary view is that s240 could cover match-fixing by fixers and by players (and support staff). New Zealand Courts will have jurisdiction if

⁷⁵ [1985] 2 NZLR 159, 179.

either the deception or the obtaining takes place in New Zealand.⁷⁶

Section 243 – Money Laundering

Two men and a woman were recently arrested as part of an investigation into money laundering in connection with Pakistan ‘spot-fixing’ scandal.⁷⁷ Money laundering is dealt with under s243 of the Act, which criminalises persons who ‘engage in money laundering ... knowing or believing that all or part of the property is the proceeds of a serious crime’.

Section 310 – Conspiring to commit offence

Section 310 makes it an offence to conspire to commit an offence. Section 310(1) states that ‘every one who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omission in New Zealand would be an offence.’ This provision may be used to prosecute those who have agreed to participate in any of the offences related to match-fixing.

Secret Commissions Act 1910

The Secret Commissions Act makes it an offence for a person to give any gift or consideration to an agent as an inducement or reward for doing or forbearing to do something in relation to the principal’s affairs.⁷⁸ It is also an offence for an agent to accept such gift or consideration from a person.⁷⁹ The definition of an ‘agent’ under the Act covers employees,⁸⁰ and therefore would cover a player or support personnel. For that reason, the Secret Commissions Act could be applicable to match-fixing. We note that the consent of the Attorney-General is required for prosecution and as a result it is less often utilised: s12.

Solutions

Match-fixing affects the integrity of sports and the public confidence in sports events and athletes. There are also wider ramifications – it has great potential to damage the economic and cultural fabric of our society. It funds the operation and expansion of organised crime syndicates. Addressing match-fixing and other forms of sports corruption will in our view require increased awareness, education, support for participants, prevention and effective enforcement.

⁷⁶ *Adams on Criminal Law*, CA240.18 and s7 Crimes Act 1961 (NZ).

⁷⁷ ‘Three more arrests in fixing investigation’ (31 August 2010) ESPN Cricinfo <www.cricinfo.com> retrieved at 27 October 2010.

⁷⁸ Section 3(1).

⁷⁹ Section 4(1).

⁸⁰ Section 2.

Awareness and Education

Ignorance of how match-fixing works is a significant factor permitting its continuation and spread. In the Condon Report on corruption in cricket, Sir Paul Condon stated that even some mature and worldly players, umpires and administrators were genuinely unaware of the corrupt practices until the revelations in recent years.

Typically, a bookmaker will try to approach a player directly, under the disguise of being an avid fan. After befriending the player, the bookmaker will then attempt to influence the player and involve the player in match-fixing. After the allegations of spot-fixing against the Pakistan players, Australian cricketers Shane Watson and Brad Haddin spoke of having been approached by illegal bookmakers.⁸¹ On other occasions, a bookmaker will try to get to a player through a former player, a players' agent, a corrupt member of the team, or the team's support staff. The alleged involvement of the Pakistan players' agent Mazher Majeed and the Pakistan captain Salman Butt in the 'spot-fixing' scandal appears to illustrate this type of arrangement.

Awareness of how match-fixing operates appears to have assisted with the way the Australian players dealt with of the approaches by bookmakers. Shane Watson publicly stated that: 'we're very well educated about what we can and can't do. We know exactly where the line is, and it's a very obvious line of what goes on.'⁸² Watson ceased contact after finding out that the person was an illegal bookmaker. In Haddin's case, he immediately reported the incident to the team manager and the ICC's security manager.

There is a case for an organised programme of education. It seems necessary to assist players and supporting staff to identify the circumstances, relationships, and conduct that could lead to match-fixing, and how to deal with them appropriately. An emphasis on the insidious and initially innocuous nature of the fixers could prevent the more naive from being ensnared.

Support/security

The security of those involved in sport is crucial to preventing match-fixing. Criminal organisations are known for targeting and blackmailing players and support staff into match-fixing.⁸³ In fact, kidnapping and intimidation have

⁸¹ Joe Barton and Daniel Brettig, 'Indian bookies targeted Watson, Haddin' (31 August 2010) *Sydney Morning Herald* <www.smh.com.au> retrieved at 27 October 2010.

⁸² *Ibid.*

⁸³ Lee and Lee (eds), above n2, 'Appendix 2 Insider Perspectives with Mike Franzese'. Mike Franzese, a former mob captain, stated that mobs go beyond just approaching players. He stated that the Russian mob is known for extorting Russian athletes into compromising the outcome of games.

taken place in Pakistan cricket.⁸⁴ Geoff Lawson, the former Pakistan cricket coach, alleged that a Pakistan selector's daughter was kidnapped in relation to Pakistan's team selection.⁸⁵ The father of Wasim Akram, arguably Pakistan's most distinguished bowler to date, had been abducted by two bookies in the late 1990s.⁸⁶

Players and support staff need protection and support to be provided by sports bodies and regulators, as well as the reassurance that they can safely report threats or approaches by illegal bookmakers and organised crime syndicates. A secure mechanism by which this can occur would seem to be imperative.

Prevention and enforcement

The authorities and bodies involved in the investigation of match-fixing need to understand the nature and the operation of match-fixing – how illegal gambling syndicates operate, how bookmaking is organised, and the scale of the problem. In our opinion, the two levels of regulation – rules of sports bodies and the criminal law – whilst inevitable, results in an uncertain and variable response to a global problem.

