

Chapter 2

Sport

2.1 Sport and Cultural Heritage

The world of sport is a paradox. On the one hand, the organization and functioning of sport runs on the principle of autonomy, such that leaders of sports organizations or relevant associations require competition and discipline matters to go through specialized sport courts, where they exist (like Brazil), before involving local authorities. On the other hand, it is imperative to prosecute offenses committed by criminal organizations that use the sport sector to cover up and facilitate their actions, and this requires the involvement of local authorities.

Indeed, the sport industry is one of many sectors that has attracted perpetrators of financial crimes, such as money laundering. The traditional, simplistic view of the sport sector as an area where no actions are taken in bad faith by those involved is no longer accurate. As several criminal cases are reported and more are gradually revealed to the public, the traditional view should cease to exist.

Yet, some people continue to have this innocent perception, where they refuse to acknowledge organized crime in sport and show a lack of interest in assessing the resources within the sport sector that are used for organized crime. This innocent perception threatens the sport sector and will even compromise the state order. This romantic view of sport does not have support in today's world, where crime that was once confined to a few sectors has expanded to the sport arena. Moreover, this expansion has transformed the sport sector's operations to propagate crimes of extreme social harmfulness.

Since ancient times, man has given importance to sport and idolized its athletes. This esteemed view of sport has led to worldwide marketing of different games, an unprecedented international labor market surrounding sport, and large sums of money invested by the media, various sponsors, and wealthy private investors. One can certainly say that money gradually began to discover sport and control it. While this increase in cash flow allows a great amount of people to contribute diverse investments, it can also lead to risks of fraud, tax evasion, and corruption. The movement of money within the sport sector can also become a channel for laundering dirty money.

There is no doubt that the sport sector is vulnerable to a number of issues and global threats. Over time, authorities have become aware of problems within the sports industry, which include racism, corruption, doping, human trafficking, illegal gambling, match fixing, violence, and money laundering. The high volume of resources being transported across borders and, as we will be discussed later, the lack of transparency in such negotiations require greater control by authorities. The absence of such control provides unprecedented opportunities for organized crime to launder dirty money within the sport sector. All of this leaves out the hunger for profits of private investors, who view the sport sector as just another commercial business whose first principle would be “business is not built on the Beatitudes.”

Despite the existence of international media reports and various studies pointing out the international schemes of organized crime within the sport sector, many choose to ignore these reports. Perhaps this is done due to denial or as a matter of convenience by those managing or participating in the sport sector. This willful ignorance prevents people within the sport sector from seeing any connection between organized crime and sports, and such denial only stimulates more crime due to state inaction.

There seems to be a general perplexity surrounding crime in sport that has cooled efforts of state control, which is dependent on confidential information provided by clubs or sports associations that is not always easily understood. This realization has surprised scholars and confronted the orthodox practices of sports management. The sport industry is surrounded by an aura of mystery that cannot be boiled down to a simple prognosis of unlawful behavior. Instead, it will take a differentiated approach to uncover the criminal acts in the sport sector.

2.2 Structural Violence and Organized Crime

Notwithstanding the central focus of this study—financial crime in the sport sector—violent crime is a constant threat to individuals at sporting events, as well as to their assets. For example, homicides, thefts, and robberies are still the crimes that most people fear while at sporting events. Street robberies make up a large portion of these criminal offenses, threatening the general public as well as foreigners who attend international sporting events. Street robberies are particularly dangerous due to the frequent use of firearms to carry out such crimes, especially in underdeveloped countries.

Football has particularly engendered violent forms of aggression, both in stadiums and outside stadiums on the streets. For example, on November 9, 1947, on the Brazilian field at Teixeira de Castro, the team from Bonsucesso defeated the team from Fluminense by a score of four to three. The referee, Alberto da Gama Malcher, was brutally attacked by six fans who disagreed with his ruling. The attack resulted in several injuries.

