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**2015 FIFPro sports law conference – ‘legal legends in sport and the future of sports law.’**

**The role of athletes in delivering the good governance of sport**

Brendan Schwab, Head of UNI World Athletes, Tuesday 15 December 2015

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## 1 Introduction

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On behalf of UNI World Athletes – the global voice of the world’s professional athletes – I would like to thank you for the opportunity to speak to today’s conference on the critical subject of the governance of sport and, in particular, the role of the athletes in delivering good governance. It is a particular honour to be speaking on the day of the 50<sup>th</sup> anniversary of the foundation of FIFPro and the 20<sup>th</sup> anniversary of Jean Marc Bosman’s landmark decision.

Established 12 months ago in December 2014 after three years of close cooperation, UNI World Athletes exists to champion the dignity of the athletes of the world, and the essence of sport. Our affiliated player associations include FIFPro, the International Rugby Players’ Association, the Federation of International Cricketers’ Associations, EU Athletes, the US National Basketball Players Association, the US National Football League Players Association, the National Hockey League Players Association of the United States and Canada, the Japanese Baseball Players Association and the Australian Athletes’ Alliance. Together, they constitute a collective of 85,000 professional athletes through more than 100 independent player associations in over 60 countries. They have a vital role to play in not only advancing the interests of their members, but also shaping the direction of their sports.

## 2 Sport’s governance crisis

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If one looks to the recent reports of two of sport’s most important global institutions, FIFA, football’s world governing body, and WADA, the World Anti-Doping Agency, it seems clear that governance is the most important issue that confronts sport today.

In his report of 2 December 2015, Dr François Carrard, the independent chair of the 2016 FIFA Reform Committee, wrote:

*“FIFA is currently going through the worst crisis of its history. The current crisis should also be considered as a unique opportunity for FIFA to renew itself. Thus, in order to restore confidence in FIFA, significant modifications to its institutional structure and operational processes are necessary to prevent corruption, fraud, self-dealing and to make the organisation more transparent and accountable.”*

Only last month, the report of WADA independent commission into Russian athletics chaired by Mr Dick Pound found that:

*“Actual and potential conflicts of interest at the WADA Executive Committee and Foundation Board make decisive actions regarding (WADA) Code compliance unnecessarily difficult to achieve.”*

The report also found a deeply rooted culture of cheating at the highest level of Russian athletics involving the governing body and anti-doping agency, the exploitation of athletes and bribery and corruption within the International Association of Athletics Federations (IAAF).

The scale of these concerns ensures that the good governance of sport is also a matter of vital concern to those that play and participate in sport, especially the professionals who do so for a living.

I approach today's discussion from two perspectives: first, as a lawyer and player association official with some 20 years experience, largely at the global level in football; and, second, as a sports administrator from Australia, a nation which points to key governance reforms in all of its major professional sports as having been fundamental to maximising the growth and development of those sports on the field of play, commercially, professionally and at grass roots level. I know that governance reform is hard and faces the staunchest of resistance and critics. For example, the reform of Australian soccer a decade ago required the closing down of both the governing body and the professional league as well as the nation's move from the Oceania to Asia's confederation. As the player union leader involved in that transformation, the players adopted the philosophical position that the wellbeing of the game was a precondition to the wellbeing of the players. Accordingly, the players were obliged to fundamentally shape the governance and decision making of the game for the better. For, if they did not, the players would pay an unacceptable price in terms of their own careers and livelihoods.

That philosophical position seems equally relevant to many sports at the global level today. It seems obvious that sport will only be well governed if it is run in partnership with the players, for the players represent a fundamental stakeholder that necessarily has to take an objective, long term and well informed view of their industry. They are professionally and

emotionally engaged with their sport. They are involved at all levels of the game and in all parts of the world. They have come through the development systems, and work for clubs and countries of all sizes and in all parts of the world. Well organised, they will nearly always make decisions that are in the interests of the generations of players yet to come.

