

**Achieving Compliance With The World Anti-Doping Code:
Learning From The Implementation Of Three Selected International
Agreements**

by

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Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
ADAN	Anti-Doping Authority Netherlands
ADO	Anti-doping Organisation
ANED	Academic Network of European Disability Experts
ARAF	All-Russia Athletic Federation
CAS	Court of Arbitration for Sport
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSACIDN	Committee for the Follow-up and Application of the CRC
DPI	Disabled Persons International
DPO	Disabled People's Organisation
ECOSOC	United Nations Economic and Social Council
EDI	Early Development Index
ESCAP	Economic and Social Commission for Asia and the Pacific
FATF	Financial Action Task Force
FINA	Fédération Internationale de Natation
FIU	Financial Intelligence Unit
FSRB	FATF-Style Regional Body
IAAF	International Association of Athletics Federations
IADA	International Anti-doping Arrangement
IC	Independent Commission
ICF	International Classification of Functioning
ICCPR	International Covenant on Civil and Political Rights
IDEA	Include Disability Employ this Disability
IF	International Federation
ILO	International Labor Organisation
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organisation
IO	Independent Observer
IOC	International Olympic Committee
IPC	International Paralympic Committee
IPEC	International Programme on the Elimination of Child Labour
JADA	The Japan Anti-Doping Agency
JADCO	Jamaican Anti-Doping Organisation
MDAC	Mental Disability Advocacy Centre
NADO	National Anti-Doping Organisation
NATO	North Atlantic Treaty Organization
NGB	National Governing Body

NGO	Non-governmental Organisation
NHRI	National Human Rights Institution
NOC	National Olympic Committee
PED	Performance Enhancing Drug
RADO	Regional Anti-doping Organisation
RUSADA	Russian Anti-doping Doping Agency
RSUI	Royal United Services Institute
SCS	Save the Children Sweden
SGO	Sports Governance Observer
SHIA	Swedish Organisation of Disabled Persons International Aid Association
TDSSA	Technical Document for Sport Specific Analysis
TUE	Therapeutic Use Exemption
UKAD	UK Anti-Doping
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UCI	Union Cycliste Internationale
UNFCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations Children's Fund
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNTOC	United Nations Convention Against Transnational Organised Crime
USADA	US Anti-doping Agency
WADA	World Anti-Doping Agency

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Abstract

The scale of the compliance problem that the World Anti-Doping Agency (WADA) faces was recently highlighted by the exposure of state-sponsored doping in Russia and the series of doping scandals within athletics. This study aims to analyse the problems of achieving compliance with the World Anti-Doping Code. Specifically, the study explores the techniques for, and problems of, achieving compliance in three similar international agreements: the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the UN Convention Against Transnational Organised Crime. The Conventions were analysed to identify the range of strategies used to achieve (or at least enhance) the level of compliance with the international conventions, to evaluate their effectiveness as a way of generating ideas for improving compliance with the WADA Code and to assess the comparative success of the WADA. To evaluate compliance, three inter-related bodies of theory were used: regime theory, implementation theory and Mitchell and Chayes' (1995) compliance system. Qualitative document analysis was used to analyse documents published by relevant organisations. Semi-structured interviews were also conducted with senior staff members responsible for monitoring compliance at the international and UK domestic level. The results identified a range of strategies used to achieve compliance, including a global annual index of compliance, independent monitoring institutions, whistleblowing and domestic lobbying. It is concluded that the identified strategies have had modest and variable success in improving compliance, yet have the potential to address the problems of achieving compliance with the WADA Code.

Key words:

Anti-doping, Anti-doping Policy, Compliance, Implementation, WADA Code

Chapter 1: Introduction

1 Introduction

1.1 Aim, Objectives and Theoretical Context

The aim of the thesis is to analyse the problems of achieving compliance with the World Anti-Doping Code. With reference to the theoretical frameworks, consideration is given to macro-level international relations theories, specifically realism, liberalism and constructivism. Macro-level theories address fundamental questions such as the distribution of power at the global level, the nature of power resources, the significance of the state and non-state actors and the dynamics of global politics (Burchill et al, 2013). As recommended May and Jochim (2013), policy regime theory is used to provide insight into the anti-doping regime and its policies, policy impacts and governing arrangements. The analysis is also informed by implementation theory. In particular, consideration is given to the major schools of thought referred to as top-down and bottom-up implementation theory, as well as the attempts to reconcile the two approaches. The significance of policy regime and implementation theory was emphasised by Raustiala and Slaughter (2013). Specifically, they argued that both concepts are closely related to compliance theory. With regard to compliance, Hanstad and Houlihan (2015) stated that the concept is complex and difficult to define. As a result, in line with Houlihan's (2013) research, the thesis distinguishes between adherence, implementation and compliance. Additionally, Mitchell and Chayes' (1995) compliance system (which comprises a primary rule system, compliance information system and non-compliance response system) is used as an analytical framework. The application of Mitchell and Chayes' compliance system assists the identification of key factors that cause varying levels of compliance with international agreements. The framework also provides analytical guidance and enables an evaluation of the mechanisms that are used to increase compliance within a regime (Werksman et al, 2014).

To achieve the research aim outlined above, the following objectives were developed:

- To explore the techniques for, and problems of, achieving compliance in three similar international agreements and to analyse the context within which the international agreements operate.
- To assess the effectiveness of the World Anti-doping Agency and its major partners in achieving compliance in anti-doping.
- To assess the utility of the Mitchell and Chayes' analytical framework and implementation theory.
- To identify techniques and strategies that might strengthen compliance with the WADA Code.

1.2 Case Study Selection

The empirical section of the thesis adopts a case study research approach. Easton (2010) identified case studies as a useful analytical approach, particularly when the primary unit of analysis is an organisation, a network of organisations or interorganisational relationships with complicated structures. Furthermore, comparative analysis of international agreements provides the opportunity to evaluate the ability of contrasting mechanisms to increase compliance (Merkouris and Fitzmaurice, 2012). The UNESCO Convention Against Doping in Sport was selected as it is the primary document that enables governments to signify their commitment to the Code. Given the unique status of the UN, it was considered appropriate to select three other UN Conventions for comparative analysis. Three international agreements were selected for comparative analysis: the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and the UN Convention Against Transnational Organised Crime (with a specific focus upon anti-money laundering). The international agreements were chosen as, similar to the Code, they represent top-down agreements that focus upon changing behaviours of both individuals and also governments. The associated

regimes are also concerned with a mix of behaviours. The child rights and disability rights regime primarily use soft law to change behaviours that aren't always illegal. In contrast, the anti-money laundering regime addresses criminal activity and aims to encourage people to observe the law. With regard to the anti-doping regime, doping in sport may be described as a semi-criminal activity. Whilst only a small number of countries have criminalised doping in sport (examples of which include Austria, France and Italy), doping is often part of a wider criminal network including illegal production, trafficking and distribution. Furthermore, WADA has a quasi-legal structure and is supported by quasi-judicial bodies such as CAS (Henne, 2010). The comparative analysis identifies the range of strategies used to achieve compliance (or at least enhance the level of compliance) with the respective international Convention and assesses their effectiveness as a way of generating ideas for improving compliance with the Code.

With reference to the methods, qualitative document analysis and semi-structured interviews were selected, a decision informed by Yin's (2003) claim that both methods are appropriate for case study research. As recommended by Bowman (2009), for each case study, documents were sourced through the official websites of relevant organisations, examples of which include the World Anti-Doping Agency (WADA), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the UN, the United Nations Children's Fund (UNICEF), and the Financial Action Task Force (FATF). Additionally, semi-structured interviews were conducted with senior staff members at a number of relevant organisations. All interviewees had a direct strategic responsibility for devising the agreement or monitoring compliance at either the international or domestic level.

1.3 Research Justification

During the 1970s / 1980s, the international sporting community was characterised by poor levels of coordination and fragmented responses to doping. Throughout this period, governments and non-governmental actors were responsible for anti-doping

policy (Mottram, 2014). With reference to governments, Houlihan (2004) identified four categories: activist, apathetic (unenthusiastic), inactive (poor) and subversive. Throughout the early 1970s, examples of activist governments included France, Norway, Sweden and the UK. Specific actions included legislative changes, expressions of disapproval and modest funding of testing programmes. However, whilst the contributions of activist governments were important, efforts were primarily confined to tackling doping at the domestic, rather than the international level. As a result, there was a lack of coordination and cooperation between international level actors. Apathetic governments included Australia, Canada and the USA. Although these countries acknowledged the problem of doping in sport, their responses were limited to condemnation. Poor countries included most of Sub-Saharan Africa and South America, who, due to marginal involvement in the Olympic Games, were not incentivised to address the issue of doping. Furthermore, had poor countries expressed a desire to tackle the problem, their efforts would have been restricted by resource constraints. Finally, the Soviet Union and German Democratic Republic were categorised as subversive governments. Although they publicly condemned doping, these governments were involved in state sponsored doping. With reference to non-governmental actors, Mazanov and McDermott (2012) stated that the IOC and International Federations were slow to address doping within sport. In particular, inaction was attributed to the perception that doping in sport was a problem confined to a small number of athletes, sports and countries. As a result, there was a narrow application of anti-doping efforts; anti-doping policy was restricted to in-competition testing, concentrated upon major events such as the Olympic Games and the football World Cup and was limited to specific countries and sports. During the 1970s / 1980s, broadcasting revenues were also rapidly increasing. Consequently, policy actors within international sports federations often viewed doping as an element of commercial sport that should be ignored.

In contrast, the 1990s were characterised by a shift in momentum. Waddington and Smith (2013) identified the 1988 Johnson scandal as a watershed moment that resulted in numerous anti-doping policy developments. In recognition that a global response was necessary to tackle the problem of doping, cooperation between

governments began to increase and a number of anti-doping agreements were developed. For example, in 1990, the United Kingdom, Canada and Australia signed an agreement, which came to be known as the International Anti-doping Arrangement (IADA). Additionally, in 1996, the group of Nordic countries completed an agreement that bound them to procedures of doping control and penalty harmonisation (see Chapter 4 for a detailed account of the developments, agreements and international cooperation). Momentum strengthened after the 1998 Tour de France scandal. In response to mounting pressure to address the problem of doping, the IOC convened the World Conference on Doping in Sport in February 1999. Despite pre-existing tensions between the International Olympic Committee (IOC) and International Federations (IFs), the organisations were united at the conference. Unity arose through a mutual lack of confidence in (and in some cases open mistrust of) governments. Additionally, numerous IFs and the IOC shared a deep belief that governments only recognised elite, international sporting events as convenient political tools, rather than valuable cultural and global events. The official outcome was the Lausanne Declaration on Doping in Sport, which included a declaration of support for the creation of an international anti-doping agency (Wagner and Hanstad, 2011). Subsequently, in November 1999, the World Anti-doping Agency (WADA) was established as an independent organisation, with the aim of bringing global consistency to anti-doping regulation and policies within governments and sport organisations.

In 2003, WADA introduced the Code as the core document responsible for globally harmonising anti-doping rules, regulations and policies amongst public authorities and sporting organisations. WADA also stated that the desire to ensure compliance with the Code was driven by the belief that doping does not conform to the intrinsic sporting value referred to as the 'spirit of sport' (WADA Code, 2015; 14). However, the non-governmental nature of the Code meant that the document was unable to legally bind governments. In recognition of this problem, in 2003, governments drafted the 'Copenhagen Declaration on Anti-doping in Sport'. The Copenhagen Declaration signified government's moral commitment towards the elimination of doping in sport and declared the intention of governments to officially recognise the

Code through an international treaty. Subsequently, the UNESCO Convention Against Doping in Sport was adopted by the UNESCO General Conference in 2005 (Wagner and Hanstad, 2011). The Convention allows governments to align national policy with the Code and contributes towards the harmonisation of legislation. Combined, the Code and the UNESCO Convention Against Doping in Sport create a global regulatory structure for anti-doping efforts (Casini, 2009).

Despite the introduction of the Code, organised doping in sport has continued to be a major problem. Furthermore, although the Code and the UNESCO Convention Against Doping in Sport were enthusiastically ratified, there is a concern that seemingly successful implementation outputs (Code signatories and testing numbers) have hidden inadequate levels of compliance amongst numerous IFs and governments (Houlihan, 2014). The scale of non-compliance has been demonstrated through a multitude of high profile doping scandals. Of particular significance was the revelation in 2012 that Lance Armstrong, seven times Tour de France champion, had persistently doped throughout much of his career (Dimeo, 2013). Cycling has also been subject to independent investigations; both UK Anti-Doping (UKAD) and the Department for Digital, Culture, Media and Sport launched investigations into Team Sky and British Cycling after it was revealed that an unaccounted medical package was delivered at the 2011 Criterium du Dauphiné (Parliament UK, 2015). Similarly, the problem of doping in athletics has received significant attention. Recently, an independent report commissioned by WADA found evidence of bribery and corruption amongst highly placed officials within the International Association of Athletics Federations (IAAF) (Independent Commission, 2015). Additionally, Ulrich et al (2017) estimated that the doping prevalence at the 13th World Championships in Athletics, held in 2011, was 30%. At the same time, the perception that doping is endemic within cycling and athletics has been reinforced by the repeated occurrence of major scandals involving professional cyclists and athletes (Pielke, 2016). Using Houlihan's (2004) categorisation, the Cycliste Internationale (UCI) and IAAF provide examples of apathetic actors within the anti-doping regime.

In addition to individual athletes and sports, scandals have highlighted the scale of the compliance problem at the national level. Although the Russian government has refuted the claims, recent evidence exposed Russia as a subversive country with a corrupt anti-doping system. In 2015, WADA formed an Independent Commission to investigate allegations surrounding a system of state-sponsored doping within Russia. The report concluded that a widespread culture of cheating exists in Russia. Furthermore, the report found evidence of systematic performance enhancing drug (PED) use by Russian athletes and identified coaches, doctors and laboratory personnel as actors guilty of facilitating doping (Pound et al, 2015). WADA also faces the challenge of ensuring compliance amongst apathetic countries such as Brazil and India, both of which have weak anti-doping systems. With reference to Brazil, a team of independent observers evaluated the effectiveness of the anti-doping programme at the 2016 Rio Olympic Games. The report concluded:

“It was only due to the enormous resourcefulness and goodwill of some key doping control personnel working at the Games that the process did not break down entirely” (Independent Observer Report, 2016; 7).

The weakness of the India’s national anti-doping system is highlighted through the IAAF’s list of suspended athletes. For example, as of December 2016, India ranked third in terms of the number of suspended athletes. Combined, Russia, Morocco and India also accounted for 36% of athlete suspensions (see Table 1.1).

IAAF Athlete Suspensions: Country Rankings			
Country	Rank	Number of Athletes Suspended	% of Total Suspended Athletes
Russia	1st	53	17
Morocco	2nd	29	10
India	3rd	27	9

Table 1.1: IAAF Athlete Suspensions: Country Rankings, adapted from IAAF (2016)

Additional analysis detailing the scale of the contemporary compliance problem within the anti-doping regime is included within Chapter 8, Section 8.2. In response to the current compliance problem, the analytical section of Chapter 8 will contribute towards developing an understanding of the key factors that have resulted in non-compliance with the Code.

The recurrence of major doping scandals has placed the issue of compliance at the forefront of the anti-doping regime. Additionally, the scandals have emphasised that WADA and its major partners are facing challenges in terms of achieving compliance with the Code. In particular, questions have been raised regarding the effectiveness of WADA's current compliance system (Houlihan, 2015). However, many of the challenges that the anti-doping regime faces are not unique; they are general problems that hinder the implementation of, and compliance with, international agreements across a variety of sectors. For example, numerous international agreements have struggled to foster a global commitment. With reference to environmental agreements, President Trump recently withdrew the USA from the Paris Climate Accord. To demonstrate the scale of the problem, the USA ranks second in terms of the amount of greenhouse gases emitted per country (New Statesman, 2017). Additionally, Bowman et al (2010) argued that the commercial whaling moratorium is significantly undermined by Norway's formal objection. Norway registered an objection stating that sustainable harvesting of minke whales in the North East Atlantic is possible, as the species is not threatened by extinction. As a result, Norway, in addition to Iceland who registered a reservation, remain the only two countries in the world to continue whaling for commercial purposes. Within the human rights sector, although Japan has ratified the Convention on the Elimination of All Forms of Discrimination Against Women, the government has generated little momentum towards the elimination of gender discrimination (Simmons, 2009). For example, in terms of gender equality, in 2016 Japan was ranked 111th out of 144. In contrast, developing countries such as Rwanda, Tanzania, Uganda and Bangladesh ranked 5th, 53rd, 61st and 72nd respectively (World Economic Forum, 2016). In addition to a lack of political commitment, resource constraints and cultural issues have frequently been cited as barriers to achieving compliance with

international regimes (Simmons, 2009). As stated by Werksman et al (2014), a comparative analysis of international agreements and their respective policy regimes provides an opportunity to develop a deeper understanding of the factors that contribute towards non-compliance.

Whilst international regimes face similar challenges in terms of achieving compliance with their respective conventions, they also exhibit a diverse range of compliance mechanisms. Comparative analysis of international agreements therefore provides the opportunity to evaluate the ability of contrasting mechanisms to increase compliance (Merkouris and Fitzmaurice, 2012). Consequently, in addition to analysing the anti-doping regime, the thesis will explore the problems of and techniques for achieving compliance within the child rights, disability rights and anti-money laundering regimes. The effectiveness of the strategies used with the comparative regimes, in addition to their potential to generate ideas for improving compliance with the Code, will also be assessed.

1.3 Thesis Summary

Chapter 2, theory, outlines the theoretical frameworks used throughout the thesis. The chapter begins with an analysis of three of the most significant macro-level theories (realism, liberalism and constructivism) and identifies neoliberalism as the most appropriate lens through which to analyse anti-doping policy. Next, in recognition of the relationship that exists between international relations and regime theory, the chapter considers the impact of realism, liberalism and constructivism upon the understanding of policy regime theory. Additionally, the key characteristics of policy regimes are identified and the issues surrounding the measurement of policy regime strength are discussed. Finally, the complex issue of compliance is explored. Specifically, this section distinguishes between the concepts of adherence, implementation and compliance. Furthermore, Mitchell and Chayes' (1995) compliance system and the ability of the framework to contribute towards developing the understanding of compliance is evaluated.

Chapter 3, methodology, begins with a summary of the different ontological and epistemological positions. Subsequently, the discussion focuses upon the chosen design frame of case study research. In particular, emphasis is placed upon the value of case studies, specifically their ability to provide a 'thick description' and contribute towards analytical generalisation (Geertz, 1973; Yin, 2013). Informed by case study research, the selected methods of document analysis and semi-structured interviews are discussed. Throughout the chapter, consideration is given to the advantages and limitations associated with the research paradigm, design frame and methods underpinning the study. Potential solutions that may help to alleviate specific problems are also identified.

Chapter 4, the history of international cooperation on doping, provides an introductory account of the history of doping within sport. In particular, the chapter focuses upon international cooperation in tackling doping. The discussion identifies watershed moments and considers their impact upon anti-doping policy and organisations in terms of leaderships and networks. To conclude, the chapter evaluates the scale of the contemporary compliance problem within the anti-doping regime.

Chapters 5, 6 and 7 contain the findings from the three case studies, namely the United Nations Convention on the Rights of the Child, the United Nations Convention of the Rights of Persons with Disabilities and the United Nations Convention Against Transnational Organised Crime. Each chapter begins with an overview of the history and trajectory of the respective international agreement. Additionally, the international and national institutional frameworks of each regime are outlined. In the next section of each chapter, Mitchell and Chayes' compliance system is applied. Using the framework, each regime is analysed to identify the range of strategies used to achieve compliance (or at least enhance the level of compliance) with the chosen international convention. To enhance the analysis, consideration is given to the additional interrelated theories discussed in chapter 2, specifically policy regime and implementation theory. During the analysis, a number of recurrent and contrasting themes that exist between each of the regimes are also

identified. Finally, each chapter concludes with a summary that outlines the distinctive characteristics of the regime, the key challenges to achieving compliance, and the similarities / differences between the chosen agreement and the anti-doping regime.

Chapter 8, the anti-doping regime, focuses upon the issues that WADA and its major partners face in terms of monitoring and achieving compliance with the Code. Similar to the previous empirical chapters, the institutional framework at the international and national level is identified. Mitchell and Chayes' compliance framework is also used to identify the range of strategies used to enhance compliance. Additionally, the comparative analysis identifies the similarities and differences that exist between the anti-doping regime and the child rights, disability rights and anti-money laundering regimes. Finally, the conclusion summarises the characteristics of the anti-doping regime and identifies the major challenges to achieving compliance.

Chapter 9, conclusion, addresses the research objectives identified in chapter 1 and uses the theoretical and methodological concepts discussed in chapters 2 and 3 to inform the empirical findings. The first section uses Mitchell and Chayes' compliance framework to summarise the problems of achieving compliance across each of the international agreements. The key differences between the anti-doping regime and the child rights, disability rights and anti-money laundering regimes are also identified. With reference to the strategies used to enhance compliance within each of the international agreements, this chapter assesses their effectiveness as a way of generating ideas for improving compliance with the Code. Second, the usefulness of Mitchell and Chayes' framework is considered and potential refinements to the theory are discussed. Third, the chapter considers the future direction in terms of improving compliance with the anti-doping regime. Specifically, scope for innovation and strengthening compliance is considered. The chapter concludes with recommendations to improve compliance within the anti-doping regime.

Chapter 2: Theory

2.1 Introduction

An inescapable connection exists between the actual political world and the abstract world of theory (Walt, 1998). To address this connection, international relations scholars Lawson (2015), Daddow (2013), Burchill et al (2013) have noted the broad range of macro-level international relations theories. Macro-level theories address the fundamental questions such as the distribution of power at the global level, the nature of power resources, the significance of the state and non-state actors and the dynamics of global politics.

First, this chapter will explore the most significant contemporary theories of realism, liberalism and constructivism. Second, in recognition of the relationship that exists between international relations and regime theory (Tecklin et al, 2011), the chapter will consider the impact of realism, liberalism and constructivism upon the understanding of policy regime theory. As recommended by May and Jochim (2013), the concept of policy regimes will be used to provide insights into policies, policy impacts and governing arrangements. This section also addresses the issues surrounding the measurement of policy regime strength and effectiveness (Frantzi et al, 2009). Third, the complex issue of compliance shall be discussed. Informed by Houlihan's (2013) research, this section will distinguish between the concepts of adherence, implementation and compliance. To conclude, an analysis of Mitchell and Chayes' (1995) compliance system and an evaluation of the model's contribution towards developing the understanding of compliance will occur.

2.2 Macro-level International Relations Theories

2.2.1 Realism

Emerging in the twentieth century, classical realism is often considered as the initial form of realist thinking in international relations. Inspired by the work of Thucydides, an Athenian general of the fifth century, Forde (1988) stated that realists frequently adopt a pessimistic outlook on politics and life. Throughout the last three quarters of a century, the continued relevance of Thucydides' work has been emphasised by key scholars, including Carr (1939), Morgenthau (1948) and Mearsheimer (2001). However, as discussed by Daddow (2013), other scholars, particularly the critics of realism, have questioned the appropriateness of using ancient Greek political relations to understand modern international politics. Classical realists traditionally place emphasis upon the political constraints that are imposed by egoism (the selfishness of humans) and anarchy (where no international government exists). Realists argue that national interests stem from the anarchical arrangement of the international sphere. Specifically, the absence of an international authority means that states have no assurances that they will not be invaded. Although classical realists do not perceive war as impending, they are wary of the possibility. Political anxiety surrounding the prospect of war is further heightened by the dynamic nature of power relations; changes in the relative power of states can cause variations in perceptions of state power. This anxiety, combined with ambition, can create pressures that result in war (Kirshner, 2010).

The concepts of egoism and anarchy were prevalent in Hobbes' (1651) 'Leviathan', an influential text in realist thinking and one that is at the forefront of the classical texts that consider power. Hobbes' three basic assumptions included the equality of men, that their interactions occur in anarchy, and that men are motivated by diffidence, competition and glory. Additionally, Hobbes argued that self-preservation provides the foundation for the sole law that governs humans within the anarchic state of nature. Humans will therefore use any achievable power to fight for

resources and secure this goal of self-preservation. Hobbes suggested that a perpetual fear exists within the state of nature. As a result, in attempt to conquer their fear of each other, men and women may create states in which the constituents agree not to harm one another. The responsibility for ruling the state lies with a sovereign government that possesses outright authority and an acknowledged source of power to safeguard the people from both domestic chaos and foreign dangers and enemies. Consequently, a persistent state of nature exists between the states. As explained by Mearsheimer (1994), substantial security is usually provided for citizens of states, even by those governments that are ineffective and vicious. As a result, the pressure to create a global sovereignty is minimised, thereby sustaining the international state of nature. Though the central problem remains constant, the unit of analysis shifts from humans to states; instead of people, states now exhibit fear for their security and survival. Described as the realist security dilemma, Forde (1988) stated that increased security at domestic level is synonymous with the generation of uncertainty at international level. However, Lawson (2015) contended that the degree to which Hobbes' analogy of the individual and the state of nature can be applied to the international sphere is questionable. In contrast, after consideration of each of Hobbes' three assumptions, Burchill et al (2009) perceived them as applicable to the key elements of international relations.

2.2.1.1 Neorealism

Although realism continued to prevail after the Second World War as the dominant paradigm both academically and in many governments, the specific shape that it took changed substantially (Hathaway, 2002). Kenneth Waltz's (1979) influential work rejected the classical realist's 'inside out' approach, which perceived the domestic state and individual human nature as drivers of behaviour within the international sphere. Instead, Waltz's new perspective – neorealism – suggested that individual actors, human nature, the type of regime and additional domestic issues, have minimal, if any, impact upon state behaviour. Neorealists contend that the

concept of the system is important and that the anarchical arrangement of the international sphere is the ultimate determinant of state behaviour (Tarzi, 2004). Furthermore, as summarised by Waltz (1979), neorealism argues that individual states are motivated by a 'principle of self help', and, as a result, states endeavour to guarantee their own survival and security compared to other states. Based upon this premise, whilst neorealism recognises that states sometimes operate through institutions, Waltz argued that this action is driven by self-interest and that the institutions have no independent impact on state behavior. Additionally, as stated by Hathaway (2002), neorealism perceives compliance with international law to be the coincidence of a path governed by self-interest.

The neorealist theory put forth by Waltz has been subjected to numerous criticisms, particularly from advocates of the counter perspective, liberalism. First, as discussed by Grieco (1988), liberals have challenged the accentuation of conflict and contended that the theory understates the ability of international institutions to encourage cooperation. Second, Keohane (2012) criticised neorealism's failure to consider the ability of humans and states to learn and develop cooperative behaviours. Third, Hayhurst et al (2010) criticised the neorealist emphasis upon state centrality and self-interest and argued that this approach encourages the adoption of an extremely narrow worldview. In addition to liberal counterarguments, Waltz's outlook was challenged by fellow neorealist Mearsheimer (2001). Specifically, neorealists are divided over the extent to which states seek power. On the one hand, Waltz (1979) represents the defensive realism strand. On the other hand, Mearsheimer (2001) represents an alternative neorealist perspective referred to as 'offensive realism'.

2.2.1.2 Defensive vs. Offensive Realism

With reference to Waltz's (1979) theory of defensive realism, the balance of power theory presumes that states act rationally and only seek a level of power that will provide survival and security under anarchy. However, it is important to recognise

that behaviour differs in relation to the respective capabilities of states and can lead to alterations in the system. For example, following the rise and fall of great powers, the balance of power will alter accordingly. Although, like realism, defensive realism ignores the role of international institutions, Waltz adopted a more optimistic outlook; similar to liberalism, Waltz recognised that cooperation between states can reap mutual advantages. In contrast to defensive realism, Mearsheimer's (2001) theory of offensive realism rejected the assumption of cooperative behaviour. Instead, Mearsheimer argued that the action of international politics is firmly established in the belligerent instincts of human nature and that states express a desire to increase their power in relation to other states. Offensive realism is founded upon five realist assumptions: states operate within anarchy and are motivated by a principle of self help, states possess offensive capabilities, state intentions are uncertain, the primary goal of great powers is survival and great powers are rational actors (Kirshner, 2010). However, a major criticism of offensive realism arises from Mearsheimer's (2001) statement that within the Western hemisphere, America has been the regional hegemon since 1900. Once a state has achieved hegemony, Mearsheimer argued that the system is no longer anarchic, but hierarchic. However, as a theory of international anarchy, offensive realism is unable to explain hierarchic relations. As a result, Mearsheimer's theory of offensive realism cannot explain the Western hemisphere's interstate relations since 1900. As argued by Pashakhanlou (2013; 211), "the implication of this revelation is catastrophic for the explanatory power of offensive realism".

From a realist perspective, institutions in the form of international sporting events provide a setting for power politics to unfold and create an opportunity to showcase state power. For example, Hitler used the 1936 Berlin Olympics as an opportunity to glorify Nazism and showcase German athletes, whilst China used the 2008 Beijing Olympics to showcase itself as an emerging power (Delaney and Madigan, 2015). Additionally, as discussed by Cottrell and Nelson (2010), international sporting events have historically been dominated by states, arguably with the objective of increasing their relative power in the international system. For example, states are able to use participation in international sports events as a means of strengthening

their claim to diplomatic recognition or making a public protest. Cold War examples identified by Keech and Houlihan (1999) include America's boycott of the 1980 Moscow Games and the Soviet's retaliatory boycott of the 1984 Los Angeles Games. To further exemplify the realist outlook within a sporting context, Chappelet and Parent (2015) discussed the ethos surrounding the Olympic Games. They stated that contrary to Pierre de Coubertin's vision, the emphasis around the Olympic Games is no longer concentrated upon participation, but rather winning; in some instances, an attitude of winning at all costs (even if that means cheating and doping) is adopted. The persistence of the win at all costs attitude has recently been highlighted by the exposure of state sponsored doping in Russia (WADA, 2015a). On the one hand, Chappelet and Parent (2015) argued that the given examples of sport being subordinated to the interests of state powers provides support for the realist view that sport is far from an independent variable. On the other hand, Cottrell and Nelson (2010) contended that the recognition of sport's power by states may be perceived as a reflection of the liberal perspective.