The congregation of large groups of people at sporting events allows for the enjoyable and spectacular experience of watching a game together and the collective

manifestations of various cultures. However, this congregation of fans can also lead to a “mob mentality,” where people engage in negative attitudes or actions as a group that they would never do in isolation. The stirring up of emotions that leads to the united gathering and support of fans can also attract those who wish to act out negatively on their emotions in a way that is normally not allowed in other social contexts. Any negative emotions that are socially repressed may find an outlet at sporting events due to the safety of numbers, causing fans to act on their frustrations in a way that would not happen if they were alone. Moreover, the stadiums in some countries are badly maintained and difficult to exit, thus creating conducive environments for festering annoyances to be aggravated until they erupt into episodes of physical violence.

Homeland security is a major concern for the general public, and issues of security are especially salient when it comes to football. On game days, authorities make plans that are meant to curb violence in football games, particularly in the stadiums, in surrounding areas, and sometimes in different places outside of game sites. However, fans and their families are skeptical of these measures due to the apparent inability of the state to reduce crime and provide greater safety at football games.

In most cases, carrying out policies that are meant to contain such crimes proves to be a challenge to government agencies. Such offenses are still considered a major threat to the citizens, which shows that what many countries are doing to contain such crime is not enough. However, the prevalence of such violent crime is based on a combination of factors that depend on the socioeconomic conditions surrounding the sport environment, and any deficiencies in police work should not be regarded as the sole cause of such crimes.

People and players are also fully aware of the serious problems regarding crime within football and the risks that stem from the absence, or insufficient action, of local authorities. The players themselves have also been victims of violence.¹ The growth of the underworld within the football arena has caused gangsters to become overconfident.

Furthermore, other crimes have been committed within the scope of international sporting events, such as Internet crimes, drugs, human trafficking for sexual exploitation of women and children, and terrorism. Misguided public policies have moved individuals and supporters away from direct participation in the management of sports, especially with respect to the revenues made by sporting clubs. These policies have made it harder to stop crime within the sport sector, since less people are able to infiltrate and prevent such crime.

On January 8, 2010, the world was surprised by the attack on the team bus of the Togo national football team, which was carried out by the Liberation Front of Cabinda and led to the killing of three people and the injuring of several others. This

¹ Graham Johnson reveals that “in the past, good players expected fans to get upset when they left a club, especially if they went to a big rival. But today, the boos and hisses of the ordinary supporters are accompanied by a sinister undertone: death threats, hate campaigns and attacks on family members.” In *Football and Gangsters: How Organized Crime Controls the Beautiful Game*. Great Britain: Cox and Wyman Ltd., 2007, p. 61.

tragic event demonstrates how sport can be used as a target for terrorist purposes. Such attacks are not small or isolated acts carried out by unknown political rebels. Rather, they represent a global threat to the sport sector by known terrorist groups who want to use football as a platform to spread their message. This fear goes beyond the fear associated with normal levels of violence within sporting events.

According to Graham Johnson, “football and gangsters is still an unspeakable taboo. Gangsters often use sophisticated methods of entrapment, including drugs, prostitutes and ‘honeytraps’ to blackmail players, who are often too young, too scared or too stupid to be wary in the first place or to report incidents of extortion to the police afterwards.”²

Thus, the sport sector has become an area ripe for various criminal activities, with a higher incidence of common crimes and a potential threat of more serious terrorist activities. It should be noted that Brazil has not been directly threatened by terrorist practices. However, this fact does not justify forgoing constant vigilance in attempting to prevent such practices, particularly when hosting international sporting events.

One way to reduce such crime is to create task forces that plan, coordinate, and involve cooperation among various actors, including educators and nongovernmental organizations (NGOs), to respond to such crime. These task forces are presented with a very difficult and complicated task; therefore, their policies should not solely involve the increased use of police forces. Even if they can plan specific safety measures for world sporting events, the apparent inability of local authorities to deal with common crime suggests that people from other lines of work need to be involved to address the problem. That being said, the inability to eradicate common crime by local authorities does not mean that there has been no success in driving public policy to deter wrongdoing. This can be seen in the achievements in public safety by Brazil during the Pan American Olympic Games held in Rio de Janeiro in 2007.

