

Is Organized Gambling a Threat to the Integrity of Transnational Individual Sport Competitions?

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ABSTRACT

*Match-fixing is egregious at the mid and lower tiers of professional and semi-professional individual sports, particularly, if not exclusively, where the relevant governing body allows real time gambling of matches and tournaments at these lower tiers. Evidence demonstrates that in sports such as tennis and badminton, the bulk of the prize money is distributed to a small minority of athletes at the top*

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*tier and instances of match-fixing there are rare as a result. There are, however, many thousands of athletes at the lower tiers that are unable to make ends meet and whose expenses far outweigh any meagre prize money they may earn. The paper suggests that the introduction of organized gambling for matches and tournaments played at the lower tiers provides an incentive for indigent players, or those who see little prospect of a career or wealth, to engage in match-fixing. This introduction of gambling is a clear recipe for corruption and manipulation of the sport. Instead, mid, and lower tier matches and tournaments should be excluded from the ambit of organized gambling and there is no good reason why gambling should even exist at this level. The profits reaped by sport governing bodies by real time gambling are far outweighed by the perils of match-fixing and the sport's disrepute. Sport governing bodies should instead endeavor to re-distribute their profits more equitably among players and provide financial safety nets for those professionals unable to make a living as a disincentive to match-fixing.*

## I. INTRODUCTION

There is a recurring phenomenon in most individual sports. Talented athletes follow their ambition to become professional, but at some point, it is evident that they have long reached their peak, and they subsequently arrive at the realization that many others will consistently outperform them to such a degree that they are never close even to the lower end of prize money in available tournaments. By this time, these athletes have invested most of their time, effort, and savings into training, coaching and travel expenses and are left with little education and prospects for an alternative career. Yet, they are forced to enter into competitions, especially in individual sports such as tennis and badminton, incurring more expenses than any earnings they can possibly accumulate.<sup>1</sup> Financially, such a pursuit makes no sense and the more that course of action is pursued, and naturally accompanied by frustrating results, the more expenses are incurred by the athlete and their family. Even if the formal banking sector is not willing to finance a sporting career, informal financing mechanisms may find this an appealing venture. No doubt, certain athletes will hail from more affluent backgrounds and

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1. See Robert I Correales, *Broken Bodies and Broken Dreams: How Social Safety Net Programs Subsidize Professional Boxing and the Need to Improve Legal and Health Protections for Prizefighters*, 19 TEX. REV. ENT. & SPORTS L. 107 (2019) (demonstrating that the problem is acute even as with regard to expenses for healthcare and medical bills. The article focuses on lower-ranking professional boxers in the USA and the absence of any healthcare plan for meeting their expenses, which has led to many of them being left with permanent disabilities and even dying because of their indigence).

will persevere with their chosen sport; others, from less affluent families, will make ends meet by coaching. Many will find the professional sport, even when losing, to be their only true passion and vocation.

A minority, however, will see things rather differently. Continued financial loss, no prospect of income or glory may well lead certain athletes on tour to accept that their career is effectively over, but not their opportunity of making some kind of profit. Given the pervasiveness of legalized gambling in the lower leagues of many sports, there is significant incentive for struggling athletes to participate in match-fixing and manipulation of their sport. At the higher echelons of the game this is next to impossible because athletes at the apex have far more to lose if involved in corrupt practices. Exceptionally, as will be demonstrated in a subsequent section, in certain spots, such as badminton, where the prize money is not significant, mid-ranked players may well have an incentive to manipulate events at the expense of an already decent career. At the lower end, however, not only is there absolutely nothing to lose; quite the contrary, there is a lot to gain by manipulating competitions, especially those in which athletes are direct participants. The hypothesis underlying this Article is the existence of a real danger that some (but not all) participants in individual sports who are unable to make a living from prize money (i.e. mid and lower tier ranked athletes) are susceptible to match manipulation where organized gambling has been introduced at these lower tiers.<sup>2</sup> As will be demonstrated in subsequent sections, real time gambling in lower tier tournaments can only be introduced where local laws so allow, as well as crucially following an agreement between the relevant sport governing body and a data/gambling company. The Independent Review of Integrity in Tennis emphasized in its 2018 report that:

The imbalance between prize money and costs is foremost among the several circumstances that render professional tennis vulnerable to breaches of integrity. The vast majority of nominally professional players, of whom there are as many as 14,000, are unable to make a living through competition. While players ranked in the top 100, and possibly down to around 150, can generally earn a living from prize money and sponsorships, at the lower rungs of the sport the available money is small and the costs are high. An ITF review in 2014 determined that the

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2. William Ralston, *The Fixer, the Cheat and the Corruption Crisis in Global Tennis*, FIN. REV. (July 8, 2022), <https://www.afr.com/companies/sport/the-fixer-the-cheat-and-the-corruption-crisis-in-global-tennis-20220701-p5aydc> [<https://perma.cc/Y6PB-UZ65>]; Simon Cambers, *Organised crime has already infiltrated tennis, says security expert*, GUARDIAN (Nov. 25, 2014), <https://www.theguardian.com/sport/2014/nov/25/organised-crime-tennis-security-expert> [<https://perma.cc/Y2NV-AWN9>].

“break even” point—the ranking where a player earned as much money from professional tennis as he or she spent on costs – was 336 and 253 in the worldwide rankings for men and women, respectively.<sup>3</sup>

If this is indeed the case, then it is clear that measures must be put in place by the relevant sport governing bodies (SGBs) in order to prevent corruption at the lower end of the game.<sup>4</sup> While governments, as well as inter-governmental organizations,<sup>5</sup> have an interest in preventing and punishing corrupt conduct such as match-fixing (in its broader sense, which includes underlying phenomena such as tanking and sport manipulation more generally),<sup>6</sup> article 7(2)(c) of the Macolin Convention emphasizes that governments must encourage SGBs to adopt effective mechanisms to facilitate the disclosure of information concerning the manipulation of sports competitions and measures should be taken not by state authorities but by SGBs themselves.<sup>7</sup> In practice, such occurrences are first detected by the investigating bodies of SGBs, and it is on the basis of the available evidence that national law enforcement prosecutes at the level of criminal law.<sup>8</sup> The Article will demonstrate that the introduction of organized gambling in the lower tiers of individual sports incites corruption, match-fixing, and attracts organized criminal activity.<sup>9</sup> This type of corruption generally goes unnoticed, other than being sanctioned by judicial organs of SGBs.<sup>10</sup> While SGBs have a real interest in stumping out such phenomena, at the same time they are eager to attract investors to their game and gambling

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3. ADAM LEWIS QC, BETH WILKINSON, & MARC HENZELIN, INDEPENDENT REVIEW OF INTEGRITY IN TENNIS ¶ 84 (2018).

4. SYLVIA SCHENK, RESEARCH HANDBOOK ON EU SPORTS LAW AND POLICY: INTEGRITY OF SPORT 431 (Anderson et. al. eds., Edward Elgar ed. 2018) (duty arising from the specificity of SGBs, in addition to their internal constitutional arrangements).

5. *Mapping of Corruption in Sport in the EU*, EUROPEAN COMM’N (Dec. 2018), <https://op.europa.eu/en/publication-detail/-/publication/71c67c33-1dff-11e9-8d04-01aa75ed71a1>; U.N. OFF. ON DRUGS & CRIME, *Resource Guide on Good Practices in the Investigation of Match-Fixing* (2016), [https://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE\\_GUIDE\\_ON\\_GOOD\\_PRACTICES\\_IN\\_THE\\_INVESTIGATION\\_OF\\_MATCH-FIXING.pdf](https://www.unodc.org/documents/corruption/Publications/2016/V1602591-RESOURCE_GUIDE_ON_GOOD_PRACTICES_IN_THE_INVESTIGATION_OF_MATCH-FIXING.pdf) [<https://perma.cc/7XYM-VVW2>].

6. Council of Europe Convention on the Manipulation of Sports Competitions art. 3, Sept. 18, 2014, CETS No. 215, <https://rm.coe.int/16801cdd7e> [<https://perma.cc/3SPJ-P54H>] (defining manipulation of sports competitions).

7. *Id.* at 5.

8. *See* Bundesgesetz über die Förderung von Sport und Bewegung [SpoFöG], [Civil Code] Jun. 17, 2011, SR 415.0, art. 25(a) (Switz.).