2.2.2 Liberalism

Locke (1689) is frequently identified as the father of classical liberalism. His ideas, alongside those of Smith (1776) and Kant (1795), shaped the earliest form of liberalism. Like realists, their view of classical liberalism perceived states as singular units that operated rationally under anarchic conditions. However, classical liberalism rejected the realist view that the primary motivation of behaviour is fear. As discussed by Kirshner (2010), instead, liberalism adopted an economic perspective and proposed that individuals are driven by a desire to maximise personal wealth. Additionally, in contrast to the anti-progressive worldview of realists, liberals recognised the ability of humans to develop morally and positively impact international relations. Liberals also contended that organisations generate the opportunity for states to engage in extensive strategic interactions with other states. The belief that the presence of international organisations impacts upon

state's decisions regarding peace and war, also distinguishes classical liberalism from realism (Nye, 1998).

2.2.2.1 Neoliberalism

Similar to realism, the developments that occurred within the global political economy after the Second World War resulted in the emergence of a new liberal theory – neoliberalism (Tarzi, 2004). Of particular influence was the work of Keohane and Nye (1977), Keohane (1982) and Krasner (1982). Though they shared previous liberal ideas regarding the potential for change and growth, idealism was rejected. With reference to international cooperation, Grieco (1998) stated that neoliberals perceive states as atomistic actors who only consider the absolute gains of their individual state. In contrast, neorealist Mearsheimer (1994) argued that states are defensively positioned actors who also consider relative gains. Specifically, states are fearful that the relative gains achieved by their collaborative partner could lead to a dangerous rival being able to threaten the state's survival in the future. Informed by this belief, realists have criticised neoliberals for overlooking relative gains; according to realists, relative gains help to explain the reluctance of states to engage in cooperative arrangements.

Additionally, neoliberals Keohane and Nye (1977), Keohane (1982) and Krasner (1982) refocused their theories upon the role of organisations and institutions in international politics. In particular, they explored ideas around the relatively consistent displays of international economic collaboration, despite the unequal allocation of economic power at international levels across the world. Keohane and Nye (1997) further contributed to neoliberalism through the notion of 'international regimes', which they described as a set of rules, norms and standards that govern relations among a clear group of actors. As discussed by Drezner (2007), within these regimes, institutions may be considered as binding mechanisms that enable demonstrations of commitments that are credible.

According to neoliberals, social movements that are driven by moral passion and principles (as opposed to material concerns), play an important role in encouraging democracies to implement their ideals (Keohane, 2012). Neoliberals have also recognised sport as a valuable social institution that can contribute to such social movements. For example, as discussed by Keech and Houlihan (1999), the focus of anti-apartheid campaigners upon international sports organisations sought to maintain a high profile for, and morally condemn, apartheid on an international level. More recently, supported by the United Nations and the IOC, the 'Sport for Development and Peace' transnational programme represents a social movement that uses sport to encourage economic, social and political change. Furthermore, 2005 was proclaimed by the United Nations General Assembly as the 'International Year of Sport', an announcement which formally recognised the potential of sport to assist development work at international level (Hayhurst et al, 2010). Additionally, sport can play a powerful role in the context of state identity. For example, Merkel (2014) identified international sporting events as an effective means for the Korean states to address the complex issue of delivering both a clear individual national and a pan-Korean identity. To enhance North Korea's profile internationally and showcase their qualities, teams and athletes frequently compete in high profile, international sport events. Synonymously, North and South Korea use sport to preserve a feeling of pan-Koreanness. As argued by Merkel, through their sporting interactions, the matter of reunification remains present in the public discourse, thereby minimising the need to engage in arduous and complicated political conference.

2.2.2.2 Institutional Liberalism

Since the initial postulation of neoliberalism, numerous distinctive strands have emerged. Although each school identified a contrasting variable as the largest explanatory value (see Table 2.1), they share the underlying principles of liberalism and consistently express the need for more collaborative and peaceful international relations.

Strands of Neoliberalism	
Strand	Focus Area
Sociological liberalism	Cross-border flows, common values
Interdependence liberalism	Transactions stimulate co-operation
Institutional liberalism	International institutions, regimes
Republican liberalism	Liberal democracies living in peace with each other

Table 2.1: *Strands of Neoliberalism, adapted from Jackson and Sørensen (2012; 48)*

Keohane (2012) stated that the neoliberal strand of institutional liberalism has dominated since the Soviet Union's collapse in 1991. Socially, the intention of institutional liberalism is to advocate the benefits of improved human welfare, security and liberty that would occur as a result of a free, harmonious and thriving world. As a result, globally, institutional liberals consent to the use of power for the benefit of liberal values, whilst exercising both wariness and control (Keohane, 1982). Institutional liberalism further argues that multilateral institutions established on liberal assumptions are capable of promoting collaboration amongst states that is mutually advantageous (Tarzi, 2004). However, Mearsheimer (1994) contended that institutional liberalism concentrates upon situations where the interests of states provide reason for cooperative behaviours. Mearsheimer criticised institutional liberalism for failing to consider instances where the interests of states are deeply conflicted and neither party can foresee potential gains from collaboration. In such situations, Mearsheimer argued that the theory of institutional liberalism becomes redundant.

As previously mentioned, Mearsheimer's (2001) theory of offensive realism emphasised the system of anarchy that states operate within. However, as argued by neoliberal Keohane (2012), cooperation can counteract the negative effects of anarchy. Specifically, Keohane stated that institutions provide a flow of information between state members that can minimise the levels of fear and uncertainty that are present as a result of the security dilemma. Such institutions may take the form of

official international organisations, examples of which include the European Union (EU), North Atlantic Treaty Organisation and World Trade Organisation (WTO). Alternatively, institutions may play an important role in regimes that manage commonplace activities, for example agreements regarding aviation, the environment and shipping. Institutions may also offer global memberships (for example the United Nations) or have a regional focus (for example the EU) (Burchill et al, 2013). However, despite the successful formation of numerous institutions, Fukuyama (2004) argued that the involvement of weak states, combined with their inability to effectively enforce institutional rules, reduces the strength of even powerful institutions. With reference to sport, Hayhurst et al (2010) identified the IOC and international sports federations (IFs) as institutions recognised by neoliberals as important non-state actors.

As discussed by Keohane (2012), institutional liberalism shares the early liberal belief that humans are able to develop morally, especially when provided with the chance to convey ambitions of peace in democratic political systems. To emphasise the importance of moralism, institutional liberals further argue that an absence of moral direction leads to improper and destructive acts of power. However, realist Mearsheimer (2001) contended that in practice, the ideals upon which moralism rests are unavoidably corrupted by power. To further oppose the progressive narrative presented by institutional liberals, realists refer to the recent challenges that America faces from al-Qaeda, Iran and North Korea. Realists have used these events to support their assertion that the generation of state power results in counter efforts by other states (Keohane, 2012).

2.2.3 Constructivism

Up until the 1990s, neorealism and neoliberalism dominated the theorisation of international relations. However, the failure of both theories to predict and explain the peaceful end of the Cold War resulted in the rise of a contrasting approach,

namely constructivism, key proponents of which include Wendt (1992), Adler (1997) and Ruggie (1998). Adler (2013) described constructivism as a multi-layered understanding of social science and reality, and of their constitutional effects. With regard to the reality that academics strive to know and the knowledge used to explain reality, constructivism adopts a metaphysical stance. Building upon the metaphysical stance, constructivism may be regarded as a social theory that considers the constitutional effect of knowledgeable agents and knowledge on social reality. Constructivism also adopts both an empirical and theoretical perspective. As a result, constructivism argues that research and theory must be established upon thorough foundations of social ontology and epistemology. With reference to ontology, as stated by Adler (2013), constructivism considers social reality and its construction. More specifically, constructivism's interpretation of the social world comprises of processes and structures that are collectively significant and intersubjective. Constructivism also examines the constitutive impact of endogenous ideas and knowledge upon the development of social reality. Consequently, constructivism rejects both the neorealist and liberal institutionalist assertion that structure comprises only of material capacities (Hopf, 1998). Adler (2013) argued that without the existence of a social context that is intersubjective, meaningful behaviour cannot exist. Based upon this premise, constructivists contend that alone, anarchy and material resource distributions are meaningless, and do not, as realists suggests, allow for the deducement of interests. As stated by Wendt (1995; 73), "material resources only acquire meaning for human action through the structure of shared knowledge in which they are embedded".

Constructivism shares neoliberal premises, specifically the belief that even in conditions of anarchy, cooperation is achievable. However, whilst institutional liberalism argues that institutions are central to the promotion of state collaboration, constructivism primarily investigates the ability of interests and identities to promote state collaboration (Hopf, 1993). As explained by Ruggie (1998), constructivism understands institutions as mechanisms that contribute towards the establishment of shared practices and collective identities. Furthermore, constructivism suggests that institutions comprise of intersubjective

procedures that channel behaviour in a desired direction. Constructivism also shares neorealist premises. As discussed by Wendt (1995), similar to neorealism, constructivism recognises the anarchic nature of the international sphere, perceives states as rational actors with a desire to survive and acknowledges state's feeling of uncertainty regarding the intentions of other states. However, Wendt rejected the neorealist assertion that within global politics, self-interested states are the singular, constant, meaningful identity of all units. Instead, constructivism contends that the variable nature of state identities is influenced by political, cultural, social and historical contexts.

Similar to Wendt, Adler (1997) considered the concept of identity and argued that variable identities are at the centre of transnational and national interests and are critical to the understanding of behaviours, change, institutions, war and state collaborations at international level. To support this argument of constructivism, Banchoff (1999) referred to the inability of realism and its assumption of fixed identities to explain Germany's post war decision to join the EU and include Europe within its identity. Wendt (1995) further argued that the international system and identities are mutually constituted. As discussed by Sala et al (2007), critics of constructivism have argued that due to the issue of observational equivalence, it is impossible to conduct empirical analysis and provide evidence for the constructivist claim that the international system and identities are mutually constituted. To address this criticism, Sala et al conducted a large-n quantitative analysis that investigated Olympic figure skating judge bias between 1948 and 2002. Their investigation focused upon judge's scoring towards respective state competitors from the Warsaw Pact and North Atlantic Treaty Organization (NATO) defence alliances. As quasi-state representatives, the figure skating judges were identified as national representatives immune from national security interests and concerns. Their findings revealed that judge bias systematically fluctuated according to whether or not judges perceived the skater's respective state as enemy, rival or friend, thereby providing empirical evidence for constructivism.

With reference to sport, Cottrell and Nelson (2010) stated that constructivism's expansion beyond a materialist ontology has provided an opportunity to understand the importance of international sporting events in international politics. For example, constructivism is better able to explain the Olympics as an emblem of national prestige and its subsequent impact upon the formation of identity, especially where host cities are concerned. Additionally, the constructivist outlook is able to provide insight into the controversial issue surrounding the inclusion of recreational drugs, particularly cannabis and marijuana, on WADA's previous and current 2015 prohibited substance list. On the one hand, Waddington et al (2013) argued that since there is insufficient evidence to indicate the performance enhancing effect of cannabis and marijuana, these recreational drugs should be removed from the prohibited substance list. On the other hand, Johnson and Mair's (2006) constructivist counter argument referred to the discourse construction of recreational drugs and the damage that they can cause to the image of sport.

	Realism	Liberalism	Constructivism
Units	Nations and states are the primary unit of analysis.	States, organisations and institutions are all units of analysis.	Individuals are the primary unit of analysis.
System Structure	Interactions occur within a state of anarchy.	Recognises anarchy and adopts an economic perspective (belief that individuals are driven by a desire to maximise personal wealth).	Considers the social construction of reality.
Process	Focuses upon the security dilemma and struggle for power.	Focuses upon the interdependent nature of processes.	Focuses upon the intersubjective nature of processes.
Leading Norms	Leading norms include autonomy, rationality, the balance of power and security / national interest.	Leading norms include the potential for cooperation, freedom and human rights.	Constructivists investigate interests and identities and their potential for state collaboration.
Key Scholars	- Hobbes (1651) - Waltz (1979) - Mearsheimer (2001)	- Keohane and Nye (1977) - Keohane (1982)	- Wendt (1992) - Adler (1997) - Ruggie (1998)
The Role of Sport	Sport has no independent power; sporting events are a tool through which power politics can unfold.	Sport is recognised as a valuable institution; the role of the IOC and IFs is recognised.	Sport and sporting events are recognised as important events in international politics.

Table 2.2: A Comparison of the Characteristics of Realism, Liberalism and Constructivism

2.3 Factors that Shape Sport Policy

This section considers a selection of factors that shape global sport policy, including institutions, interests, control of resources, ideology, domestic events and external events. Houlihan (2005) distinguished between two broad conceptualisations of institutions. The first orientation conceptualises an institution as an organisational entity. Houlihan (2013) identified a range of organisations and actors that drive anti-doping policy, including individual states, UNESCO, the Council of Europe, the European Union, the IOC, WADA, countries such as Australia, Canada and Norway that have historically displayed activism on doping and a collection of Olympic IFs including swimming (Fédération Internationale de Natation – FINA). As stated by Hanstad (2015), the allocation of anti-doping responsibilities varies between these organisations. As a result, Hanstad emphasised the importance of institutional collaboration to achieve deeper levels of anti-doping compliance.

The second conceptualisation, namely cultural institutionalism, considers shared beliefs, norms and values (Houlihan, 2005). As discussed by O’Leary (2013), the culture relating to anti-doping is varied. For example, based upon religious beliefs, athletes may claim the right to refuse supervised urine and / or blood samples. However, the WADA Code (2015) contended that there is insufficient support for this assertion. As a result, under the 2015 Code, sample refusals, even those based upon religious claims, are considered as a doping violation. With reference to values, the primary rationale behind WADA’s anti-doping policy is the belief that doping does not conform to the intrinsic sporting value referred to as the ‘spirit of sport’. As outlined within the Code, the spirit of sport consists of numerous values including “ethics, fair play and honesty, health, excellence in performance, character and education, fun and joy, teamwork, dedication and commitment, respect for rules and laws, respect for self and other participants, courage, community and solidarity” (WADA Code, 2015; 14). McDermott (2015) argued that the values identified within the Code have underpinned WADA’s anti-doping education. However, Waddington

et al (2013) criticised WADA's reference to the 'spirit of sport'. Waddington et al contended that WADA has used this argument to justify the banning of non-performance enhancing recreational drugs such as cannabis and marijuana, to transcend traditionally acceptable sporting concerns and to unnecessarily police athlete's personal activities. Additionally, Hardie et al (2012) criticised WADA's anti-doping policy for assuming the prevalence of a 'win at all costs' attitude amongst athletes. Following research that conducted interviews with Australian peloton cyclists, Hardie et al argued that WADA fails to look beyond traditional anti-doping rationales and provides an incomplete presentation of athlete's anti-doping decisions. Whilst cyclists referred to rule adherence, fair play and personal health were cited as reasons behind their decision not to dope, they more frequently drew upon deeply embedded values, specifically, their sense of identity within cycling, feelings of collegiality, moral integrity and economic security for themselves and the industry.

Chappelet and Parent (2015) identified a range of stakeholders who have an invested interest in sport, including the government, media, sport events organisers and the community. With regard to the anti-doping regime, all organisations have interests when they look at the Code. In addition to mediating implementation, stakeholder interests also impact upon compliance. For example, compliance with an international agreement may be in the best interest of the organisation, particularly when the consequences of non-compliance include sanctions and fines (Winter and May, 2001).

As argued by Houlihan (2002), in order to successfully further their interests, a variety of tangible and / or intangible resources may be required by policy actors. Resources include, but are not limited to, finance, equipment, specialist knowledge, manpower and control over legislation. With reference to the anti-doping regime (Rhodes, 1985). Houlihan (2004) stated that resources include money (to finance testing and analysis), expertise (to conduct analysis), political support (from governments) and facilities (adequate laboratories). Benson (1982) likewise identified resources as an important element that impacts upon the extent to which

policy can be effectively implemented. For example, lack of resources can place significant constraints upon the policy capacity of organisations. However, Benson continued to discuss how, in some instances, resource dependence (a situation wherein one organisation controls the resources needed by another) may occur. Where resource dependency occurs, the resource holder possesses influence over the policy of the resource dependent organisation. Within sport, an example of resource dependence includes those countries that are dependent upon funding from the Olympic Solidarity (IOC, 2016). In addition to issues surrounding resource dependence, the anti-doping regime also faces capacity challenges. For example, as discussed by Rabin (2011), therapeutic products developed by the pharmaceutical industry, including those in the initial pre-clinical development stages, are frequently used as doping agents in sport. Consequently, anti-doping authorities face a major resource challenge to eliminate doping in sport. In particular, sufficient finance and specialist knowledge is necessary to ensure that relevant pharmaceutical products are included in the prohibited substance list and to enable the development of methods that are capable of detecting advanced pharmaceutical substances. To address this issue, in 2014, WADA announced a long-term collaboration with the biopharmaceutical company Pfizer Inc. Under the agreement, Pfizer Inc informs WADA of clinical stage product developments with the potential for misuse by athletes. In return, Pfizer Inc benefits from minimised negative publicity surrounding doping scandals and product misuse outside of the intended medical context (WADA, 2014).

A widely accepted and powerful ideology includes sport's linkage with health, community and social benefits. Furthermore, the purist conception of sport is rooted in values of fair play, integrity and equity (Gleaves, 2015). However, Coalter (2013) suggested that doping contradicts the romantic ideology around sport. As argued by Hanstad et al (2008), doping tarnishes the credibility of sport, undermines sport's social efficacy and delivery of public value and negates the constitutional ethics and values of sport. Such ideological arguments are used by WADA to justify the enforcement of its anti-doping policy.

Domestic events can impact sport policy at national and global levels. At the national level, Kamber (2011) discussed how the positive anabolic steroid testing of Ben Johnson at the Seoul 1988 Olympics prompted the Canadian government to launch an investigation into doping within Canadian sport. In line with the report's recommendations, the Canadian Anti-doping Organisation was subsequently founded as the central body responsible for doping research, control, prevention and arbitration. Additionally, the infamous 1998 Tour de France scandal prompted significant action by the French government. The government's response included a re-examination of its anti-doping laws and aggressive drug raids. The extensive involvement of French police represented an unprecedented level of political involvement in the anti-doping regime (Johnson, 2016). The Festina cycling team scandal also had implications for global sport policy. For example, Møller (2016) identified the revelation of the endemic nature of performance enhancing drug use in sport as the primary factor that resulted in the establishment of WADA in 1999. Again, in 2004, global sport policy was impacted by a domestic event, namely the San Francisco Bay Area Laboratory Cooperative (Balco) scandal. Following the revelation that the laboratory had provided the designer-steroid THG to numerous elite athletes, WADA responded by amending their prohibited list to include designer-steroids (Dimeo, 2013).

With reference to external events, Szymanski (2006) identified satellite broadcasting as a significant development that transformed the commercial value of sport. For example, the increase in the fees paid for Olympic Games broadcasting rights demonstrates sport's importance to broadcasting companies (Houlihan, 2002). However, Waddington and Smith (2009) used cycling to exemplify how some commercial sports are unable to exist in their present form if the large financial investments from broadcasters cease. As a result of repeated doping offenses within cycling, the German public service broadcasters Zweites Deutsches Fernsehen and Association of Public Broadcasting Corporations withdrew their support for the Tour de France in 2008 and refused to broadcast the event in Germany. Subsequently, a lack of sponsors resulted in the cancellation of the 2009 Tour of Germany (Solberg et al, 2010).

2.4 Theory

2.4.1 Defining Policy Regimes

Krasner (1982; 186) defined international regimes as “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area”. Such rules may be contained within bilateral or multilateral treaties (referred to as formal regimes) or laid down informally (referred to as informal regimes) (List and Rittberger, 1998). With reference to the anti-doping regime, Wagner (2009) argued that WADA, the hybrid organisation that comprises of both political authorities and sports bodies, has contributed towards formalising the regime. Similarly, Houlihan (2014) stated that since WADA was established, the anti-doping regime has exhibited a range of characteristics that are frequently found within formally articulated regimes. First, relations between core actors display a substantial degree of stability. In part, the purpose of WADA’s regional offices is to maintain the network of relationships that exist between actors. Governments and international sport organisations also provide joint funding for WADA and both interests are equally represented on the WADA Executive and Foundation Board. Second, anti-doping policy is driven by a solid group of actors including individual states, UNESCO, the Council of Europe, the European Union, the IOC, WADA, countries such as Australia, Canada and Norway that have historically displayed activism on doping, and a collection of Olympic IFs such as FINA. Third, the anti-doping regime fulfills key maintenance activities, including the monitoring and review of policy, the exchange of information and compliance authentication and enforcement.

Although Krasner’s (1982) original conceptualisation of regimes is widely accepted, Kuyper (2014) noted how international relations scholars emphasise different elements depending upon their theoretical positioning. For example, neorealist Walt (1987) stated that power governs the establishment of regimes and relations between states. In contrast, neoliberal Keohane (1984) concentrated upon the

rational utilisation of institutions and their rules to encourage cooperation. As explained by Drezner (2007), the potential reputation loss that may be incurred through uncooperative behaviours encourages actors to comply with the regime's rules. Alternatively, constructivists suggested that principles and norms are at the heart of regime formation (Reus-Smit, 1997). To expand upon Krasner's definition, Kuyper (2014) stated that principles, rules and norms are repeatedly defined, ordered and stabilised by ever changing ideational and material qualities that exist within regimes. Muzaka (2010) also suggested that regimes may be considered as processes that are both dynamic and evolving. However, as argued by Houlihan (2015), the objectives and processes of policy can also become institutionalised. In such instances, regime evolution and the achievement of substantial policy changes can be challenging.

Broadly described by May and Jochim (2013) as key governing arrangements, policy regimes, whether formal or informal, are purposely formulated on a global or regional scale to address areas of concern within distinct political domains. For example, the International Trade Regime addresses economic issues (Sao and Gupta, 2013), the Homeland Security regime addresses security issues (May and Jochim, 2013), the Ozone Layer regime addresses international environmental issues (Young, 2011), and the European Convention on Human Rights addresses human rights issues (Larson et al, 2014). Within sport, the anti-doping regime exemplifies a more formal agreement designed to address anti-doping issues, whilst the gender equity regime (International Working Group on Women and Sport) exemplifies an informal regime designed to address gender inequality (Houlihan, 2015a). Regimes may also be established as a diplomatic method of facilitating state cooperation (Frantzi et al, 2009). Similarly, Hasenclever et al (2000) argued that regimes encourage state cooperation through the creation of mutual expectations regarding suitable behaviour and heightened transparency in the given area. Although states have arguably remained as the core actors within regimes, Young (2011) suggested that there is increasing recognition of the important role and impact of non-state actors on domestic policy. Houlihan (2015) made a similar assertion, however, he argued

that such recognition can direct attention to restrictions on government's scope for policy choice.

2.4.2 Policy Regime Theory: Practical Applications

May and Jochim (2013) identified regime theory as a useful concept that can provide insight into policies, policy impacts and governing arrangements. Although initially introduced within the political sciences, regime theory has since been applied to a range of contexts and academic studies (Szyliowicz, 2012). First, Tecklin et al's (2011) research highlighted the relationship between international relations and regime theory. Their case study investigated the emergence of Chile's environmental regime within the country's neoliberal regime. Additionally, the analysis concentrated upon the relationship between Chile's neoliberal regime and the environmental regime's characteristics. Within highly neoliberal contexts, a differentiating factor is whether the international regime's policy approach displays market-enabling or regulating characteristics. Market-enabling regimes are those that provide important collective goods to multinational corporations and reduce costs of transactions. Alternatively, market-regulating regimes are predominantly created to place restrictions on corporate behaviours, address social costs associated with corporate operations and supply collective goods (Levy and Prakash, 2003). In contrast to the market-regulating qualities traditionally attributed to environmental policy, Tecklin et al's (2011) empirical description concluded that Chile's environmental regime exhibited strong market-enabling characteristics. This finding was explained by the constraints that institutions embodying strong neoliberal ideologies have placed upon Chile's environmental policymaking.

Regime theory may also be applied to industrial sectors. For example, Szyliowicz's (2012) research used regime theory to better understand changes and growth that have occurred within the security industry, specifically the US brokerage house industry. With reference to the temporal nature of industries, the application of regime theory provided insightful contributions to the literature and enhanced

understanding of regime developments within the securities industry. Furthermore, distinguishing between specific regimes was found to assist the identification of critical factors and drivers of change. Though the findings were limited to the security industry, Szyliowicz recommended regime theory as a lens through which to investigate changes that occur within alternative industries.

Within sport, there is evidence that supportive interests and external actors are capable of instigating policy change within a regime. For example, as discussed by Collins et al (2009), as a result of continuous pressure from environmental regime actors, the mitigation of detrimental environmental impact has become a central theme within sporting mega-event organisations. In particular, Greenpeace have repeatedly criticised the negative impact of the Winter Olympics upon sensitive environments, and, more recently, the contribution of the Winter Olympics towards climate change. In response to mounting pressure, the IOC incorporated environmental protection into their official goals. Furthermore, host city bid documents are required to outline environmental sustainability measures (McCullough and Cunningham, 2010).

2.4.3 Characteristics of Policy Regimes

In addition to using regime theory as an analytical lens within academic studies, scholars have discussed the components and characteristics of regimes. Three broad components of policy regimes, specifically, ideas, institutional arrangements and interests, were identified by May (2015), May and Jochim (2013) and Martin and Simmons (1998). First, certain ideas provide policy foundations, create a shared understanding with regard to the policy purpose and can shape future policy directions. However, although Muzaka (2010) likewise recognised the importance of shared understanding within regimes, she contended that the extent to which actor expectations must converge is unclear. Second, May (2015) stated that institutional arrangements help to structure authority, direct the flow of information and develop relationships required to address the policy issue. May identified the important role

that policies play in outlining the implementation methods and institutional structures. With regard to the responsibility of developing and implementing policy initiative, this may be assigned to new or established governmental and / or non-governmental organisations. Although institutional arrangements are an important component of regimes, Drezner (2007) argued that their importance may be reduced within complex regimes where cross-institutional strategies occur. Additionally, as discussed by May and Jochim (2013), regimes can suffer from institutional fragmentation. In such instances, May and Jochim speculated as to whether or not powerful and deeply embedded ideas could compensate for institutional fragmentation. Third, May (2015) argued that policy regimes are impacted by the extent to which interests provide support for, or opposition to, the policies and their implementation. In addition to strengthening the regime, May suggested that extensive support and campaigning can also instigate desirable policy change within institutions outside of the regime. With reference to policy sub-sector areas such as sport, Houlihan (2015) argued that the identification of interests is more challenging compared to the identification of ideas. Chappelet and Parent (2015) identified the government, media, sport events organisers and the community as stakeholders that often express an interest in sport. As stated by WADA's president, Sir Craig Reedie, support for sport's anti-doping policy has recently been indicated through increased interest expressed by governments, the public and the pharmaceutical industry (WADA, 2015a).

May (2015) suggested that strong regimes use widely accepted ideas that are embodied within authoritative institutions and supportive interests that outweigh the opposition to enhance policy legitimacy (the extent to which actors accept the regime's approach and goals). McConnell (2010) identified policy legitimacy, in addition to policy durability (political commitments and their sustainability over time) as key factors that impact policy success. However, whilst academics have investigated the impact of ideas, institutional arrangements and interests as individual variables, May and Jochim (2013) stated that the research would benefit from investigations into the combined impact of these elements upon policy legitimacy and durability. May and Jochim also emphasised the significance of

monitoring and reviewing policy regimes as mechanism to enhance legitimacy and durability. Additionally, they highlighted the importance of feedback processes as a method of determining whether ideas are fragmented or coherent and determining the sustainability of commitment. Whilst these elements cannot ensure policy success, May (2015) argued their importance in providing the foundations for successful policy implementation, reform and durability.

2.4.4 Analysing the Strength and Effectiveness of Policy Regimes

As part of the review process, policy makers may wish to analyse the strength and effectiveness of the regime. However, the measurement process is complex and faces numerous criticisms and challenges (Frantzi et al, 2009). May and Jochim (2013) described regime strength as the extent to which a regime augments political commitment. To address criticisms surrounding the inability to directly observe the strength of regimes, May and Jochim suggested that strong regimes are characterised by widely shared ideas that are embodied within institutions, by institutional arrangements that concentrate upon important political goals and by a supportive constituency stronger than the opposition. However, although a regime may exhibit these characteristics, it is possible for strong regimes to be founded upon unethical values or have outcomes that are undesirable. Alternatively, Young (2011) suggested that overall regime strength may be conceptualised using a spectrum that ranges from weak to strong. However, what remains unclear is whether one overall dimension or a multi-dimensional measurement approach better captures regime strength.

The inability to measure policy regime effectiveness has also been critiqued. As stated by Frantzi et al (2009), the concept is a complex issue due to contrasting stakeholder conceptualisations of effectiveness. Focusing upon the Mediterranean Action Plan environmental regime, their discourse analysis research concluded that single approaches are only partially able to evaluate the overall effectiveness of a regime. Furthermore, Wettestad (2006) argued that an accurate evaluation of

regime effectiveness necessitates counterfactual knowledge (knowledge of the situation's relative improvement had the regime not existed). However, the inability to acquire such information, he contended, is a central problem that hinders the measurement of regime effectiveness. To address this criticism, numerous academics including Grundig (2009), Underal and Young (2004), Hovi et al (2003), Young (2003) and Helm and Sprinz (2000) have engaged in a methodological debate that concerns the identification of an appropriate method to measure regime effectiveness and counterfactual knowledge. Of the suggested approaches, Grundig (2009) identified the Oslo-Potsdam solution as the clearest and most formalised.

2.4.4.1 Measuring Regime Effectiveness: The Oslo-Potsdam Solution

The Oslo-Potsdam solution compares the regime's actual policy with two benchmarks. The 'no-regime counterfactual' benchmark involves hypothesising the prevailing situation had no regime existed (Grundig, 2009; Hovi et al, 2003; Helm and Sprinz, 2000). Young (2011) emphasised the importance of this comparison and argued that it should be considered within all evaluations of regime effectiveness. To measure the no-regime counterfactual, academics have proposed a range of methods including interviews with industry experts (Helm and Sprinz, 2000), cost benefit analysis and simulation (Hovi et al, 2003). Referred to as the 'collective optimum', this second benchmark considers the ideal outcome of the regime (Helm and Sprinz, 2000). However, Young (2011) criticised this concept as one that is challenging to operationalise and contended that it is difficult to obtain agreement amongst actors regarding the ideal outcome.