Unlike international sporting events, where there is greater knowledge on what needs to be addressed in order to create a successful policy, it is hard to control the socioeconomic conditions that typically cause general crime. In addition to violence in sports, the will to win has led some athletes to engage in another kind of criminal activity, doping—the use of substances that improve physical performance. This is not a new concept, as the practice of doping is even older than the Olympics. Four thousand years ago, the Chinese, well aware of the effects of the tea plant called “machuang,” which contains ephedrine in high doses, used this plant to increase their working capacity. During the Olympic Games of Antiquity in 800 BC, athletes drank various herbal teas and oils and used mushrooms to enhance performance. In the nineteenth century, it became popular among athletes to consume a drink called “Vin Mariani,” which was made from the leaves of cocaine and took the name of the alchemist who produced it.

The modern Olympics, an event of both social and national celebration, emphasizes victory so much that it has created a culture of obtaining wins at any price.

² In *Football and Gangsters. How Organized Crime Controls the Beautiful Game*. Great Britain: Cox and Wyman Ltd., 2007, p. 7.

As Luis Fernando Correia points out, “the first games of the modern era, organized by Baron Coubertin in Athens, in 1896, marked the emergence of ‘small balls’, spheres containing various stimulants as cocaine, ephedrine and strychnine.”³ This emphasis on winning led athletes to their deaths through excessive use of stimulants and hormones during the 1960 and 1964 games. Despite the International Olympic Committee’s strong attempts to control the use of doping, frequent cases are still recorded. For example, seven cases of doping were reported in the 2004 Athens Paralympics.

As it has grown in recent years, the sport sector has reflected an exacerbation of passion and expression, especially in football. Assaults are a constant in the sport, but it has also drawn attention to cases of racism⁴ and violence by organized supporters.⁵ According to Graham Johnson, “in countries where armed gangs still rule the roost, they have used football to vent their violence.”

A paradigmatic case of racism occurred in Brazil in April 2005, when an Argentine player, Leandro Desábato of Quilmes, made racist comments toward Grafite, a soccer player of São Paulo, at the Morumbi stadium. The altercation that arose between these two players led to the entry of a police chief into the field to arrest the Argentine player. In another incident, soccer player Roberto Carlos was taunted by fans of Atletico Madrid who called him “monkey.” This resulted in a fine of US\$ 787 to the club, which had already been fined by the European Union of Football at US\$ 12,000 after fans of the club also made racist gestures toward Brazilian defenders Juan and Roque Junior. In Italy, striker Mario Balotelli from Inter Milan suffered racial discrimination by Juventus fans in 2009.

The situation regarding racism in Europe has reached such high levels that an association named “Red Card” was created in Barcelona, Spain, to combat racism by mobilizing clubs and athletes against this phenomenon and taking legal action to ensure respect for minorities in sports.

The Fédération Internationale de Football Association (FIFA) announced on May 6, 2013, that it would also take measures to combat racism in football. For instance, one FIFA employee will be present during each game to help the referee handle racist encounters. In 2006, the Brazilian Football Confederation (CBF) published resolutions that punish clubs that practice or tolerate racism among their staff or fans. Football clubs can now be punished with financial or sport sanctions for engaging in racism.⁶

³ *In*: A história do doping nos esportes. Available at <http://g1.globo.com/Noticias/Ciencia/0,,MUL1267929-5603,00-A+HISTORIA+DO+DOPING+NOS+ESPORTES.html>.

⁴ According to Steve Greenfield and Guy Osborn, “The football authorities are very conscious of the problem of racism within the game, although there have been highly public instances of alleged abuse with racial undertones between players that have been largely ignored.” In *The Football (Offences and Disorder) Act 1999: Amending s3 of the Football Offences Act 1991*. 5 J. C. L. 55 2000, p. 62.

⁵ *Football and Gangsters. How organized crime controls the beautiful game*. Great Britain: Cox and Wyman Ltd., 2007, p. 195.