Plainly, the athletes have a deep interest in delivering the highest standards of governance in sport:

- the livelihoods and careers of athletes are fundamentally impacted by poor governance due to its symptoms, such as the non-payment of salaries, the unjust termination of player contracts, abuses such as third party ownership and threats such as racism, victimisation, bullying, harassment, cheating and corruption. These problems are acutely felt by athletes who are young, often minors, and pursuing a career which is intensely competitive, short term and precarious;
- research such as FIFPro's '*Don't Fix It!*' player questionnaire shows that players place great importance in their own sense of integrity, as well as their duties to their families, team mates and sport. Yet most approaches by governing bodies to protecting the integrity of sport from threats such as doping and match-fixing see athletes as the problem, not the solution; and
- athletes are essential to the generation of sport's wealth.

However, any partnership between a sport and its athletes is only possible if the governance of sporting bodies is accountable to the players as well as other key stakeholders. That accountability has been absent in the world of football. This legal conference has examined the widespread violation of the rights of professional footballers in the world today. There is also a commercial aspect to those violations which goes to the heart of the governance of FIFA. Of FIFA's revenue of \$5.72 billion for the 2011 – 2014 cycle, \$4.83 billion was generated from the 2014 FIFA World Cup Brazil, a tournament involving 64 matches and 736 players. Prize money to the countries totalled \$354m, about 7% of the revenue generated. The players' share is a mere fraction of FIFA's revenue:

**Table 1 – Players’ Share of FIFA Revenues, 2011 – 2014 (US\$ billions)**

	<b>FIFA Revenue (2011 – 2014)</b>	<b>Payments to Participating Countries</b>	<b>Players’ Share of FIFA Revenue (30% assumption)</b>
Total	5.72	0.354	0.106 (1.8%)
2014 FIFA World Cup	4.83	0.354	0.106 (2.2%)

Similarly, the world’s best women players were only given the opportunity to share in a total prize money pool of US\$15,000,000 from the 2015 FIFA Women’s World Cup in Canada. This is approximately 0.3% of FIFA’s total revenues over the previous four year cycle.

### **3 Reforming the governance of sport – the starting point**

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The effectiveness of any reform effort requires it to address the causes of the governance failures. For too long, the significance society places on sport has been misused by major sporting bodies to justify privilege instead of duty. Vague notions such as the specificity or autonomy of sport, which have been adopted at the highest levels of government, including in the Treaty on the Functioning of the European Union and by the General Assembly of the United Nations, have been emphasised unconditionally.

According to the ‘Sports Governance Observer 2015’, as prepared by Dr Arnout Geeraert and published by the October ‘Play the Game’ conference in Aarhus, Denmark:

*“Even though they have allowed politics to influence their policies and decisions, autonomy from formal regulatory public interference is an obsession for (International Sporting Federations, or) ISFs. Modern sport’s construction is, in essence, rooted in classic liberalism, namely in the concept of freedom of association. Autonomy is therefore a deeply ingrained and cherished principle in the sports world. It is an essential part of ISFs’ belief system; a doctrine that they aim to spread among political institutions and stakeholders in order to keep the governance of international sport strictly private.”*

However, the autonomy of sport, as first developed as a notion within the European institutions, is conditional. It demands good governance, social dialogue and the protection and

development of young people, especially through education. Further, it does not affect sport where it is an economic activity.

For the necessary governance reforms to occur, a broad societal acknowledgement is required: that, as sports are structured as cartels, they warrant not special treatment and protection but enhanced scrutiny and accountability. As a stakeholder whose livelihoods are fundamentally affected by the current structure, the world's athletes must organise themselves globally through their major player associations to help finally deliver the highest standards of governance in sport.

#### **4 'The athlete's choice'**

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The notion of the autonomy of sport is often used to demand, despite the legal certainty to the contrary, that athletes are not workers and entitled to the protection of national and international labour law. International sporting federations are monopolies and, as such, can defend their position by denying athletes the right to participate in events conducted by the federation or in alternative events that do not carry the federation's sanction.

Mr John Coates, the Vice President of the International Olympic Committee, the President of the Australian Olympic Committee and the President of both the the Court of Arbitration for Sport (CAS) and the International Council of Arbitration for Sport, the body responsible for financing and administering the CAS, told Australian radio earlier this month that the intrusions of the WADA Code on athletes, such as being available for drug testing at any time, are "*part of the privilege of being an Olympian, part of the privilege of participating in the sport*".

This is '*the athlete's choice*': the athlete must agree to the demands of the federation, or be denied the right to participate, compete and work. It applies in equal measures to regulatory regimes such as the WADA Code and the FIFA Regulations for the Status and Transfer of Players (RSTP) as it does to the resolution of disputes by CAS.