Grundig (2012) argued that a key limitation of the Oslo-Potsdam solution lies in its failure to explicitly consider the impact of regimes over time. Grundig argued that evaluating regime effectiveness after a selected period of time provides an incomplete report that hinders comparative assessments. Whilst measurement data may indicate that two regimes are equally effective at a chosen point in time (t),

Figure 2.1 illustrates how one regime (A) may have been more effective than the other (B) throughout the course of its operation.

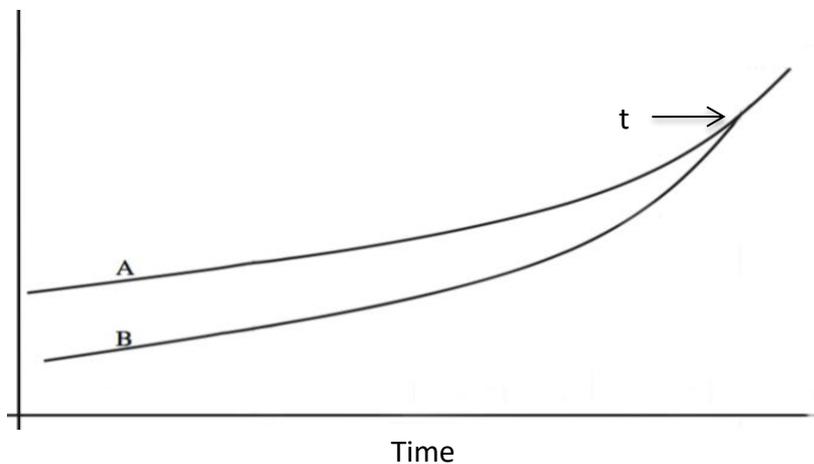


Figure 2.1: *Measurement of Two Hypothetical Regimes Over Time (adapted from Grundig, 2012; 117)*

To address this issue, Grundig recommended the evaluation of regime effectiveness over a specific time period, rather than at a given point in time. However, the identification of an appropriate time period is contested amongst academics. To further complicate the issue, regime effectiveness may be the consequence of endogenous and / or exogenous factors. Using the anti-doping regime as an example, López (2015) discussed how exogenous events, particularly doping scandals, have continuously prompted anti-doping inquests, policy reappraisals and policy changes designed to address the regime's effectiveness. As a result, when analysing regime effectiveness, researchers face the challenge of separating and understanding the interaction between endogenous and exogenous variables (Mitchell, 2006).

2.5 Compliance

2.5.1 Defining Compliance

The issue of compliance has emerged as a prominent area of concern within WADA. This concern was recently expressed at WADA's Foundation Board Meeting on November 18th 2015, where WADA announced that there would be an increased focus upon strengthening compliance (WADA, 2015a). However, although compliance has been declared as a focal area within WADA, providing a definition for, and identifying, compliance is challenging (Hanstad and Houlihan, 2015). To further complicate the issue, Houlihan (2013) stated that WADA and, as a result, numerous National Anti-Doping Organisations (NADOs), commonly fail to differentiate between the concepts of implementation and compliance, with the two often being treated as interchangeable. To address this issue, Houlihan distinguished between adherence (otherwise known as acceptance or ratification), implementation and compliance.

First, Trachtman (2010, p.4) defined adherence as the decision at domestic level to execute the "international legal rule as a national measure". With reference to the Code, extensive and rapid adherence occurred amongst IFs, international sport organisations and event organisers. For example, prompt acceptance of the Code occurred amongst all winter and summer Olympic IFs, and within five years, more than 100 IFs had become signatories. Similarly, rapid ratification occurred for UNESCO's 2005 International Convention against Doping in Sport. Within two years, the Convention was ratified by 69 member states. As of May 2017, the Convention had 185 signatories (WADA, 2017a).

Second, Houlihan (2014) stated that the shift from adherence to implementation is indicated when primary actors (including governments, IFs and event organisers), commit resources. Examples of resource commitment include inputs such as budget creation and staff appointments, in addition to outputs such as an established

programme for doping control, anti-doping information and anti-doping education. However, Houlihan expressed concern that formal implementation could hide either tepid commitment amongst key stakeholders or undesirable variations in interpretations. With reference to the latter, Overbye's (2015) research revealed inconsistencies in the implementation of anti-doping testing regimes. Furthermore, the study concluded that as a result of contrasting testing regimes, athletes were subject to inequality. Additionally, Houlihan (2014) highlighted suspicions that amongst some governments and IFs, there are inadequate levels of compliance, despite seemingly successful implementation outputs (for example Code signatories and testing numbers). Such suspicions were recently confirmed when WADA's Independent Commission (IC) confirmed widespread doping in Russian Athletics. Following the IC's recommendations, Russia, in addition to five other countries were deemed by WADA to be non-compliant (WADA, 2015a).

Third, Hanstad and Houlihan (2015) suggested that compliance exists where a deep, intense commitment is exhibited towards reaching the goal of drug-free sport. However, Overbye's (2015) research, in addition to the IC's (2015) findings, highlighted the current issues surrounding the depth and extent of compliance amongst some governments and IFs. Similarly, Engelberg and Skinner (2016) suggested that lack of organisational commitment has hindered the effectiveness of anti-doping strategies. However, monitoring compliance continues to be a difficult and intimidating task for both WADA and UNESCO. For example, the process involves the measurement of routine behaviour of more than 170 countries and more than 150 IFs. Even when the task is restricted to 'sports powers' (30 countries that win approximately 75% of Olympic medals) and Olympic sports federations, the task remains challenging (Houlihan, 2013).

2.5.2 Motivations behind Compliance

Winter and May (2001) identified three primary motivations behind compliance: calculated motivation, normative motivation and social motivation. First, with reference to calculated motivation, Becker's (1968) seminal article predicted that regulated actors comply with agreements when the benefits of compliance outweigh the costs associated with non-compliance. In such instances, coercion-based models that use material inducements such as sanctions and fines to manipulate a state party's utility calculations are an effective method of encouraging compliance (Guzman, 2008). Second, Burby and Paterson (1993) stated that normative motivations (otherwise referred to as ideological or moral compliance) are driven by combined factors including the actor's internal sense of moral duty to obey the law and their opinion that the regulation is of importance. The normative obligation to obey treaties exists, even when repercussions for non-compliance (such as sanctions) are absent. Third, social motivation refers to an actor's desire to earn the respect and approval of significant others. Grasmick and Bursik (1990) suggested that social motivation may occur as a result of pressure from external advocacy groups, other regulated actors, trade associations and the media. However, as emphasised by Krommendijk (2015), the ability to build reputation is closely linked to the legitimacy of the treaty body. Furthermore, Winter and May (2001) argued that whilst social motivation results in normative commitment, the value of compliance has not been internalised. In contrast, Hathaway (2002) contended that repeated interaction with regime actors can gradually lead to norm internalisation.

2.6 Implementation

2.6.1 Top-down vs. Bottom-up Implementation

After conducting a review of the literature, it became apparent that much of the research concentrates upon implementation rather than compliance. With reference to implementation, the first major school of thought to emerge was that of the top-down approach, key proponents of which included Pressman and Wildavsky (1973), Van Meter and Van Horn (1975) and Mazmanian and Sabatier (1983). The top-down model is embedded with the idea that implementation involves encouraging people to do as they are told. The top-down approach also places emphasis upon the role of the central government. Beginning with the formation of policy objectives, implementation is believed to occur in a linear fashion. Additionally, the approach focuses upon developing a control programme designed to reduce deviation and conflict from the central actor's goals that are outlined within the original policy (Schofield, 2001). To enhance this process, recommendations have included the creation of policy goals that are consistent and clear, minimising the degree of change (Mazmanian and Sabatier, 1979) and reducing the number of actors involved (Pressman and Wildavsky, 1973). Gunn (1978) also identified ten criteria, which he argued, are necessary for effective policy implementation (see Figure 2.2).

1. Circumstances external to the implementing agency do not impose crippling constraint.
2. Adequate time and sufficient resources are made available to the program.
3. Not only are there no constraints in terms of overall resources but also that, at each stage in the implementation process, the required combination of resources is actually available.
4. Policy implemented is based upon a valid theory of cause and effect.
5. The relationship between cause and effect is direct and that there are few, if any, intervening links.
6. There is a single implementing agency which need not depend upon other agencies for success or, if other agencies must be involved, that the dependency relationships are minimal in number and importance.
7. There is complete understanding of, and agreement upon, the objectives to be achieved; and that these conditions persist throughout the implementation process.
8. In moving towards agreed objectives it is possible to specify, in complete detail and perfect sequence, the tasks to be performed by each participant.
9. There is perfect communication among, and co-ordination of, the various elements or agencies involved in the program.
10. Those in authority can demand and obtain perfect obedience.

Figure 2.2: *An Ideal Model of Perfect Policy Implementation (Gunn, 1978)*

However, Hill and Hupe (2009) argued that Gunn's model is an ideal type that assumes rationality and takes compliance for granted. Additionally, Sabatier and Mazmanian (1980; 542) outlined six variables that impact upon policy implementation: "socioeconomic conditions and technology; media attention to the problem; public support; attitudes and resources of constituency groups; support from sovereigns; and commitment and leadership skills of implementing officials".

The top-down perspective has been subject to numerous criticisms, many of which form the foundations of the contrasting school of thought known as the bottom-up approach. In his critique, Matland (1995) likened the characteristics of the top-down approach, specifically the emphasis upon clarity, rules and monitoring, to the Weberian ideal of rational-legal authority. The rational-legal authority is a type of

leadership that implements bureaucratic, all-inclusive, impersonal regulations. These regulations define a community's normative boundaries and provide a criterion against which the moral authority and legitimacy of claim-makers can be measured. Additionally, Berman (1978) argued that the top-down approach views implementation as a solely administrative procedure and attempts to ignore political components. Both Matland (1995) and Berman (1978) claimed that the separation of administration from politics is seldom possible. As a result, they suggested that policy failure may be incurred through the top-down's attempt to protect the inherent policy subject matter from politics. The top-down argument that local actors are potential deviants and hindrances to successful policy implementation has also been criticised. Lipsky's (1978) powerful critique of Gunn's managerial model, and the alternative bottom-up approach to implementation, contended that the knowledge and expertise of service deliverers place them in a better position to suggest feasible (or even optimal) policies. Furthermore, he argued that street-level bureaucrats at the micro-implementation level display a high degree of discretion that cannot be controlled by central planners at the macro implementation level. As a result, Lipsky argued that front-line officials are responsible for the success or failure of policy execution. The bottom-up approach may be considered as an approach that concentrates upon the actions of implementers at the local level, focuses upon the nature of the problem that the policy aims to address and describes the implementation network. However, a main criticism of the bottom-up approach is its failure to recognise the interdependent nature of the local situation and central policy / actors (Schofield, 2001).

Hill and Hupe (2002) suggested that Lipsky is frequently misrepresented as a critic who merely demonstrated the challenges of controlling street level bureaucrat's activities. Indeed, Lipsky (1978) suggested that the decisions, established routines, and the devices that are invented to cope with work pressures and uncertainties, effectively become the public policies that street level bureaucrats carry out. However, Lipsky made additional theoretical contributions by considering some of the problems associated with compliance. For example, he argued that the nature of street level work, including inadequate resources, large caseloads, client

unpredictability and professional norms, hinders the ability of officials to meet the ideal conceptualisation of their job. Furthermore, Lipsky suggested that the system engenders practices that facilitate the development of coping methods (including processing in ways that are relatively stereotyped and routine) to help manage the work pressures that street level bureaucrats face.

In line with Lipsky, Bos et al (2013) challenged the common perception that street level bureaucrats are conservatives who, out of self-interest, are resistant to change. Instead, they describe these front-line officials as pragmatists who often try their hardest to achieve implementation in restricting circumstances. To support this argument, an example may be provided within the context of anti-doping procedures. As discussed by Houlihan (2015), capacity and resource limitations are factors that impede anti-doping efforts in countries such as Jamaica and Kenya. Therefore, whilst anti-doping officials sometimes share WADA's ideals and remain committed to delivering effective anti-doping policies, many have insufficient resources to do so. As Lipsky (1978) suggested, officials may therefore resort to their developed coping mechanisms of stereotyping. For example, if an anti-doping official acquires 150 doubtful samples, yet only possesses the resources to send 100, the official may use their developed coping mechanisms and prioritise those samples from the sports stereotypically known for higher levels of doping.

Additional contributions to the bottom-up tradition were made through the empirical research conducted by Hjern (1982) and Hjern and Porter (1983). Adopting a bottom-up approach to investigate public policy problems, Hjern's (1982) research involved the questioning of micro-level actors to determine their activities, goals, problems and contacts. This technique enabled Hjern to create a network map that identified the appropriate implementation framework at local, regional and national levels. Hjern and Porter (1983) proceeded to introduce the concept of implementation structures (structures that comprise of groups of organisations and actors). Their research claimed that programmes are implemented through a matrix or network of organisational pools, rather than one single organisation. With reference to the anti-doping regime, there is an expanding anti-doping network,

which comprises a range of organisations and actors (Houlihan, 2013). Acknowledgement of the complex set of interactions created by organisational multiplicity, addresses a key weakness of the top-down models (Hjern and Porter, 1983). In contrast, Sabatier (2006) criticised the bottom-up methodology for its reliance on perceptions. Additionally, Sabatier (1988) highlighted concerns regarding democratic accountability. In particular, he argued that the bottom-up model provides non-elected, front line staff at the local level with policy control and power that should lie with democratically elected representatives. Sabatier also contended that despite the large amount of discretion exhibited by street-level bureaucrats, this should not provide a foundation for policy design.

2.6.2 Alternative Implementation Frameworks

To address the limitations of both the top-down and bottom-up approaches, some attempts were made by Elmore (1985), Sabatier (1988) and Goggin et al (1990) to synthesise elements of the two frameworks and develop a new and improved conceptual model. Elmore's (1985) initial efforts suggested that the success of a programme is dependent upon backward mapping (a bottom-up perspective that considers the target group's incentive structure and analyses implementation by beginning with the policy impact rather than the policy goal) and forward mapping (a top-down perspective that considers the policy resources and instruments at hand). However, Matland (1995) contended that Elmore's theory was largely descriptive and lacked explanatory power. Similarly, Sabatier (2006) criticised the theory for its inability to explain outcomes within a broad range of settings.

An alternative approach adopted by Matland (1995) concentrated upon the development of a contingency theory. Specifically, Matland argued that it is impossible to formulate a single implementation strategy. The identification of an implementation strategy is made increasingly difficult by the context of policy making, which is multi-level due to the range of government and societal layers that are involved, distributed due to an array of different and dispersed actors, path

dependent and politicised. Furthermore, following a review of the implementation literature, Matland criticised studies for concentrating upon the identification of variables that influence implementation. He also argued that a limited number of studies examined implementation within the context of different policy types, and, to a large extent, the research failed to consider the circumstances under which the variables were most important. To address these issues, Matland developed the Ambiguity-Conflict Matrix (see Table 2.3) in an attempt to more effectively characterise the fundamental characteristics of varying policy types. Matland recommended that actors amend their implementation strategy to reflect the level of ambiguity (the extent to which policy requirements are clear) and the level of conflict regarding the policy.

The Ambiguity-Conflict Matrix		
	Low Conflict	High Conflict
Low Ambiguity	Administrative Implementation - Clear goals and policy requirements. - Implementation depends on resource availability.	Political Implementation - Clear but incompatible goals create resistance amongst implementing actors. - Sanctions and / or compliance incentives are necessary.
High Ambiguity	Experimental Implementation - Contextual conditions are critical for successful implementation. - Short-term emphasis is placed on learning rather than results.	Symbolic Implementation - Coalition strength determines outcomes.

Table 2.3: *Matland's Ambiguity-Conflict Matrix, adapted from Matland (1995; 160)*

The preceding discussion highlighted the ongoing debate between advocates of the top-down and bottom-up approach, in addition to several academic's attempts to

integrate the two frameworks. However, implementation remains the predominant focus within the research studies. As a result, so far, neither of the proposed models are able to effectively deal with the issue of compliance.

2.7 Mitchell and Chayes' (1995) Compliance System

As previously stated, Hanstad and Houlihan (2015) suggested that compliance exists where a deep, intense commitment is exhibited towards reaching the goal of drug-free sport. However, the shallow commitment of some governments and IFs serve to undermine anti-doping efforts. For example, the scale of the compliance problem that WADA faces was highlighted through the recent exposure of Russia's non-compliance and the series of major doping scandals within Athletics (WADA, 2015a). In light of the compliance issues within the anti-doping regime, Houlihan (2013; 271) emphasised the importance of an effective compliance system, which he described as the "matrix of actors, relationships, values, expectations and actions that are encapsulated within the Code rules". Mitchell and Chayes (1995) identified three key elements of a compliance system: a primary rule system, a compliance information system and a non-compliance response system. A discussion of these subsystems and their applicability to the anti-doping regime will occur in Chapter 8. In the meantime, examples will be drawn from the much-researched area of environmental policy.

First, the primary rule system refers to the rules, procedures and actors, and fulfills the purpose of determining who will be regulated and through what methods. The design of the primary rule system depends upon whether or not behavioural change is necessary. Furthermore, the degree of behavioural change required and the associated costs are factors that impact upon the ease of achieving compliance (Mitchell, 1998). For example, Faure and Lefevre (2012) argued that compared with the 'United Nations Framework Convention on Climate Change' (UNFCCC), compliance with the 'Montreal Protocol on Substances that Deplete the Ozone

Layer' is easier as industries are required to make smaller behavioural changes. Mitchell (1998) identified the extent to which the primary rule system is transparent and specific as another factor that impacts the achievement of compliance. Mitchell argued that actors with a predisposition to comply are better able to understand the expectations when the guidance is clear. Simultaneously, it is easier to identify non-compliant actors and it becomes more difficult for non-compliant actors to attribute their failure to inadvertence. However, Houlihan (2013) contended that increased levels of transparency and specificity are often synonymous with a loss of depth and subtlety. This, in turn, often diverts attention from policy impact monitoring and redirects attention upon policy output monitoring.

The compliance information system is the second element identified by Mitchell and Chayes (1995). The compliance information system aims to guarantee the highest levels of transparency, aims to ensure that high quality, relevant data is collected, and that all data is rigorously analysed and widely circulated. If the threat of a retaliatory response is to remain credible, actors under regulation must know that their decisions will be noticed. With reference to environmental regimes, Faure and Lefevre (2012) identified self-reporting as a common method of information collection. However, they criticised this method and contended that states may violate reporting requirements and falsify reports in order to prevent self-incrimination and associated sanctions. To address this issue, Zhao (2002) identified the use of financial assistance mechanisms. Arguably, compared to the threat of sanctions, the prospect of resource assistance is more effective at encouraging the self-reporting of non-compliance. Demonstrated within the Montreal Protocol, the regime's elaborate compliance information system enables states to report lack of capacities. Where non-compliance is reported, the Implementation Committee is required to conduct an investigation into the possibility of providing the state with technical and financial aid through the Montreal Protocol's Multilateral Fund (MLF). Zhao argued that such assistance is essential to enable the achievement of compliance within developing and under-resourced countries. However, Faure and Lefevre (2012) contended that in an attempt to reduce their compliance costs, some states may inaccurately report their capabilities to receive resource assistance.

Faure and Lefevre identified third party monitoring as one method of addressing the issues associated with self-reporting.

The third element of Mitchell and Chayes' (1995) compliance system is the non-compliance response system, which comprises the actors, processes and rules that govern the formal and informal responses used to encourage non-compliant actors to comply. Within this subsystem, Mitchell and Chayes suggested that non-compliance may be caused by incapacity, inadvertence or deliberate violations. Additionally, they emphasised the importance of differentiated responses to address the variable causes of non-compliance. Although sanctions are often perceived as reactive tools that deal with agreement breaches after their occurrence, Houlihan (2013) identified sanctions as the favoured response to non-compliance within many regimes, including the anti-doping regime. Where compliance is driven by calculated motivations and the desire to maximise utility, Winter and May (2001) identified sanctions and the enforcement regime as an important element that can encourage compliance. However, it is important to recognise that the effectiveness of sanctions is dependent upon their potency and credibility. As discussed by Faure and Lefevre (2012), the Montreal Protocol has inspired the development of new non-compliance response systems within environmental regimes. For example, although the Kyoto Protocol (an extension of the UNFCCC) uses an enforcement branch to issue sanctions, a facilitative branch was implemented to address instances of non-compliance that are the consequence of incapacities. Additionally, Werksman et al (2014) identified financial and technology transfers as an alternative approach taken by the Montreal Protocol to address non-compliance caused by technical incapacities. Where sanctions are difficult to impose, Werksman et al identified resource transfers as a useful lever to encourage compliance. Furthermore, inducements can address difficulties in identifying non-compliance. For example, within self-reporting information systems, actors may be more forthcoming in their reports if the information provided opens up new sources of funding. However, inducements are also susceptible to problems, particularly when an actor purposely misrepresents their circumstances in order to receive resources from other parties.

Whilst Mitchell and Chayes' (1995) research provides useful insight into the concept and elements of a compliance system, academics (Jacobson and Weiss, 1995; Hatcher et al, 2000; Crawford and Hucklesby, 2012) have repeatedly noted the ambiguity surrounding an appropriate measurement system of compliance. As explained by Jacobson and Weiss (1995), compared to implementation, compliance is more challenging to measure as it involves an assessment of the extent to which policy actors have pursued their compliance efforts. The difficulty of measuring organisational behaviour and compliance is demonstrated through the Sports Governance Observer (SGO), a report commissioned by the Danish Institute for Sports Study's 'Play the Game' initiative. The SGO is a benchmarking tool designed to evaluate the extent to which IFs comply with four dimensions of governance (transparency, democratic process, checks and balances and solidarity). Despite FIFA's ongoing corruption scandal, out of the 35 IFs evaluated, this rigorous analytical tool ranked FIFA second with an overall score of 67.8% (Sports Governance Observer, 2015). This finding demonstrated how implementation structures alone do not guarantee good governance. Instead, the dominant culture within an IF plays an important role in the achievement of good governance. This further highlighted the challenges of determining an appropriate compliance measurement system that is able to provide an accurate measure of the depth of commitment and the extent to which policy is embedded in organisational culture (Hoye and Cuskelly, 2007).

2.8 Conclusion

To address Walt's (1998) assertion that an inescapable connection exists between the actual political world and the abstract world of theory, this chapter analysed the three most significant contemporary macro-level international relations theories: realism, liberalism and constructivism. Macro-level theories address fundamental questions concerning the distribution of power at the global level, the nature of power resources, the significance of the state and non-state actors and the dynamics of global politics. Of the three macro-level theories analysed, neoliberalism (a strand

of liberalism) has been identified as the most appropriate lens through which to analyse anti-doping policy. In contrast to realists and constructivists, neoliberals emphasise the role of organisations and institutions within international politics; states, organisations and institutions are the primary unit of analysis (Keohane, 1982). For example, neoliberals perceive the IOC and IFs as important non-state actors (Hayhurst et al, 2010) and consider sport as a valuable institution that can contribute towards social movements (Keech and Houlihan, 1999).

Tecklin et al's (2011) research (an investigation into the emergence of Chile's environmental regime within the country's neoliberal regime) highlighted the relationship that exists between international relations and regime theory. This relationship, combined with May and Jochim's (2013) identification of regime theory as a useful concept that can provide insight into policies, policy impacts and governing arrangements, prompted the chapter's discussion of policy regime theory. Developed by Krasner (1982; 186) defined policy regimes as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area". Although this conceptualisation is widely accepted, Kuyper (2014) noted how international relations scholars emphasise different elements depending upon their theoretical positioning. For example, the neoliberal perspective emphasises the rational utilisation of institutions and their rules to encourage cooperation (Keohane, 1984). Informed by May (2015), May and Jochim (2013) and Martin and Simmons (1998), ideas, institutional arrangements and interests were identified as the three broad components of policy regimes. Policy legitimacy and policy durability were also identified as key factors that impact policy success within regimes (McConnell, 2010). However, the analysis highlighted the need for a more sophisticated understanding of policy regime characteristics and their combined impact upon policy legitimacy and durability (May and Jochim, 2013).

The chapter's final section discussed the complicated issue of compliance. The failure of WADA, and consequently numerous NADOs, to differentiate between the concepts of implementation and compliance was highlighted (Houlihan, 2014). This

finding made clear the need to distinguish between the concepts of adherence, implementation and compliance. Trachtman (2010; 4) defined adherence as the decision at domestic level to execute the “international legal rule as a national measure”. With reference to implementation, Houlihan (2014) stated that the shift from adherence to implementation is indicated when primary actors (including governments, IFs and event organisers), commit resources. Finally, Hanstad and Houlihan (2015) suggested that compliance exists where a deep, intense commitment is exhibited towards reaching the goal of drug-free sport. The literature review also revealed how much of the research concentrates upon implementation rather than compliance. Mitchell and Chayes’ (1995) model of compliance systems provides a useful starting point to understand the application of the concept of compliance and has therefore been identified as an appropriate framework of analysis for the upcoming empirical chapters. However, whilst Mitchell and Chayes’ (1995) research provides a useful insight into the elements of a compliance system, academics (Jacobson and Weiss, 1995; Hatcher et al, 2000; Crawford and Hucklesby, 2012) have repeatedly identified the measurement of compliance as an issue that would benefit from further investigation.

Chapter 3: Methodology

3.1 Methodology

Although ontology is often considered alongside epistemology, Hay (2002) argued that the two concepts should be considered separately and identified ontology as the beginning point for all research. Blaikie (1993; 6) defined ontology as the “claims or assumptions that a particular approach to social enquiry makes about the nature of social reality – claims about what exists, what it looks like, what units make it up and how these units interact with each other”. Two contrasting ontological positions identified by Bryman (2008) include objectivism and constructivism. Originating from the work of Hume (1751), objectivism (also referred to as foundationalism), argues that the existence of social phenomena and their meanings are separate from social actors. In contrast, constructivism (also known as constructionism and anti-foundationalism) contends that social actors are continuously constructing social phenomena and their meanings. Constructivists further suggest that social phenomena are in a continuous state of change (Guba and Lincoln, 1994). An awareness of one’s ontological positioning is essential to understand the nature of the political and social reality under investigation (Hay, 2002). Furthermore, Grix (2002a) identified this awareness as a prerequisite for the discussion of epistemology.

Epistemology is defined by Blaikie (1993; 6 – 7) as the “claims or assumptions made about the ways in which it is possible to gain knowledge of this reality”. Epistemology concentrates upon the ever-changing process of collecting knowledge and the development of new and improved theories. Illustrated in Figure 3.1, Grix’s (2002b) continuum identified positivism, realism and interpretivism as the key epistemological positions.

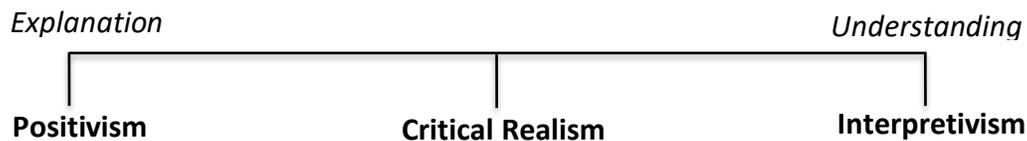


Figure 3.1: *Continuum of Epistemological Positions (adapted from Grix 2002b; 14)*

Based upon the ontology of foundationalism, positivism (also known as empiricism and objectivism) is an epistemological position that advocates the use of methods from the natural sciences (Tikly, 2015). Positivists distinguish between fact and value (with emphasis being placed on the former), believe in acquiring knowledge from sensory observation and focus upon explanations, empirical theory and causal statements. Additionally, positivists believe in the value-free investigation of the social world and concentrate upon the replicable nature of findings and the reliability of predictions (Comte, 1930). However, critical realist Bhasker (1978), criticised positivism for treating all phenomena as closed systems within which replicable and generalisable results can be produced. Bhasker stated that within the social sciences, systems may be distinguished as closed or open. Closed systems are systems wherein the effects of specific causal mechanisms can be isolated; closed systems are rare and often confined to experimental conditions that have been contrived (Tikly, 2015). In contrast, open systems are social systems comprising of causes and effects that are multi-causal and varied in complexity. In open systems, the effects of individual causal mechanisms cannot be isolated or predicted with certainty (Pawson, 2013). Additionally, Tikly (2015) criticised positivism's focus upon empirical observation and argued that this approach provides a conflated understanding of reality (reality is reduced to what can be known via human senses). Similarly, Mingers (2015) argued that positivism is unable to effectively address problems within the real world. Specifically, Mingers criticised positivism for its narrow view of causation and claimed that positivism is unable to explain non-quantifiable, multi-casual and multi-dimensional issues.

At the other end of Grix's (2002b) continuum is the epistemological position of interpretivism. Numerous research traditions including, but not limited to, hermeneutics, symbolic interactionism, constructivism and phenomenology, may be categorised under interpretivism (Sparkes, 1992). Although a number of positions exist, interpretivism is broadly informed by the ontology of anti-foundationalism. Interpretivism argues that the subject matter of social sciences is separate from that of the natural sciences. Furthermore, interpretivism rejects the positivist assertion that the world exists independently of our knowledge of it and believes that the world is socially constructed. Interpretivists therefore focus upon interpreting the social world from the perspective of the subject and seek to understand rather than explain the behaviours of humans (Weber, 2004). However, as stated by Tikly (2015), interpretivism has been criticised for its failure to acknowledge the existence of a reality beyond those versions that are constructed within discourse and language.

Emanating from Bhasker's (1978) work, in addition to others (Lawson, 1997; Sayer, 1992; Archer et al, 1998), critical realism is situated in the middle of Grix's (2002b) continuum of epistemological positions. According to Baert (2005), the initial question that should be addressed is the extent to which critical realism is 'realist'. In a weak sense, Baert stated that the concept is realist through its belief in the existence of an external reality that is independent from the conditions through which people gain access to it. In a stronger sense, critical realism is realist in the sense that the perspective assumes that scientists are capable of gaining access to the reality. Although critical realism supports the ontological position of foundationalism, Lawson (1977) criticised positivism's 'flat ontology' (the assumption that reality only exists at the level of observable events). This critique was also emphasised by Bhasker (1978). In his alternative conceptualisation of the depth of reality, Bhasker distinguished between the transitive and intransitive domain. The former refers to the relatively enduring social / natural structures, whilst the latter relates to deep constructions of reality such as

explanatory theories. Bhasker also proposed a stratified reality comprising of three overlapping domains: the real, the actual and the empirical (see Table 3.1).