⁶ In *Racismo poderá gerar até rebaixamento*. FIFA. Federação cria pacote de propostas para combater discriminação, com punições financeiras e esportivas. Folha de São Paulo, esporte, D3, May 7, 2013.

The root of racism in football may stem from the fact that only white people and aristocrats played it in the beginning. Considered to be the sport of the Brazilian elite in the 1920s, the makeup of football players changed in 1923, when a new football team, Vasco da Gama, was created to destabilize the hegemony of the ruling classes. The team, coming from Rio de Janeiro, was composed of black players, multiracial players (“mulattoes”), and white players from lower-income origins, and it won the State football championship during its first year.

In addition to its privileged origins, there is also the belief that it is appropriate to release any latent aggression without limitations while engaged in sports. This view makes sporting arenas analogous to lawless lands, where human aggression finds legitimacy to express itself. While “free expression” is a fundamental value, it must yield to the right to live in a peaceful society in which human dignity is always protected. Free expression cannot undermine the foundations of democracy and open ground for intolerance and totalitarianism.

The release of the basest emotions during sporting events has not only led to assaults and racist encounters but also been leveraged by people who “organize” militarily, causing the spread of new kinds of physical violence in cities. These instigators of “organized” violence are able to lure in younger fans in particular. The possibility of escaping from reality, combined with a manifestation of power that includes congregating with others and retaining anonymity, influence younger fans to perform every kind of expression of intolerance and terror under the illusory cloak of supporting their favorite team. Theories that explain this adolescent rebellion include the desire to reject parental domination, sport being a release for all kinds of adolescent frustrations, and an antiestablishment belief in opposing the domination of the government or ruling party.

The possibility of strict liability for the leaders of organized violence based on the actions taken by its members may eventually constitute effective means to steer these leaders and their members toward lawful action. It is not fair that leaders have access to privileges, like tickets, participation in meetings, transportation, etc., without also being liable for the violence they cause.

In its most trivial sense, there are currently several cases of vandalism, foolishness, and irrational behavior, to the point that organized groups of fans are only allowed to move around with police escorts. On the other hand, there are also more serious instances of organized violence, where groups are usually armed with iron bars, incendiary instruments, and traditional weapons, and war cries can be heard. The shouts of these groups represent intolerance and hostility at its worst, where the leaders opine ideological appeals ostensibly based on reason instead of acknowledging their true racist and prejudiced purposes. The brutal scenes in the episode at the Pacaembu stadium in São Paulo in 1995, where supporters of teams from São Paulo and Palmeiras clubs staged regrettable confrontations that were televised, showcase the intensity of serious organized violence.

Even in more developed countries, this “hooliganism,” which originally stemmed from the working classes and subcultural groups, has expanded to the general population. Even the groups in more developed countries express their worldview about

the differences among various groups in a negative light through slogans, gestures, and songs. In England and Spain, the issue of organized violence among “hooligans” has been a matter of public safety since the 1980s.

Football mobilizes the masses and is a trendsetting sport; however, it also models aggressive behaviors and provides an environment to act out on these aggressions. Even leaders of various sports teams and organizations may reflect and support the implicit understanding that anything is acceptable in the sports environment. One cannot forget, for example, the incident where the former coach of the Brazilian national team, Carlos Alberto Parreira, spit water served by Argentine players in an obvious display of incivility. This “everything is acceptable” attitude can often facilitate crime and calculated disorder, since such an attitude makes little distinction between legal and illegal actions, especially in the economic field. However, these same sports leaders should recognize that the danger of violence and crime that is constantly present during these football games will eventually affect the sport by compromising its popularity. National policies to combat violence in sport, including organized violence, have been introduced. In Spain, such policies began to surface in 1987, while similar policies cropped up in England in 1990. In Brazil, the Charter of Brasilia was drafted in 2003 after debates sponsored by the Sports Ministry took place among people involved with football. In 2004, a national commission was created that dealt with violence in sports and required ongoing action to address this problem. Unfortunately, despite these efforts, the main values that are meant to be instilled in sport—that is, coexistence, brotherhood, and welfare—remain shattered and weakened by attitudes that reaffirm cultural, social, and economic differences and attempt to give certain groups privileges and advantages over others.