9. ANDREW MENZ & DAVID SKENE, MATCH-FIXING IN SPORT: COMPARATIVE STUDIES FROM AUSTRALIA, JAPAN, KOREA AND BEYOND 18–21 (Stacey Steele & Hayden Opie eds., 2018); DAVID FORREST, SPORTS BETTING: LAW & POLICY 22–40 (Paul M. Anderson et al eds., 2012).

10. Mike Higgins, *Match-Fixing: A Historical Perspective*, 35 INT’L J. HISTORY SPORT 123, 125 and 128 (2018) (showing that match fixing has increased in recent years and is largely unregulated).

is the most lucrative among these.<sup>11</sup> Given that the topic is vast and potentially open-ended, this Article will focus only on two individual sports to illustrate the hypothesis, namely tennis and badminton, where manipulation and match-fixing is not a rare occurrence, particularly in the realm of tennis.

The Article is organized as follows: section 2 explores match-fixing by individuals acting on their own or small conspiracies, as well as through the intervention of organized crime. Section 3 goes on to suggest that gambling should be eliminated altogether at the mid and lower tiers of these two sports as it is the only incentive for manipulation. Section 4 takes a look at the role of sanctions as a deterrent and proposes that life bans do not necessarily deter disgraced athletes from re-inventing themselves as more experienced and sophisticated match-fixing ring leaders. Section 5 takes a look at so-called financial safety nets for those professional and semi-professional athletes struggling to make a living and who otherwise may be tempted to manipulate their games. Section 6 analyzes the current state of play regarding enhanced monitoring and investigation of match-fixing, as well as the difficulty in retrieving evidence.

## II. THE VARIETIES OF MATCH-FIXING IN TENNIS AND BADMINTON

The following two subsections will set out the two types of manipulation generally encountered in the two sports; namely match-fixing by current and former professional or semi-professional athletes acting alone or in the form of small conspiracies, as well as match-fixing perpetrated by organized criminal groups, most often orchestrated by people with no relation to the sport.

### A. Match-Fixing by Athletes Acting Alone

The *Zulkiffi and Seang* case involved an active (Zulkiffli) and a former professional badminton player, both of whom were accused of match-

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11. Robert C. R. Siekmann, *Sports Betting in the Jurisprudence of the European Court of Justice: A Study into the Application of the Stare Decisis Principle, or: The Application of the "Reversal Method" of Content Analysis and the Essence of the ECJ Case Law on Sports Betting*, SPORTS BETTING: L. & POL'Y 107, 128 (Paul Anderson & Ian Blackshaw eds., 2012).

fixing for the purpose of betting in various badminton tournaments.<sup>12</sup> In 2017, a year after the violation was registered, Zulkifli was ranked 30<sup>th</sup> in the Badminton World Federation (BWF) rankings and was just 23 years old at the time of the original investigation.<sup>13</sup> A whistleblower alerted the authorities that Zulkifli requested his assistance to manipulate the outcome of a match during the Brazilian Grand Prix of 2016.<sup>14</sup> The investigation into Zulkifli revealed evidence that his involvement in manipulation of badminton competitions had commenced well before 2016.<sup>15</sup> Seang, who at the time was ranked between 105 and 170 in the BWF rankings,<sup>16</sup> had earned just short of \$27,000 USD as prize money in his entire career.<sup>17</sup> While both athletes were at different phases of their career, and despite the fact that Zulkifli was ranked higher, the gross aggregate of their earnings compared to their expenses was similar. By way of reference, the prize pool of the BWF Korean Open 2023 was \$420,000 USD—the winner was set to receive \$31,500 USD, while those in the top sixteen were guaranteed \$1,470 USD.<sup>18</sup> Even if an athlete ordinarily ranked at number 30 was to somehow break into the top 16, and even assuming that the organizers or the athlete’s national federation funded all or part of his travel and accommodation expenses, this amount is taxable and only covers a fraction of the athlete’s health care, rent, energy, transportation, living expenses and any other costs. A player ranked as high as 30th in the BWF rankings would most likely be excluded from serious sponsorship. By way of illustration, athletics apparel company Li Ning, which sponsors badminton, offers sponsorship deals to athletes ranked in the top 25 globally,<sup>19</sup> and as of May 2022, Li Ning was the second biggest sponsor of badminton

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12. Badminton World Federation v. Zukifli, Decision 2018/01, Ethics Hearing Panel, ¶ 2 (Court of Arbitration for Sport) (Apr. 27, 2018) [hereinafter Zukifli Ethics Hearing Panel].

13. *Ranking History: Zulfadli Zulkifli*, BADMINTON WORLD FED’N, <https://bwfbadminton.com/player/89511/zulfadli-zulkifli> [<https://perma.cc/4M2X-UA79>].

14. Zukifli Ethics Hearing Panel, *supra* note 12, ¶ 7.

15. Badminton World Federation v. Zukifli, Court of Arbitration for Sport (CAS) 2018/A/5846 & CAS 2018/A/5847 Arbitral Award, ¶ 18 [hereinafter Zukifli Arbitration Award].

16. *Ranking History: Chun Seang Tan*, BADMINTON WORLD FED’N, <https://bwfworldtourfinals.bwfbadminton.com/player/52867/chun-seang-tan/ranking-history> [<https://perma.cc/9RXZ-3HTB>].

17. Performance Data: Chun Seang Tan, BADMINTON WORLD FED’N, <https://bwfworldtourfinals.bwfbadminton.com/player/52867/chun-seang-tan> [<https://perma.cc/5C3U-2W8G>].

18. *2023 Korea Open*, BADMINTON WORLD TOUR, <https://badmintonworldtour.com/event/2023-korea-open/> [<https://perma.cc/6KCQ-B4KS>].

19. *Athlete Sponsorships*, LI NING, <https://www.li-ning-sports.com/athlete-sponsorships> [<https://perma.cc/76YH-AKY9>] (last visited Feb. 21, 2024).

behind Yonex.<sup>20</sup> While certain national badminton federations in wealthy countries such as Singapore do receive *ad hoc* donations,<sup>21</sup> some of which is funneled to the players, this is hardly the case with all national federations. This data suggests that even top-class athletes ranked between 20-30 of the global rankings of a relatively popular (certainly not fringe) sport, most likely incur more expenses than the prize money they earn. This naturally places many players in a perilous situation, where either greed or sub-standard living conditions induce corrupt conduct initiated by the player, or otherwise opens the door for organized crime to approach players.

In the case at hand, Zulkifli and Seang acted in concert to manipulate entire games or engage in ‘point-fixing’ so that they could make bets on those games and points.<sup>22</sup> It was estimated that Zulkifli had committed at least 31 match-fixing violations, while at least 26 had been committed by his associate.<sup>23</sup> The two athletes had approached another person, who ultimately became the whistleblower in the case, to facilitate the manipulation of other athletes.<sup>24</sup> Zulkifli under-performed in certain games and feigned injuries in order to allow opponents to win, among other tactics.<sup>25</sup> There is no evidence to suggest that either of the athletes was involved with organized crime or that they worked with external associates as part of a broader conspiracy. The fact that at the age of 23, Zulkifli had manipulated at least 31 games is astounding, but shows that once this corrupt practice takes root, it is difficult for the perpetrator to set any sensible control, let alone stop it.

The ITF has a long list of sanctions against players at mid-level and lower tiers.<sup>26</sup> Besides the organized dimension of match-fixing expounded in the next section, there is no shortage of tennis athletes that place bets

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20. *Top Brands Sponsoring Badminton – As of May 2022*, GLOBALDATA, <https://www.globaldata.com/data-insights/sport/most-active-brands-sponsoring-badminton/> [<https://perma.cc/5AXH-C72A>] (last visited Feb. 21, 2024) .

21. Ervin Ang, *Singapore Badminton Gets \$ 1.1 Million Boost from Sponsors*, STRAITS TIMES (May 2, 2023, 11:48 PM), <https://www.straitstimes.com/sport/singapore-badminton-gets-11-million-boost-from-sponsors> [<https://perma.cc/R6T9-B8HJ>].

22. Zulkifli Arbitration Award, *supra* note 15, ¶¶ 60, 114.

23. *Id.* ¶ 62.

24. *Id.* ¶ 7.

25. *See id.* ¶ 4.