	Domain of Real	Domain of Actual	Domain of Empirical
Mechanisms	√		
Events	√	√	
Experiences	√	√	√

Table 3.1: *Overlapping Domains of Reality (Bhasker, 2013; 56)*

The real domain refers to underlying mechanisms that exist independently from, but which are capable of generating, events. Second, the actual domain comprises of events (the visible, external behaviours of systems and people) that are generated by mechanisms. Finally, the empirical domain consists of the researcher’s personal experiences and the small subset of observable events (Bhasker, 1978). As discussed by Baert (2005), due to the stratified notion of reality postulated by critical realists, synchronicity may not exist between the three levels. For example, if people’s observations do not match specific events, there is a lack of synchronicity between the actual and the empirical realms.

Critical realism is advantageous as the position shares similarities with, and builds bridges between, two other relevant epistemological positions. For example, like positivists, critical realists consider causal relationships and are concerned with providing explanations. Like interpretivists, critical realists recognise the researcher’s value position and acknowledge that structures, conflict and social change within society cannot always be observed (Sayer, 2000). As a result, critical realism draws upon the insights of these two epistemologies and has the potential to unify sociological practice (Porpora, 2015).

The selected epistemological position will give rise to a specific methodology (Hay, 2011). Defined by Grix (2002a) as the ways in which knowledge is acquired, methodology involves an investigation into the potential strengths and weaknesses of specific procedures. Whereas positivists adopt a quantitative methodology, interpretivists adopt a qualitative methodology. In contrast, Sayer (2000) described critical realism as an epistemological position that embraces a range of methodological approaches. Specifically, critical realists argue that various research methods are required to effectively understand complex situations within the multi-dimensional world. Guba and Lincoln (1994; 107) identified ontology, epistemology and methodology as the fundamental components of a research paradigm. A research paradigm, they suggested, may be defined as a set of basic beliefs or “world view that defines, for its holders, the nature of the “world” and the individual’s place in it”. Underpinning this study is the research paradigm of critical realism. One rationale behind the selection of critical realism is the advantage of epistemological and methodological plurality. One benefit of critical realism is that it incorporates strengths from both positivism and interpretivism, whilst simultaneously rejecting their weaknesses (Mingers, 2015). Furthermore, Sayer (2000) argued that compared to alternative paradigms, critical realism’s flexible methodological approach is better able to understand and explain the world and its multi-dimensions. Critical realism is also consistent with a neo-liberal view of global politics and power.

3.2 Research Design

Grix (2002a) identified methods as the logical research stage that follows methodological considerations. In contrast, Thomas (2011) emphasised the importance of first selecting a design frame, which in turn can involve a variety of methods. Case study research is a popular design frame that is utilised across a range of disciplines, especially within the social sciences (Merriam, 2009). The broad aim of case study research is to holistically portray, explore and advance understanding of a phenomenon within its natural context (Cousin, 2005). Informed by their philosophical positions, academics have adopted different approaches to case study research. Although the interpretive nature of case study research is recognised, postpositivist researcher Yin (2014) emphasises objectivity and the falsification of hypotheses. In contrast, pragmatic constructivist Merriam (2009), prioritises rich descriptions and interpretation over hypotheses testing. Nevertheless, there are common characteristics and benefits associated with case study research.

First, Baxter and Jack (2008) stated that case study research can be administered through both quantitative and qualitative methods. Compared to single method research designs, Baxter and Jack claimed that case studies that utilise multiple exploratory lenses can achieve a greater depth of analysis and thus generate a more holistic portrayal of the phenomenon. Second, researchers are able to analyse complex relationships and factors through case study research. The revelation of a phenomenon's various facets can contribute towards a more sophisticated understanding (Easton, 2010). Third, case study research is not guided by specific requirements. As a result, the researcher benefits from using design and data collection processes that can be specifically tailored to address the research question (Meyer, 2001). However, in light of this approach, Russell et al (2005) emphasised the need for a clear research question, an appropriate design and systematic data collection. The omission of such elements, they argued, leads to the production of weak case studies

that are often subject to criticism, especially from quantitative researchers. Fourth, case studies provide a useful analytical approach, particularly when the primary unit of analysis is an organisation, a network of organisations or interorganisational relationships with complicated structures (Easton, 2010). To ensure the applicability of case studies, Yin (2003) identified four situations that are suitable for a case study research design. Yin suggested that case studies are appropriate when 'how' and 'why' questions provide the study focus, the behaviour of those within the study cannot be manipulated, contextual conditions are perceived as pertinent to the phenomenon being studied and / or when ambiguous boundaries exist between the context and phenomenon.

Woodside (2010) provided an overview of the key criticisms of case study research. First, quantitative researchers have frequently criticised case study research for its low levels of generalisability and practical irrelevance (the research is unable to assist decision-making within alternative contexts). Merriam (2009) argued that a trade off occurs within case study research between the advantage of in-depth and rich explanations that emerge from a limited number of cases, and the ability to generalise findings. In response to this criticism, Yin (2013) differentiated between statistical generalisation (using statistically significant data to make inferences regarding the population that the sample was drawn from) and analytical generalisation (generalising theoretical propositions to broader theories). Yin argued that case study research is not concerned with statistical generalisations. Instead, Yin suggested that it is possible to draw analytical generalisations from case studies, provided that the case study research is replicable. Additionally, Geertz (1973) argued that case studies are capable of generating 'thick descriptions' which increase the accuracy of the research findings. Second, Woodside (2010) critiqued case study research for its weak ability to provide satisfactory replications and its failure to use a deductive approach. To address the issue of study replication, Gibbert and Ruigrok (2010) recommended that high levels of transparency are displayed throughout the case study research process. Transparency,

they suggested, can be achieved through a detailed description of the research stages, for example the processes involved in choosing cases, collecting data and selecting methods. Third, Woodside (2010) discussed the critique surrounding the data collection of case study research. Often limited to one or a small number of contexts, the empirical basis of case study research is arguably insufficient to evidence causal factors. Despite this criticism, Crowe et al (2011) advised against large amounts of data collection. They argued that due to the complicated nature of data sets used within case study research, in addition to analytical time restrictions, large amounts of data can compromise the quality of the data analysis.

After choosing case studies as the research design frame, it is important to consider the different types of cases available. Stake (1995) categorised case study research as intrinsic, instrumental and collective. The purpose of intrinsic case studies is to develop an understanding of the case, rather than to contribute towards theory development. This purpose stems from the researcher's genuine interest in a unique phenomenon and their desire to develop a greater understanding of the case. In contrast, as discussed by Crowe et al (2011), instrumental cases assume a supportive role and their purpose transcends the development of understanding. An instrumental case is carefully chosen to pursue the external interest of the researcher, to enable the investigation of a specific phenomenon and to refine or contribute towards a theory. With reference to collective case studies, Thomas (2011) suggested that these concern the 'process' of case study research. Specifically, collective case studies involve the careful selection of numerous representative cases. Through sequential or simultaneous analysis, the researcher's intent is to build a greater appreciation of the phenomenon. Yin (2013) likened collective case study research to his alternative categorisation of multiple case study research. As discussed by Yin (2003), a multiple case study approach enables the researcher to make comparisons across the chosen cases and / or replicated studies. In addition to multiple case study research, Yin offered three alternative categories of case study research: explanatory, exploratory and descriptive (see Table 3.2).

Yin's (2003) Classifications of Case Study Research	
Explanatory	Used to answer a question that seeks to explain presumptions about causal links in real-life interventions that are too complicated for experimental research designs.
Exploratory	The case study explores situations where the intervention under evaluation has multiple, unclear outcomes.
Descriptive	Used to describe the phenomenon or intervention and the real-life context in which it occurs.

Table 3.2: *Classifications of Case Study Research (Informed by Yin, 2003)*

3.3 Methods

The previous discussion highlighted how a case study research design frame can comprise of a variety of methods (Thomas, 2011). Grix (2002a) defined methods as the specific procedures that are used to acquire knowledge. For the purpose of this research, qualitative document analysis and interviews will be conducted, both of which are identified by Yin (2003) as appropriate methods for case study research.

3.3.1 Document Analysis

With reference to document analysis, numerous academics (Karpinnen and Moe, 2015; Gaborone, 2006) identified this method as one that is often marginalised or used as a supplementary approach to other research methods. However, Gibton (2015) argued that document analysis is a valuable, independent method that should be considered

within policy research. Specifically, Gibton claimed that such analysis is important as documents (written texts) provide the foundations of policy and act as a key point of reference throughout the policy process. Within qualitative research, Bowen (2009) suggested that document analysis has five main roles. The first role is to develop an understanding of the operating context of research participants. With reference to context, Scott (1990) stated that to develop an interpretative understanding, it is important to understand the real world origins of the documents and the conditions under which they were produced. Documents are capable of providing a genuine picture of a specific place and time that the researcher hopes to grasp. The second role is to aid the generation of potential interview questions. As stated by Patton (2014), the insight provided through document analysis can prompt the inclusion of numerous interview questions, which may otherwise have been unconsidered. Bowen's (2009) third role is to generate additional research data, information and insights. The fourth role is to provide an indication of policy developments and changes; the date of the document's creation is an important piece of information that can be used to develop chronological insight into the policy developments. The final role identified by Bowen relates to the corroboration of evidence and verification of findings. In addition to verifying findings, Patton (2014) stated that when document analysis is used alongside additional qualitative research methods, the variety of data sources and approaches can increase the validity of findings. Often referred to as triangulation, this approach will be addressed following the discussion of interviews as an additional research method.

The range of benefits associated with document analysis provides additional support for the adoption of this method. First, a major strength identified by Yin (2003) is the unobtrusive nature of documents. Documents, including their content, ideas and design, are often created in an environment that is independent from research and thus free from researcher involvement. As a result, Bowen argued that the authenticity of documents is heightened, especially when compared to interviews and situations wherein a participant is under observation. However, Gibton (2015) cautioned that in

some instances, the unobtrusive nature of documents is tainted. Gibton referred to situations wherein the acquisition of documents is dependent upon a participant's willingness to disclose them for use. However, with reference to the study of public policy, Karpinnen and Moe (2012) contended that the need for caution is minimised as many core documents are publicly available and are easily accessible via the Internet. A second advantage discussed by Gibton (2015) is the ability of document analysis to provide insight into policies that have not been completely and / or effectively implemented; in such situations, the policy document may be more distinct than the policy itself. Finally, Bowen (2009) stated that additional advantages include the accessibility of documents and the minimal expense associated with locating and analysing them. However, document analysis is also susceptible to limitations. As stated by Martella et al (2013), incomplete documents are a common issue that can serve to reduce the confidence in research findings. Often, the researcher also has a limited insight into the quality of context within which the document was created and the quality of data collection. Furthermore, Monette et al (2013) argued that documents are not produced for research purposes, which creates issues surrounding their objectivity. In such instances, they warned that researchers must display caution and be wary of biased reporting and representations.

To address the limitations of document analysis, Gaborone (2006) recommended the utilisation of Scott's (1990) quality control framework, which comprises of four criteria: authenticity, credibility, representativeness and meaning. Authenticity concerns the genuineness of evidence and whether it has origins that are dependable and reliable. To ensure authenticity, Platt (1981) suggested that researchers closely scrutinise documents that are error laden, display internal inconsistencies, have more than one different version available and / or come from unreliable sources. Additionally, documents should be clearly cited and described within the research. Gaborone (2006) stated that credibility refers to the error free nature of the document and whether it is free from distortion. To heighten the level of credibility, Gaborone suggested using

documents that were prepared independently and prior to the research process. Bratlinger et al (2005) also emphasised the importance of highlighting the relevance of the chosen documents. Representativeness refers to whether the document is perceived to be typical of its kind. Finally, meaning concerns the extent to which the document is comprehensible and clear (Scott, 1990).

In line with Gaborone's (2006) recommendation, Scott's (1990) quality control framework was used throughout this study. As suggested by Gaborone (2006), credibility was increased through the selection of documents that were produced independently and prior to the research process. Furthermore, to heighten the level of authenticity, public documents were sourced through the official websites of relevant organisations, examples of which include WADA, UNESCO, the United Nations, UNICEF, and the FATF. Academic databases including Sport Discus, Lexus Nexus and Web of Science were also used to conduct article searches. The process used to select articles from the databases began with a series of key search words, a comprehensive list of which can be found in Appendix 1. The search words were derived from the research aim / objectives and focused upon each of the four regimes. The most effective search terms that yielded the greatest number of relevant responses were: child rights implementation; disability rights implementation; anti-money laundering compliance; anti-doping implementation; and anti-doping compliance. Subsequently, the abstracts of the articles were sifted through. For each empirical chapter, approximately twelve documents that were relevant to the research questions and appropriate for analysis were identified. As suggested by Bratlinger et al (2005), additional researchers were consulted (specifically the PhD supervisory team) to ensure that the document selection was based on sound judgement. With reference to the process used to analyse the documents, this will be discussed in the upcoming section alongside the analysis of interview data.

3.3.2 Interviews

Interviews were identified as an additional research method to be used within this study. When conducting interview research, Gubrium and Holstein (2001) emphasised the importance of considering the range of interview methods available. Specific interview types include focus groups and in-depth interviews, which may be distinguished by their group and individual setting (Ho, 2011). The nature of the focus group discussion is exploratory and flexible. As a result, emphasis is placed upon participant interactions, which enables the interviewer to adopt the role of a moderator (Qu and Dumay, 2011). On the one hand, Ho (2011) suggested that the moderator role is advantageous as the researcher is less likely to introduce bias during the focus group, especially when compared to in-depth interviews. On the other hand, if the researcher does not effectively fulfil the role of the moderator and influences the discussion, the results of the focus group will be compromised. As argued by Morgan (1977), an additional benefit is that participant interactivity is encouraged through the group setting. Such interactivity is capable of producing insights and data that would be difficult to acquire from other methods.

In-depth interviews are the alternative interview method available to researchers (Gubrium and Holstein, 2001). In-depth interviews have frequently been classified according to their level of structure, with the three main categories being structured, semi-structured and unstructured (DiCicco-Bloom and Crabtree, 2006). In essence, Qu and Dumay (2011) stated that all of the in-depth interview types involve asking questions and interpreting the given answers. However, Alvesson (2003) suggested that on a conceptual level, qualitative researchers adopt one of three theoretical perspectives (neo-positivism, romanticism and localism) when conducting interviews, each of which enables contrasting knowledge claims. Qu and Dumay (2011) likened these perspectives to positivism, interpretivism and critical realism, and suggested that each worldview is closely associated with a specific interview approach.

The first category to be considered is that of structured interviews. The neo-positivist perspective has largely influenced structured interviews (Alvesson, 2003). Neo-positivists are concerned with objective data, context free truth, bias reduction and generalisability. As a result, the structured interview procedure is heavily standardised in an attempt to reduce interviewer bias, aid the cross-comparison of answers and reveal an objective truth. For example, the researcher makes minimal deviation from their script and asks identical questions in the same order. Neo-positivists believe that this approach contributes towards an interview account that reveals the objective truth (Qu and Dumay, 2011). Additionally, as discussed by Roulston (2010), prior to conducting a structured interview, the researcher prepares questions that have a small number of response categories. Roulston argued that this process is advantageous as the researcher benefits from findings that are easier to quantify and organise. Given that the analysis process of structured interviews is quicker when compared to unstructured interviews, a second advantage is the ability to study larger samples and address generalisability issues associated with interview data. However, Eisenhardt (1989) contended that like case studies, interviews are concerned with theoretical rather than statistical generalisations. Furthermore, Qu and Dumay (2011) criticised the rigidity of the structured interview and contended that such rigidity inhibits the interviewer from probing new and important topics that may arise during the interview. As a result, they argued that increases in the levels of generalisability occur at the expense of producing a rich, detailed data set.

At the other end of the continuum is the classification of unstructured interviews, which, despite its name, is identified by Cohen et al (2006) as a formal process. To illustrate the formality, the researcher and interviewee arrange a mutual time to meet and conduct the interview process. The researcher has a plan that outlines the focus areas / desired goals and is used to guide the interview discussion. Additionally, unstructured interviews may be conducted through informal conversations within the field (DiCicco-Bloom and Crabtree, 2006). Romanticists argue that one benefit of

prolonged time within the field is an enhanced understanding of the interviewee's context, which subsequently produces data that is more likely to reflect reality. Alvesson and Deetz (2000) argued that this approach contributes towards building a rapport between the researcher and interviewees, which is important to obtain truthful accounts. However, as discussed by Qu and Dumay (2011), localists criticise unstructured interviews conducted within the field for frequently ignoring environmental, social and political contexts. Localists contend that the interview accounts obtained are merely representative of the interviewee's worldview in a specific context at a specific moment in time. Another weakness identified by Creswell (2007) relates to the use of inconsistent questions. Specifically, Creswell argued that difficulties occur when the researcher attempts to code the data and contended that the comparability of findings is limited.

The semi-structured interview approach is positioned in-between structured and unstructured interviews (Fontana and Frey, 1998). As stated by Qu and Dumay (2011; 246) semi-structured interviews involve "prepared questioning guided by identified themes in a consistent and systematic manner interposed with probes designed to elicit more elaborate responses". In contrast to structured interviews, the questions and their order are not fixed. However, the researcher does prepare an interview guide that outlines the desired discussion themes. DiCicco-Bloom and Crabtree (2006) stated that the use of open-ended questions is advantageous as the interviewees are able to provide narratives in their own words. Furthermore, the utilisation of probes is beneficial as the researcher has the flexibility to investigate topics that arise during the interview discussion. Through using probes, the research can encourage the interviewee to produce a rich and complete narrative. The flexible nature of semi-structured interviews also enables varied responses from different interviewees. Described by localists as 'situated accounts', different responses are advantageous as the researcher is able to gain an understanding of each interviewee's perception of the social world. As stated by Alvesson (2003), similar to constructivism, localism argues that social actors

are continuously constructing social phenomena and their meanings. Therefore, rather than perceive interviews as a pipeline used to transmit knowledge, localists suggest that interviews are social encounters that can be used to examine complex phenomena.

The range of benefits associated with semi-structured interviews, particularly their flexible nature, ability to provide a rich narrative (DiCicco-Bloom and Crabtree, 2006) and potential to examine complex phenomena (Qu and Dumay, 2011), provided justification for their selection as a research method within this study. However, recognition is also given to the weaknesses associated within semi-structured interviews. One problem associated with semi-structured interviews is that the production of a rich, accurate narrative is dependent upon the interviewee being both forthcoming and truthful (Myers and Newman, 2007). To minimise this issue, Qu and Dumay (2011) emphasised the importance of quickly establishing rapport between the interviewer and interviewee. Four stages of rapport identified by Spradley (1979) include apprehension, exploration, cooperation and participation. During the first stage, both the interviewer and interviewee display apprehension. To address this issue, Spradley recommended that the researcher ask broad, minimal risk and open-ended questions to encourage the interviewee to talk. Such style of questions can also aid the transition into the second phase of exploration. Here, the interviewee begins to engage and produce in-depth descriptions. Within the third rapport stage of cooperation, the interviewer and interviewee become comfortable in the interview setting. DiCicco-Bloom and Crabtree (2006) identified the cooperation stage as a good opportunity for the researcher to clarify information provided by the interviewee. Spradley (1979) stated that the final phase of participation displays the greatest levels of rapport. Spradley suggested that participation occurs when the interviewee takes an active role and begins to teach and guide the interviewer. Similar to unstructured interviews, a second limitation of semi-structured interviews includes their time-consuming nature, which limits the sample size. As a consequence of the small sample sizes, a common critique surrounds the weak ability of semi-structured interviews to produce findings

that can be generalised (Creswell, 2007). However, as previously mentioned, Eisenhardt (1989) contended that interviews are concerned with theoretical rather than statistical generalisations.

An additional factor to consider when conducting interviews is the selection of participants. As discussed by Bratlinger et al (2005), choosing appropriate interviewees is important due to its impact upon the interview quality. As a result, specific criteria were identified to ensure that the interview participants had sufficient organisational and policy knowledge to provide a rich, detailed and accurate narrative. The first selection criterion was staff that hold a senior position within the organisation. The second was someone who had been in the role for a significant period of time (five years or more). The final criterion was someone with a direct strategic responsibility for devising the agreement. In instances where the policy had been in existence for a long time, the alternative criterion was someone with responsibility for monitoring compliance at the international or domestic level. Initially, participants were sourced through reviewing the websites of relevant organisations, including WADA, UNICEF UK, Disability Rights UK and the FATF. To identify additional participants, the strategy of snowball sampling was used. Outlined by Robinson (2014), this process involved asking the interviewees for recommendations of people within their own or other organisations that met the identified criteria. However, one limitation of snowball sampling is that interview participants are susceptible to recommending like-minded people.

In addition to carefully selecting the interviewees, specific procedures were followed prior to, during and after the interviews. Before conducting the interviews, participants were emailed with an outline of the interview content. Interviewees were also provided with a participant information sheet and asked to sign an informed consent form which included permission to audio record the interviews. In line with Mero-Jaffe's (2011) recommendation, to enhance the quality of audio recordings, the interviews were

arranged to take place in a quiet location. Furthermore, as suggested by Myers and Newman (2007), the researcher ensured that all participants were available for a sufficient amount of time to complete the interviews and collect a complete data set. Each interview was conducted in accordance with Loughborough University's ethical standards. Following the completion of the interviews, the recordings were transcribed, and all data was stored in accordance with data protection laws. With reference to the transcription process, Braun and Clarke (2006) discussed how specific guidelines do not exist for the production of a transcript for thematic analysis. Nevertheless, they emphasised the importance of ensuring that the transcript provides a true copy of the original verbal account. For example, Braun and Clarke identified punctuation as an important component of the transcript that must be carefully placed so as not to change the meaning of the text. As a result, to increase the quality and accuracy levels of the transcripts, the completed transcripts were compared against the audio recordings. Finally, all interviewees were offered anonymity and were informed that upon data analysis completion, participants would receive a copy of the section of the thesis that contained the interview comments. The purpose behind this decision was to make interviewees aware of the context within which their words had been placed.

3.3.3 Validity and Reliability in Qualitative Research

Validity and reliability are important factors and quality indicators that should be considered by both qualitative and quantitative researchers. However, the concepts of validity and reliability are rooted within positivism and are frequently used within quantitative studies (Golafshani, 2003). With reference to validity, Bryman (2008) distinguished between external and internal validity. The former is defined as the ability to generalise research results to populations, whilst the latter is the extent to which the research design actually enables conclusions to be drawn about the relationships between variables. With reference to the concept of reliability, this refers to the repeatability of the study and whether another researcher could repeat the research at

a later date and achieve the same results. Qualitative research has been subject to numerous criticisms regarding the levels of validity and reliability (Ho, 2011). Eisenhardt (1989) and Yin (2013) addressed issues surrounding external validity through the argument that qualitative research is concerned with theoretical rather than statistical generalisations. With regard to internal validity and reliability, Healy and Perry (2000) contended that the quality of a research study should be judged according to the assumptions of its own paradigm. Lincoln and Guba's (1985) seminal paper made a similar assertion and proposed that the quantitative concepts of internal validity and reliability are closely associated with the qualitative notions of credibility (the conscious efforts made by the researcher to build confidence regarding the accuracy of their data interpretation) and dependability (the stability of findings over time). In line with Lincoln and Guba's recommendation, triangulation was used to address the limitations of qualitative research and enhance credibility. Triangulation seeks to develop a deeper understanding of the phenomenon by adding rigor and depth to the research. The specific type of triangulation used within this study was methodological triangulation, which involves the use of multiple methods (in this case document analysis and interviews). Methodological triangulation is advantageous as the strengths of one method can be used to compensate for the weaknesses of another and vice versa (Flick, 2007). Furthermore, Bratlinger et al (2005) argued that the collection of data through numerous methods provides the opportunity to verify findings and increase their validity. Throughout the research process, the data provided by interviewees was verified through the document analysis and vice versa. Additionally, as recommended by Lincoln and Guba (1995), to enhance dependability, the research and data collection processes were clearly documented and justified.

3.4 The Analytical Process

Krippendorff (2013) identified content analysis as a broad technique comprising of numerous strategies (both quantitative and qualitative) that can be used for textual analysis. Neundorf (2002) described quantitative content analysis as a systematic and objective analytical process. In contrast, Weber (1990) stated that qualitative content analysis transcends the simple quantification of words. Instead, the texts are closely examined to uncover textual meaning. One strand of qualitative content analysis is thematic analysis, which Braun and Clarke (2006; 79) defined as a “method for identifying, analysing and reporting patterns (themes) within data”. With reference to the technique used to analyse the interview data, thematic analysis was chosen over conversation analysis due to its ability to uncover themes within the data.

To identify the most appropriate technique for the analysis of documents, consideration was given to the analytical purpose of the documents within this study. As discussed by Karpinnen and Moe (2012), traditionally, documents have been treated as sources. Within this approach, the document serves a descriptive function and the analytical intention is to highlight (and sometimes compare) the facts and developments of a particular policy process(s). The alternative perspective is that of the ‘documents as texts’, which perceives documents as more than simple instruments. As argued by Altheide (1996), social reality undergoes a change when documents are released into the public domain and become routinely used. Additionally, Karpinnen and Moe (2012) stated that documents impact upon the scope of policy options available to policy makers. As a result, the ‘documents as texts’ approach recognises the power and political consequences of discourse and ideas, and places emphasis upon analysing the document’s discourse and language to reveal underlying themes, values and social meaning. This research primarily adopted the alternative perspective that treats documents as texts. Given that this approach attempts to uncover underlying themes,

thematic analysis was also identified as an appropriate technique to analyse the documents.

3.4.1 Thematic Analysis

As detailed in Table 3.3, Braun and Clarke (2006) identified six distinct phases of thematic analysis. The steps outlined by Braun and Clarke provide sound methodological and theoretical foundations for conducting thematic analysis. As a result, the framework was used as a guideline for the analysis within this study.

1. Familiarising yourself with the data
2. Generating initial codes
3. Searching for themes
4. Reviewing themes
5. Defining / naming themes
6. Producing the report

Table 3.3: *Phases of Thematic Analysis (Braun and Clarke, 2006)*

Following the transcription of the interview data, the first phase of data familiarisation involved data immersion. In line with Braun and Clarke's (2006) recommendation, immersion in and familiarity with the data content was achieved through repeated reading of the transcripts and documents. Additionally, active reading of the texts occurred. This involved searching for patterns within the data set during the repeated reading process. Within the second stage, initial codes were generated. Informed by Boyatzis (1998), the process of coding involved the collation of interesting data into specific codes. Additionally, efforts were made to code the data in a meaningful and systematic manner, an approach that Bratlinger et al (2005) identified as an important indicator of data analysis quality. Throughout Braun and Clarke's (2006) third stage of

theme searching, the analysis was refocused at the broader level. Specifically, codes that had previously been identified were collated into relevant themes. Figure 3.2 provides an example of the theming and coding process that took place during the interview data analysis.

Theme: Whistleblowing	Theme: Sanctions
<p>Codes:</p> <p><i>Code of silence</i></p> <p><i>Poor treatment of whistleblowers</i></p> <p><i>Snitching is frowned upon</i></p> <p><i>The culture is against whistleblowing</i></p> <p><i>Weak protection of whistleblowers</i></p> <p><i>Whistleblowing policies</i></p> <p><i>Good platforms but poor promotion</i></p> <p><i>Insufficient resources to analyse whistleblowing information</i></p> <p><i>Russian whistleblowers</i></p>	<p>Codes:</p> <p>Athlete bans</p> <p>WADA needs authority</p> <p>Graded sanctions</p> <p>Self-imposed sanctions (feelings of guilt and shame)</p> <p>Lack credibility</p> <p>Disjointed responses to Russia</p> <p>CAS</p> <p>Financial sanctions</p> <p>Sanctions not in line with the Code</p>

Figure 3.2: Thematic Analysis Theme and Code Example

Subsequently, during the fourth stage, the candidate themes were reviewed. Within this phase the themes with insufficient data to support them were disregarded, whilst other themes were collapsed into each other or separated where necessary. Further refinement occurred during the fifth stage where the themes were defined and named (Sparkes and Smith, 2013). Additionally, sub-themes were identified. Braun and Clarke (2006) argued that the development of sub-themes is useful to provide structure whilst simultaneously indicating the hierarchy of meaning that exists within the data. An example of the sub-theming process is detailed in Figure 3.3.

<p>Theme: Whistleblowing</p> <p><i>Weak protection of whistleblowers</i></p> <p><i>Whistleblowing policies</i></p> <p><i>Good platforms but poor promotion</i></p> <p><i>Insufficient resources to analyse whistleblowing information</i></p> <p><i>Russian whistleblowers</i></p> <p>Subtheme: Whistleblowing Culture</p> <p><i>Code of silence</i></p> <p><i>Poor treatment of whistleblowers</i></p> <p><i>Snitching is frowned upon</i></p> <p><i>The culture is against whistleblowing</i></p>	<p>Theme: Sanctions</p> <p>Lack credibility</p> <p>Disjointed responses to Russia</p> <p>Subtheme: Types of Sanctions</p> <p>Athlete bans</p> <p>Financial sanctions</p> <p>Graded sanctions</p> <p>Self-imposed sanctions (feelings of guilt and shame)</p> <p>Subtheme: Sanction Enforcement</p> <p>WADA needs authority</p> <p>CAS</p> <p>Sanctions not in line with the Code</p>
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Figure 3.3: Thematic Analysis Subthemes

Throughout stages two, three and four, the researcher made an initial attempt at generating codes and themes before consulting with the PhD supervisory team. This process was repeated until a satisfactory level of analysis was achieved. Consultation with PhD supervisors also aimed to heighten the quality of the analysis through reducing researcher bias and ensuring that the selection of codes and themes were based on sound judgement. The final phases comprised of writing up the data. As emphasised by Schinke et al (2012), care was taken during the write-up phase to ensure that the narrative transcended a simple description of the data. For example, specific extracts were embedded into the analysis to provide a compelling argument that was specific to the research question.