This model of governance sees athletes exercise very limited control or influence over matters of fundamental importance to them, such as wages, commercial and financial terms,

health and safety, discipline and dispute resolution, all matters which are essential subjects of labour law and collective bargaining at the national level.

The development of the jurisprudence of the CAS in the application of article 17 of the FIFA RSTP following the *Matuzalem* case, which relied on the notion of the specificity of sport to determine a player's apparent market value, compares relevantly and starkly with the opinion of Advocate General Lenz in Jean Marc Bosman's case. In his opinion, the right of a club to claim financial compensation for the loss of the services of a player:

*"...presupposes precisely that a player can be regarded as a sort of merchandise for which a price is to be paid. Such an attitude may correspond to today's reality, as characterized by the transfer rules, in which the 'buying' and 'selling' of players is indeed spoken of. That reality must not blind us to the fact that this is an attitude which has no legal basis and is not compatible with the right to freedom of movement ... I also have considerable doubt as to whether a system which ultimately amounts to treating players as merchandise is liable to promote the sporting ethos..."*

The inconsistent legal reality between the European Court of Justice and the CAS is no accident. Many international sporting bodies continue to reject the application of labour law to sport despite the long history of players' associations acting responsibly and being key partners in addressing some of sports most fundamental challenges.

The response by WADA to the initial moves to establish UNI World Athletes is a case in point. Then WADA Chairman John Fahey's minuted remarks to the WADA Foundation Board on 20 November 2011 read: *"He thought that it was incumbent on all who believed that sport was a very different and separate operation to other workplaces to make that clear. In his opinion, the least amount of credibility given to these people, the better. They must be seen for what they were: a union, and if individual sportsmen and women wanted that, it was their choice. But WADA should make this clear at every opportunity possible and under no circumstance would it recognise them as representatives of the sportsmen and women of the world."*

According to Mr Coates: *"These are the unions who are not elected representatives of the athletes. I know who they are."* When asked whether he thought players or athletes should not have union bodies representing them, he said, *"I think our position is that all bodies should*

*have athletes representatives on their board who are elected by the athletes themselves. That is the case with the Athletes Commissions in the national federations and the Australian Olympic Committee. It is not some other self-appointed body that goes out and negotiates wages and other matters for them.”*

Mr Coates has moved quickly to involve athlete commissions in some minor changes to the CAS in response to the landmark legal proceedings brought by German speed skater Claudia Pechstein. This will not, of course, introduce the necessary levels of accountability. The Charter of the Athletes' Commission of the Australian Olympic Committee (AOC), for example, provides that the commission's role is to “advise” the executive of the AOC and obliges each member of the commission not to act in the best interests of the athletes or even sport, but “solely in the best interests of the Committee (i.e. the AOC) and its members as a whole” (emphasis added).

The right to organise and collectively bargain, as enshrined in article 20 of the 1948 *Universal Declaration of Human Rights* and Conventions 87 and 98 of the International Labour Organization (ILO) is, of course, a fundamental element of any civilized labour law. Recognition and respect for the right to organise and collectively bargain involves an obligation on the part of employers and their representatives not to interfere with the independent pursuit and exercise of that right. Article 2 of the ‘*Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*’ of the ILO provides:

*“1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.*

*2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.”*

As a consequence, athletes are again resorting to the law and industrial action to install much needed accountability into the governance of sport, to make it clear that sport is not above

the rule of law and that the voice and interests of the athletes must be heeded. Claudia Pechstein's case, together with the recent complaints to the European Commission by Dutch ice skaters Mark Tuitert and Niels Kerstholt and FIFPro, suggest an increasing tendency on the part of athletes to reinstall the law as a central player in the governance of sport. Women professional footballers have recently been on strike in Australia and Italy to achieve better pay and conditions, and US players led a class action of players from all over the world last year over FIFA's decision to play the 2015 FIFA Women's World Cup in Canada on artificial pitches.