26. *Tennis Anti-Corruption Program Rules*, INT'L TENNIS INTEGRITY AGENCY (ITIA) (Jan. 1, 2023), <https://www.itia.tennis/media/0bgdcmbi/tacp-2023.pdf> [<https://perma.cc/WW3J-9UVW>].

on their own games.<sup>27</sup> In March 2021, the ITF announced the results of a match-fixing investigation against two Nigerian tennis players. One was ranked 986 and the other was not ranked at all; yet their matches were amenable to betting by the ITF and the two had gone on to bet on their own games.<sup>28</sup>

### *B. Match-Fixing by Organized Crime: The ‘Maestro’*

In the summer of 2023, the biggest-ever tennis fixing ring was prosecuted by Belgian authorities.<sup>29</sup> The key person moving the strings was hardly a sportsman but rather a former chess player.<sup>30</sup> The Belgian-Armenian was a 32 year-old man who had set up the ring a decade earlier. His name was Grigor Sargsyan but he was known to his inner circle as the Maestro.<sup>31</sup> In order to understand why this was a lucrative arrangement, a brief introduction to the global organization of tennis is warranted. Professional tennis is spread out through three distinct entities: (1) the International Tennis Federation (ITF) organizes the four Grand Slams,<sup>32</sup> and on behalf of the International Olympic Committee (IOC) it also administers the Davis Cup and the Olympic tennis tournament;<sup>33</sup> (2) the Association of Professional Tennis (ATP), which is organized as a non-profit entity, is the governing body of only some men’s professional circuits, namely the ATP Tour, the ATP Challenger Tour and the ATP Champions Tour<sup>34</sup>; and (3) the Women’s Tennis Association (WTA),<sup>35</sup> founded in 1973, governs the WTA Tour, but not the Grand Slam, the Davis Cup, nor the Olympic tennis tournament,

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27. See Kevin Sieff, *The Maestro: The Man who Built the Biggest Match-Fixing Ring in Tennis*, WASHINGTON POST (Sept. 7, 2023, 1:00 AM), <https://www.washingtonpost.com/world/interactive/2023/tennis-match-fixing-itf-grigor-sargsyan/> [<https://perma.cc/3ZWS-P6VV>].

28. *Two Nigerian Tennis Players Banned for Life for Match-Fixing Offences*, INT’L TENNIS INTEGRITY AGENCY (Mar. 11, 2021), <https://www.itia.tennis/news/press-releases/two-nigerian-tennis-players-banned-for-life-for-match-fixing-offences/>.

29. Sieff, *supra* note 27.

30. *Id.*

31. *Id.*

32. *Grand Slam Tournaments*, INT’L TENNIS FED’N, <https://www.itftennis.com/en/itf-tours/grand-slam-tournaments> [<https://perma.cc/F4BM-XC9F>] (last visited Feb. 23, 2024).

33. INTERNATIONAL TENNIS FEDERATION [ITF], *The Constitution of ITF Limited 2024 By-Laws 2.2(2)(a)*, <https://www.itftennis.com/media/2431/the-constitution-of-the-itf-2024.pdf>.

34. *ATP: Role, chairman, structure, all you need to know about the governing body of men’s tennis*, TENNIS MAJORS (Mar. 1, 2020), <https://www.tennismajors.com/atp/atp-role-chairman-structure-all-you-need-know-81433.html> [<https://perma.cc/PU7H-4SQS>].

35. About the WTA, Women’s Tennis Ass’n Tour, <https://www.wtatennis.com/about> [<https://perma.cc/HR3R-PCSY>] (last visited Feb. 23, 2024).



all of which are organized in the same manner as the men's game by the ITF.<sup>36</sup>

The tournaments with the greatest number of sponsors and prize money are those under the aegis of the ATP and WTA. The ITF's tournaments, as well as the ATP's Challenger tournament, effectively serve as a means for young players to climb the ranks of the professional game, but also serve as a platform for older players wishing to remain active.<sup>37</sup> Both tours are comprised of more than 60,000 matches per year played across the globe and organized by national tennis federations.<sup>38</sup> Players earn points per match won, calculated on ranking points for each tournament. Ranking is both domestic<sup>39</sup> and international (i.e. Junior ITF).<sup>40</sup> The prize money for all these mid and lower tier events is meagre. While athletes are willing to play as many tournaments as they physically can, cost makes this prohibitive, so ultimately most athletes end up choosing events based on cost and likelihood of picking up points. The Independent Tennis Integrity Review pressed the point that:

A comparison of the costs and available prize money for players at the Lowest Level of professional tennis—ITF men's and women's \$15k or \$25k events—underscores this point. The ITF's review in 2014 demonstrated that the average costs of playing professional tennis, excluding coaching, were \$38,800 for men and \$40,180 for women. On the other hand, the winner of a singles tournament at that level is unlikely to receive more than \$4,000. As a result, a player at that Lowest Level<sup>41</sup> would need to win at least ten tournaments in a year just to break even, without any accounting for coaching. By comparison, at the ATP World Tour level, the loser in a first-round singles event will typically earn over \$10,000.<sup>42</sup>

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36. See Ilias Bantekas & Marko Begovic, *Professional Tennis and International Law*, CAMBRIDGE U. PRESS 1, 1–10 (2024).

37. Sieff, *supra* note 27.

38. *Id.*

39. E.g., *Player Development*, U.S. TENNIS ASS'N, [http://www.playerdevelopment.usta.com/itf\\_junior\\_rules/#:~:text=A%20player%27s%20ranking%20will%20be,the%20best%20six%20doubles%20results.&text=Points%20are%20counted%20on%20a%2052%2Dweek%20rollover%20system](http://www.playerdevelopment.usta.com/itf_junior_rules/#:~:text=A%20player%27s%20ranking%20will%20be,the%20best%20six%20doubles%20results.&text=Points%20are%20counted%20on%20a%2052%2Dweek%20rollover%20system) (last visited Feb. 27, 2024).

40. *ITF World Tennis Tours Juniors Grading Criteria for 2024*, ITF WORLD TENNIS TOURS JUNIORS (Mar. 2023), <https://www.itftennis.com/media/9481/itf-world-tennis-tour-juniors-2024-grading-criteria.pdf>.

41. Lewis QC et al., *supra* note 3, ¶ 9 (describing how the “Lowest Level” is made up of ITF men's and women's \$15k and \$25k events. The “Mid-Level” is made up of ATP Challenger, ITF women's \$60k–100k and WTA \$125k events).

42. *Id.* ¶ 85.

Despite the fact that these are negligible tournaments and are never reported in the press, in 2016 the ITF signed a five-year deal with Swiss data company Sportradar, for a sum estimated around \$70 million USD. This agreement rendered these matches susceptible to gambling and Sportradar agreed to provide gamblers with live updates on non-televvised matches.<sup>43</sup> It is estimated that between 2016 and 2022, wagers on tennis matches surged more than 30% to a staggering \$50 billion USD, of which more than a quarter was bet on these obscure matches.<sup>44</sup> The Independent Tennis Integrity Review had earlier expressed serious concerns about placing ATP Challenger and lower tier ITF competitions on the radar of organized gambling. In 2018, the referral ratios for potential match-fixing were 0.81% (1 in every 123 bettable matches) for ITF men's \$15,000 events and 0.50% (1 in every 199 bettable matches) for ITF men's \$25,000 events.<sup>45</sup> The Independent Review aptly concluded that there was a "strong causal connection between the sale of official live scoring data to the Lowest Level and the growth in betting on matches at that level."<sup>46</sup>

Despite these deep concerns, in 2021 the ITF extended its agreement with Sportradar for an additional three years,<sup>47</sup> as did the ATP for its mid-level Challenger events.<sup>48</sup> A new agreement was signed between Sportradar and Tennis Data Innovations (TDI), a specialist joint venture vehicle of ATP and ATP Media, which allows Sportradar access to "global data and streaming rights for betting, and media data rights, for all ATP Tour and ATP Challenger Tour events."<sup>49</sup>

Within this context, it was not a big leap for the Maestro to create a network of about 180 loyal, but very much out of pocket and without any prospect of climbing the ranks, tennis players active in these lower-tier ITF and ATP Challenger tournaments.<sup>50</sup> The players chosen by the Maestro were spread across thirty countries.<sup>51</sup> The Maestro would not only pay them bribes for fixing points or matches, but would also pay their expenses,

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43. Sieff, *supra* note 27.

44. *Id.*

45. Lewis QC et al., *supra* note 3, ¶ 133.1.

46. *Id.* ¶ 102.

47. See *Infront to Become ITF Official Data Partner*, INT'L TENNIS FED'N (Sept. 15, 2023), <https://www.itftennis.com/en/news-and-media/articles/infront-to-become-itf-official-data-partner/> [<https://perma.cc/65VU-389Q>] (announcing in September of 2023, that following a fresh bid, Sportradar was to be replaced by Infront until 2029).