2.3 Unlawful Practice and Consent

The private appropriation of the sport industry can be observed by the actions taken by the ex-president of the CBF, as evidenced by the frequent comments and assertions made by his top managers close to him. The ex-president threatened to strip a group of Brazilian teams called “Club 13” of television contract rights if his nominee for election was not chosen to command this entity. These competitors claimed that the dispute affected the very survival of these sports clubs.⁷ Common sense goes against taking such a stance, trumpeted so shamelessly, revealing the sad state of the football industry.

Besides the activities of bookies and middlemen outside the sport who seek illicit profits at the expense of the pain and suffering of athletes and their families, there

⁷ Cf. ARRUDA, Eduardo. A ameaça. *Folha de São Paulo*, Esporte, D2, Paineis FC, March 31, 2010.

is a structured problem involving the industry of football as a whole.⁸ For example, countries prefer to use service contracts in professional football clubs based on the desire to not contribute to the players' pensions and to not make social security payments. According to Robert Siekmann, "the player is regarded as an artist. Football is thus treated as a special branch of industry that simply cannot be compared with ordinary business."⁹

The US Congress passed the Sports Agent Responsibility and Trust Act ("SPARTA")¹⁰ in 2004. It is the only federal legislation specifically dealing with sports agents. According to Timothy G. Nelson, SPARTA "was enacted to protect colleges and universities and, to a lesser extent, student-athletes from improper recruitment practices of agents. Among other things, the law makes it illegal for an athlete agent to provide anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt."¹¹

Often, licensed agents use web sites and unauthorized persons for the practice of "dirty" service. Even big clubs make use of smaller clubs, usually located in the countryside, for the placement of children who have not yet reached the legal age to practice sports. Common reports show the prevalence of sports leaders breaking laws and regulations established by FIFA in order to obtain a player with a promising future. There are even cases of people linked to human or drug trafficking who traffic young football players for large amounts of money.

There are some loopholes to the rules that prohibit the use of minors in international transfers in football. For example, Arts. 19 and 19bis in the FIFA Regulation on the Status and Transfer of Players, of October 19, 2003, called "Protection of minors,"¹² actually facilitate criminal activity because they represent a relaxation of the rules in a way that makes them easy to circumvent.

Title VI, titled "International Transfers Involving Minors," states the following:

⁸ In an interesting case, *Eastham v. Newcastle United Football Club*, George Eastham, a famous British football player, was at the end of his contract with Newcastle United. He requested to be transferred to another club, but at that time a club could effectively hold a player for life by withholding his playing registration and refusing any and all transfer requests by both the player and other clubs. In this system, considered an "archaic one," players were like "soccer slaves." In: James G. Irving, *Red Card: The Battle Over European Football's Transfer System*. 56 U. Miami L. Ver. 667, 2002, p. 670.

⁹ In Labour Law, the Provision of Services, Transfer Rights and Social Dialogue in Professional Football in Europe. 4 ESLJ 1 2006–2007.

¹⁰ 15 U.S.C. §§ 7801–7807 (2006).

¹¹ In Flag on the Play: The Ineffectiveness of Athlete-Agent Laws and Regulations—and How North Carolina Can Take Advantage of a Scandal To Be A Model For Reform. 90 N.C. L. Rev. 800, 2011–2012, p. 803.

¹² FIFA Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/95/83/85/regulationsstatusandtransfer_e.pdf, accessed on June 21, 2013.