## **5 The Australian experience**

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Australia is certainly not complacent when it comes to governance in sport. This is because Australian sport does not see good governance as necessary to defend sport from corruption. It sees good governance in a positive light and vital to maximising a sport's revenue and fan and participant bases. Accordingly, in recent years:

- the Australian Sports Commission adopted a series of governance principles in 2012 which are imposed as a condition of government funding of Australia's national sporting organisations. The Australian Athletes' Alliance (AAA), the peak body for Australia's 3,500 elite athletes through eight major player associations, incorporated these into its 2014 governance policy, which also called for the promotion of the essence of sport as a governance principle, the adoption of the AAA Charter of Athletes' Rights, the strict imposition of the separation of powers doctrine within sporting bodies and the involvement of the athletes through collective bargaining underpinned by minimum standards and mandatory subject matters for bargaining;
- the Australian Rugby Union (ARU) reviewed its corporate governance in 2012 with former Australian Sports Minister Mark Arbib;
- an independent Australian Rugby League Commission was established in 2012 as the new governing body of that sport;
- cricket's governance was reviewed in 2011 by leading corporate governance expert David Crawford and former Australian Football League Commissioner Colin Carter, also of the

Boston Consulting Group. Mr Crawford is somewhat of a governance guru in Australian sport;

- Football Federation Australia and Australian football had its governance reviewed in December 2011 by the former Chair of the Australian Sports Commission, Warwick Smith, which followed a landmark review of 2003 led also by the same Mr Crawford;
- *‘The Future of Sport in Australia’* report of 2009 by the Independent Sports Panel, also chaired by Mr Crawford, reviewed the very governance and structure of the sporting industry in Australia and the bodies that make it up; and
- the Australian Football League (AFL), which almost uniquely has not been under review, is widely regarded as having a ‘best practice’ governance model. The AFL has not reviewed its governance since the famous ‘Crawford report’ of August 1992.

Delivered at a time when the AFL was struggling to secure the sustainability of the expanded Victorian Football League/national competition, Mr Crawford, even though he was commissioned somewhat in response to club discontent, recommended a further wave of reform and the handing of all major decision-making power to the independent AFL Commission, the clear demarcation between the responsibility of the Board (the Commission) and management and clear accountability to the “owners” (the Clubs) who retained veto rights over those decisions which truly changed the game, such as contraction and expansion in the size of the AFL competition.

## **6 The ‘best’ governance model in the world**

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The *‘Sports Governance Observer 2015’* assesses the governance of international sporting federations by reference to the four broad criteria of transparency, democratic processes, checks and balances and solidarity, including in respect to internal and external stakeholders. Its 2015 report ranked FIFA second of 35 international Olympic sporting federations, with the author Dr Geeraert describing the findings as being in keeping with the *“legitimacy crisis”* in sport’s governance due to the twofold difficulties of autonomy (which allows federations to keep government’s at arm’s length) and their institutional design which does not allow *“stakeholders to monitor and sanction decision-making members”*.

Messrs Crawford and Carter reflected on the principles of good governance in shaping their recommendations in their December 2011 report, *'A Good Governance Structure for Australian Cricket'*. The report builds its recommendations on three requirements: (1) independence; (2) skill; and (3) accountability. It reads:

*"We believe that cricket's interests will be best served by adopting the governance structure now regarded as 'the best' throughout the world. This is an 'independent and well-skilled' Board that is clearly accountable to the owners and which doesn't confuse its own role with that of management.*

*"Twenty years ago, the AFL ... adopted what is now seen as the best governance model which is the same design as that of BHP Billiton and a not-for-profit like Mission Australia. These Boards are designed, as far as possible, to remove 'conflicts of interest' and attract relevant skills...*

*"The Board's main role is to agree strategy and appoint and oversee highly competent management on behalf of the owners. The owners appoint the Board as their representatives and are able to dismiss the Board if necessary. A good Board will be comprised of Directors who understand that their primary duty is to act on behalf of all owners and not sectional interests. A good Board will be of workable size and its members will be chosen for their complimentary skills and their capacity to contribute. A good Board understands that its role is different to that of management. The Board's delegations to management will be clear and those major decisions that are retained by the Board will also be clear. Similarly, the Board's accountability to the owners will be understood and those few matters that must be referred to the owners for approval will be clearly defined."*

This raises the fundamental question: who are the owners? This is essential to effective accountability. According to the report:

*"...an effective governance structure will clearly define to whom the Board is accountable, and how that accountability will be exercised. Put another way, it is to agree who can dismiss the Board. Unless a Board can be removed, it will lack the necessary accountability.*

*"The common view among cricket's leaders is that the (cricket organisations of the Australian) States are in fact the shareholders, and we agree. They are the custodians of the*

*game on behalf of the wider community. As such, the States should continue to hold the right to appoint the members of the Board and, if circumstances require, remove them.”*

The rights of the owners (the States) are then clearly defined: (1) the right to appoint the Board; (2) the right to dismiss a Director or the whole Board; and (3) approval for those very few decisions that fundamentally change the business, such as to add or delete teams or major competitions. The vesting of these rights in the owners delivers accountability.