48. Sieff, *supra* note 27.

49. *Sportradar Launches Future of Tennis Betting with ATP*, SPORTRADAR (Dec. 12, 2023), <https://investors.sportradar.com/news-releases/news-release-details/sportradar-launches-future-tennis-betting-atp> [<https://perma.cc/9YFD-EZBN>].

50. Sieff, *supra* note 27.

51. *Id.*

tournament fees, and buy them gifts.<sup>52</sup> In one of the many text messages the police were able to find in his mobile phone, the Maestro explained to Aleksandrina Naydenova (whose highest ITF ranking was 89 and WTA ranking 218),<sup>53</sup> a Bulgarian female player who was struggling to break into the world's top 200, that "if she lost her first service game, she would make \$1,000 euros . . . If she lost the second one, she would make \$1,200 euros. It didn't matter if she won the match, only that she lost those games."<sup>54</sup>

While the police investigation as to the tentacles of the criminal organization is ongoing, the police are certain the Maestro was working on behalf of a transnational criminal syndicate based in Armenia.<sup>55</sup> At the time of writing in late December 2023, there was no information from the Belgian authorities about an impending judgment.<sup>56</sup> This case exemplifies how simply a mere representative of a criminal organization can round up disgruntled and out-of-pocket professional and semi-professional athletes and manipulate their matches.

### III. ELIMINATION OF BETTING AT THE MID AND LOWER END OF INDIVIDUAL GAMES?

In announcing its new agreement with Infront in September 2023, the ITF jubilantly declared that "the new five-year agreement will help to deliver an enhanced fan experience through rich data and metrics, create new commercial opportunities and develop compelling data stories around ITF events."<sup>57</sup> This statement is problematic considering the 2018 Independent Integrity Review. While "rich data and metrics" are useful for players, coaches, and their parents, it is difficult to imagine why anybody else would have a serious interest in this information.<sup>58</sup> The fusion of organized gambling

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52. *See id.*

53. *Current Sanctions*, INT'L TENNIS FED'N, <https://www.itia.tennis/sanctions/> [<https://perma.cc/F9QA-YHYE>] (last visited Feb. 25, 2024) (locating Naydenova's latest suspension details and profile).

54. Sieff, *supra* note 27.

55. *Id.*

56. *See id.*

57. *Infront to Become ITF Official Data Partner*, *supra* note 47.

58. Mario Musa, *How Many People Play Tennis in the World?*, TENNIS RACKET BALL (July 30, 2023), <https://tennisracketball.com/guide/how-many-people-play-tennis/> [<https://perma.cc/QC3Q-QBBK>] (stating that by 2023, the ATP and WTA had registered roughly 3500 professional tennis players and data reveals that in Europe alone there was about 25 million registered players, although admittedly only a fraction of these competes in ITF and ATP tournaments. Still, the numbers are staggering.).

with accessible live data is a recipe for corruption, and if the purpose is to “deliver [an] enhanced fan experience” the ITF would have stopped at data collection alone. This allows us to surmise that the real purpose underlying these agreements is anything but enhancing fan experience. This is evident in the penultimate paragraph in the ITF’s news release concerning its agreement with Infront:

The new contract with Infront is another commercial outcome of ‘ITF2024’, the ITF’s long-term plan for sustainable growth. Since its introduction the strategy has helped drive a significant upturn in the ITF’s financial performance and enabled record levels of funding for the global game. The ITF’s reinvestment in tennis has grown by 95.4% or \$41.5 million since 2015 to \$85.0 million last year.<sup>59</sup>

It is unsurprising that the ITF’s focus is effectively on its financial growth, given its organization as a for-profit entity.<sup>60</sup> A key reason for incorporating in the Bahamas is the country’s preferential tax regime. Even so, the UK still finds the ITF an attractive commercial enterprise because it generates employment opportunities and uses other UK companies to sub-contract with. It is no surprise, therefore, that during the Covid crisis, the UK tax authorities offered a tax credit of £455,000 to the ITF for income generated in the UK.<sup>61</sup>

The ITF is an avid investor. In 2022 it announced an agreement with sports investment group Kosmos, committing itself to a 25-year, \$3 billion partnership that was hailed as revolutionizing its Davis Cup BNP Paribas.<sup>62</sup> In reaction to the partnership, ITF President David Haggerty stated “this is a complete game changer for the ITF and for tennis. This new partnership will not only create a true World Cup for Tennis but will also unlock record levels of new investment for future generations of tennis players and fans around the world.”<sup>63</sup> In similar fashion, the ITF reported in 2022

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59. *Infront to Become ITF Official Data Partner*, *supra* note 47.

60. See *Modern Slavery*, INT’L TENNIS FOUND. (Mar. 22, 2022), [<https://perma.cc/9XZC-ADNV>] (complying with Article 10 of the IFT Constitution, the ITF is organized and registered as a limited liability company under the laws of the Commonwealth of the Bahamas but retains its headquarters in London); Article 1 of the FIFA Statutes stipulates that it is a commercial company under Swiss law. Article 1 FIFA Statutes, FIFA (Oct. 19, 2003), [<https://perma.cc/6ESL-VYQA>]; Art 15.1 of the Olympic Charter emphasizes that the IOC is a non-profit association under Swiss law. Article 15.1 *Olympic Charter*, INT’L OLYMPIC COMM. (Oct. 15, 2023), [<https://perma.cc/E9CX-ZC2Z>].

61. David Owen, *Strict Financial Discipline to be Maintained at International Tennis Foundation as \$3 Million IOC Loan Revealed*, INSIDE THE GAMES (July 25, 2021), [<https://www.insidethegames.biz/articles/1110765/strict-financial-discipline-to-be-main>] [<https://perma.cc/F9JC-WBLZ>].

62. *ITF Announces Plans for Transformation of Davis Cup*, DAVIS CUP, [<https://www.daviscup.com/281841?channel=daviscupnews>] [<https://perma.cc/HTE4-PQNH>].

63. *Id.*

that it received a 3% return on its portfolio investments, but did not divulge the precise nature of these investments.<sup>64</sup>

SGBs, such as the ITF, are not composed of traditional shareholders. Their shareholders are largely comprised of national sports federations and SGBs are at pains to satisfy them and in turn sustain tournaments under their aegis that are lucrative to all those involved. In this sense, national federations are *de facto* shareholders and the executive arm of the international federation a *sui generis* board of directors exercising corporate governance.<sup>65</sup>

This further explains why the ITF's human rights policies are mostly decorative<sup>66</sup> despite Article 1 of its Constitution whereby it pledges to abide with the fundamental principles of the Olympic Charter<sup>67</sup> without directly setting out a firm commitment to human rights. Unlike other SGBs,<sup>68</sup> the ITF has never promulgated a broad human rights policy. The

64. Agenda, Int'l Tennis Fed'n, AGM Agenda 2022 (Nov. 14, 2022), <https://www.itftennis.com/media/8709/2022-itf-agm-agenda-eng.pdf> [<https://perma.cc/T9SV-HQ7B>].

65. See Els De Waegeneer & Annick Willem, *Embedding Good Governance Principles in Sport Governing Bodies through a Code of Ethics: Opportunities, Pitfalls and Good Practices*, in RESEARCH HANDBOOK ON SPORTS GOVERNANCE (Mathieu Winand & Christos Anagnostopoulos eds., 2019).

66. See, e.g., *Modern Slavery and Human Trafficking Statement*, INT'L TENNIS FED'N (Mar. 22, 2022), <https://www.itftennis.com/media/2158/modern-slavery-and-human-trafficking-statement-2021.pdf> [<https://perma.cc/4KW3-VQYR>].

67. *The Constitution of ITF Limited 2024: Memorandum, Articles of Association and Bye-laws of ITF Limited*, INT'L TENNIS FED'N 5 (2024), <https://www.itftennis.com/media/2431/the-constitution-of-the-itf-2024.pdf> [<https://perma.cc/N88S-7S7G>]; Maison Olympique, *Olympic Charter*, INT'L OLYMPIC COMM. 12–14 (Oct. 2023), <https://stillmed.olympics.com/media/Document%20Library/OlympicOrg/General/EN-Olympic-Charter.pdf> [<https://perma.cc/T7L8-ULNB>] (noting that Article 2 of the Olympic Charter, which sets out the mission and role of the IOC, does not specifically mention human rights as a goal or policy objective); *Respecting Human Rights*, INT'L OLYMPIC COMM. 1 (Feb. 2024), <https://olympics.com/ioc/human-rights> [<https://perma.cc/KVT2-R5AY>] (suggesting principles 1, 2, 4, and 6 of the Fundamental Principles and Article 2 of the IOC Charter enshrine human rights; this author suggests that this is hardly the case).