3.5 Summary

To summarise, the methodology within this study was guided by Grix's (2002) model of the research process, which identified a directional relationship between the distinct methodological stages of ontology, epistemology, methodology (the three fundamental components of a research paradigm) and methods. Firstly, critical realism was chosen as the research paradigm that would underpin this study. As discussed by Bhasker (1978), although ontologically critical realism supports foundationalism, the position proffers its own stratified version of reality comprising of three overlapping domains: the real, the actual and the empirical. The decision to choose the epistemological position of critical realism was informed by Mingers (2015) and Sayer (2000), who highlighted how compared to alternative positions, critical realism is uniquely able to offer epistemological pluralism. Such pluralism, they argued, is advantageous as it incorporates strengths from both positivism and interpretivism, whilst simultaneously rejecting their weaknesses. As outlined by Hay (2011), the selected epistemological position gave rise to a specific methodology. Influenced by critical realism, this study

adopted methodological pluralism, an approach that Sayer (2000) argued is essential to effectively understand complex situations within the multi-dimensional world.

After carefully selecting the paradigm of critical realism, consideration was given to the research design frame and methods. In line with the methodological pluralism of critical realism, case studies were chosen as this design frame supports the use of multiple exploratory lenses (Baxter and Jack, 2008). Additional justification behind this decision included Easton's (2010) identification of case studies as a useful analytical approach, particularly when the primary unit of analysis is an organisation, a network of organisations or interorganisational relationships with complicated structures. Qualitative document analysis and semi-structured interviews were selected, a decision informed by Yin's (2003) claim that both methods are appropriate for case study research. The selection of document analysis was further rationalised by Bowen's (2009) argument that the unobtrusive nature of documents serves to heighten authenticity, whilst semi-structured interviews were justified by their flexible nature, ability to provide a rich narrative (DiCicco-Bloom and Crabtree, 2006) and potential to examine complex phenomena (Qu and Dumay, 2011). Finally, as recommended by Bryman and Bell (2015), a Gantt chart for each academic year of the PhD (see Tables 3.4, 3.5 and 3.6) was used to provide structure to the research process by visually outlining the key tasks and timeframes of the research project.

Year 1: 2015 / 2016												
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Chapter 2 – Theory:												
Preliminary Literature Search	■	■										
Write Chapter Draft			■	■								
Amendments / Proof Reading					■							
Chapter 3 – Methodology:												
Preliminary Literature Search					■							
Write Chapter Draft						■						
Amendments / Proof Reading							■					
Chapter 4 – History:												
Preliminary Literature Search							■	■				
Write Chapter Draft								■	■	■		
Amendments / Proof Reading										■		
Chapter 1 – Introduction												
Write Chapter 1										■	■	
Write Year 1 Report												■
Chapter 5 – Case Study 1: UN Convention on the Rights of the Child												
Preliminary Literature Search											■	■
Data Collection												
Prepare Interview Questions											■	
Contact Interviewees											■	
Interview Preparation and Preliminary Case Study Research												■
Conduct Interviews												■

Table 3.4: Gantt Chart: Timeline for PhD Year 1

Year 2: 2016 / 2017												
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Data Analysis:												
Transcribe Interviews												
Analyse Interview Data												
Chapter 5 – Case Study 1: UN Convention on the Rights of the Child												
Write Chapter Draft												
Amendments / Proof Reading												
Chapter 6 – Case Study 2: UN Convention on the Rights of Persons with Disabilities												
Preliminary Literature Search												
Write Chapter Draft												
Amendments / Proof Reading												
Chapter 7 – Case Study 3: The Vienna Convention												
Preliminary Literature Search												
Write Chapter Draft												

Table 3.5: Gantt Chart: Timeline for PhD Year 2

Year 3: 2017 / 2018												
	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Write Chapter 7 Draft												
Amendments / Proof Reading												
Chapter 8 – Case Study 4: WADA												
Preliminary Literature Search												
Write Chapter Draft												
Amendments / Proof Reading												
Chapter 9 – Conclusion												
Write Chapter												
Final Amendments												
Prepare for Viva												
VIVA Amendments												
Submit PhD Thesis												

Table 3.6: Gantt Chart: Timeline for PhD Year 3

Chapter 4: The History of International Cooperation on Doping

4.1 Introduction: International Agreements

Guzman (2005; 585) defined international agreements as an “exchange of promises amongst states”. Agreements can take place between two states (referred to as bilateral treaties) or multiple states (referred to as multilateral or multipartite conventions) (Joyner, 2005). With reference to the content of multilateral conventions, D’Amato (1961) distinguished between contractual and law-making treaties. Within the former, mutual exchanges between states are regulated and a change to the general law does not necessarily occur. Within the latter, a general rule or statutory law of conduct is laid down. Law making treaties are designed in the interest of the whole international community and bind all parties upon treaty ratification. Law-making treaties also establish a regime towards the whole world, rather than towards specific parties (Fitzmaurice, 1957). Examples of law-making treaties identified by Joyner (2005) include the UN Charter, the 1982 Law of the Sea Convention, the 1989 Convention on the Rights of the Child and the 1994 General Agreement on Tariffs and Trade.

Between the 1960s and late 1990s, there was a rapid growth in the number of international agreements across a range of subject matters. For example, international agreements emerged to address human rights, environmental, social, economic and communications behaviours. Joyner (2005) attributed the continued growth of international agreements to the intensification of state interdependence and inter-state conduct (Simmons, 1998). International agreements that sought to address doping problems in sport were therefore introduced into a well-established field of behaviour. As explained by Casini (2009), international anti-doping

agreements were necessary to address the inability of the World Anti-Doping Code to legally bind governments. As a result, in 2005, the UNESCO Convention Against Doping in Sport was introduced.

Although this study is concerned with anti-doping, three case studies will analyse a selection of international agreements, namely the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Convention of the Rights of Persons with Disabilities (UNCRPD) and the United Nations Convention Against Transnational Organised Crime (UNTOC). Chapters five, six, and seven will provide an overview of the history and trajectory of each international agreement. Additionally, the analysis will identify the range of strategies used to achieve compliance (or at least enhance the level of compliance) with the respective international Convention and assess their effectiveness as a way of generating ideas for improving compliance with the Code. Chapter eight will refocus the discussion upon the issues that WADA faces in terms of monitoring and achieving compliance with the Code. The purpose of this preliminary chapter is to provide an introductory account of the history of doping within sport, with a particular focus upon international cooperation in tackling doping. The discussion will identify watershed moments and consider their impact upon anti-doping policy and organisations in terms of leaderships and networks. Finally, the scale of the contemporary compliance problem will be evaluated.

4.2 International Cooperation on Doping

4.2.1 The Definition of Doping as a Problem

Prior to the mid 1960s, concerns regarding doping in sport were limited to a small network of sport authorities. However, following numerous high profile scandals during the early to mid 1960s, the issue of doping emerged on the agendas of the International Olympic Committee (IOC), international sport federations (IFs) and governments (Houlihan, 2002). Of particular significance was the collapse and subsequent death of the Danish cyclist Knud Jensen after the 1960 Rome Summer

Olympics road race; amphetamine overuse was suspected as the cause of death (Dimeo, 2007). Likewise, Houlihan (2004) identified Jenson's death as a key event that instigated the initial phase of anti-doping policies. For example, in 1963, a convention of European sports governing bodies was held, the outcome of which included a definition of doping which was later adopted by the IOC. Doping was defined as:

“the administration to, or the use by, a competing athlete of any substance foreign to the body or any physiological substance taken in abnormal quantity or by an abnormal route of entry into the body, with the sole intention of increasing in an artificial and unfair manner his performance in competition” (Barnes, 1980; 21 – 24).

This initial definition marked the beginning of intense conversation between organisations interested in defining doping. However, as argued by Houlihan (2002), the preliminary definition had clear weaknesses. In particular, challenges were associated with operationalising phrases such as “abnormal route of entry” and “abnormal quantity”. Additionally, the phrase “with the sole intention of increasing in an artificial and unfair manner his performance in competition” would have been very difficult to prove in a court or tribunal.

4.2.2 Anti-doping Policy Developments

The multitude of doping scandals within the late 1950s and start of the 1960s resulted in the establishment of the IOC Medical Commission in 1961 (Casini, 2009). However, as discussed by Houlihan (2002), although the Medical Commission had condemned doping within a 1962 Resolution, it was not until 1967 that the IOC reformed and revitalised the Medical Commission, the purpose of which was to provide guidance to the IOC and supervise policy development. Houlihan identified the 1966 World Road Race Championship, during which five prominent cyclists refused to give urine samples, and the death of a professional cyclist at the 1967

Tour de France, as key events that instigated the reinvigoration of the Medical Commission. Additionally, prompted by the public criticism that surrounded both scandals, the Council of Europe debated the issue of doping and passed a Resolution that condemned athlete doping. Specifically, the Resolution recommended that member governments persuade their sport federations to introduce penalties for doping perpetrators (Council of Europe, 1967). The Council of Europe's Recommendation was significant in that it recognised the international scale of the emerging doping issue and foretold the importance of policy agreements between countries and sport federations (Houlihan, 2002).

Prompted by the scandals that occurred during the 1960s, numerous governments began to express an interest in the problem of doping and introduced legislation to tackle the issue. Early examples include the implementation of anti-doping legislation in 1965 by Belgian and French governments, later followed by Italy and Turkey in 1971. As discussed by Hanstad et al (2008), the increasing involvement of governments in sport was concerning for the IOC. In particular, governments threatened the IOC's authority as the policy leader within the sporting arena. The involvement of the Council of Europe, combined with the increasing threat of government legislation, prompted the IOC and many IFs to take action. For example, the Union Cycliste Internationale (UCI) and Fédération Internationale de Football Association (FIFA) introduced doping controls at the 1966 World Championships, whilst the IOC implemented doping tests at the 1968 Grenoble Winter and 1968 Mexico City Summer Olympic Games (Müller, 2009). Despite the introduction of doping controls, as argued by Hunt (2011), numerous factors limited the effectiveness of testing throughout the initial phases of policy making. First, the reach of testing was restricted due to insufficient financial capacity. Second, fragmented testing was caused by the inability of organisations to agree upon a basic definition of doping. Third, out of fear that their authority would be undermined, IFs were reluctant to include other parties within their policy-making process. Consequently, poor levels of coordination existed between key stakeholders and fragmentation was evident throughout the international sporting system. Finally, there was a narrow application of anti-doping efforts. For example, anti-doping

policy was restricted to in-competition testing, concentrated upon major events such as the Olympic Games and the football World Cup and was limited to specific countries and sports.

During the 1970s, the Council of Europe began to express an increased interest in the problem of doping within sport and steadily began to strengthen its position as the principal non-sporting, international arena for policy debate. In particular, the Council of Europe contributed to the anti-doping policy process through the preparation of a Recommendation to member governments that was agreed by the ministerial conference in 1978. The Recommendation focused upon the practicality of implementation and stated that more anti-doping laboratories were necessary. Additionally, the Recommendation emphasised the need for policy harmonisation, including cooperation between IFs. Shortly after, the Council was spurred into further action when, at the 1981 Olympic Congress held in Baden-Baden, athletes called for lifetime bans for doping offenders. Subsequently, the European Anti-doping Charter for Sport was approved and adopted in 1984 (Council of Europe, 1990). However, as argued by O'Leary (2013), the Council of Europe suffered from numerous weaknesses. Unlike a Convention, the status of the Charter was not legally binding. As a result, the Charter relied upon the moral authority of the Council of Europe. Although this weakness was addressed when the Anti-doping Convention was opened for signature in November 1989, anti-doping efforts were hindered by the Council of Europe's weak resource base and its limited geographical scope. For example, despite being open to signatories throughout the world, by 1998, Canada and Australia were the only countries outside of Europe that had signed the Anti-doping Convention. Furthermore, the complexity of the anti-doping policy development framework hampered the Council of Europe's efforts. As exemplified by the British government, although support was expressed for the Council of Europe, the government also wished to retain state sovereignty and was therefore reluctant to encourage the Council of Europe to take control (Houlihan, 1994).

Waddington and Smith (2013) identified the 1988 Johnson scandal as a watershed moment that resulted in numerous anti-doping policy developments. After winning

the 100 metres event at the 1988 Seoul Olympic Games, Canadian sprinter Ben Johnson tested positive for steroid use, a revelation that unprecedentedly focused the attention of the world upon the issue of doping in sport (Ritchie and Jackson, 2014). Hunt et al (2012) argued that the Johnson scandal significantly undermined the credibility of the IOC; despite the IOC's rhetoric surrounding the need to protect the moral purity of sport, the scandal exposed the IOC's inability to address the doping issue. The Johnson scandal also prompted substantial policy reforms. At the international level, policy reforms included a shift from in-competition to out-of-competition testing. For example, in 1989, the council of the IAAF imposed random drug testing for all international athletes (Houlihan, 2002). Additionally, nine days after Johnson's positive test, the Canadian federal government created the 'Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athlete Performance' and appointed Justice Dubin as the commissioner (Ritchie and Jackson, 2014). In the final report, Dubin (1990) concluded that drug use within international sport was extensive, supported by physicians and drug traffickers and encouraged by nationalist and commercial impulses. To address the doping problem, Dubin's recommendations included the creation of an independent agency to manage anti-doping efforts. Following the Dubin Inquiry, national level reforms included the 1991 establishment of the Canadian Anti-doping Organisation (renamed in 1992 as the Canadian Centre for Drug-Free Sport). After an amalgamation with Fair Play Canada in 1995, Canada's current anti-doping organisation was renamed as the Canadian Centre for Ethics in Sport (CCES) (Ritchie and Jackson, 2014).

Although the Dubin Inquiry highlighted the scale of doping within sport and the ineffectiveness of the IOC's doping control policy, governments expressed little desire to confront the IOC leadership on the doping problem (Hanstad and Houlihan, 2015). As stated by Hanstad et al (2008), although policy developments occurred after the Johnson scandal, Canada's response illustrates how doping controls focused upon sport at the national level. Given that governments were predominantly working independently, their ability to collectively challenge the IOC was limited. Furthermore, collective government action was difficult to organise as

the Council of Europe represented one of the few arenas within which governments could debate and initiate collective anti-doping action (O'Leary, 2013). According to Houlihan (1999), the absence of coordination between governments and IFs caused numerous problems. First, the increased mobility of world-class athletes meant that drug users were able to exploit implementation and legal inconsistencies between domestic National Governing Bodies (NGBs), IFs and countries. Such differences enabled an increasing number of athletes to initiate legal challenges to the doping infraction decisions made by federations. Second, doping regulations were ineffective as many elite athletes had minimal contact with anti-doping authorities within their home country. For example, world-class Australian cyclists spend the majority of their time training and competing in Europe, where the major competition circuits are located. As a result of such problems, the doping issue began to transcend the capacities of governments and even the wealthiest IFs, and the need for coordinated anti-doping efforts was highlighted.

In the early 1990s, a number of governments began to cooperate and develop anti-doping agreements. In 1990, the United Kingdom, Canada and Australia signed an agreement, which came to be known as the International Anti-doping Arrangement (IADA) (Houlihan, 2002). Hanstad and Houlihan (2015) identified the IADA as a valuable accomplishment that prepared the foundations for the present anti-doping regime. Additionally, in 1996, the group of Nordic countries completed an agreement that bound them to procedures of doping control and penalty harmonisation. Hanstad and Houlihan argued that in addition to bypassing the IOC, the IADA and Nordic Anti-doping Agreement signified public acknowledgement by governments that the IOC's anti-doping policies were ineffective and that cooperation between governments was necessary to address the doping problem. However, although the development of anti-doping agreements demonstrated governmental cooperation, Houlihan (2002) stated that anti-doping activity during the 1990s was largely characterised by fragmented efforts. Additional factors that hampered anti-doping efforts included capacity constraints, low levels of momentum and suspicion amongst key actors.

Similar to the Johnson scandal, Waddington and Smith (2013) identified the 1998 Tour de France scandal as another watershed moment that added momentum to anti-doping policy developments. During a vehicle check at the French-Belgian border, doping products were found in the car of Willy Voet, the Festina cycling team 'soigneur' (Brissonneau, 2015). The Tour de France scandal was momentous as the doping revelations provided conclusive evidence that drug use within professional cycling was institutionalised, systematic and widespread. However, the revelation had numerous implications for the IOC. First, the inclusion of professional cycling in the Olympic Games resulted in the IOC being implicated in the scandal (Hanstad et al, 2008). Second, as discussed by Waddington (2000), the UCI failed to express a commitment towards addressing the epidemic of doping within professional cycling. As a result, the IOC was under significant pressure to respond to the scandal. Third, after the Tour de France, the Festina team masseur and three doctors were prosecuted with supplying illegal drugs at a sporting event. Houlihan (2002) argued that the heavy involvement of the French government, specifically the French police and customs officers, was the most significant factor that prompted the IOC to take action. As explained by Hanstad et al (2008), the incident redefined doping from a sporting problem to be addressed by sporting organisations, to a matter of law to be addressed through judicial procedures. Additionally, the increasing involvement of governments threatened the IOC's authority as a leading organisation within the anti-doping regime. In response, the IOC convened the World Conference on Doping in Sport, which took place in Lausanne during February 1999.

Houlihan (2002; 169) described the World Conference on Doping in Sport as a watershed moment in anti-doping policy, which signified the IOC's long overdue endeavour to "recapture the initiative in policy-making from governments". Despite pre-existing tensions between the IOC and IFs, the organisations were united at the conference. According to Houlihan, unity arose through a mutual lack of confidence in (and in some cases open mistrust of) governments. Additionally, numerous IFs and the IOC shared a deep belief that governments only recognised elite, international sporting events as convenient political tools, rather than valuable cultural and global

events. In an attempt to maintain complete control of the proceedings and affirm their authority within the world of anti-doping, the IOC leadership carefully planned the agenda of the Lausanne Conference. Specifically, the IOC proposed the establishment of an anti-doping agency (initially referred to as the Olympic Movement Anti-doping Agency) to be created and solely funded by the IOC. The careful planning of the Conference agenda reflected the IOC's attempt to maintain its authority and control proceedings within the anti-doping regime. However, despite the IOC's efforts, numerous factors resulted in governmental reluctance to accept the proposals of the IOC and contributed towards the IOC's loss of leadership (Hoberman, 2001).

First, Hanstad et al (2008) identified the Lausanne Conference as a forum for powerful North American, Australasian and European governments to unite and collectively challenge the leadership of the IOC. In particular, Hanstad et al identified Barry McCaffrey, Director of the White House Office of National Drug Policy, as an influential actor who spearheaded governmental mistrust of the IOC. With regard to mistrust, allegations of corruption within the IOC tarnished the credibility and legitimacy of the IOC. Specifically, allegations concerned positive drug test results at the Olympic Games; although no positive results were reported at the 1980 Moscow Olympics, when Dr Donike retested the urine samples following the Olympics, 20% of samples produced positive testosterone results. Additional allegations exposed corruption during the bidding process of the 2002 Salt Lake City Winter Olympics, which subsequently resulted in six IOC members being expelled. Second, governments believed that the increasing commercial success of the IOC would result in a conflict of interests that would undermine the IOC's anti-doping policy commitment. Specifically, rigorous anti-doping efforts that exposed elite athletes could alienate corporate Olympic sponsors and damage the public image of both the IOC and the Olympics. Third, the IOC's role as an event organiser caused limitations (Teetzal, 2004). As explained by Sugden and Tomlinson (2012), as an event organiser, the IOC had no contractual relationship with athletes outside of the Olympics. Instead, the IOC relied upon its moral authority and financial leverage through the distribution of Olympic income. The series of anti-doping scandals,

combined with the allegations of corruption within the IOC, severely undermined the moral authority of the IOC and led to governmental mistrust of the IOC. As a result, the IOC was unable to control all outcomes of the Lausanne Conference (Hanstad et al, 2008).

The 'Lausanne Declaration on Doping in Sport' was the official outcome of the World Conference on Doping in Sport. The Declaration stated the need for harmonised anti-doping rules, stricter testing procedures and an international anti-doping agency. Contrary to the IOC's proposals, in November 1999, the World Anti-doping Agency (WADA) was established as an independent agency (Wagner and Hanstad, 2011). Houlihan (2007) argued that the IOC's decision to accept WADA as an independent agency demonstrates the ability of powerful governments to challenge the transnational status of the Olympic movement and IFs. With reference to WADA, the organisation's aim is to bring global consistency to regulations and anti-doping policies within governments and sport organisations. In terms of its organisational structure, since 2002, the Olympic Movement and governments have provided equal funding for WADA and have equal representation on WADA's Executive Committee and Council (WADA, 2016a).

4.3.3 The Code and the UNESCO Convention Against Doping in Sport

As stated by Houlihan (2013), when one considers the international efforts to battle the doping issue in high performance sport, the formation of WADA marks a pivotal occasion. Houlihan identified the World Anti-Doping Code, published in March 2003, as WADA's most significant contribution to the anti-doping regime. The Code is the core document that globally harmonises anti-doping rules, regulations and policies amongst public authorities and sporting organisations. The Code operates in conjunction with six International Standards, namely the Prohibited List, Laboratories, Testing and Investigations, Therapeutic Use Exemptions (TUEs), Protection of Privacy and Personal Information, and Code Compliance by Signatories, each of which are intended to enhance implementation of the Code (WADA, 2018).

Wagner and Hanstad (2011) identified the international standards as key documents that help to regulate operational and technical elements of the anti-doping regime.

The Code was inaugurated with the expectation that all international sport organisations and countries would subscribe to the Code (Hanstad and Houlihan, 2015). Indeed, a broad range of sporting organisations, including IFs of the summer and winter Olympic Games, quickly endorsed the Code; the only major exceptions were some commercial leagues within the United States. Additionally, the IOC expressed support for the Code through Chapter Five, Section 43 of the Olympic Charter, which identified the Code as compulsory for the entire Olympic Movement (Olympic Charter, 2015). However, due to the Code's non-governmental status, the document was unable to legally bind governments. In recognition of this problem, in 2003, governments drafted the 'Copenhagen Declaration on Anti-doping in Sport'. The Copenhagen Declaration signified government's moral commitment towards the elimination of doping in sport and declared the intention of governments to officially recognise the Code through an international treaty. Subsequently, the UNESCO Convention Against Doping in Sport was adopted by the UNESCO General Conference in 2005 (Wagner and Hanstad, 2011).

According to Jedlicka and Hunt (2013), UNESCO's decision to adopt the Convention was surprising given that UNESCO had previously refrained from involving itself in elite sport. Jedlicka and Hunt suggested that UNESCO's decision provides an example of normative isomorphism (where organisations adhere to accepted standards of behaviour). Increasing acceptance of WADA as the lead organisation within the anti-doping regime increased WADA's power and legitimacy. As a result, it became clear that in order for UNESCO's commitment towards drug free sport to remain credible, it was necessary for UNESCO to express support for, and accept, WADA and its international standards. With regard to the Convention itself, the Convention allows governments to align national policy with the Code and contributes towards the harmonisation of legislation. Combined, the Code and the UNESCO Convention Against Doping in Sport create a global regulatory structure for anti-doping efforts (Casini, 2009). Similar to the Code, rapid ratification of the Convention occurred. For

example, when all the UNESCO treaties are considered, the Convention Against Doping in Sport ranks second in terms of the speed of ratification (UNESCO, 2016). However, as argued by Houlihan (2013), emphasis upon successful implementation outputs, including Convention and Code signatory numbers, have hidden tepid commitment amongst some governments.

4.3.3.1 Code Revisions

The Code undergoes repeated revisions in order to improve the robustness of the document and to address loopholes that athletes may have abused within previous versions of the Code. For example, following revisions to the 2003 Code during the mid 2000s, WADA published a second edition in 2009 (Dimeo and Møller, 2014). However, Houlihan (2013) argued that successive revisions to the Code can increase the complexity of the anti-doping regime. Referring to the 2009 Code, Houlihan contended that the ambitious nature of the document caused significant challenges, each of which made compliance harder to achieve.

First, as discussed by Sugden and Tomlinson (2012), the second version went 'upstream'. Under the 2003 Code, athlete support personnel who had facilitated access to drugs, often remained in sport following their athlete's suspension. In contrast, rather than focusing only on athletes, the 2009 Code concentrated upon those responsible for manufacturing, supplying and trafficking drugs. The frequent involvement of athlete support personnel in the doping process provides justification for WADA's decision to move 'upstream'. Furthermore, as explained by Müller (2017), as organisations founded under private law, ADOs have insufficient investigative capabilities to investigate manufacturing, supplying and trafficking issues. Consequently, the upstream focus of the 2009 Code resulted in the expansion of the anti-doping organisational network. Specifically, this policy revision necessitated extensive domestic collaboration with an increased number of agencies (including police and customs services), in addition to international collaboration with anti-doping organisations. In 2009, WADA announced a collaborative

agreement with the International Criminal Police Organisation (INTERPOL), the world's largest police organisation, in an attempt to tackle the trafficking of PEDs (INTERPOL, 2009). However, as argued by Houlihan and Garcia (2012), despite extensive commitment amongst NADOs, the achievement of compliance can be adversely affected when police and customs organisations give anti-doping a lower operational priority. Second, the 2009 Code controversially extended the athlete whereabouts requirements. For the purpose of testing, the revision stated that athletes within the registered testing pool of their NADO or IF must specify a one hour time slot and an address where they could be located each day. Previous research has highlighted the challenges of implementing WADA's whereabouts system (Sugden and Tomlinson, 2012). Relating to the 2003 Code requirements, Hanstad et al's (2010) study of 32 NADOs found that only half of the NADOs with a registered testing pool had a system designed to collect athlete whereabouts information. Furthermore, substantial differences were found in terms of NADOs responses to missed tests. For example, in situations where an athlete was not at the reported address, one fifth of the NADOs had no procedure in place, whilst one third of NADOs stated that they would contact the athlete if the athlete was not at the designated address, thereby undermining the unannounced nature of the test.

The third and current edition of the Code came into force in January 2015. Within the 2015 Code, the potential default sanction period for intentional dopers, including first offenders, was increased from two years to four years (WADA Code, 2015). As specified within Article 10.2.1 of the 2015 Code:

“10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional” (WADA Code, 2015; 61).

Despite the increased sanction period, WADA argued that the 2015 Code simultaneously provides greater sanction flexibility for athletes who are able to prove that they had not intended to cheat, in which case the sanction period may be reduced to two years (WADA Code, 2015). Consequently, Duval (2015) argued that the issue of intent has become ever more important within the Code as it directly impacts upon the default sanction length. As specified within Article 10.2.1, dependent upon whether or not a specified substance is involved in the doping offense, the responsibility for proving / disproving intent lies with either the athlete or the Anti-doping Organisation (WADA Code, 2015). However, as argued by Møller (2016), by placing intent at the foreground of doping cases, the Code makes penalty enforcement more difficult. With reference to article 10.2.1.2, it is extremely challenging for NADOs to prove athlete intent, thereby making a four-year ban difficult to impose.

Additional amendments in the 2015 Code include the mandatory implementation of the ‘Technical Document for Sport Specific Analysis’ (TDSSA) (WADA Code, 2015). This change was prompted by previous anti-doping testing reports, which identified variations between the testing procedures of anti-doping organisations (ADOs). Specifically, WADA found that some ADOs did not advocate complete analysis of all the collected samples, whilst other ADOs conducted limited or no testing for prohibited methods / substances most likely to benefit athletes of their specific sport. Compulsory implementation of the TDSSA therefore seeks to ensure that prohibited substances susceptible to abuse within specific sports are subject to a minimum and consistent level of analysis by all ADOs (WADA, 2016b). However, as argued by Houlihan (2015), the policy capacity of ADOs is significantly impacted by resource availability. As a result, compliance issues may arise amongst ADOs that,

despite a commitment to anti-doping, have insufficient resources to meet the TDSSA requirements.

4.3.4 The Current Issue of Compliance

Despite amendments to the Code, organised doping within sport has continued to be a persistent and major problem. In recognition of the doping problem, in 2012 WADA established a Working Group, the purpose of which was to investigate issues surrounding the inability of anti-doping programmes to detect many doping offenders. Referred to as the 'Pound Report', the following conclusion was made:

“The primary reason for the apparent lack of success of the testing programmes does not lie with the science involved. While there may well be some drugs or combinations of drugs and methods of which the anti-doping community is unaware, the science now available is both robust and reliable. The real problems are the human and political factors” (Pound et al, 2012; 3).

As stated above, Pound et al identified human and political issues as the major factors that negatively impact upon the effectiveness of drug testing procedures. The report also criticised governments, NADOs and IFs for their failure to commit sufficient resources necessary to address the problem of doping. More recently, the scale of the compliance problem was evidenced through the major doping scandal surrounding Russia and the IAAF. In 2014, WADA formed an Independent Commission, the purpose of which was to investigate allegations regarding a sophisticated system of state sponsored doping in Russia. The Independent Commission concluded that a culture of cheating is deeply rooted within Russia and confirmed the systematic and regular use of PEDs by many Russian athletes. Additionally, the report found evidence of bribery and corruption within the IAAF and All-Russia Athletic Federation (ARAF), some evidence of which transcended sporting misconduct and was of a criminal nature (Pound et al, 2015). In line with

report's recommendations, in November 2015, WADA declared the Russian Anti-doping Agency (RUSADA) to be non-compliant and withdrew the Moscow laboratory's accreditation, whilst the IAAF imposed a provisional suspension on the ARAF (IAAF, 2015). Following the McLaren report, the IOC established a disciplinary commission (Oswald Commission) to investigate allegations of doping amongst Russian athletes. All available samples from Russian athletes at the Sochi 2014 Winter Olympic Games were re-analysed. Forty-three athletes received lifetime bans from the Olympic Games and were retrospectively disqualified from the Sochi 2014 Winter Olympics (Oswald Commission, 2017). However, following a number of appeals, CAS overturned 28 of the bans (WADA, 2018). The scale of the recent doping scandal, combined with evidence contained within the Pound Report (2012) and Independent Commission (2015), indicates that WADA and its major partners are a long way from solving the problem of compliance.