The importance of independent governance is acknowledged by the Council of Europe’s Resolution 1875 (2012) *‘Good governance and ethics in sport’*. It calls for the statutes of sports federations to prevent any form of conflict of interest by prohibiting individuals from holding senior offices within those federations if, at the same time, they hold senior posts in a club.

## **7 The central case of FIFA**

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The events at FIFA, including the arrests of key officials, continued concerns over human rights abuses in the construction of infrastructure in connection with the 2022 FIFA World Cup to be held in Qatar and the departure of long-serving FIFA President Sepp Blatter, have prompted an international consensus on the need to reform one of sport’s major global institutions. In his surprise announcement of 2 June 2015 that he would “*lay down*” his mandate at a to-be-convened extraordinary congress, the now provisionally suspended Mr Blatter said: *“While I have a mandate from the membership of FIFA, I do not feel that I have a mandate from the entire world of football – the fans, the players, the clubs, the people who live, breathe and love football...”*

The longstanding failure of FIFA’s own efforts to reform its governance needs to be borne in mind. The Independent Governance Committee (IGC), chaired by Professor Mark Pieth of the Basel Institute on Governance and made up of critical stakeholders, including the players through then FIFPro president Leonardo Grosso, was unable to deliver the wholesale reform of FIFA that is now universally demanded.

Some key lessons from the IGC report of 22 April 2014 are particularly relevant. These include the roles played by the six FIFA confederations in defeating principal reforms, the uncertainty that continues to surround the awarding of the hosting rights for the 2018 and 2022

World Cups and how the reform process is to be driven if it is to succeed. The current reform process being chaired by Dr Carrard consists of representatives of the six FIFA confederations. Not surprisingly, the role of the confederations and the member associations in the structure of FIFA has not been addressed in the body's recommendations. The Committee calls for the greater involvement of the member associations, recommends that elections of FIFA's governing body continue to be determined by the member associations within the confederations, and that that body continues to be made up exclusively of the representatives of both. Indeed, both stakeholder groups benefit by the recommended changes, which include expanding the governing body to 36, increasing the number of teams in the men's world cup to 40 and decreasing FIFA's administrative and competition costs to fund an increase in so called 'football development' projects. The Committee continues to see the FIFA Congress as the vehicle to drive the reforms, concluding confidently that *"The reform process which shall be launched at the February 2016 FIFA Congress should be the beginning of a new era for FIFA."*

However, the 2016 FIFA Reform Committee's recommended design of the new FIFA Executive Committee is flawed and falls well short of the best practice model. The Executive Committee is given both strategic and representative functions and is structured without regard to the requirements of skill and sound decision-making. The Reform Committee recommends that:

*"The Executive Committee of FIFA should oversee strategic matters and have a supervisory role over standing committees and the FIFA administration. It should not have executive powers or direct managerial responsibilities. To reflect its more appropriate function, the name of the committee should be changed to the "FIFA Council". At the same time, the size of this body should be increased to ensure wider participation and democracy."*

On the one hand, the FIFA Council is to *"define policy and strategies to generate revenue, to prescribe the criteria for the distribution of funds to member associations generally and to approve the FIFA budget and annual financial accounts"*. On the other, *"it is important that the FIFA Council becomes larger and more representative"*.

The FIFA Reform Committee preserves the position of the confederations and the member associations as the 'owners' of FIFA. The guiding principle adopted by the Committee

is one of *“foster(ing) greater participation”* on the part of member associations and other stakeholders, including clubs and players. The Committee recommends that *“key stakeholder groups such as clubs and players are (to be) anchored into relevant FIFA committees”* to be supervised by the FIFA Council (emphasis added).

## **8 Good governance and the athletes – the principles of accountability and partnership**

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The key question that remains is how should the athletes be best involved in the delivery of good governance by an international sporting federation? This question can only be answered to reference to two principles: (1) accountability; and (2) partnership. Mere participation is not enough.