68. International Olympic Committee, *Olympic Agenda 2020+5: 15 Recommendations* 30, <https://stillmedab.olympic.org/media/Document%20Library/OlympicOrg/IOC/What-We-Do/Olympic-agenda/Olympic-Agenda-2020-5-15-recommendations.pdf> [<https://perma.cc/VRX3-4KTD>] (suggesting the adoption of an overarching IOC human rights strategic framework with specific action plans for each of the IOC's three different spheres of responsibility; the linking of overarching IOC human rights strategic framework to various existing or forthcoming IOC strategies; the amendment of the Olympic Charter and the "Basic Universal Principles of Good Governance" of the Olympic and Sports Movement to better articulate human rights responsibilities; and the enablement of the newly created IOC Human Rights unit to develop the IOC's internal capacity regarding human rights);

ITF has been the subject of severe criticism for its handling of the liberty deprivation of the Chinese female tennis professional Peng Shuai. Peng Shuai went public with accusations of sexual abuse against a Chinese Communist Party official and subsequently disappeared from the professional circuit but even so, the ITF made no attempt to exert pressure on the Chinese government, nor did it suspend tournaments and activities taking place in China.<sup>69</sup> On the contrary, the WTA called for an independent investigation and threatened to pull out of all tournaments in China.<sup>70</sup>

It is the opinion of this author that the clear correlation between match-fixing and athletes desperate at the mid and lower-tiers of professional tennis does not warrant the admission of gambling. This is a recipe for corruption. Instead, mid, and lower-tier matches and tournaments should be excluded from the ambit of organized gambling because there is equally no good reason, other than profit, why there should be any gambling available among lowly-ranked professional athletes,<sup>71</sup> especially since there is no fan interest in these games other than the participants and their families. The only reasonable equilibrium—if organized gambling were sustained—would be for such professional players (e.g. tennis players ranked at 300 and below) to receive such a return from gambling proceeds accrued to the ITF that would provide a serious incentive not to engage in match-fixing. If money does not trickle to under-funded professional and semi-professional players, then it is not at all clear to this author how an SGB like the ITF considers that it can invest in the growth of the game while at the same time curb the likelihood of corruption. Both decreasing one's profits through the elimination of gambling and using excess proceeds to fund struggling professionals is a sure way to eliminate match-fixing.

#### IV. SANCTIONS

There is no doubt that a lengthy sanction that effectively terminates the competitive career of an athlete is a viable penalty for (at least) aggravated match manipulation. Players that have fallen prey to corruption cannot be trusted to return to the game and there is no promise that they are free

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*FIFA's Human Rights Policy*, FIFA 4 (May 2017), <https://digitalhub.fifa.com/m/1a876c66a3f0498d/original/kr05dqyhwr1uhqy2lh6r-pdf.pdf> [<https://perma.cc/3T22-SHMH>].

69. See Helen Davidson, *Peng Shuai: International Tennis Federation does not want to 'punish 1.4bn people' with a China boycott*, THE GUARDIAN (Dec. 2021), <https://www.theguardian.com/sport/2021/dec/06/peng-shuai-international-tennis-federation-does-not-want-to-punish-14bn-people-with-a-china-boycott> [<https://perma.cc/BE25-JU7X>].

70. See Reuters, *WTA's Stance on Peng has Made it Human Rights Champion says Former US Official*, CNN (Nov. 2021), <https://www.cnn.com/2021/11/24/tennis/peng-shuai-wta-spt-intl/index.html> [<https://perma.cc/NH2J-FF64>].

71. Lewis et. al., *supra* note 3, ¶ 24.

from the organized crime networks, if any, that controlled their game. It is equally clear that sanctioned athletes cannot and should not be involved with the national or international administration of their sport. It has aptly been shown that corrupt leaders of sports entities, far from being deterred, are in fact empowered and emboldened by their position to commit more corrupt acts. The BWF's Independent Hearing Panel (IHP)<sup>72</sup> has made it clear that lengthy ineligibility sanctions in match-fixing cases have proven not to constitute a deterrent and hence questioned the appropriateness of a 12-year ban.<sup>73</sup> Yet, in *Zulkiffli and Seang v BWF*, the CAS emphasized that a spree of about 30 documented match-fixing incidents justified a ban of 20 years for the badminton athletes in question.<sup>74</sup> The ITF's Independent Arbitral Tribunal (IAT) has not hesitated to impose lifetime bans on players for even a single match-fixing incident.<sup>75</sup>

It is doubtful that an athlete who receives a lifetime ban from its SGB or CAS and who is without any serious job prospects will be expected to simply find alternative employment. Such a disgraced former professional will now possess ample experience about how to manipulate a match and will have accumulated enough money to make match-fixing a viable lifestyle and source of income. In order to avert such a likelihood, it is imperative that the SGB in question eliminate any potential for match-fixing. As will be shown in subsequent sections, the only feasible way this can be achieved is by eliminating all and any gambling potential for mid and low-tier tournaments where struggling athletes may be more susceptible to match-fixing manipulation. In this manner, a lifetime ban will not only constitute a somber punitive remedy, but there will be sufficient established safeguards to prevent disgruntled former athletes from offending from a position of retirement.

What remains unanswered is whether athletes convicted of match-fixing should be banned from being allowed to coach others, specifically minors, in their chosen sport. The issue is not free from ethical and legal

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72. *Independent Hearing Panel*, BWF, <https://corporate.bwfbadminton.com/integrity/independent-hearing-panel/> [https://perma.cc/5BR2-UTAJ].

73. *Badminton World Fed'n v. Zhu Jun Hao et al.*, Indep. Hearing Panel 31 (2021).

74. *Zulkiffli Arbitration Award*, *supra* note 15, ¶ 130.

75. *See, e.g.*, ITIA, *Franco Feitt banned from tennis for life: Argentinian player admitted match fixing*, ITIA.TENNIS (Apr. 13, 2021, 2:30 PM), <https://itia.tennis/news/sanctions/franco-feitt-banned-from-tennis-for-life/> [https://perma.cc/3KXE-P7CP]; *see also*, ITIA, *Two Russian Tennis Players Given Lifetime Bans*, ITIA.TENNIS (Jan. 27, 2021, 12:00 PM), <https://www.itia.tennis/news/sanctions/two-russian-tennis-players-given-lifetime-bans/> [https://perma.cc/C4CE-P4XQ].

pitfalls and contention. Such a ban cannot be imposed by CAS, nor by the tribunals of national sport governing bodies as this would give rise to a violation of the freedom to exercise one's profession and if imposed by CAS or on the basis of an agreement with an SGB, it risks being challenged as a restraint of trade.<sup>76</sup> It is only national courts that have authority to disqualify a person from exercising a profession generally or be in contact with other people in the course of exercising that profession.<sup>77</sup> No doubt, on the basis of a broad definition of safeguarding,<sup>78</sup> it may be possible to prevent convicted athletes from coaching minors in academies or in places where said minors play competitively with a view to playing professional.<sup>79</sup> It is far-fetched for the courts to prevent a disqualified former player from coaching persons not interested or not fit to become professionals or play at competitive level as such an interaction can never lead to manipulation of the game. At the same time, it is suggested that the authorities should learn from disgraced athletes banned from their sport for match-fixing. Investigate authorities may well have space for the services of those that have shown remorse for their actions so that law enforcement can be one step ahead of organized crime.

## V. FINANCIAL SAFETY NETS

A recurring theme in this Article, as well as the thinking that permeates strategies to mitigate match-fixing, is the creation of mechanisms that will deter athletes with no financial prospects from committing acts of corruption. We have already discussed the imposition of appropriate sanctions, as well as the need to eliminate the gambling incentive that has been introduced in the mid, and lower-tiers of individual sports such as tennis and badminton. If a particular sport (through its SGB) thrives financially while its athletes struggle and become indigent, there is something wrong in such a relationship and a re-balancing of this equilibrium needs to be undertaken. If not, some athletes will be tempted to form a new and alternative entity and redistribute its prize money among all its members,

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76. See Ilias Bantekas, *Professional Tennis and Restraint of Trade in the English Common Law*, 22 VA. SPORTS & ENT. L.J. 1 (2023) (arguing that the doctrine in the field of professional tennis has not yet been claimed by impugned athletes against disciplinary sanctions imposed by CAS and SGB disciplinary organs and tribunals).