Chapter 5: The United Nations Convention on the Rights of the Child (UNCRC)

5.1 Introduction to the UNCRC

To raise awareness and encourage an evaluation of the circumstances of children around the world, the United Nations proclaimed 1979 as the 'International Year of the Child'. In celebration of this declaration, Poland proposed the creation of a treaty to protect children's rights, a proposal which subsequently led to the drafting of the United Nations Convention on the Rights of the Child (UNCRC). Established in 1979 by the Commission on Human Rights, an 'Open-Ended Working Group' was given responsibility for drafting the Convention (Cohen, 2006). In addition to the Working Group, Fass (2011) stated that non-governmental organisations (NGOs) played a significant role in the development of the UNCRC. Similarly, NGOs were involved in the development of the WADA Code, although the character of the relationship between governmental and non-governmental organisations displayed some marked differences. For example, whilst governments expressed their support for the Code through the UNESCO Convention Against Doping in Sport, some sporting organisations such as FIFA were reluctant to adopt elements of the original Code (McDermott, 2015). The influence of NGOs within the child rights regime can be traced back to 1983, when the 'Ad Hoc NGO Group on the Drafting of the Convention on the Rights of the Child' (NGO Group) was created to monitor the Working Group's processes and make appropriate recommendations (Breen, 2003). To further highlight the significance of NGOs, the Working Group Chairman appointed an NGO to partake in small group discussions regarding textual amendments (Cohen, 2003). As stated by Breen (2003), the active role played by

NGOs and their impact upon the Convention is unparalleled in the history of drafting international conventions. This extensive cooperation and the work of the NGOs was rewarded through Article 45 of the UNCRC, which provides the opportunity for NGOs (referred to as 'other competent bodies') to implement and monitor the UNCRC.

Adopted by the United Nations General Assembly in 1989, the UNCRC has been ratified by every country in the world, with the only exception being the United States (Rasmusson, 2016). Hammarberg (1990) described the UNCRC as an authoritative document that provides a universal definition of children's rights. McGoldrick (1991) argued that the UNCRC was significant as it reflected a new vision of the child. Prior to the UNCRC, the non-binding 1923 Declaration of Geneva and 1959 UN Declaration of the Rights of the Child articulated children's rights in terms of protection and care. In contrast, rather than perceive children as passive recipients under the protection and care of adults, the UNCRC acknowledged and reclassified children as subjects of rights. Additionally, as claimed by Melton (2005), the significance of the Convention is reflected through its unparalleled conceptual breadth. For example, in contrast to other human rights treaties, the 54 articles contained within the UNCRC incorporate all areas of human rights, including cultural, political, social, economic and civil rights. Killkelly and Lundy (2006) argued that the scale of the document's content provides the UNCRC with the unique capability to address, or at least concern itself with, all domains of children's lives. However, the UNICEF UK representative criticised the breadth contained within the Convention. Specifically, the representative argued that the wording of some Articles provides too much flexibility for governments to declare themselves as compliant. For example, referring to Article 28 (Right to Education), the UNICEF UK representative stated:

"The UK government would no doubt say we fully comply with child rights to have an education. On the face of it yes of course you do, every child by law is entitled to an education. But then we know there are children who struggle to access education. So, to what extent is that non-compliance?" (UNICEF UK Interview, 2016).

Although it is intended that the Convention be treated as a whole, as stated by UNICEF (2015), the core principles of the UNCRC are articulated through Article 2 (non-discrimination), Article 3 (best interest of the child), Article 6 (right to life, survival and development) and Article 12 (right to be heard). Referred to as the 'general principles', the themes contained within the four articles underpin the Convention and are intended to govern the interpretation and implementation of the Convention as a whole.

5.1.1 UNCRC: Areas of Controversy

Despite the guidance provided by the general principles, a key area of controversy that impinges upon the interpretation and implementation of the Convention is the concept of cultural relativism. The dichotomy between universalism and cultural relativism has continuously been debated within the context of international conventions, including the UNCRC. Whilst universalism believes that human rights are inalienable and universal, cultural relativism contends that there is no common value of human rights. Instead, human rights are relative to the cultural frame of reference (Song, 2010). Furthermore, Ansell (2014) argued that the type of child imagined within the UNCRC is that of a western, middle class, able-bodied male. As a result, Ansell contended that as the circumstances of children becomes more distant from the Western norm, the relevance of the UNCRC articles decreases. Similarly, within the anti-doping regime, Park (2008) argued that anti-doping regulations are a construction of the first world that is imposed upon poorer countries.

With reference to the UNCRC, proponents of universalism and cultural relativism continue to argue over the appropriateness of a universal definition of childhood and a universal set of children's rights. On the one hand, Harris-Short (2003) criticised state parties for using cultural relativism to justify inadequate implementation and non-compliance. On the other hand, Gielen and Roopnarine (2004) considered how cultural relativism and the reality of poverty creates problems for implementation and makes non-compliance difficult to determine.

Specifically, Gielen and Roopnarine referred to the circumstances of working children in poor economies. With reference to Article 28 (right to education), should developing countries be deemed non-compliant, or do the children live in an appropriate, albeit different set of cultural circumstances? To further demonstrate the complexity of the issue, Daiute (2012) considered the definition of child labour rights. From a top-down perspective, rights pertaining to child labour are intended to protect the child from employment that is exploitive. In contrast, bottom-up research involving children has revealed that in conditions of extreme poverty, many children find labour both practical and empowering. Such situations have, and continue to, raise questions as to whether a universal set of standards is appropriate, or whether a culturally specific set of standards are required.

Another area of controversy surrounds the complex task of defining a child and childhood. Article 1 of the UNCRC (1989; 4) defines a child as:

“Every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”.

First, Goucha (2007) questioned the appropriateness of using temporal boundaries to define a child. Goucha argued that the end of childhood is a social construction that may be determined by legal responsibility, religious beliefs or a level of psychological maturity that differs according to culture and social class. For example, Burton (2007) discussed how adulthood is often prematurely forced upon children living in underdeveloped economies. Whereas affluent children usually find themselves protected from adult concerns, children living in poverty are often burdened with the responsibility of work and / or taking care of their family. Although the ‘African Charter on the Rights and Welfare of the Child’ (ACRWC) is largely in accordance with the UNCRC, one variation is the Charter’s reference to ‘responsibility’. Specifically, Article 31 of the ACRWC refers to the responsibilities that a child has towards their family and rests upon the cultural view that family members are mutually dependent upon each other (African Charter on the Rights and Welfare of the Child, 1999). Consequently, in contrast to the UNCRC’s emphasis

upon the individual rights of the child, within Asian and African cultures, individual rights are often subordinate to the collective family unit (Rasmusson, 2016).

Second, Arnett (2000) contended that, in industrial societies, demographic changes have lengthened the transition from childhood / adolescence to adulthood. Arnett's concept of 'emerging adulthood' focused upon young people aged 18 – 25 in industrial societies, many of which attend college and graduate school. He argued that this period of time represents a distinct phase of life where the individual has surpassed the status of a dependent child, but does not possess normative adulthood responsibilities. Arnett's conceptualisation of emerging adulthood raised questions regarding the appropriateness of a universal set of standards, and whether a new set of rights are necessary to represent young people in this transitioning period. With reference to doping in sport, similar questions concern the boundaries of anti-doping regulations, and how far down the sporting hierarchy anti-doping efforts should be concentrated. Whilst the WADA Code is concerned with implementing a moral order within all levels of sport, McDermott (2015) argued that the Code is integrally linked with, and action focused upon, Olympic sport.

5.2 UNCRC Institutional Framework

5.2.1 International Institutional Framework

At the international level, numerous bodies and agencies operate alongside the United Nations to oversee the implementation of, and compliance with, the UNCRC. Additionally, these organisations shared responsibility for monitoring state compliance with the Convention and its optional protocols. The Committee on the Rights of the Child (CRC) was established under Articles 43, 44 and 45 of the UNCRC, comprises of 18 independent experts and is the UN's monitoring body. In addition to the CRC, Article 45 of the UNCRC describes the role that agencies play in implementing the UNCRC and makes specific reference to specialised agencies: the

United Nations Children's Fund (otherwise known as UNICEF) and other competent bodies (UNCRC, 1989). Given that UNICEF is the only organisation explicitly recognised within the Convention, Milne (2015) identified UNICEF as the UN's leading agency in children's rights. However, although the organisation was created by the United Nations in 1946, UNICEF is not in receipt of UN funding and instead relies upon voluntary contributions from governments, NGOs, corporations, foundations and private individuals. The agency operates through national committees and country programmes in 192 countries. As a leading advocate of children's rights, UNICEF aims to reach the most vulnerable children in the world. To achieve this aim, UNICEF monitors the circumstance of children globally and works with governments and partners to improve children's rights policies (UNICEF, 2015).

In addition to UNICEF, Fass (2011) emphasised the important role played by NGOs in implementing and monitoring the UNCRC. Formerly known as the NGO Group, 'Child Rights Connect' comprises 84 international, national and regional organisations and identifies itself as the largest international child rights network. In 2012, the NGO was granted the United Nations Economic and Social Council (ECOSOC) consultative status at the United Nations (Child Rights Connect, 2015). As discussed by Breen (2003), ECOSOC consultative status enables an NGO to participate in UN deliberations and become actively involved in the drafting of international instruments. Although state parties and international organisations are positioned higher than NGOs in the UN hierarchy, Breen argued that ECOSOC consultative status increases the legitimacy of the NGO (in this case Child Rights Connect) and provides them with the opportunity to challenge governments in an international forum. In contrast, the UNICEF UK representative suggested that greater challenges and attempts to hold governments accountable for non-compliance often come from NGOs that do not have access to such official forums:

"It's a balancing act for us [UNICEF UK] of challenging but also being constructive and helpful. Other NGOs who don't have access to the Committee and governments, they will take a much more hard line approach to compliance" (UNICEF UK Interview, 2016).

Child Rights Connect (2015) stated that an additional role of the NGO involves providing support for the CRC, national and regional NGOs. In particular, the group connects advocates of children's rights with other international actors in an attempt to prompt and improve UNCRC implementation efforts both internationally and nationally.

5.2.2 National Institutional Framework

With reference to the national level, although the UNCRC provides a global framework, Melton (1991) emphasised that the UNCRC's principles must be implemented by states and translated into governmental structures and legislation. Furthermore, whilst the UNCRC requires that state parties take 'all appropriate measures', Lundy et al (2013) discussed how states are ultimately responsible for determining the most suitable measures. The Wales Observatory representative also recognised the flexibility contained within the UNCRC:

"Some of the provisions within the Convention, they're not really obligations on government, they're suggestions to the government as to conditions that should be established to promote children's welfare"
(Wales Observatory Interview, 2017).

Similar to the UNCRC, whilst the UNESCO Convention Against Doping in Sport invites state parties to commit to the principles outlined within the Code, the Convention presents governments with a large amount of flexibility. For example, governments are able to decide how they will give effect to the Convention Against Doping in Sport, either by way of regulation, legislation or policies (UNESCO Convention Against Doping in Sport, 2005).

Operationalisation of the UNCRC at national level most commonly begins with law reform (Arts, 2014). However, as noted by Lundy et al (2013), law reform and

subsequent institutional frameworks vary according to the constitutional and legal system of the given country, and whether the country operates under a monist or dualist system. Within a monist system, ratification of the UNCRC results in the automatic incorporation of the Convention into national law. In contrast, where states operate under a dualist system, an act of parliament is required to include international law, in this case the UNCRC, into the domestic legal order (Malone, 2008). In dualist states, Lundy et al (2013) found that instead of transposing the entire Convention into the national legal system, state parties selected specific provisions within the UNCRC. In such instances, only those provisions explicitly incorporated into national law have legal effect. The willingness of governments to transpose specific Articles into national law is also impacted by cultural norms and power relationships. As explained by Calvert (2008), the family unit has the primary responsibility for the child, and, as a result, families expect a degree of privacy and freedom from governments. In recognition of this power relationship, many governments express a reluctance to intervene in family life. The Wales Observatory representative shared this viewpoint:

“The notion of parental rights and the sanctity of the family is a cultural value within Wales and the UK. And perhaps the reluctance of politicians to intrude into that domain partly explains the reluctance to remove the defence of reasonable chastisement” (Wales Observatory Interview, 2017).

Furthermore, it is important to recognise that the legal status of the UNCRC in national law varies according to its position in the legal system hierarchy. Using South Africa as an example, UNICEF (2009) highlighted how the UNCRC’s principles may be embedded into the country’s constitution. In other jurisdictions, the UNCRC and selected provisions may be inferior to the constitution but superior to ordinary legislation. Alternatively, the status of the UNCRC may be equal to legislation. Although law reforms are important to translate the UNCRC’s principles into governmental structures and legislation, the UN Child Rights Consultant emphasised how, alone, the effectiveness of legislation is limited:

“Typically, the government reports tell you all these wonderful regulations and new laws and so on. What the NGOs say is it’s all very good but none of it’s implemented, there’s no resources, there’s no policy, there’s no strategic support for it, there’s no training of the professionals and so on. Without those bits the law is meaningless” (UN Child Rights Consultant Interview, 2016).

In terms of the institutional framework at national level, a common pattern includes the establishment of a ministry and / or an ombudsman. As discussed by Himes (1995), the responsibility of implementing and monitoring the UNCRC is often included within the mandate of one or multiple new or established ministries. However, as argued by Lundy et al (2012), in instances where child rights are integrated into the mandate of an existing ministry, child rights can become lost amongst alternative ministry priorities. Furthermore, Lundy et al (2013) criticised those governments who perceive the delegation of power and authority as an opportunity to limit their responsibilities and involvement, particularly in relation to implementing and monitoring compliance with the UNCRC. Similar to the child rights regime, the responsibility of anti-doping functions is sometimes allocated to an existing ministry, particularly in countries that have not created a NADO (Houlihan and Garcia, 2012).

Numerous countries have followed the CRC’s recommendations and established a Children’s Rights Ombudsman or equivalent, as a means of overseeing the progress of children’s rights and safeguarding the best interests of children (Milne, 2015). However, as emphasised by Cheshmedzhieva (2015), numerous variations exist between each country’s ombudsmen. For example, the ombudsmen may operate on a national or regional level and may reflect a range of legal personalities. Countries such as Belgium, Guatemala, Columbia, Peru, Sweden and Norway established a Parliamentary Ombudsman that operates independently from governments. With their authority being derived from law, the Parliamentary Ombudsman possesses a

broad level of power that is often protected from political interference. In countries such as Australia, Austria, Canada, Denmark, and New Zealand, the Ombudsman was created within a framework of children's social policies. Consequently, their actions are restricted to applying the measures and standards that are specified within the government's social policy for children. In contrast, in countries such as Finland, the Children's Ombudsman was established by an NGO and consequently does not have official constitutional status (Parliamentary Assembly, 1999).

5.3 Mitchell and Chayes' Compliance System

5.3.1 Primary Rule System

The primary rule system refers to the rules, procedures and actors, and fulfills the purpose of determining who will be regulated and through what methods (Mitchell, 1988). As stated by Melton (1991), the UNCRC provides a global framework for child rights and therefore represents the primary rule system. Within Article 4 of the UNCRC, state parties are clearly identified as the primary actors who are responsible for undertaking the necessary measures to implement the rights recognised within the Convention. However, a devolved system of government can hinder the ability of state parties to fulfil their duty bearer responsibilities. The challenges of this problem were emphasised by the UNICEF UK representative:

“The UK government has no power to tell the Scottish Parliament what to do in its delivery of children's social care, and yet, the UK government is the duty bearer for the purposes of the UNCRC. It's a real problem when you are looking at implementation” (UNICEF UK Interview, 2016).

In recognition that resource availability impacts upon implementation and the ability of actors to comply, Article 4 includes a progressive realisation clause. Specifically, Article 4 states that implementation measures shall be undertaken to the “maximum extent of their [states] available resources” (UNCRC, 1989; 4). However, as discussed

by Lansdown et al (2015), sceptics contend that the inclusion of the progressive realisation clause within the UNCRC undermines state compliance. Arts (2014) described the progressive realisation clause as an 'escape clause' and argued that it may be relatively easy for a state party to make dishonest claims that a lack of compliance is due to insufficient resources. In contrast to the UNCRC, the Code requires full compliance and does not take into account the variable capacity and resources of states (WADA Code, 2015).

Additional responsibilities of state parties are outlined within Article 3(3) of the UNCRC (1989), which specifies that states must ensure that institutions, facilities and services responsible for child protection and care conform to the standards of competent authorities. As stated within the UNCRC, standards include areas of health, safety, staffing levels, staff suitability and competent supervision, whilst McGoldrick (1991) suggested that 'competent authorities' are the relevant national authorities. Hanson and Nieuwenhuys (2013) stated that the UNCRC reflects a top-down approach to implementation; implementation is perceived as the application of the UNCRC's international standards into practice, from the global, to national, to local levels. Similar to the UNCRC, the WADA Code outlines the responsibility of signatories to ensure compliance amongst other actors, specifically event organisers and domestic sport organisations (WADA Code, 2015).

The CRC operates as the UNCRC's monitoring body (Frota and Quintao, 2007). Under Article 43 of the Convention, the CRC is responsible for evaluating the progress of state parties. The method of assessing compliance is made clear within Article 44, which stipulates that each state must, through the Secretary General of the United Nations, submit a report to the CRC two years after acceding to the Convention and every five years thereafter. The report submitted to the CRC should include an outline of the measures that have been taken to implement the Convention and an indication of the factors, if any, that have impinged upon compliance (UNCRC, 1989). However, as discussed by McGoldrick (1991), basic information included in the initial report does not need to be repeated within subsequent submissions. McGoldrick suggested that this represents a clear attempt by the UNCRC to minimise the burden

of reporting responsibilities for states that are party to numerous international conventions. Additionally, the UNCRC requires that state parties make the report widely available to the general public within their jurisdiction (UNCRC, 1989). As outlined by Sow et al (2016), following the submission of a report, the CRC will respond through the public document referred to as the 'Concluding Observations'. Within the Concluding Observations, the CRC outlines positive elements of the state party's implementation efforts, highlights areas of concern and makes recommendations to improve implementation of and compliance with the UNCRC.

The Concluding Observations provide an example of feedback processes within the child rights regime. May and Jochim (2013) argued that feedback processes contribute towards achieving sustainable commitment and, though they cannot guarantee policy success, provide the foundations for successful policy implementation, reform and durability. Additionally, Sow et al (2016) identified the Concluding Observations as an effective tool that provides state parties with an agenda for action until the next mandatory report is due. However, Krommendijk (2014) found that since the mid-1990s, of the 1000 plus Concluding Observations for Finland, The Netherlands and New Zealand, only 74 initiated behavioural changes such as legislative amendments, policy reviews, institution establishment and increased budget and resource allocation. Whilst this result may seem disappointing, Krommendijk (2015) emphasised that neorealist scholars would not expect the Concluding Observations to have any impact upon behaviour. According to Krommendijk (2014), the large majority of Concluding Observations were ineffective due to their vague and broad formulation. Governments also cited resource constraints and conflicting interests as reasons for rejecting the recommendations. For example, the Dutch Government refused to amend its child euthanasia policy relating to children aged 12 years and above, and stated that a fundamental difference of opinion existed between the CRC and The Netherlands. In contrast, the UNICEF UK representative stated that ultimately, many of the recommendations are rejected because there is an issue with "governments not liking to be told what to do by international agencies" (UNICEF UK Interview, 2016). To further complicate the issue, governments who ignore the recommendations are subject to minimal, if any,

repercussions. For example, Down and Jones (2002) found that countries that possess a strong reputation for human rights, often suffer minimal reputational damage if they reject unfavorable recommendations contained within the Concluding Observations. With regard to those Concluding Observations that were effective in encouraging behavioural change, Krommendijk (2014) attributed this success to domestic actors who placed pressure upon the government and persuaded them to act upon the CRC's recommendations. As stated by Dai (2013), the Concluding Observations are a powerful tool that can be used to strengthen and legitimise the arguments of child rights advocates who are lobbying for policy change. In contrast to the child rights regime, advocates within the anti-doping regime have not used recommendations within the Independent Observer reports to legitimise arguments and lobby for policy change.

Additional actors are identified within Article 45 of the Convention, which promotes international cooperation between specialised agencies, the United Nations Children's Fund and other competent bodies. The Article further states that the CRC may invite these agencies to provide implementation advice and submit reports on the implementation of the UNCRC in the areas that fall within their mandate. To enhance the flow of information between the CRC and NGOs, in 2006 the NGO Group published a revised version of the 'Guide for Non-Governmental Organisations Reporting to the Committee on the Rights of the Child' (NGO Group, 2006). Where appropriate, the CRC may also provide relevant organisations with a copy of the state party's report, particularly when the report requests or indicates the need for assistance (UNCRC, 1989). UNICEF (2015) stated that the CRC's Concluding Observations frequently request that UNICEF assist the state in implementing the recommendations of the CRC. As argued by Hanstad (2015), institutional collaboration is an important element that contributes towards achieving deeper levels of compliance within the given regime.

5.3.2 Compliance Information System

5.3.2.1 State Party Reports: Data Collection

Mitchell and Chayes' (1995) compliance information system aims to ensure that high quality, relevant data is collected and that all data is rigorously analysed and widely circulated. With reference to the implementation of child rights, Lundy (2013) argued that the systematic collection of reliable data is essential to identify vulnerable groups of children and explain the factors causing disparities. As previously mentioned, the CRC collects information through compulsory state party reports. The effectiveness of the UNCRC's self-reporting system is dependent upon numerous factors including the timeliness and quality of state reports, the CRC member's ability to conduct a critical appraisal of the Convention's information and state party cooperation. Furthermore, the submission of high quality information by a range of external actors is important to provide a comprehensive picture and verify the content of state reports (McGoldrick, 1991). The importance of external shadow reports was reinforced by the UNICEF UK representative:

“If you look at any of the Concluding Observations, you'll see that a government says that it is complying but an NGO says it's not, but you know, that's the nature and the point of the whole process, to come at it from two opposing views and get a balanced view of what's going on” (UNICEF UK Interview, 2016).

Similar to the CRC, WADA and UNESCO use information provided by the signatory's mandatory, biennial self-reports to assess the levels of compliance (Houlihan, 2013).

To gather comprehensive information to include in the reports, a number of state parties have made substantial data collection investments, the findings from which are also used to inform the policy decision-making process (Lundy et al, 2013). Whilst the UNICEF UK representative agreed that comprehensive data collection has occurred, she contended that within some countries, including the UK:

“It's just raw data or data in tables and it doesn't actually say how that

has influenced policy decision making. That's where our [UNICEF's] concern would be, in how you use that data to benefit children" (UNICEF UK Interview, 2016).

The Early Development Index (EDI) is one example of a data collection method that has been implemented in numerous countries. The EDI originated in Canada as a tool to measure the development of all children as they enter school. Data is collected during the latter half of the first school year using the EDI checklist. Included in the checklist are the five domains of physical health and well-being, emotional maturity, social competence, communication skills / general knowledge and language / cognitive skills (Janus et al, 2006). Although teachers complete the checklist for individual children, Goldfeld et al (2009) discussed how the EDI scores are only used to generate data at the population level, specifically the postcode or suburb where the child resides. As a result, the EDI allows for comparison between populations. Such comparison helps communities to evaluate their local early childhood development efforts and identify policies that require improvements. As illustrated in Figure 5.1, since Canada's implementation of the EDI in 1998, the tool has been implemented in numerous countries throughout the world, whilst others are currently piloting or planning use of the EDI (EDI, 2014).

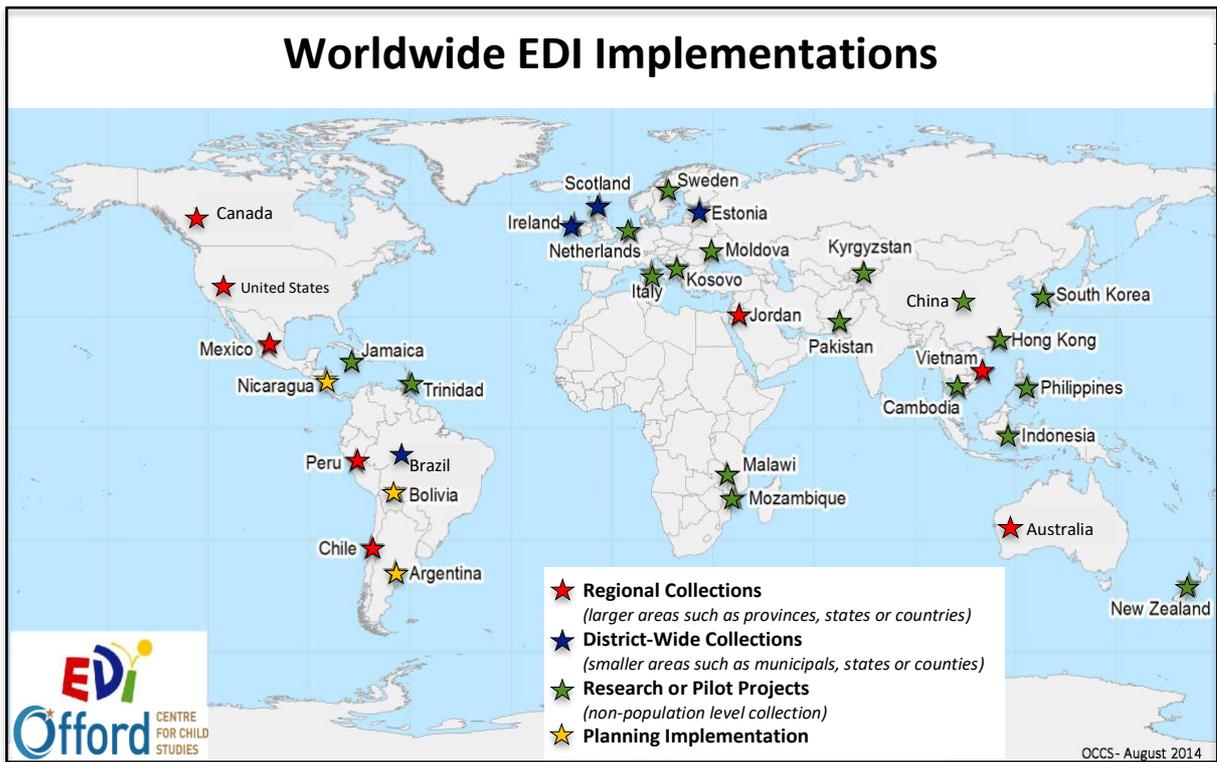


Figure 5.1: Map of Worldwide EDI Implementations (EDI, 2014)

However, whilst the CRC commended the development of EDI initiatives amongst state parties, concerns have also been expressed over the quality of data collection. With reference to Australia’s 2012 periodic report and the Australian Early Development Index, in the CRC’s Concluding Observations, attention was drawn to the sparse levels of data disaggregation and its failure to address all areas of the UNCRC. To improve Australia’s quality of data collection, the CRC recommended that information be collected on all children under the age of 18 and that the data focus upon socio-economic status, sex, ethnicity, disability and geographic location (Committee on the Rights of the Child, 2012). As argued by Arts (2014), data that is disaggregated, comprehensive and up to date is essential to understand the effectiveness and impact of governmental child rights policies.

In addition to the EDI, Lundy et al (2013) identified longitudinal studies as a popular method of data collection used by governments. Similarly, longitudinal data is used within the anti-doping regime. Currently, WADA is funding projects such as the ‘Certified Internal Standard for Accuracy in Longitudinal Monitoring for Testosterone Abuse’, the aim of which is to increase the accuracy of longitudinal testosterone

monitoring through providing an internal standard of a key testosterone metabolite (WADA, 2016c). With reference to child rights, in 2007, the Irish government launched a seven year national longitudinal study named 'Growing up in Ireland', the funding for which has been extended until 2019. Comprising both quantitative and qualitative data, the study monitors the development of a child cohort (a group of 8,500 children visited at 9, 14, 17 and 20 years old) and an infant cohort (11,000 infants visited at 9 months, 3, 7 and 9 years old), the purpose of which is to gain an insight into the development of children in the current economic, cultural and social environment (Growing up in Ireland, 2016). Lundy et al (2012) noted that the extent to which the study has informed Ireland's child rights policy is currently difficult to assess due to the slow iterative process of policy formation. Whilst the CRC (2006) commended Ireland's efforts to explore the lives of children through the Growing up in Ireland study, the CRC criticised Ireland for failing to collect sufficient levels of disaggregated data. Poor levels of disaggregated data are identified by Arts (2014) as a persistent problem that has existed since the early days of the UNCRC and that has yet to be resolved. Arts stated that this issue limits the effectiveness of child rights situation analysis and hinders the ability of governments to develop policies that address the situation of vulnerable groups of children.

Significant data collection investments have also been made by Norway. Lundy et al (2013) argued that Norway is largely concerned with its international reputation. As a result, Norway has demonstrated high levels of commitment to international agreements and is regarded as a leader in the field of child rights. Similarly, Hanstad and Houlihan (2015) stated that as a result of the country's involvement in bilateral agreements, Norway has been recognised as a pioneer in the fight against doping. With reference to child rights, Kjørholt (2002) identified Norway as a rare example of a country that has fostered a child-centric culture; in addition to placing child rights at the forefront of its political agenda, Norway conceptualises children as active agents who should be empowered. Kjørholt discussed how this perspective has influenced the development of data collection methods that are focused upon the theme of 'child participation'. For example, to ensure the involvement of children in the reporting process of Norway's third periodic report, in 2003 the Ministry of

Children and Equality financed the 'Livet under 18' ('Life before 18') project. The dual purpose of the project was to engage children in reporting procedures and improve municipality competence in collecting data from children. In total, eight municipalities were involved in the project and participants included a range of 13 - 18 year olds, including children with disabilities, children in the child welfare services and children in asylum centers (Livet under 18, 2003).

Child participation in the reporting process provides children with the opportunity to contribute towards the development of their rights and is a fundamental element of a bottom-up approach to child rights policy (Brems, 2013). Likewise, the importance and effectiveness of child participation in the reporting process was emphasised by the UN Child Rights Consultant. Referring to research which interviewed adults and children to investigate how children felt when they were smacked by their parents, the UN Child Rights Consultant stated that the child participants provided an "incredibly eloquent, powerful and very different narrative to the one being promoted by adults" (UN Child Rights Consultant Interview, 2016). According to Lundy (2007), Norway's respect for the views of children is often perceived as a model of good practice in the field of child rights policy. However, Article 12 of the UNCRC refers to the responsibility of states to ensure that children have the opportunity to freely express their views. Lundy therefore argued that Norway's approach is not simply an ideal that other countries should aspire to, but a legally binding obligation under the UNCRC. Lundy also suggested that improved awareness of Article 12 amongst state parties and child rights advocates is necessary in order to achieve greater levels of compliance with the Article. Within the field of anti-doping, a similar bottom-up approach has been adopted by NADOs within countries such as The Netherlands. For example, as discussed by Hon et al (2011), the 'Anti-Doping Authority Netherlands' (ADAN) periodically assesses the opinions of elite Dutch athletes towards current anti-doping policy and requests that the report include actionable policy recommendations.