As this conference has analysed, it has been through legal action, backed by collectivism, that any sense of accountability on the part of international sporting federations to the players has been achieved. This has involved great personal and professional sacrifice on the part of a select few athletes of rare character, principle and determination. It is right that they are honoured by FIFPro on its golden anniversary.

Given the role of professional footballers in the generation of FIFA’s wealth as well as in the promotion and development of the game, it seems that the players have a significant claim to ownership and that, accordingly, they should have a central and powerful role in FIFA’s governance including the power to substantially influence the election and removal of members of the FIFA Executive Committee or Council, howsoever it is named. This is particularly so given they, unlike the clubs and the leagues, do not have a dominant position within the governance of the national football associations which already have the prominent role in FIFA. The 2016 FIFA Reform Committee does not consider the question of who are FIFA’s rightful owners, and, by encouraging the participation of players through a football stakeholders committee, provides neither any sense of accountability to, or partnership with, them.

The report of Messrs Crawford and Carter into Australian cricket looked into the specific position of the highly unionised professional cricketers.

*“In our interviews, we asked several times whether the professional players should be regarded as a shareholder? (Their stake in the game is obvious and also different to that of the*

*many amateur participants in the game). Our view is that this is not preferable. Players will want their share of cricket's income and will need to negotiate this share alongside game development priorities, the fans (admittance prices) and the need for facilities. As co-owners and with a position on the Board, they would have an uncomfortable conflict of interest. Their long term position is best served working in partnership with CA rather than being viewed as a co-owner along with the States."*

I think this is a highly contestable conclusion. The issue of the distribution of revenue is an issue that affects all stakeholders, such as clubs and member associations, and does not seem, given the essential role of the players in the generation of that revenue, to justify excluding them from 'ownership'.

Mr Arbib, in his review of the Australian Rugby Union, concluded that, as *"the Membership model proposed in this report is broader and more diverse than that of Cricket Australia and given (the Rugby Union Players' Association's) close historical relationship with ARU and its standing in Rugby generally, they can and should be regarded as a Member with voting entitlements."* As part of the review, however, RUPA relinquished its right to a seat on the ARU Board as part of the game's commitment to establishing an independent governing body.

The Council of Europe's Resolution 1875 (2012) *'Good governance and ethics in sport'* recommends that the governance mechanisms of sports federations should be such as to involve athletes in the major decisions relating to the regulation of their sport. In this respect, encouragement could be given to the representation of players' and athletes' trade unions and to the presence of former athletes of acknowledged integrity on federation bodies.

The *'Sports Governance Observer 2015'*, states that, *"athletes are put in a complicated position regarding control. Even though (International Sporting Federations) ISFs are increasingly regulating their profession, athletes seem to lack direct control options..."* The report recommends that athletes be involved through a committee as part of the democratic processes of a federation. This would enable athletes to see the federation's decisions as their own and reduce the risk of legal challenges. The report describes the model of an athletes' commission as being *'state of art'* if athletes are represented within a specific athletes' committee, the chairman/woman of the athletes committee is a member of the organisation's governing body

and the chairman/woman of the athletes committee is elected by athletes. The report does not consider the role of independent player associations or other innovative models, such as the players' council established between the Royal Dutch Football Association (KNVB) and the Dutch Professional Footballers' Association (VVCS), which gives the council, made up of players and player representatives, with rights of consultation and consent on key regulations and the composition of the professional football supervisory board.

## **9 A strategic partnership based on collective bargaining**

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Whilst rejecting the players as owners in the structure of Australian cricket, Messrs Crawford and Carter called for the sport to be run in partnership with the players. Like all owners, the players would continue to have a vested interest in the maximisation of revenue for the benefit of all, an essential component of any partnership, and will be dedicated to on-field success as well as the continued growth and development of the game. The partnership is implemented through collective bargaining. It replaces the *'athletes' choice'* with an *'athletes' agreement'* negotiated by equal parties in good faith.