77. See CORRUPTION IN SPORT: CAUSES, CONSEQUENCES AND REFORM (Lisa A. Kihl ed., 1st ed. 2018) (explaining that match-fixing, corruption, and doping also constitute criminal offenses under national laws and hence the evidence collected for BWF proceedings may be sought by one or more national authorities for the initiation of criminal prosecutions).

78. See ITF Safeguarding Policy for Children, ITF TENNIS, <https://www.itftennis.com/media/4458/itf-children-safeguarding-policy-2023.pdf> [<https://perma.cc/3X87-BFMA>].

79. Zulkiffli Arbitration Award, *supra* note 15, ¶ 64. (showing Zulkiffli was given this sanction).



as is the case with the ATP and WTA, and as mooted in respect of the Professional Tennis Players' Association (PTPA).<sup>80</sup> Another way that athletes may claim a higher percentage and better working conditions (including access to healthcare), cover their cost of training and travel, as well as make a decent living, is by collective bargaining agreements.<sup>81</sup> In the field of tennis, the ATP through some of its most famous members such as Novak Djokovic, have made significant strides in their collective bargaining agreements.<sup>82</sup> Even so, such agreements are limited in scope and number to only a fraction of athletes and do not encompass mid and lower-tier athletes in the sense described above. Unlike the ATP, the ITF has not discussed, let alone set up, a financial safety nets for athletes competing in tournaments under its aegis.

It appears that the Professional Tennis Players' Association (PTPA) initiative<sup>83</sup> paid some dividends. In a rare move for an SGB, although not with the goal of curbing corruption and match-fixing, the ATP announced in 2023 that it was planning to establish a financial safety net for the top 250 ATP-ranked players.<sup>84</sup> The program is called "Baseline".<sup>85</sup> The first pillar of the programme is "Guaranteed Base Earnings", which guarantees minimum income levels for the Top 250-ranked singles players each season.<sup>86</sup> In case a player's prize money earnings finishes below the guaranteed threshold, the ATP will step in to cover the shortfall.<sup>87</sup> For the 2024

80. See Simon Cambers, *Vasek Pospisil Exclusive: Why Time was Right to Form the PTPA (Professional Tennis Players' Association)*, ATP (Sept. 12, 2020), [https://www.tennismajors.com/atp/vasek-pospisil-exclusive-ptpa-interview-289067.html/amp?\\_\\_twitter\\_impression=true](https://www.tennismajors.com/atp/vasek-pospisil-exclusive-ptpa-interview-289067.html/amp?__twitter_impression=true) [<https://perma.cc/GD8N-98DW>].

81. See *id*; see also *Collective Labor Agreements in the Sports Sector* (Jan. 1, 2016–Dec. 31, 2018), <https://www.fnv.nl/getmedia/144f6021-8e2d-41f9-8cee-d3a92c140403/341-sport-cao-english-2016-2018.pdf> [<https://perma.cc/XJ3N-UXZ8>].

82. See Elizabeth Priest, *Working Toward Break Point: Professional Tennis and the Growing Problem of Employee and Independent Contractor Misclassifications*, 75 S. METHODIST L. REV. 943, 955 (2002).

83. See *Our Principles*, PTPA, <https://www.ptpaplayers.com/principles/> [<https://perma.cc/RGJ5-YMP5>] (last visited Feb. 23, 2024) (giving a clear list of parameters for protecting the rights and opportunities of tennis players, including requirements for "equitable, percentage-based player prize money, as well as annual player minimum compensation.").

84. ATP Unveils 'Baseline,' a Pioneering Financial Security Programme for Players, ATP TOUR (Aug. 22, 2023), <https://www.atptour.com/en/new/baseline-financial-security-programme-august-2023> [<https://perma.cc/3VTT-LR2P>].

85. *Id.*

86. *Id.*

87. *Id.*

season, these levels are \$300,000 (Top 100), \$150,000 (101-175) and \$75,000 (176-250).<sup>88</sup> No doubt, this will stem the contagion of corruption and match-fixing, but it will certainly not eliminate it, particularly since players ranked 251 and below will continue to be approached by entities enticing them with financial rewards in exchange for match-fixing.<sup>89</sup> As the relevant evidence indicates, while there are some isolated real or alleged incidents involving tennis players within the top 250, the problem lies elsewhere.

No doubt, it is not only unfeasible but also unwise for all players entering tournaments to receive some kind of financial compensation. At the same time, SGBs are desirous of having as many registered players in their books because they do not only generate revenues as fans; in addition, the contribute to the wider architecture of the game (60.000 matches per year for the ITF) by sustaining worldwide tournaments and the tournaments in question constitute the sole pipeline for filtering the next generation of talents. So, who should fall under the financial safety nets? The answer is simple. It should be anyone whose game is (1) susceptible to gambling and who (2) because of indigence or lack of sufficient funding, may be amenable to match-fixing either on one's own initiative, or at the suggestion of third parties. On the basis of this proposal, an SGB might well consider that the financial rewards from opening all its tournaments to gambling are far outweighed by the cost of the financial safety net it would have to make available. As a result, the SGB in question may simply consider eliminating the gambling dimension in mid or low-tier events. This does not in any way entail that live data or broadcasting of lower-tier matches cannot and should not be made the subject of distribution. SGBs may be forced to reduce prize money for their top-seeded athletes and distribute their profits more broadly. SGBs should be able to seek more sponsorship arrangements and minimize the cost of their overall operations. This is very viable alternative, and it should be made clear that this Article does not seek to offer a ready-made solution. It is clear, however, that the scourge of sport-related corruption is a cancerous evil, whose uprooting is worth a sharp decrease in revenues, as is the overall reputation of a sport and the enticement of younger participants and their families.

#### VI. ENHANCED REPORTING OF *PRIMA FACIE* MATCH-FIXING VIOLATIONS

In both badminton and tennis, all officials of the pertinent organizations have a distinct duty under their employment contract to be observant and

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88. *Id.*

89. *Id.*

report any incident or occurrence that has a *prima facie* taint of corruption. Relevant rules, contractual or otherwise, naturally exist in all sport governing bodies and in most employment settings. To this end, a report should be drawn up and dispatched to the relevant entity in accordance with the pertinent institutional rules. Such a duty also exists between the SGB in question and the betting companies with which they have an agreement. Such agreements, however, are subject to confidentiality clauses and hence this obligation is implicitly ascertained by reference to the Independent Review of Integrity in Tennis, explained in a previous sections, which contains data derived from data companies.<sup>90</sup> Investigations are a crucial component of the BWF's dispute resolution architecture. In accordance with article 10.1 of the BWF Judicial Procedures a general power to investigate belongs to the BWF,<sup>91</sup> as well as its constituent continental confederations (investigating parties); the latter within their geographical sphere of competence.<sup>92</sup> Both entities may delegate this task to third parties.<sup>93</sup> In situations where the BWF would enjoy investigating authority, it may delegate this task to a continental confederation, whether at its own behest or following a request by a confederation.<sup>94</sup> Even so, the BWF retains the power to resume its investigating role at any time in the process.<sup>95</sup> BWF national members possess authority to investigate and resolve disputes arising under their rules and pertinent to national matters, save where the dispute in question concerns the image or reputation of badminton or its Olympic and Paralympic status.<sup>96</sup> In many cases, there is a tip off from an anonymous whistleblower and the matter is taken up by officials from the BWF Integrity Unit (in respect of match-fixing allegations).<sup>97</sup> Equally, a BWF incident report form may be submitted by an umpire that demonstrates

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90. See Lewis et. al., *supra* note 3, ¶¶ 105–45 (summarizing of the data stored in the TIU database, including “suspicious betting patterns” and “possible breaches of integrity for specific matches.”).

91. BWF, BWF JUDICIAL PROCEDURES ¶ 10.1 (Dec. 11, 2023), <https://extranet.bwf.sport/docs/document-system/81/1466/1469/Judicial%20Procedures%20-%20V2.3%20-%20November%202023%20-%20FINAL.pdf> [<https://perma.cc/NN2F-S2AQ>]; see also *id.* ¶¶ 10.2.1.1, 10.2.3.1 (applying investigatory power to major BWF tournaments, as well as alleged breaches against top 100-ranked players and BWF officials).