In *The Law of the Olympic Games*, Alexandre Miguel Mestre argued that the best route to counter illegal gambling, corruption and other means of distorting results (in the context of the Olympic Games) is the standardisation and harmonisation of concepts and legal regimes.⁸⁷ Mestre believes that the enforcement of the World Anti-Doping Code through the World Anti-Doping Agency ('WADA') is indicative of the advantages of this approach. Mestre further supports the establishment of an independent tribunal that is speedy, competent and inexpensive. The implementation of a uniform anti-corruption code by governments is also advantageous because they have powers that sport organisations do not have, including greater financial capacity, legislative powers, and investigative and enforcement powers.

We agree with Mestre that the standardisation and harmonisation of the regime will advance the prevention of corruption in sport. In our view, there are existing examples to draw from. First, consideration could be given to a similar system to the WADA system to deal with match-fixing and wider integrity issues. A global code could adopt the definitions already in use by global sports bodies such as FIFA or the IRB, for example. That global code could be enforced through a similar framework that exists under WADA. This necessarily requires

⁸⁴ Dileep Premachandran, 'Pakistan cricket scandal: kidnapping and violence enforce gambling scams: players inhabit world of lax discipline and hypocrisy in which greed, corruption and force rule the game' *The Guardian* <www.guardian.co.uk> retrieved at 27 October 2010.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Alexandre Miguel Mestre, *The Law of the Olympic Games* (The Hague, TMC Asser Press, 2009), 18.

greater thought and consideration on the global level,⁸⁸ to achieve a harmonised approach and a comprehensive legal enforcement regime (something that is close to being achieved for anti-doping).⁸⁹ This will likely be both a lengthy exercise, and may not be able to meet the urgent need for action on the global level.

Another option is to extend the ambit of World Anti-Doping Code to cover match-fixing (and other aspects of unfair play) – effectively turning the Code and WADA into a global fair play regulator. The advantage of this approach is that it could utilise the infrastructure and framework that already exist under the WADA system.

Neither of these frameworks, however, will be able to touch illegal gambling syndicates and others who have not contracted to the jurisdiction of the particular sport governing body. Therefore, specific criminalisation may still be required, particularly if the targets are illegal bookmakers and organised crime syndicates. It may seem unfair to criminalise conduct that essentially belongs to a relationship between the player (or support staff) and the sports body. In terms of the wider picture, however, if there is uncertainty in the existing regime, there is a case for criminalisation given the socio-economic significance of sport in contemporary New Zealand society and the link between sports corruption and the operation of organised crime syndicates.

Collaboration between sports bodies, law enforcement authorities, other government departments, betting facilities (the TAB in New Zealand), and financial institutions⁹⁰ is a prerequisite to preventing sports corruption. The

⁸⁸ After the Tour de France scandal of 1998 (where a large number of prohibited medical substances were found by police in a raid during the Tour de France), the International Olympics Committee ('IOC') took initiative and convened the First World Conference on Doping in Sport in Lausanne in February 1999. Following the proposal of the Conference, the World Anti-Doping Agency ('WADA') was established on November 10, 1999. 'WADA History' World Anti-Doping Agency <www.wada-ama.org> retrieved at 27 October 2010. WADA's key activities include scientific research, education, development of anti-doping capacities, and monitoring of the World Anti Doping Code.

⁸⁹ The International Convention Against Doping in Sport was adopted by 119 governments at the UNESCO General Conference in October 2005 and came into force in February 2007. Through ratification of the Convention, governments commit to the principles of the World Anti-Doping Code (Article 4). The Code was adopted by WADA, and to date, 146 governments have ratified, accepted, approved or acceded to the Convention. 'International Convention against Doping in Sport. Paris, 19 October 2005' UNESCO <unesco.org> retrieved at 27 October 2010. In New Zealand, the Code was implemented through the Sports Anti-Doping Act 2006(NZ) and is enforced by Drug Free Sport NZ in New Zealand.

⁹⁰ For example, in 2008 WADA adopted a memorandum of understanding with Interpol which provides a framework for cooperation between the two organisations in tackling doping, in particular in the areas of evidence gathering and information sharing, see 'WADA Advances Cooperation with Interpol, Athlete Passport Development' (23 November 2008) World Anti-Doping Agency <www.wada-ama.org> retrieved at 27 October 2010. On 6 July 2010, the International Federation of Pharmaceutical Manufacturers and Associations ('IFPMA') and WADA signed a joint declaration, which aims to facilitate voluntary cooperation between WADA and IFPMA member companies, to identify medicinal compounds with doping potential, minimize misuse of medicines still in development, improve the flow of relevant information and facilitate development of detection methods in the context of the fight against doping in sport.' See 'Joint Press Release: IFPMA and WADA to Cooperate in the Fight against Doping in Sport' (6 July 2010) World Anti-Doping Agency <www.wada-ama.org> retrieved at 27 October 2010.

cooperation between the UEFA and the German police and Turkish police in the recent European crackdowns, and Interpol's collaboration with Asian governments to crackdown on illegal gambling in recent years, are good examples of effective cooperation between sports bodies and enforcement agencies. In our view, collaboration is a necessary minimum to effective action in this area.

The advent of attempted or actual match-fixing in a major New Zealand sport is inevitable. We recommend that sports bodies, government agencies, and major sport associations intensify their examination of the appropriate means of combating it.