5.3.2.2 NGO Reports

As stated within Article 45 of the UNCRC, the CRC may invite specialised agencies, UNICEF and other competent bodies to submit reports on the implementation of the UNCRC in the areas that fall within their mandate (UNCRC, 1989). To address the shortcomings of governmental compliance information systems, this opportunity has been capitalised upon by NGOs such as 'Save the Children Sweden'. An analysis of the UN database revealed that many West African states were late in submitting their reports, whilst others still have reports that are overdue (UN Treaty Database, 2016). Krommendijk (2015) argued that report delays are often caused by the inadequate financial capacity of states to fulfil reporting requirements. As a result, these states fail to meet the periodic reporting requirements of the UNCRC and the CRC is unable to effectively assess the level of state compliance. Additionally, as previously mentioned, Article 12 of the UNCRC refers to the responsibility of states to ensure that children have the opportunity to freely express their views (UNCRC, 1989). A similar statement is made within Article 7 of the ACRWC (1999). However, as discussed by Sow et al (2016), unlike child-centric countries such as Norway, African cultures struggle to reconcile the treaty notions of child participation with traditional values that perceive children as passive listeners who should respect adults. Consequently, African state party reports that are submitted to the UNCRC are often void of important data that reflects the opinions of children.

To address the identified problems, 'Save the Children Sweden' (SCS) (2016) introduced the 'Child Rights Governance' initiative. SCS provides support for national and regional child rights coalitions and aims to improve implementation of the UNCRC, ACRWC and other child rights instruments within West Africa. In part, the initiative seeks to improve the compliance information system through encouraging child rights coalitions to submit timely, high quality complementary child rights reports. Through recommending the active participation of children within the reporting process, the initiative also reflects an attempt to connect with a bottom-up approach to policy implementation and ensure compliance with Article 12 of the UNCRC. As detailed in Sow et al's (2016) research, between 2009 and 2014, the

effectiveness of the programme was reflected through the submission of reports to the UNCRC by coalitions in The Gambia, Guinea, Niger, Senegal and Togo, which, for the first time, included data collected through the active participation of children. As argued by Breen (2003), the submission of high quality complementary reports provides a useful insight into the situation of child rights in the given country, particularly when state party reports are delayed or omit important data. This view was shared by the UN Child Rights Consultant, who stated that the UNCRC's shadow reporting mechanism provides a:

“Very coherent collaborative independent voice of civil society, bringing them [the CRC] evidence which gives them a much stronger base from which to examine state parties” (UN Child Rights Consultant Interview, 2016).

Similarly, in recognition of the importance of alternative, unbiased perspectives on anti-doping efforts, at the 2000 Sydney Olympics WADA launched the Independent Observer (IO) programme, which randomly monitors and reports on doping control at major sport events (WADA Independent Observer, 2016).

Howe (2009) identified limited resources as a key factor that constrains NGOs. This restriction, combined with the costs associated with conducting primary research, poses difficulties for NGOs. With regard to the compliance information system, NGOs are faced with the challenge of collecting sufficient levels of high quality data that can be used to compile a complementary compliance report. To overcome this issue, some NGOs have produced reports using secondary data. Developed by KidsRights and Erasmus University Rotterdam, the KidsRights Index is the only global, annual index that ranks the status of implementation amongst UNCRC state parties. Comprising five domains (Right to Life, Right to Health, Right to Education, Right to Protection and Enabling Environment for Child Rights), the index collates quantitative data from UNICEF reports and qualitative data from the CRC's Concluding Observations (KidsRights, 2016). The first four domains of the index are linked to the economic status of a country. In contrast, the fifth is a unique domain that considers the extent to which the general principles of the UNCRC have been

operationalised in each country and the extent to which a basic child rights infrastructure (national legislation, cooperation between state and civil child rights organisations, budget allocation and disaggregated data collection / analysis) exists (Smits, 2015).

In their 2016 report, KidsRights (2016) found a very strong (0.81) correlation between the KidsRights Index and the Human Development Index. However, the two indices also revealed significant variations in country rankings. For example, the KidsRights Index highlighted failures amongst developed countries such as Italy (ranked 81st), Canada (ranked 72nd) and Luxembourg (ranked 56th). The inability of these countries to effectively operationalise the UNCRC was emphasised further through the fifth domain 'Enabling Environment for Child Rights', in which Italy was ranked 147th and Canada and Luxembourg were ranked 130th – 135th. KidsRights stated that these low rankings were caused by the lack of commitment amongst governments to allocate sufficient resources. As previously mentioned, the UNESCO Convention Against Doping in Sport requires state parties to submit biennial reports that contain information on the measures taken to comply with the provisions of the Convention (Houlihan, 2013). Using the information within these reports, the opportunity exists to adopt a similar approach to that taken by KidsRights and develop a global index that ranks compliance with the WADA Code.

Smits (2015) argued that the KidsRights Index is a useful tool that provides governments and other child rights stakeholders with an important insight into the extent to which state parties are equipped to implement the UNCRC. For those state parties that are socially motivated to comply and wish to compare favourably against other states, the KidsRights Index can prompt governments to make policy amendments in order to improve their ranking. The annual report also identifies areas of implementation that require improvement and provides state parties with specific recommendations to achieve greater levels of compliance. Smits also suggested that this information may be used by governments to shape their child rights policy agenda. However, as emphasised by Lundy et al (2013), the KidsRights Index draws data from the CRC's Concluding Observations. Although Lundy et al identified these documents as a rich source of evidence, they cautioned that the

Concluding Observations only provide a partial representation of a country's position at a specific point in time.

The KidsRights Index also contributes towards addressing weaknesses of a state party's compliance information system. For example, Mitchell and Chayes' (1995) identified widely circulated data as one element of the compliance information system. Additionally, Article 44 of the UNCRC (1989) requires that state parties make their mandatory reports widely available to the public. However, the CRC has criticised countries such as Canada for insufficient dissemination of information (Concluding Observations, 2012). According to Howe (2009), poor circulation of reports can lead to a lack of child rights awareness amongst the public, which, in turn, can pose a major problem for the advancement of child rights. Specifically, Howe argued that public pressure is crucial to engendering change amongst the Canadian government and improving the situation of child rights within Canada. In such situations, Breen (2003) stated that the CRC relies heavily upon child rights advocates, including NGOs, to disseminate information to the public in order to increase the awareness of child rights and encourage public pressure for improvement. In part, this role is fulfilled through the KidsRights Index, which was developed to stimulate attention, increase awareness and encourage public debate of child rights issues at the national and international level (KidsRights, 2016).

5.3.2.3 The Effectiveness of the Compliance Information System

Numerous factors can impact upon the effectiveness of the compliance information system. First, the compliance information system is impacted by the extent to which adequate resources are allocated by the government (Sow et al, 2016). To use Norway as an example, since 1998 the Ministry has provided the Internet gateway 'Statistics Norway' with annual funding. This funding has enabled the development of an extensive data system that collects information on ten broad subject areas, including the child population, children and young people's families, health, law violations, leisure time, children in kindergarten, school, the labour market, child welfare services, and children and the economy (Statistics Norway, 2015). In

contrast, Sow et al (2016) highlighted how, the majority of West African states distribute less than 1% of their national budget towards child rights. Consequently, the governmental departments tasked with implementing the UNCRC are faced with significant resource challenges and, as a result, are often unable to conduct adequate levels of data collection. To further complicate the issue, Sow et al found that the few resources available to the relevant departments were often used inefficiently. In such instances, non-compliance may be attributed to inability (inadequate resources) and inadvertence (poor utilisation of resources) (Houlihan, 2013).

To address the problems caused by insufficient resources, Banati et al (2015) suggested that policy decision-making may be informed by longitudinal data collected by non-governmental organisations. Additionally, the data may be used to ensure that resources are used more efficiently, particularly through interventions that are implemented at the most appropriate time of a child's life. For example, the University of Oxford's research project 'Young Lives' coordinated a longitudinal study in India, Ethiopia, Peru and Vietnam that investigated child recovery from nutritional deprivation during infancy. Despite severe infant growth stunts caused by nutritional deprivation, the research found that post-infancy growth was possible to achieve until the middle years of childhood. The study stated that this finding has significant implications for public policy and highlighted the opportunities for remedial intervention during childhood (Young Lives, 2015).

Second, high quality data is an integral element of the compliance information system (Mitchell and Chayes, 1995). However, Ruggio (2002) argued that the effectiveness of the compliance information system is affected by the system of government in place. Ruggio contended that the collection of quality data is more difficult in countries that operate under a decentralised system of government. In decentralised countries such as Spain, legal and institutional responsibilities are transferred from the central to local governments. Consequently, to compile the UNCRC's mandatory report, the central government collates data from the seventeen autonomous communities. However, Lundy et al's (2013) research concluded that legislative fragmentation and poor consistency in implementation

practice, combined with significant variations between interventions and data collection methods across regions, made it difficult to collect adequate information to evaluate the situation of child rights in Spain as a whole. Likewise, Tang (2003) found that the federal government system within Canada incurred similar national data collection problems. As argued by Howe (2009), implementation problems occur as the provinces are largely dependent upon fiscal transfers from the federal government. A lack of coordination between the federal government and provinces, combined with insufficient resource allocation by the federal governments, means that the policy capacity of the provinces is restricted. Similarly, the Wales Observatory representative stated that devolution within the UK and insufficient resource allocation has caused similar problems:

“The Welsh government relies on a budget from the UK government. The Welsh government could go to the UK government and say look, we need more money for children’s rights, can you give it to us, if the English government says no, which it has done, what can the Welsh government do?” (Wales Observatory Interview, 2017).

5.3.3 Non-compliance Response System: National Level Responses

The non-compliance response system is the final element of Mitchell and Chayes’ (1995) compliance system and refers to the actors, processes and rules that govern the formal and informal responses used to encourage non-compliant actors to comply. As previously mentioned, Houlihan (2013) identified sanctions as the favoured response to non-compliance within many regimes, including the anti-doping regime. Additionally, Guzman (2008) suggested that where compliance is driven by calculated motivations, coercion-based non-compliance models that incorporate sanctions can be used to manipulate a state party’s utility calculations and encourage compliance. Despite the CRC’s role as the UN’s monitoring body for the UNCRC, the CRC lacks the authority to impose sanctions upon state parties that are non-compliant with the Convention (Fortin, 2003). On the one hand, Stein (2016)

stated that the absence of a formal enforcement mechanism is a common problem within human rights agreements that often results in weak levels of compliance. On the other hand, Hathaway (2002) suggested that the absence of formal enforcement mechanisms is arguably a prerequisite for ratification. This view was shared by the UN Child Rights Consultant who stated, “It’s soft law, and you know if there were any real sanctions, states would not ratify the CRC” (UN Child Rights Consultant Interview, 2016). Additionally, Dai (2013) argued that state parties express little interest in using inducements to encourage human rights compliance within other states. As a result, although the UNCRC refers to a global moral concern, the consequences of non-compliance are substantially confined within national boundaries. In contrast, within anti-doping, international bodies such as the IOC and IFs are able to enforce sanctions (Houlihan, 2013).

At the national level, numerous approaches have been taken to address non-compliance. First, as outlined within Article 19 of the UNCRC (1989), state parties are required to develop systems that protect children from neglect and abuse. As discussed by Cukovic-Bagic et al (2013), to fulfill this obligation, a selection of governments have introduced laws which make reporting of suspected or confirmed child neglect and abuse cases compulsory. To address non-compliance with the national reporting laws, countries such as Croatia and Italy and the Canadian Province of Ontario have used the approach of sanctions. Within Croatia, under the Domestic Violence Act (2003), any working professional that fails to report domestic violence cases to the police or Attorney’s office will be fined a minimum of €400. This reflects a top-down approach to implementation, in which the policy is formulated by the central governments and is implemented in a linear fashion (Pressman and Wildavsky, 1973). However, Schofield (2001) argued that such an approach is ineffective at addressing the fundamental nature of the problem, in this case the underlying causes of child abuse and neglect. Within the anti-doping regime, although WADA does not impose fines, the 2015 Code states that anti-doping organisations may enforce financial sanctions in instances where the maximum period of ineligibility for a doping violation has been imposed (WADA Code, 2015).

Second, in monist states the UNCRC is automatically incorporated into national law, whereas in dualist states a selection of provisions are commonly transposed into the national legal system (Lundy et al, 2013). As argued by Campbell (2003), in such situations, child rights are withdrawn from the political sphere where contestation may occur and moved into the legal sphere where domestic judiciaries play an important role in enforcement. Norway, a country which Lundy et al (2013) identified as a leader in the field of child rights, has recognised the significance of domestic judiciaries. To improve understanding of the UNCRC, Norway has made substantial investments in training and workshops for judicial systems actors. As a result of this training, the UNCRC has been cited in an increased number of cases within Norway. Additionally, judges have been able to give practical effectiveness to the UNCRC by making decisions informed by, and in line with, the Convention (Freeman, 2014). Having identified Norway as an example of good practice, UNICEF (2010) suggested that a non-compliance response system that incorporates training programmes could be used to improve the judicial system's compliance with the UNCRC.

5.3.4 Non-compliance Response System: Informal Responses

5.3.4.1 Lobbying

The absence of a formal enforcement mechanism within the child rights regime has resulted in the development of informal responses to address non-compliance. As a result, the improvement of compliance with the UNCRC is largely dependent upon public pressure and advocacy at the national and international level (Howe, 2009). As argued by Grugel and Peruzzotti (2010), advocacy coalitions have the potential to transform into a compliance constituency, thereby providing an informal mechanism of accountability. Grugel and Peruzzotti stated that compliance constituencies play an important role in improving compliance with the UNCRC by monitoring the progress of child rights and lobbying for legislative and institutional reforms. As stated by Simmons (2009), this response to non-compliance is founded upon liberal theories of international relations, which argue that international institutions have

the power to change state behaviour. In addition to generating pressure at the domestic level, child rights advocates can place external pressure upon their governments by seeking international support and linking with transnational networks (Keck and Sicking, 1999). Grasmick and Bursik (1990) suggested that political pressure is particularly appropriate when governments are socially motivated to comply. Although compliance with international agreements rarely features centrally in electoral debates, Stein (2016) argued that within democratic societies, leaders are often motivated to respond to public demands in order to minimise political retribution and any negative impact upon electoral success.

The power of lobbying activities within the child rights regime was emphasised by the UN Child Rights Consultant:

“The fact that there are fifty states that have ended all forms of corporal punishment in all settings is a consequence of incredibly effective, persistent, skilled lobbying” (UN Child Rights Consultant Interview, 2016).

Argentina’s policy reform also illustrates the potential impact of lobbying activities upon child rights policy. During 2003 and 2004 the ‘Committee for the Follow-up and Application of the CRC’ (CSACIDN) and the ‘Collective for the Rights of Children and Adolescents in Argentina’ campaigned for legislative reform and the introduction of a Children’s Code that was centred around child rights. With two previous attempts at policy reform having been rejected by Congress, the campaign argued that legislative reform was required to modernise Argentina’s old-fashioned care system and bring the country up to date with the international community. This approach sought to counter the cultural norm of the *Ley del Patronato* (Law of Trusteeship), which had embedded a culture of guardianship within Argentina that was in violation of the UNCRC’s conceptualisation of children as individuals with rights (Grugel and Peruzzotti, 2010). The *Ley del Patronato* provides an example of what Benson (1982) referred to as society’s deep structure of power relationships; in this case, the deeply embedded cultural values held by families and communities regarding the relationship between generations. As discussed by Grugel and

Peruzzotti (2010), to generate support and build momentum for the campaign, the CASCIDN engaged in intensive lobbying activities including press advertisements and demonstrations outside of Congress, and used contacts with the media, journalists and high profile activists. As a result of the intense pressure that the campaign placed upon the Argentinian government, Law 26061 'The Law of Integral Protection of the Rights of the Child' was passed in 2005. Whereas lobbying efforts have played an important role in monitoring and strengthening compliance with the UNCRC, domestic lobbying is an area within the anti-doping regime that requires greater support within major sporting countries and Ifs (Houlihan, 2003).

Of the lobbying activities used by CASCIDN, Grugel and Peruzzotti (2010) identified the involvement of high profile activists as a critical element that maintained high levels of publicity for the campaign. Although this strategy has the potential to yield positive results, Lundy (2013) contended that the reliance upon prestigious figures can negatively impact upon lobbying efforts and cause support for child rights campaigns to rise and fall. Additionally, Howe (2009) identified resource constraints as a common problem that impedes the ability of child rights advocates and NGOs to sustain lobbying efforts and achieve policy reform. Similarly, within the anti-doping regime, Houlihan (2013) identified inadequate resources as one factor that hinders the development of independent watchdogs that could be responsible for domestic lobbying and monitoring of NADO activities.

5.3.4.2 Education

Arts (2014) identified legal frameworks and legislative changes as an important element of UNCRC implementation. However, as argued by the UN Child Rights Consultant, you can have a “legal framework that does all the right things and then traditional practice that completely disregards this” (UN Child Rights Consultant Interview, 2016). Additionally, the effectiveness of the non-compliance response system varies according to the cause of non-compliance (Mitchell and Chayes, 1995). Similarly, Houlihan (2013) suggested that where non-compliance is caused by inability to comply, for example due to a lack of knowledge or resources, education and capacity building has the potential to be more effective than sanctions. With reference to the causes of non-compliance within the child rights regime, the UN Child Rights Consultant identified inability to comply, rather than a lack of motivation, as a key problem:

“Very often people are very hungry for that, very often people want to be able to implement but don’t feel they have the knowledge or understanding as to how to do it, so there’s been a huge amount of training and capacity building that’s gone on” (UN Child Rights Consultant Interview, 2016).

Non-compliance response systems that incorporate educational measures can also be used to address non-compliance caused by deeply embedded cultural norms and traditional practices. Lee-Rife et al (2012) identified educational programmes as a popular response to non-compliance with child marriage laws in under-developed countries. Although the UNCRC does not explicitly refer to child marriage, child marriage violates numerous articles contained within the UNCRC (1989), including Article 34 (the right to protection from sexual exploitation and abuse), Article 24 (the right to health and protection from harmful traditional practices), and, in many cases, Article 28 (1) (the right to education). As discussed by Lee-Rife et al (2012), educational programmes reflect a bottom-up attempt to change cultural norms, specifically through educating communities and parents on the negative

consequences of child marriage and the benefits of alternative options such as schooling. Likewise, within the anti-doping regime, WADA has recognised the value of education as part of a comprehensive anti-doping programme (McDermott, 2015).

Although the UNICEF UK representative recognised that educational strategies can bring about cultural change, the bottom-up approach was criticised for being a “very slow, slow process”. Instead, the UNICEF UK representative advocated use of a top-down approach to address non-compliance, specifically legislative frameworks, and argued that “legislation can be used to, galvanise cultural change” (UNICEF UK Interview, 2016). Additionally, Gaffney-Rhys (2011) contended that alone, the effectiveness of educational programmes are limited as they fail to address non-compliance caused by the realities of poverty. For example, the 2010 Multiple Indicator Cluster Survey found that 50% of girls in Sierra Leone were married before the age of 18, despite this being a violation of the country’s 2007 Child Rights Act (UNICEF, 2011). To explain this result, Gaffney-Rhys (2011) discussed how impoverished families often perceive young girls as an economic burden and view child marriage as a necessary strategy of economic survival. As a result, Gaffney-Rhys argued that a combination of responses is required to effectively address the social factors (such as cultural norms) and economic factors (such as poverty) that underpin non-compliance with child marriage laws.

5.3.4.3 Capacity Building

As argued by Zhao (2002), where the compliance information system primarily relies upon data collected through self-reporting mechanisms (as is the case within the child rights regime), resource assistance and capacity building is more effective at encouraging the reporting of non-compliance. Within the child rights regime, Stein (2016) identified capacity as an important factor that impacts upon a government’s ability to achieve compliance with Article 32 of the UNCRC, which refers to the responsibility of states to protect children from economic exploitation. However,

governments are seldom directly responsible for the economic exploitation of children and face the challenge of ensuring that relevant actors are compliant with child labour laws. Similar capacity challenges exist within the anti-doping regime; as a result of resource limitations, many Eastern and Central European NADOs do not have the capacity to comply (Houlihan, 2013).

Established in 1992 by the 'International Labor Organisation' (ILO), the 'International Programme on the Elimination of Child Labour' (IPEC) identifies itself as the largest global programme that aims to eliminate child labour through the adoption of capacity building strategies. Currently operating within 88 countries, capacity building activities used by the IPEC include funding, implementation and monitoring workshops and advocacy training for a range of stakeholders including the government, NGOs, employer organisations, trade unions and the local community. Through these activities, the IPEC builds the capacity of various stakeholders to address the issue of child labour. As a result of the IPEC programme, the ILO stated that many governments have been able to sustain and develop initiatives that continue to address the issue of child labour (IPEC, 2015). At the same time, the ILO (2014) admitted that the IPEC and its ability to assist implementation is heavily reliant upon resources. For example, in order to address the issue of child labour, Mongolia and Sri Lanka developed national action plans. However, as a result of resource limitations, the IPEC rejected Mongolia and Sri Lanka's requests for implementation support. In such instances, it may be argued that non-compliance with child labour laws is the consequence of inadvertence, which Houlihan (2013) described as a sincere but inadequate attempt at local implementation and / or incompetence such as poor policy tool application.

5.4 Conclusion

The analysis within this chapter has revealed the existence of a tangible child rights regime that has numerous distinctive features. First, the regime is characterised by a top-down approach to implementation. At the global level, primary child rights actors include the United Nations and its monitoring body, the CRC, whilst additional actors include international child rights organisations such as UNICEF, international NGOs, advocacy groups and coalitions. At the national level, governments are the primary compliance agents who are responsible for implementation of the UNCRC within their respective states, whilst local level actors include governmental and non-governmental organisations. Although a top-down approach to implementation is adopted, the logistical challenge of monitoring compliance with the UNCRC is beyond the capacity of the UN. As a result, the ideal conceptualisation of implementation is weak due to the UN's dependence upon governments and other child rights actors to translate the UNCRC's international standards into practice at national and local levels.

Whilst the range of actors and organisations operating at international, national and local levels creates a tangible child rights policy regime, the relationship between the levels has suffered from numerous weaknesses. For example, the CRC lacks adequate and effective authority over governments. In particular, the absence of a formal enforcement mechanism within the child rights regime has resulted in weak levels of compliance amongst many state parties. Additional breakdowns between the international and national level have occurred as a result of national sovereignty. For example, although the CRC uses its Concluding Observations to make recommendations to improve implementation of and compliance with the UNCRC, governments have failed to comply with the large majority of recommendations due to conflicting interests. Furthermore, the top-down nature of implementation, combined with the range of actors involved, means that the child rights regime is particularly susceptible to policy dilution and erosion. Likewise, within the anti-doping regime, an expansive infrastructure of organisations operating at regional,

national and global levels share responsibility for implementation of the Code. As a result, similar to the child rights regime, WADA faces the challenge of ensuring that a commitment, in this case towards achieving drug free sport, is sustained across all levels of implementation. Similar to the UN, WADA is also dependent upon governments and sporting organisations to implement its recommendations.

Second, the problem of non-compliance within the child rights regime often manifests itself at the family level. Although action often focuses at the familial level, behaviours that manifest themselves at the family level are more difficult to monitor and change than governmental behaviours. To further complicate the issue, power relationships impact upon the ability and willingness of governments to address non-compliance at the family level. The family unit has the primary responsibility for the child, and, as a result, families expect a degree of privacy and freedom from governments. In recognition of this power relationship, many governments express a reluctance to intervene in family life and address non-compliance at the family level. Such reluctance is enhanced when the government shares the same religious and cultural background as the family. For example, within Muslim societies the dominant culture is one of non-intervention in the family life, especially with regards to the raising of children (Calvert, 2008). In contrast, the Chinese government has previously displayed high levels of intervention in family life. Most notably, in an attempt to control population growth, the Chinese government enforced its one child policy between 1979 and 2015 (Fong, 2016). Whilst society's deep structures and power relationships exist, they continue to place constraints upon political action and limit policy effectiveness. Additionally, the unwillingness of many governments to intervene in family life (the level at which non-compliance primarily manifests), has led to fragmented policy initiatives and ideas within the child rights regime. Such fragmentation has served to weaken the policy legitimacy, and the overall strength, of the regime. Similar to the child rights regime, the anti-doping regime is focused upon changing behaviours. However, whereas the unit of change within the child rights regime is the family, the anti-doping regime deals with a less intimate issue; the problem of doping often occurs at club or squad level, and, as a result, action primarily focuses upon changing the behaviour of organisations and

individuals within formal organisations. Nevertheless, some similarities between the two regimes do exist. Similar to the family's expectation of privacy within the child rights regime, within the anti-doping regime, the issue of privacy arises with regard to mental health issues and therapeutic use exemptions. For example, privacy may be expected for athletes who suffer from disorders such as 'attention deficit hyperactivity disorder' (ADHD) and are taking medication approved under WADA's therapeutic use exemptions.

Third, at the national level, capacity constraints were identified as a key factor responsible for variable levels of compliance. At the governmental level, capacity constraints have hindered the ability of many governments to fulfill their role as the primary compliance agent and implement the UNCRC within their jurisdiction. At the local level, inadequate resources were identified as a key factor that hindered the ability of NGOs and child rights officials to meet the standards expressed within the UNCRC. In such instances, despite a commitment to child rights amongst many employees within NGO and local agencies, non-compliance is caused by lack of capacity. Likewise, many countries and NADOs within the anti-doping regime face capacity challenges that limit their ability to effectively deliver national anti-doping policies and comply with the WADA Code.

Finally, the child rights regime uses a range of tools to monitor and address non-compliance. Similar to the anti-doping regime, there is evidence of national level sanctions. However, due to the nature of non-compliance within the child rights regime, good practice was found to include alternative approaches. In particular, educational programmes were identified as an effective mechanism to address non-compliance caused by deeply embedded cultural norms, whilst capacity building initiatives were found to address non-compliance caused by resource limitations. Additionally, in contrast to the anti-doping regime, compliance with child rights is largely dependent upon civil society pressure and advocacy at the national and international level. In particular, compliance constituencies play an important role in improving compliance with the UNCRC by monitoring the progress of child rights and lobbying for legislative and institutional reforms. However, it is important to

recognise that the ability of advocacy groups to sustain pressure is largely dependent upon resource availability. In contrast, lobbying and activism is an area that is currently weak, if not absent from the anti-doping regime and one that could be explored to produce deeper levels of compliance within anti-doping. Finally, although the UNCRC operates within a top-down organisational context, it is clear that bottom-up approaches to implementation are necessary to address the problems caused by power relationships, and change, albeit slowly, the deeply embedded cultural beliefs and to improve child rights compliance at the family level. Likewise, cultural beliefs and capacity constraints are some of the causes behind non-compliance within the anti-doping regime. Similar to the child rights regime, the anti-doping regime faces the challenge of choosing appropriate instruments for implementation and selecting the most suitable tools to respond to the many causes of non-compliance.

Chapter 6: The United Nations Convention on the Rights of Persons with Disabilities

6.1 Introduction to the UNCRPD

The Mexican government was largely responsible for putting the proposal for an international disability convention on the agenda of the United Nations. The United Nation's Millennium Development Goals failed to identify persons with disabilities as a target action group. This omission prompted the Mexican government to generate a campaign to ensure that persons with disabilities were included within global development efforts. Framed around social development, the campaign also aimed to secure a mandate from the United Nation's General Assembly to generate a convention relating to persons with disabilities (Kayess and French, 2008). When the issue was debated at the General Assembly's 56th Session in 2001, a Resolution to create a human rights instrument that was specific to persons with disabilities was adopted by consensus. At the same time, an Ad-Hoc Committee was created to review proposals for a 'Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities' (United Nations, 2001a). Subsequently, in 2003, the Ad-Hoc Committee established a working group, the purpose of which was to draft a convention text relating to persons with disabilities (United Nations, 2004). In addition to the working group, civil society institutions and representatives played a significant role in the drafting process. Compared to other human rights conventions and also the Anti-Doping Code, the UNCRPD negotiation process involved an unprecedented number of civil actors, including disabled people's organisations (DPOs), NGOs and persons with disabilities, who participated under the principle of 'nothing about us without us'

(Lang et al, 2011).

Adopted by the United Nations General Assembly in 2006, the UNCRPD has currently been ratified by 166 state parties (United Nations, 2016). As specified within Article 1, the purpose of the UNCRPD is to “promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities, and to promote respect for their inherent dignity” (UNCRPD, 2006; 8). Lewis (2010) identified the UNCRPD’s explicit inclusion of guiding principles as an innovative feature. Articulated within Article 3, these principles include:

“Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; Non-discrimination; Full and effective participation and inclusion in society; Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; Equality of opportunity; Accessibility; Equality between men and women and Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities” (UNCRPD, 2006; 9 – 10).

According to Lang et al (2011), the UNCRPD is significant as it is the first UN Convention to explicitly protect the rights of persons with disabilities. The European Commission’s Independent Consultant shared this view:

“The UNCRPD is hugely significant. In a number of countries it is the trigger for any significant efforts towards a rights based approach to disability” (European Commission Independent Consultant Interview, 2017).

Additionally, Harpur (2012) argued that the UNCRPD is significant as it reflects a new disability rights paradigm. Historically, the medical model of disability has largely influenced the conceptualisation of disability. This model emphasises the idea that limitations experienced by the individual are caused by impairments, and, as a result,

concentrates upon treatment and care (Kayess and French, 2008). Prior to the UNCRPD, the medical model was emphasised within the UN declarations, including the 1971 'Declaration on the Rights of Mentally Retarded Persons' and the 1975 'Declaration on the Rights of Disabled Persons'. Both declarations concentrated upon care, social protection and rehabilitation rights (Hendricks, 2007). With reference to sport, McNamee (2016) stated that three of the four Paralympic values, namely courage, determination and inspiration implicitly favour the medical model of disability. McNamee argued that these values suggest that Paralympic athletes are in deficit to the able-bodied population, that Paralympic athletes should be admired for their determination and courage to excel in athletics, and that Paralympic athletes act as an inspiration to others. Only the fourth value of equality displays some appreciation of the cultural and social constructions of disability.