Art. 19 Protection of minors

1. International transfers of players are only permitted if the player is more than the age of 18 years.
2. The following three exceptions to this rule apply:
 - (a) The player's parents move to the country in which the new club is located for reasons not linked to football.
 - (b) The transfer takes place within the territory of the EU or European Economic Area (EEA) and the player is aged between 16 and 18 years. In this case, the new club must fulfil the following minimum obligations:
 - (i) It shall provide the player with an adequate football education and/or training in line with the highest national standards.
 - (ii) It shall guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education and/or training, which will allow the player to pursue a career other than football, should he cease playing professional football.
 - (iii) It shall make all arrangements necessary to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).
 - (iv) It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations.
 - (c) The player lives no further than 50 km from a national border and the club with which the player wishes to be registered in the neighboring association is also within 50 km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100 km. In such cases, the player must continue to live at home and the two associations for their concern must give explicit consent.
3. The conditions of this article also shall apply to any player who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time.
4. Every international transfer according to paragraph 2 and every first registration according to paragraph 3 is subject to the approval of the subcommittee appointed by the Players' Status Committee for that purpose. The application for approval shall be submitted by the association that wishes to register the player. The former association shall be given the opportunity to submit its position. The subcommittee's approval shall be obtained prior to any request from an association for an International Transfer Certificate and/or a first registration. Any violations of this provision will be sanctioned by the Disciplinary Committee in Accordance with the FIFA Disciplinary Code. In addition to the association that failed to apply to the subcommittee, sanctions may also be imposed on the former association for issuing an International Transfer Certificate without the approval of the subcommittee, as well as on the clubs that reached an agreement for the transfer of a minor.

19bis Registration and reporting of minors at academies:

1. Clubs that operate an academy with legal, financial, or de facto links to the club are obliged to report all minors who attend the academy to the association upon whose territory the academy operates.
2. Each association is obliged to ensure that all academies without legal, financial, or de facto links to a club:

- (a) Run a club that participates in the relevant national championships; all players shall be reported to the association upon whose territory the academy operates, or registered with the club itself.
 - (b) Report all minors who attend the academy for the purpose of training to the association upon whose territory the academy operates.
- 3. Each association shall keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies.
- 4. Through the act of reporting, academies and players undertake to practice football in accordance with the FIFA Statutes, and to respect and promote the ethical principles of organized football.
- 5. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code.
- 6. Art. 19 shall also apply to the reporting of all minor players who are not nationals of the country in which they wish to be reported.

The text says nothing about transfers within a country, thus failing to preclude the spurious use of these forms by organized crime.

Furthermore, two of the three exceptions to the general rule prohibiting international transfers include situations where one can easily violate the standard rules.

The first, Art. 19(2)(a), permits international transfer when the parents of a young player move to the country in which the new club is located for reasons not linked to football. It is possible for clubs to use this exception and facilitate a parent's move in order to remove any obstacles to obtaining the young player. Thus, there are situations where clubs or agents have admitted to employing a young player's father as the stadium gardener or, in another case, as a driver for the club in order to circumvent the general rule and take advantage of the talented young player. A parent moving for a new job allows the club to hire the parent's younger child, even if the move is, in fact, linked to football and was solely done to allow a teen to get player status.

The other exception, Art. 19(2)(b), permits transfer within the EU or the EEA if the player is between the ages of 16 and 18 years, as long as the player is placed in optimal living standards and provided adequate football training and academic or vocational education. However, there are reports of immigration policies that allow a 16-year-old child to come to Europe, only to be transferred by a football club, thus triggering this exception to the general rule.

The FIFA regulations also require clubs that run football training schools to report the names of all the minors participating in such clubs to the appropriate association or local federation (Art. 19bis(1)). Even when there is no legal or de facto financial link between the training schools and the clubs, these schools are still required to report to the mentioned entities all listed minors within the school (Art. 19bis(2)). Moreover, the failure to record the names and dates of birth of all minors within these football training schools results in sanctions against the violating entities (Art. 19bis(3)).

Even though registrations and international transfers of players are subject to the approval of the subcommittee appointed by the Players' Status Committee (Art. 19(4)), this provision and its accompanying sanctions for those who violate it have not curbed the abuses that are committed and often reported in this area of sport. Despite these ostensibly stringent rules, clubs often use their lawyers to find

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