92. See *id.* ¶ 10.2.

93. *Id.* ¶ 10.1.

94. *Id.* ¶¶ 10.2.4, 10.2.5.

95. *Id.* ¶¶ 10.2.5, 10.2.6.

96. *Id.* ¶ 10.2.6.

97. See, e.g., *Badminton World Fed'n v. Tandjaya et al.*, 2020/02, Badminton World Fed'n Indep. Hearing Panel Decision, ¶¶ 9–10 (2020).

elements of match manipulation in one way or another (e.g. lack of best efforts).<sup>98</sup> The investigating party shall have the power to request any covered person to attend a formal interview and the latter has the right to have a lawyer present.<sup>99</sup> The request may be followed by a *demand* to provide access to pertinent evidence, whether electronic or otherwise.<sup>100</sup>

Similar and even more extensive procedures exist in the field of tennis.<sup>101</sup> The ITF has set up a plethora of judicial and quasi-judicial organs and bodies, as well as investigative institutions.<sup>102</sup> By way of illustration, before the ITF Independent Tribunal can exercise its first instance jurisdiction over a corruption-related violation, article I. E.2 of the ITF Women's World Tour Tennis Regulations stipulates that the ITF's anti-corruption hearing official shall have exclusive jurisdiction, in the first instance, over allegations that the Tennis Anti-Corruption Program (TACP)<sup>103</sup> has been breached. Moreover, the ITF Supervisor,<sup>104</sup> possesses authority to make decisions over particular matters. His or her decisions can be challenged by way of appeal to the Panel.<sup>105</sup> The entity of the ITF has granted itself investigative powers in respect of certain types of cases. In accordance

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98. See *Badminton World Fed'n v. Li Jun Hui et al*, 2022/01, Badminton World Fed'n Indep. Hearing Panel Decision ¶ 5 (2022).

99. *BWF Statutes, Section 3.1: BWF Judicial Procedures*, BWF ¶¶ 5.4, 5.8 (May 22, 2018), [https://system.bwfbadminton.com/documents/folder\\_1\\_81/Statutes/CHAPTER-3—JUDICIAL-PROCESSES/Section%203.1%20-%20Judicial%20Procedures%20-%202022052018.pdf](https://system.bwfbadminton.com/documents/folder_1_81/Statutes/CHAPTER-3—JUDICIAL-PROCESSES/Section%203.1%20-%20Judicial%20Procedures%20-%202022052018.pdf) [<https://perma.cc/MB2C-8LB9>].

100. *Id.* ¶ 5.11. See also, in joint cases, *Zulfadli bin Zulkifli v. Badminton World Fed'n*, CAS Case 2018/A/5846 (2018) and *Tan Chun Seang v. BWF*, CAS Case 2018/A/5847, ¶¶ 9–15 (2018) (BWF investigators requested the two athletes to present personal items, such as access to their bank accounts, their mobile phones and Whatsup messaging history, to which they agreed).

101. See *Women's ITF World Tennis Tour Rules & Regulations 2024*, ITF WORLD TENNIS TOUR 62 (Feb. 23, 2024), <https://www.itftennis.com/media/11861/2024-wtt-regulations.pdf> [<https://perma.cc/AG9B-FGHB>].

102. See *id.*

103. *Id.* at 67.

104. See *2022 ITF World Tennis Tour Organisational Requirements*, ITF WORLD TENNIS TOUR 1, 15 (2022), <https://www.itftennis.com/media/7953/2022-mens-womens-itf-world-tennis-tour-organisational-requirements.pdf> [<https://perma.cc/6QK7-DY2F>] (stating that “Each [All World Tennis Tour] Tournament must appoint and provide an appropriately certified official, in accordance with Appendix B, to act as ITF Supervisor. The ITF Supervisor must be available throughout the Tournament Week False The ITF Supervisor is the final authority for on-site issues related to the Rules of Tennis, the Men's and Women's ITF World Tennis Tour Regulations and all on-court matters.”).

105. See *2023 Men's and Women's ITF World Tennis Tour Regulations*, ITF World Tennis Tour, art. I. E, ¶ 4 (2023), <https://www.itftennis.com/media/9100/2023-itf-world-tennis-tour-regulations.pdf>.

with article VI.C of the ITF Code of Conduct,<sup>106</sup> the ITF has the power to investigate any alleged major offence and it is mandatory for all players and related persons to cooperate fully with such investigation. This may include a request by the ITF to furnish evidence, information, or attend a hearing and provide a written statement. Where, as a result of such investigation the ITF there is prima facie evidence that the underlying offence has been committed, the ITF shall refer the matter not to the Panel or the Independent Tribunal, but to its Review Board.<sup>107</sup>

The problem in tennis, of course, is the sheer number of matches and tournaments and the exposure of all of these to organized gambling services.

The very fact that match-fixing may involve a point or a game in a match makes detection a very difficult enterprise. The ITF's manpower is insufficient and, in many tournaments, particularly in junior ITF, there is no correspondence of one umpire to a match. Rather, the number of matches outweigh the availability of umpires in the preliminary rounds, and it is effectively the parents that keep an eye on the matches.<sup>108</sup>

Where such tournaments are open to data streaming and gambling, the potential for corruption and match-fixing is immense. It is clear that even the best observation and reporting methods are insufficient to capture even a fraction of match-fixing violations. Seasoned sports investigators suggest that video footage of match-fixing activities is rare, and this is further compounded by opening 60,000 matches per year to gambling.<sup>109</sup> Gambling companies could assist the SGB by making betting alert reports with as much information as possible timely available, yet the available evidence

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106. See *Code of Conduct Men's and Women's ITF World Tennis Tour 2022*, art. VI. C, <https://www.itftennis.com/media/7632/2022-wtt-code-of-conduct-v2.pdf> [<https://perma.cc/M79Z-WZDZ>].

107. Ilias Bantekas, *The Resolution of Professional Tennis Disputes*, 14 J. INT'L DISP. SETTLEMENT 488, 490–91 (2023), <https://academic.oup.com/jids/article/14/4/488/7187450> [<https://perma.cc/22UT-EPYZ>].

108. This observation is based on the author's personal observation as a tennis dad and former CEO of a major tennis academy in the Middle East.

109. BJORN HESSERT, *SPORTS INVESTIGATIONS LAW & THE ECHR: COLLECTION, USE & EXCHANGE OF INTELLIGENCE* 85 (Routledge 2023) (The few match-fixing incidents revealed by video footage were in the domain of televised football with a significant fan presence). See *Klubi Sportiv Skenderbeu v. UEA*, CAS 2016/A/4650, Award (Nov. 21, 2016), ¶ 67; Chris McLaughlin, *Nigeria v Scotland: Match-Fixing Threat Brought to SFA's Attention*, BBC (May 27, 2014), <https://www.bbc.com/sport/football/27596127> [<https://perma.cc/5ZC7-M9N5>].

may be insufficient for a prosecution.<sup>110</sup> Even where betting fraud detection systems (BFDS) are employed to detect suspicious betting patterns, they are not directed at a specific player, but rather at the betting market as a whole.<sup>111</sup> In a widely reported tennis match between the highly seeded (at some point ranked 3rd) Davydenko against Arguello (who at his brief height was ranked 47th), a significant number of bets were placed almost simultaneously on lower seeded Arguello at the end of the first set, thus raising suspicions of manipulation, but a lack of corroborating evidence ultimately meant that neither was charged.<sup>112</sup> Investigators must thus look for particular patterns of suspicious behavior, rely on multiple sources of evidence,<sup>113</sup> and accept the reality that the culprits may ultimately tamper with or destroy crucial evidence.<sup>114</sup>

## VII. CONCLUSION

The terms manipulation, corruption, and match-fixing are used in this Article interchangeably but are generally taken to convey the same meaning. When corruption started to become an entrenched obligation in international affairs it was initially confined to acts involving public officials of states or of international organizations. This was a natural consequence of the fact that badly paid, or just greedy, public officials were easy prey for contractors eager to be awarded lucrative public procurement contracts, for which they would otherwise have to bid in highly competitive processes. However, it was never doubted that corruption in the private sector was equally deleterious and injurious not only to private but also public interest. Article 12(1) of the 2003 UN Convention against Corruption (UNCAC),<sup>115</sup> despite focusing on the corruption of public officials, emphasizes that:

Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

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110. In practice, most of the evidence available to match-fixing investigators is available on social media accounts and data retrieved from mobile phones. See Stefano Caneppele et al., *Those who Counter Match-Fixing Fraudsters: Voices from a Multi-Stakeholder Ecosystem*, 74 CRIME, L. & SOCIAL CHANGE 13, 19 (2020).