In the words of leading US attorney Jeffrey Kessler, who has extensive experience in representing the NFLPA and the NBPA:

*"What history has taught us is that there's no inconsistency between having a fair system for players and having a healthy sport. Quite the contrary. What we've seen is that when sports have given players more freedom and have compensated them better the entire sport has grown on the revenue side. The players and the clubs can work together to build the sport much more easily in a fair system than in an unfair system."*

Similarly, the key challenges facing the integrity of sport – match fixing, doping, financial sustainability – require the engagement and the commitment of the athletes in order to be effectively addressed. An effective integrity program requires the athletes to agree to regulations, undertake education, compromise on important legal rights such as privacy and to have trust in the process. Reporting approaches to fix games or undertaking testing for drugs can only occur if the athletes have trust and confidence in the established measures that will be effective and safeguard their security, health and privacy.

Financially, athletes agree to labour market restraints that arguably and, indeed, probably violate their legal rights. Yet, most sports exclude the athletes from the strategic decision-making processes required to maximise revenue for the benefit of all stakeholders, including the players.

Let us look at what occurs when a strategic partnership with the players is embraced, as recommended by Messrs Carter and Crawford in their review of Australian cricket. In the midst of two major lock-outs in the National Football League and the National Basketball Association, Major League Baseball and the MLB Players Association signed a new Collective Bargaining Agreement through to 2016, guaranteeing 21 years of labour peace in the sport that has a history of the most bitter player relations affected by industrial action by both sides. On 26 November 2011, Jon Pessah writing in *The New York Times* commented on how three key players in American baseball – former MLB Commissioner Bud Selig, former MLBPA Executive Director Don Fehr (now the President of UNI World Athletes) and New York Yankees owner the late George Steinbrenner – forged two decades of labour peace.

*“Just how far did this partnership propel baseball? Consider these two elements in the sport’s newest agreement,”* Pessah writes.

*“One calls for the realignment of the game into two 15-team leagues, an idea first put on the table by the union more than 10 years ago. Not only did management adopt an idea developed by the players, it gave the union the credit it deserved. Gone is the acrimony that held the game back for so long...”* (emphasis added)

On the issue of the luxury tax and revenue sharing, which holds down the payroll of even the Yankees but rewards and encourages the smaller clubs to increase revenues (and payroll) by fielding better teams, *“the union got what it wanted and management got what it wanted – on the same issue.”* (emphasis added)

The partnership includes conducting the game’s world championships – the World Baseball Classic – as a joint venture between the MLB and the MLBPA. The MLB’s international strategy, which sees MLB games played in markets as far away as Sydney, is conducted on the same basis.

In 2014, the benefits of the partnership were extended to the critical area of integrity with a collectively bargained anti-doping regime. In the words of the late Michael Weiner, the former Executive Director of the MLBPA:

*“The players are determined to do all they can to continually improve the sport’s Joint Drug Agreement. Players want a program that is tough, scientifically accurate, backed by the latest proven scientific methods, and fair; I believe these changes firmly support the players’ desires while protecting their legal rights.”*

Having excluded the players from ownership, FIFA must now develop a strategic partnership with the players. The opportunity exists for FIFA, together with the leagues and the clubs, to partner with FIFPro to negotiate a regulatory regime that does not get its legitimacy from the vague sanction of the autonomy of sports. Instead, that legitimacy comes from an informed agreement that empowers the game’s key stakeholders to drive the growth and development of the game. At a minimum, that agreement should address the essential subject matters of collective bargaining such as remuneration, discipline, health and safety, dispute resolution, labour market regulations and the protection of players from abuse such as non-payment and by third parties. In the interests of good governance, it also needs to address revenue sharing, commercialisation, game development, the terms on which players will play in major tournaments and the involvement of the players in the governance of those tournaments and the decision-making of the game.

Such a partnership can only be developed based on trust, mutual understanding and a shared vision for the game. The overhaul of FIFA’s governance is therefore a prerequisite to the development of that partnership.

## **10 Conclusion**

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With FIFPro playing such a leading role in the establishment of UNI World Athletes and the development of the player association movement throughout the world and across sport, the opportunity exists for sport through its international federations to work in partnership with the athletes to install good governance and address many of the fundamental challenges sport faces today. However, that partnership must be underpinned by genuine accountability to the athletes.

The requisite level of accountability can only be achieved if the athletes, through their associations, are recognised as critical stakeholders within the governance of sporting bodies and that good governance, collective bargaining and respect for the rule of law become the principal means by which any notion of the autonomy of sports can be recognised.