111. Jack Kerr, *How to Build an “Open” Match-Fixing Alert System*, 17 INT’L SPORTS L.J. 82, 97 (2017).

112. Richard H McLaren, *Corruption: Its Impact on Fair Play*, MARQUETTE SPORTS L. REV. 15, 17 (2008).

113. Hessert, *supra* 109, at 85.

114. *Guillermo Olaso de la Rica v. TIU*, CAS case No. 2014/A/3467 (Sept. 30, 2014), ¶ 11.

115. United Nations Convention Against Corruption, 2004, 2349 U.N.T.S. 14.

Indeed, corrupt practices in the private sector may lead to monopolistic acts harming consumers and creating unnecessary price spikes. They can also contribute, as the case at hand, to manipulation of organized gambling, and in turn to money laundering and other predicate offences. These evils lead to job losses, income reduction for several layers of society, bring sports into disrepute, and drive children and aspiring athletes away from them. This is just a short list, but a comprehensive analysis of the effects of corruption in the private sector and particularly the sports sector will no doubt demonstrate far more ill effects.<sup>116</sup> It is no accident that paragraph 2 of article 12 of UNCAC obliges its more than 160 member states to take measures to achieve the following goals related to corruption in the private sector:

- a. Promoting cooperation between law enforcement agencies and relevant private entities;
- b. Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- c. Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- d. Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
- e. Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
- f. Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

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116. See *Sports Corruption*, EUROPOL (2022), <https://www.europol.europa.eu/crime-areas/corruption/sports-corruption#:~:text=Match%20fixing%20damages%20the%20integrity,impact%20on%20the%20sports%20industry> [https://perma.cc/TU5C-YPBS] (claiming match fixing harms integrity of sports and has significant implications on sports associations, which are at risk of losing sponsors and stigmatizing athletes); see also Kihl, *supra* note 77.

This study does not suggest that sport governing bodies should not have business interests or that they should not strive to make revenues to grow their sport and entice new fans and participants. However, just as actions by sport governing bodies give rise to monopolistic tendencies that are promptly investigated by authorities, so too should irresponsible organized gambling proven to increase match-fixing and other corruption and which allows for the infiltration by organized crime be investigated.<sup>117</sup>

Leading commentators have described match-fixing as the biggest curse of sport, far above doping in its detrimental impact.<sup>118</sup> In this Article we focused on the type of manipulation, particularly the various forms of match-fixing in tennis and badminton and their underlying aggravating factors. Despite advancements in governance and organization, no SGB has satisfactorily delineated who is *truly* professional and why those aspiring to become professional, even without serious prize money, should not be classified as professional. For an athlete devoting a big part of his or her day practicing, who makes little or no money from prizes, there are several benefits to being classified as a professional athlete. It may involve some kind of eligibility for access to affordable healthcare or a pension system, and may also offer a marketing advantage for lucrative coaching opportunities. The fact that an athlete earns no money from the prize pool set up under the aegis of an SGB is largely irrelevant for the professional status of that athlete. National federations pay professional athletes stipends in order to admit them to their national teams without most having ever won any prize money.<sup>119</sup> The crux of this Article is to find an appropriate balance between the development of a sport and professional athleticism, while at the same time eliminate the incentives and pitfalls favoring manipulation and

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117. See Case C-124/21, *International Skating Union v. Comm'n*, ¶¶ 136–38 (Dec. 21, 2023), <https://curia.europa.eu/juris/document/document.jsf?text=&docid=280763&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=8144980> (confirming ineligibility rules of International Skating Union based on prior authorization of skating competitions infringing EU competition law; see also Case C-333/21, *Eur. Super League Co., S.L. v. Union of Eur. Football Ass'n and FIFA*, ¶¶ 129–30 (Dec. 21, 2023), <https://curia.europa.eu/juris/document/document.jsf?text=&docid=280765&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2576455> (explaining that monopolistic rules designed by UEFA and FIFA enable full control over those rights and allow abusive prices and fees, thereby impacting competition in media markets and spectators of UEFA competitions).

118. Kevin Carpenter, *Match-Fixing: The Biggest Threat to Sport in the Twenty-First Century*, INT'L SPORTS L. REV., 2012, at 13, 20, <http://www.responsiblegambling.eu/wp-content/uploads/2016/06/Match-Fixing%E2%80%94The-Biggest-Threat-to-Sport-in-the-21st-Century.pdf> [<https://perma.cc/MQ5G-X84Z>].

119. See Andreas Joklik, *The Legal Status of Professional Athletes: Difference Between the United States and the European Union Concerning Free Agency*, 11 SPORTS LAW. J. 223 (2004) (contending that the issue provokes considerable debate and complexity, with countries like the USA adopting multiple definitions that serve a variety of purposes).



corruption. The 2018 Tennis Integrity Report identifies the key problem is in its recommendations. Although there are several recommendations dealing with various aspects of manipulation, the first recommends that:

[T]he opportunities for breaches of integrity be reduced through limitations on the supply of official live scoring data, in particular:

- 24.1 Discontinuing the supply of official live scoring data in respect of the developmental base tier of the new ITF World Tennis Tour (“WTT”) . . . and which comprises the former ITF \$15k events.
- 24.2 Empowering the TIU to monitor betting markets and to disrupt betting based on unofficial live scoring data at ITF World Tennis Tour \$15k developmental tier matches and at any other matches for which official data will not be supplied. . . .
- 25 The Panel considers that it is unsustainable for tennis to maintain the *status quo* of there being betting markets on tens of thousands of matches at the ITF \$15k level involving many thousands of players. The Panel considers, following consultation, that the significant limitations described above are necessary and strike the appropriate balance at this time between all the competing considerations. The Panel recognises that these recommendations will have an adverse impact on the ITF’s revenues, a substantial part of which is reinvested in promoting tennis at what is essentially a developmental level of the game. The Panel therefore recommends that the other International Governing Bodies should contribute greater funds to assist the ITF’s critical function of developing the next generation of professional tennis players.<sup>120</sup>

These recommendations are at odds with the ITF’s financial strategy. As discussed, the ITF disregarded these recommendations and proceeded to sign lucrative deals with gambling and data companies. While it has enhanced its investigation and enforcement of strict lifetime bans against match manipulations, it is uncertain whether this an effective deterrent. as gambling at the lower tiers is rampant. It has been demonstrated that none of the detection systems currently operated by betting companies can point to suspicious behavior of individuals, as opposed to suspicious patterns. Hence, enforcement on the ground is akin to a drop in the ocean of match-fixing. While SGBs are busy accumulating wealth and becoming sophisticated

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120. Adam Lewis QC et al., *supra* note 3, ¶ 24.

investors<sup>121</sup> that are reaping profits from audiovisual rights,<sup>122</sup> branding and trademark rights,<sup>123</sup> advertising, sponsorships, and other sources of revenue, they are paying lip service to their original aim of advancing their game. The financial stakes are too high, and the aim has become obscured. Inconvenient truths are difficult to escape from and prompt the need for national law enforcement authorities to intervene in SGB policies regarding sports manipulation. After all, this is a criminal offence, and in certain cases, a criminal conspiracy and part of organized criminal activity. National authorities possess the authority and legitimacy to take appropriate action. This may well include a ban against gambling in lower tiers after identifying that this is where the bulk of match-fixing takes place. While this will no doubt upset the financial planning of SGBs, it will eliminate much of the underlying scourge of sports-related corruption and hopefully culminate in the diversification of SGB resources.

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121. See Hakan Sahin & Ilias Bantekas, *Non-Profit Entities as Foreign Investors? The Case of International Sport Governing Bodies*, 60 STAN. J. INT'L L. (forthcoming May 2024).

122. See EU Parliament, AUDIOVISUAL RIGHTS IN SPORTS EVENTS (2017), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS\\_BRI\(2017\)599320\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599320/EPRS_BRI(2017)599320_EN.pdf) [<https://perma.cc/723J-RB48>].

123. WIPO, THE INTERNATIONAL TRADEMARK SYSTEM AND SPORTS, [https://www.wipo.int/ip-outreach/en/ipday/2019/madrid\\_trademarks\\_sports.html](https://www.wipo.int/ip-outreach/en/ipday/2019/madrid_trademarks_sports.html) [<https://perma.cc/M7QL-GTAB>].