With reference to the disability rights regime, the social model of disability influenced the UNCRPD. As explained by Kayess and French (2008), the social model of disability distinguishes between disability and impairment and suggests that disability is caused by the structures of society. However, the social model of disability has been subject to criticism. Shakespeare (1997) argued that cultural issues and questions are neglected, that the social model ignores disability analysis from a feminist perspective and that the individual's experiences, particularly those caused by impairment, are ignored. Whilst the UNCRPD incorporates the social model, Harpur (2012) suggested that a new disability rights paradigm is reflected within the UNCRPD, specifically, a paradigm that aims to help and improve every aspect of a disabled person's life.

The Chairman of the General Assembly's Ad-hoc Committee described the UNCRPD as an 'implementation convention' (United Nations, 2005). The UNCRPD does not contain new human rights. Instead, existing human rights are applied to, and expressed in a way that addresses the circumstances of persons with disabilities. As discussed by Flóvenz (2009), some of the articles included within the UNCRPD can be found within other international conventions. For example, Article 15(1) of the UNCRPD corresponds to Article 7 of the International Covenant on Civil and Political

Rights (ICCPR). In the given example, a government that has already implemented Article 7 of the ICCPR may question the need to implement Article 15(1) of the UNCRPD. However, in such instances, governments must carefully analyse the rights in question to assess whether both Articles can be interpreted in the same manner, or whether the UNCRPD Article requires autonomous status and a new context of implementation.

6.1.1 UNCRPD: Areas of Controversy

Kanter (2006) identified the provision of a definition for ‘disability’ and ‘persons with disabilities’ was one of the most controversial areas during the drafting of the Convention. On the one hand, the majority of NGOs argued for the inclusion of a definition that was applicable to all persons with disabilities. On the other hand, many governments were worried that such a definition would have negative consequences in terms of implementation. Specifically, states expressed concern that their implementation efforts would have to address impairment groups that were not usually recognised as disabled persons, for example persons with HIV / AIDs and persons with psycho-social disabilities. Additionally, the International Disability Caucus argued that due to the evolving nature of the concept of disability, the omission of a definition was necessary to prevent the UNCRPD being locked in time. In line with the latter argument, the UNCRPD did not include a definition of disability or persons with disabilities, although some guidance was included. For example, the preamble recognises that the concept of disability is evolving and that disability is the consequence of environmental and attitudinal barriers, both of which impede upon the participation of disabled persons in society (Kayess and French, 2008). Additionally, although Article 1 of the UNCRPD identifies persons with disabilities as including those with “long-term physical, mental, intellectual or sensory impairments”, state parties are able to apply the Convention to a range of other persons with disabilities (UNCRPD, 2006; 8).

Brown and Guralnick (2012) argued that the Convention's exclusion of a definition for disability is advantageous as it redirects focus from eligibility criteria, to ensuring that persons with disabilities are afforded the rights included within the UNCRPD. However, Schulze (2010) contended that definitions contained within national legislation may fail to include many persons that should be offered protection under the UNCRPD. Furthermore, a study conducted by the Economic and Social Commission for Asia and the Pacific (ESCAP) found that despite the UNCRPD's emphasis upon environmental and attitudinal barriers, several governments (Bangladesh, Fiji, Cambodia, Japan, Indonesia and Pakistan) defined disability as a limitation caused by an impairment (ESCAP, 2010). With reference to the child rights regime, Goucha (2007) identified the definition of a 'child' as a controversial issue during the drafting process of the UNCRC. Likewise, definitional challenges occurred within the anti-doping regime, particularly with regard to defining 'PEDs' and the 'spirit of sport' (Waddington et al, 2013).

As argued by Ravindram and Myers (2011), cultural conceptualisations of disability influence the quality of a disabled person's life, the resources committed to disability issues and the operationalisation of the UNCRPD. In numerous cultures, disability has a negative connotation. For example, within Puerto Rico, a disabled child is believed to be the consequence of a mother's sin, whilst many Haitian and Latin American cultures perceive disability as the result of a curse. Further challenges are created when society's values and overarching beliefs contrast the social model of disability promoted within the UNCRPD (Roger-Adkinson et al. 2003). Similarly, cultural challenges occur within the child rights regime. For example, Sow et al (2016) highlighted how African cultures struggle to reconcile the UNCRC notion of child participation with traditional values that perceive children as passive listeners who should respect adults.

6.2 UNCRPD Institutional Framework

6.2.1 International Institutional Framework

At the international level, numerous bodies and agencies operate alongside the United Nations to oversee the implementation of the UNCRPD and monitor state compliance with the Convention and its optional protocols. The Committee on the Rights of Persons with Disabilities (CRPD) was established under Article 34 of the UNCRPD. The CRPD has reached its maximum number of 18 experts and is identified as the UN's monitoring body (Soledad and Reyes, 2015). Lewis (2010) identified the establishment of a Committee as the UN's monitoring body is a popular approach taken within many human rights conventions, including the UNCRC. In addition to the CRPD, Article 38 of the UNCRPD describes the role that agencies play in implementing the UNCRPD and makes specific reference to specialised agencies and other competent bodies. Additionally, Article 33 of the Convention outlines the requirement for persons with disabilities and DPOs to be fully involved in the monitoring process (UNCRPD, 2006). To support this Article at the international level, international DPOs such as Disabled Persons International (DPI), Mental Disability Advocacy Centre (MDAC) and the Swedish Organisation of Disabled Persons International Aid Association (SHIA) have been granted the United Nations Economic and Social Council (ECOSOC) consultative status (ECOSOC, 2016). As stated by Breen (2003), ECOSOC consultative status enables an NGO to participate in UN deliberations and become actively involved in the drafting of international instruments. Although states and international organisations are positioned higher than NGOs in the UN hierarchy, Breen argued that ECOSOC consultative status increases the legitimacy of the NGO and provides them with the opportunity to challenge governments in an international forum.

6.2.2 National Institutional Framework

With reference to the national institutional framework, Article 4 of the UNCRPD requires that state parties “adopt all appropriate legislative, administrative and other measures”. Additionally, the UNCRPD outlines specific obligations. Such obligations include the abolition or modification of regulations, laws, practices and customs that discriminate against persons with disabilities, the promotion of UNCRPD related training for staff working with disabled persons and refrainment from acting in any manner that is inconsistent with the UNCRPD (UNCRPD, 2006; 10). According to Lewis (2010), as a result of the specific obligations, state parties are better able to understand their responsibilities. Additionally, Lewis argued that the obligations contained within the UNCRPD provide the CRPD, DPOs, NGOs and domestic bodies with a powerful tool that can be used to hold state parties accountable for non-compliance. However, although specific obligations are contained within the Convention, governments are also able to interpret the UNCRPD provisions. For example, Article 24 outlines the rights of disabled children to a mainstream education. Upon ratification, the UK government registered an interpretative declaration, which stated that the UK’s mainstream education system includes both integrated and special schools (United Nations, 2006). The problem incurred by the lack of specificity within Article 24 was emphasised by the representative of the Academic Network of European Disability Rights Experts:

“Most of the Articles are clear but there are intentions that aren’t explicit. Certainly the intention was that disabled children would not be going to special schools. These children are being educated within the mainstream of publically funded education but they are going to special schools, which negates the intention of the Article 24” (ANED Interview, 2017).

In contrast to the UNCRPD, the UNCRC and the Convention Against Doping in Sport do not include a list of specific obligations. Although the UNCRC includes a

requirement to adopt appropriate legislation, state parties are ultimately responsible for determining the most suitable measures to implement child rights (Lundy et al, 2013). Likewise, whilst the UNESCO Convention Against Doping in Sport invites state parties to commit to the principles outlined within the Code, the Convention presents governments with a large amount of flexibility. For example, governments are able to decide how they will give effect to the Convention Against Doping in Sport, either by way of regulation, legislation or policies (UNESCO, 2015).

According to Stein and Lord (2010), the drafters of the UNCRPD recognised that previous government disability legislation was limited and primarily reflected the medical model of disability, rather than the rights based approach contained within the UNCRPD. As a result, the UNCRPD requires the abolishment or modification of existing legislation and laws that discriminate against persons with disabilities. However, the multi-sectoral nature of disability, combined with the need for a thorough review of existing laws, means that implementing the legislative changes required within the UNCRPD is a long and complex process. Furthermore, once legislative changes have been introduced, it will take time for the relevant organisations to adopt their policies and procedures. (Stein and Lord, 2008). This argument was supported by the Inclusion Scotland representative:

“We get good legal instruments and legislation that are compliant with the Convention, but in practice there is still a long way to go. It takes a long time” (Inclusion Scotland Interview, 2017).

Despite the UNCRPD’s requirement to adopt appropriate legislation, an Asia-Pacific region study conducted by the Economic and Social Commission for Asia and the Pacific (ESCAP) found that countries such as Australia, Fiji, Hong Kong, Indonesia, Singapore and Pakistan did not have comprehensive disability legislation in place (ESCAP, 2010). Additionally, Hathaway’s (2002) research found that many human rights treaties have minimal monitoring and enforcement mechanisms. As a result, Hathaway argued that state parties driven by calculated motivations are rarely

incentivised to make expensive policy amendments in order to comply with the respective treaty.

Whilst the CRPD operates as a monitoring body at the international level, at the domestic level, Article 33 of the UNCRPD obliges state parties to designate or establish independent implementation monitoring mechanisms. Article 33 further requires that the United Nations Paris Principles on National Human Rights Institutions (NHRIs) be taken into account when establishing independent mechanisms (UNCRPD, 2006). Stein and Lord (2008) identified the NHRIs as important domestic level actors that play a crucial role in the implementation of the UNCRPD. Specifically, Stein and Lord argued that NHRIs have the potential for broad mandates, the potential to review legislation and participate in the drafting process of new legislation and the opportunity to implement disability education and awareness initiatives. Cortell and Davies (2000) also stated that monitoring units as important elements that contribute towards increasing the legitimacy of international norms. Lewis (2010) identified numerous countries, some examples of which include Australia, Germany, Mexico, South Korea and the UK, have identified human rights institutions as their independent monitoring mechanism. However, Lewis contended that the effectiveness of independent monitoring mechanisms is dependent upon the availability of resources and the ability of staff members to conduct a critical appraisal of disability rights. Furthermore, as discussed by Reif (2014), in countries such as Canada where a federal government system is in operation, compliance with Article 33 is more challenging; sub-national institutions commonly used within federal government systems cannot be in full compliance with the Paris Principles due to insufficient levels of independence. The CRPD recognised this problem during its Concluding Observations on the initial report of Austria. In order to guarantee full independence, the CRPD recommended that each 'Länder' (federal state) establish their own independent monitoring mechanisms (CRPD, 2013). In contrast to the CPRD's emphasis upon the independence of the monitoring mechanisms, Himes (1995) stated that within the child rights regime, the responsibility of implementing and monitoring the UNCRC is often included within the mandate of one or multiple new or established ministries. Similarly, discussed

how the responsibility of anti-doping functions is sometimes allocated to an existing ministry, particularly in countries that have not created a NADO (Houlihan and Garcia, 2012). However, the issue of independence has recently transpired within the anti-doping regime. For example, within the Declaration of the 5th Olympic Summit, the IOC suggested that anti-doping testing should be made independent from sports organisations (IOC, 2016).

Similar to the child rights regime, Ombudsmen have been established within the disability rights regime (Lewis, 2010). However, as noted by Reif (2014), the structure of Ombudsmen varies amongst countries. Although Sweden provides an example of a country that has established a specific Disability Ombudsman, the Ombudsman is subject to the Swedish government and does not have an independent mandate. As a result, Sweden's Disability Ombudsman has been criticised for failing to comply with the UN's Paris Principles. The Swedish Disability Ombudsman contrasts with Sweden's Child Rights Parliamentary Ombudsman, which operates independently of the Swedish government (Parliamentary Assembly, 1999). Reif (2014) also identified varying powers of Ombudsman institutions. For example, British Columbia and the New South Wales Ombudsmen have additional powers of inspection that enable them to enter facilities where persons with disabilities are involuntarily confined, such as psychiatric health facilities and prisons. However, Lewis (2010) argued that in order to be effective and ensure that the rights of persons with disabilities are being met, all state parties must give the ombudsmen and monitoring mechanisms the power to enter such facilities.

6.3 Mitchell and Chayes' Compliance System

6.3.1 Primary Rule System

The primary rule system refers to the rules, procedures and actors and fulfills the purpose of determining who will be regulated and through what methods (Mitchell, 1988). The UNCRPD is the first binding international treaty that provides a global framework for the implementation of disability rights. The UNCRPD therefore represents the primary global rule system (Kanter, 2006). Article 4 of the UNCRPD (2006) clearly identifies state parties as the primary actors who are responsible for undertaking the necessary measures to implement the rights recognised within the Convention. However, whilst the state is clearly identified as the primary duty bearer, their ability to fulfil this role is sometimes limited. For example, as discussed by Goonatilake (2007), the Sri Lankan state is not a significant service provision actor. Instead, Sri Lanka's social services (which include disability rights within their mandate) are primarily mediated, if not controlled, by foreign, unregulated, non-state actors. Similar problems were identified within the child rights regime, where, despite being the duty bearer, the UK government does not have the power to control the delivery of children's social care in Scotland (UNICEF UK Interview, 2016).

Similar to the UNCRC, the UNCRPD recognises that resource availability impacts upon implementation. For example, Article 4 includes a progressive realisation clause, which states that implementation measures shall be undertaken to the "maximum extent of its [states] available resources" (UNCRPD, 2006; 10). Brown and Guralnick (2012) argued that the progressive realisation clause does not, as many sceptics would suggest, provide an excuse for non-compliance. Instead, the progressive realisation clause reflects a realistic strategy that seeks to enable eventual compliance. As a result, a country is considered compliant if it is moving in the direction of the principles contained within the UNCRPD. In contrast the UNCRC and the UNCRPD, the WADA Code does not take into account the variable capacity and resources of states. Instead compliance is determined by absolute criteria,

rather than relative / progressive criteria (WADA Code, 2015). To ensure that momentum towards eventual compliance is maintained, Kallehaug (2009) recommended that the disability rights regime develop a global index (as used within the child rights regime), to measure and enable a comparison of UNCRPD implementation and compliance amongst state parties. Kallehaug suggested that if a global index were to be introduced, governmental desire to compare favourably against other governments could act as a driver of compliance. The development of a global compliance index is also an area that has yet to be explored within the anti-doping regime.

Although the responsibility for implementing the UNCRPD primarily lies with the state, the UNCRPD recognises that a top-down approach to implementation is often adopted within many countries, with implementation occurring through local or devolved, rather than national governments. Article 4 therefore outlines the responsibility of states to ensure compliance amongst other actors, namely public authorities and institutions. Article 4 continues to specify the responsibility of state parties to take all “appropriate measures to eliminate discrimination on the basis of disability by any person, organisation or private enterprise” (UNCRPD, 2006; 10). However, devolved governments have created challenges in terms of holding governments accountable for non-compliance. The European Commission’s Independent Consultant shared this view:

“The UK has highly decentralised decision-making. The government translates its obligations to those involved at the local and private level, which makes it hard to hold national governments to account. Governments point the finger and say it’s their fault” (European Commission Independent Consultant Interview, 2017).

Additional responsibilities of state parties are outlined within Article 40 of the UNCRPD, which requires states to regularly meet and discuss matters of implementation at a ‘Conference of State Parties’. Article 40 of the UNCRPD is unique amongst human rights conventions and reflects a provision traditionally used

within arms controls or international environmental Conventions. However, although the UNCRPD provision is intended to facilitate a discussion on how best to implement and operationalise the Convention, Stein and Lord (2010) argued that instead, the Conference is often used as an opportunity to adopt or revise protocols to existing agreements. Similar to the UNCRPD, the UNCRC requires state parties to ensure that institutions, facilities and services responsible for child protection and care conform to the standards of competent authorities (UNCRC, 1989). Likewise, the WADA Code outlines the responsibility of signatories to ensure compliance amongst other actors, specifically event organisers and domestic sport organisations (WADA Code, 2015).

As previously discussed, the CRPD is the monitoring body of the UNCRPD (Soledad and Reyes, 2015). The mandate of the CRPD is similar to that of existing human rights treaty monitoring bodies, particularly the UNCRC. Specifically, the CRPD is responsible for evaluating the reports submitted by state parties. The method of assessing compliance is made clear within Article 35, which stipulates that each state must, through the Secretary General of the United Nations, submit a report to the CRPD two years after acceding to the Convention and at least every four years thereafter (UNCRPD, 2006). Article 35 states that the CRPD may request more frequent state party reports. Lord and Stein (2010) identified this distinct element as a notable innovation that differentiates the UNCRPD from other human rights conventions. Article 35 also outlines how the report submitted to the CRPD may include an outline of the measures that have been taken to implement the Convention and an indication of the factors, if any, that have impinged upon compliance. Additionally, the Convention requires that state parties make the report widely available to the general public within their jurisdiction. Similar to the UNCRC, attempts have been made to minimise the burden of reporting responsibilities; basic information included in the initial report does not need to be repeated within subsequent submissions. Following the submission of the report, Article 36 states that the CRPD will make suggestions and general recommendations to improve implementation of and compliance with the UNCRPD through the public document referred to as the 'Concluding Observations' (UNCRPD, 2006).

On the one hand, Sow et al (2016) identified the Concluding Observations as an effective tool that provides state parties with an agenda for action until the next mandatory report is due. On the other hand, the effectiveness of the Concluding Observations depends upon the willingness of governments to take the recommendations on board. Lansdown (2009) identified the Convention and the Concluding Observations as important tools that can be used by NGOs and DPOs during domestic lobbying to hold governments accountable and add legitimacy to demands. The ability of civil society to use the Convention to further the rights of disabled persons was emphasised by the Academic Network of European Disability Experts representative:

“In terms of promoting the issue of the rights of disabled people on the global agenda and national and regional agendas, the Convention has had an incredible impact” (ANED Interview, 2017).

However, although the Concluding Observations have the potential to place disability rights on the agenda of governments, the CRPD’s ability to generate the reports is restricted. Although the CRPD added a third week to its sessions in 2012, Soledad and Reyes (2015) contended that the CRPD has insufficient allocated time to review the increasing number of state party reports. For example, the Secretary of the CRPD announced that since the Committee’s establishment, 84 state reports had been received, 58 of which were still pending review as of April 2015 (CRPD, 2015). The problems caused by the inability of the CRPD to provide timely responses was emphasised by the Academic Network of European Disability Experts representative:

“There is a lack of accountability because of the time lags. The government that submitted the report is often not the same government in power. Even a delay of 2 or 3 years in monitoring compliance is problematic in holding states to account” (ANED Interview, 2017).

Additional actors are identified within Article 33 of the Convention. Specifically, state parties are required to fully involve persons with disabilities and DPOs in the monitoring process (UNCRPD, 2006). Through this Article, Lewis (2010) suggested that a culture of continuous communication is encouraged. Lewis further stated that the participation of persons with disabilities contributes towards a monitoring process that is more accurate, relevant and sensitive to the needs of persons with disabilities. According to Harpur (2012), this inclusion reflects a bottom-up approach in which DPOs are given the opportunity to ensure that governments and stakeholders hear the voices of persons with disabilities. However, although DPOs are provided with the opportunity to share their views, the extent to which their opinions are valued is variable. For example, as stated by the Inclusion Scotland representative:

“In Scotland we feel that the government is more open and willing to listen, whereas at the UK level the ideology is so far from where it needs to be. There is a feeling that what we contribute won’t be taken on board at all in consultations with the UK government” (Inclusion Scotland Interview, 2017).

Within the field of anti-doping, a similar bottom-up approach has been adopted by NADOs within countries such as The Netherlands. For example, as discussed by Hons et al (2011), the ‘Anti-Doping Authority Netherlands’ (ADAN) periodically assesses the opinions of elite Dutch athletes towards current anti-doping policy and requests that the report include actionable policy recommendations. However, similar to the disability rights regime, for the process to be effective, it is important that ADAN take on board the comments of the athletes.

As stated within Article 38, the CRPD may also invite specialised agencies to provide advice and submit reports on the implementation of the UNCRPD in the areas that fall within their mandate. In attempt to improve the flow and quality of information submitted by NGOs and DPOs, numerous organisations including Disabled People’s

International, International Disability Alliance and Disability Council International, have produced documents that provide guidelines for the content and submission of compliance shadow reports to the CRPD (Global Disability, 2016). Where appropriate, the CRPD may also provide relevant organisations with a copy of the state party's report, particularly when the report requests or indicates the need for assistance (UNCRPD, 2006).

6.3.2 Compliance Information System

6.3.2.1 State Party Reports: Data Collection

The compliance information system aims to ensure that high quality, relevant data is collected and that all data is rigorously analysed and widely circulated (Mitchell and Chayes', 1995). With reference to the implementation of disability rights, Bickenbach (2011) argued that the collection of reliable and valid data is critical in order to effectively operationalise the UNCRPD and formulate policies that are consistent with the Convention. Lang et al (2011) also stated that disability data and statistical indicators of progress are essential to convince bilateral and multilateral donor agencies to include disability within their activities. Similar to the UNCRC, the method of assessing compliance is made clear within the UNCRPD. Specifically, Article 35 stipulates that each state party must, through the Secretary General of the United Nations, submit a report to the CRPD two years after acceding to the Convention and every four years thereafter. In contrast to the UNCRC, the UNCRPD grants the CRPD with the power to request reports more frequently (UNCRPD, 2006). The effectiveness of the UNCRPD's self-reporting system is dependent upon numerous factors including the timeliness and quality of state reports, state party cooperation and the CRPD member's ability to conduct a critical appraisal of the report and its information (McGoldrick, 1991). With regard to the timeliness of reports, as of April 2015, the initial reports of 34 state parties were overdue (Disability Council International, 2015). Furthermore, Soledad and Reyes (2015) argued that the CRPD's ability to conduct critical appraisals is currently limited as the CRPD has insufficient allocated time to review the increasing number of state party

reports. Similar to the child rights and disability rights regimes, WADA uses information provided by the signatory's mandatory, biennial self-reports to assess the levels of compliance (Houlihan, 2013).

Additional state party requirements are outlined within Article 31 of the UNCRPD. In order to assist the formulation and implementation of policies, state parties are required to collect appropriate statistical and disaggregated data (UNCRPD, 2006). However, Lewis (2010) identified the absence of meaningful statistics and data relating to disability rights as a significant area of weakness in many countries. This view was shared by the Inclusion Scotland representative:

“We [Inclusion Scotland] have been critical in our reports in terms of government data collection on disability, particularly in relation to disaggregated data. We don't know much about disabled women's experiences, disabled children in schools, there's a lot more that official data collectors could do” (Inclusion Scotland Interview, 2017).

Likewise, Arts (2014) identified poor levels of disaggregated data as a major issue within the child rights regime. Similarly, Mottram (2014) found that within the anti-doping regime, there is an absence of meaningful data regarding the prevalence of PEDs. Specifically, Mottram argued that the range of data collection methods used (laboratory statistics, athlete surveys and anecdotal reports) provide inconsistent sources of evidence. Engelberg and Skinner (2016) agreed that the formulation and implementation of anti-doping policy is hindered by a lack of empirical data and reliable information.

As stated by Madans et al (2011), disability is a complex, dynamic concept that represents a measure of the negative effects that environmental factors have upon a person's potential to participate. Madans et al argued that such complexity has led to the proliferation of incomparable national and international disability statistics that are difficult to interpret. Similarly, in 2001, the United Nations highlighted the fragmented nature of international disability statistics and emphasised the need for

high quality, internationally comparable, population-based measures of disability. To address the disability data collection issue, the UN Statistical Commission founded the 'Washington Group on Disability Statistics', the purpose of which is to promote and coordinate "international cooperation in the area of health statistics by focusing on disability measures suitable for censuses and national surveys" (United Nations, 2001b). The Washington Group uses the International Classification of Functioning (ICF) Framework to develop its question sets. The ICF represents a bio-psycho-social model of disability, which, like the UNCRPD, recognises that disability is the consequence of environmental factors (International Classification of Functioning, 2016).

Since its establishment, the Washington Group's 'Short Set of Questions on Disability' has been implemented as a method of national data collection within sixty-nine countries (Washington Group, 2016). Governments are able to collect data through the inclusion of the Washington Group's short set of six standardised questions into the national census and / or surveys. Specifically, the short set is able to produce data that can be compared between national populations of varying economic resources and cultures. Additionally, through the collection of baseline data, it is possible to monitor improvements over time and assess a country's compliance with the UNCRPD (Altman, 2015). As argued by Lewis (2010), assessing compliance at numerous points in time is essential to evaluate whether a state party is progressively realising the rights contained within the UNCRPD. However, as emphasised by the Washington Group (2016), it is important for governments to recognise that the short set is intended for use alongside other measurement tools. To comply with Article 31 and meet the requirement of disaggregated data, Madans et al (2011) recommended that governments include the Washington Group's short set within a larger survey. By including disability as a demographic variable, data may be analysed to enable the disaggregation of additional measures such as educational achievement and employment level by disability status.

Altman (2015) recommended that the Washington Group's short set be included in surveys and / or the national census. With reference to survey-based estimates,

Saikia et al (2016) contended that this method of disability data collection has numerous limitations that hinder the international comparability of data. Specific weaknesses identified included coverage and sample size deficiencies, reporting biases, the omission of vulnerable groups and poor levels of representativeness. Additionally, Me and Mbogoni (2006) identified cultural stigmas and negative perceptions of disability as large problems that hinder the accuracy of household surveys. In particular, Me and Mbogoni argued that societal attitudes often generate a reluctance to disclose information regarding a disabled person in the household. Likewise, surveys used within the anti-doping regime to assess the prevalence of doping have faced numerous problems. As discussed by Petróczi and Naughton (2014), countries and sports often use different definitions to define doping and choose samples for control purposes rather than representativeness. Similar to disability surveys, the accuracy of the doping survey data is also dependent upon the honesty of participants; in this case their willingness to disclose information regarding PED use.

With reference to national censuses, Saikia et al (2016) identified this data collection method as the primary source of reliable disability prevalence data within developing countries. To use India as an example, the government made large data collection investments to improve the 2011 census data and provide a resource for the study of disability patterns within Indian regions and sub-populations. Specifically, the 'Registrar General of India' improved the census guidelines, provided training for census enumerators and generated a media campaign that targeted the general public (Indian Government, 2011). However, despite significant investments, the data was not sufficiently disaggregated to consider socioeconomic and regional differences in disability prevalence. As explained by Saikia et al (2016), although the 'Registrar General of India' published aggregated census data that estimated disability prevalence at state and district level, substantial demographic variations in states and districts meant that the data was largely incomparable. Furthermore, at the international level, the data was incomparable as the medical, rather than the social model of disability, informed the disability definition used within the census. As argued by Sabariego et al (2015), data collection methods that are conceptualised

using the medical model of disability can lead to the development of inadequate policies. Such policies may fail to address key disability issues, may negatively impact upon the lives of persons with disabilities and may be inconsistent with the UNCRPD. As a result, the data collected through India's 2011 survey failed to comply with Article 31 of the UNCRPD, which requires state parties to collect appropriate data that will enable the implementation and formulation of policies that will give effect to the Convention (UNCRPD, 2006).

In addition to surveys and national censuses, Lin et al (2012) identified administrative registries (databases that include details of people who are in receipt of a specific benefit from a government department, in this case disability benefits), as an additional method of national disability data collection used by governments. Lin et al stated that administrative registries are a useful source of disability data, particularly demographic and social benefit data. Significant investments in administrative registries have been made by Norway, a country that, according to Heyer (2002), is reputed for its progressive disability rights politics. Similarly, Lundy et al (2013) identified Norway as a leader in the field of child rights, whilst Hanstad and Houlihan (2015) described Norway as a pioneer in the fight against doping. Norway's national database 'Forløpsdatabasen Trygd' contains information regarding the Norwegian Social Insurance Scheme. Established in 2000, the registry holds records of all persons who are in receipt of disability pension awards from 1992 onwards. Continuous updates of the database also contribute towards the production of reliable and accurate data (Knudsen et al, 2012). However, as outlined by the United Nations (2008), there are limitations associated with administrative registries. In particular, the ability of administrative registries to determine overall disability prevalence is limited given that the information is restricted to disabled persons that are in receipt of a specific service. Saikia et al (2016) argued that this problem is intensified within developing countries. For example, within India, only a small proportion of disabled persons are in receipt of government assistance.

In contrast to the disability rights regime, Lundy et al (2013) identified longitudinal studies as a popular method of data collection used by governments within the child

rights regime. Similarly, longitudinal data is used within anti-doping and WADA is currently funding projects such as the 'Certified Internal Standard for Accuracy in Longitudinal Monitoring for Testosterone Abuse', the aim of which is to increase the accuracy of longitudinal testosterone monitoring through providing an internal standard of a key testosterone metabolite (WADA, 2016c). Within the disability rights regime, the importance of longitudinal studies has recently been recognised by countries such as Australia. For example, in 2012, Australia's Disability Policy and Research Working Group (DPRWG) provided the University of Melbourne with funding to develop longitudinal study orientated around the social model of disability. The purpose of the study was to explore the economic and social participation of disabled and non-disabled persons. Currently in its draft stage, further questionnaire development and piloting is required before funding for the longitudinal study can be sought (Department of Social Services, 2016). As argued by Kavanagh et al (2014), the longitudinal study would address a key disability data gap. Specifically, Kavanagh et al stated that the study would provide a deeper understanding about the lives of disabled persons over time, and, through its comparative nature, identify the areas in which disabled persons are disadvantaged relative to non-disabled persons. Furthermore, given that the UNCRPD emphasises the rights of persons with disabilities to participate within society on an equal basis with others, studies that provide direct comparison between disabled and non-disabled persons are essential to ensure compliance with the UNCRPD (UNCRPD, 2006).

6.3.2.2 DPO / NGO Reports

As previously discussed, the UNCRPD requires state parties to fully involve persons with disabilities and DPOs in the monitoring, but not the reporting process. Nevertheless, disabled persons and DPOs are able to contribute towards the reporting process under Article 38 of the Convention, which states that the CRPD may invite specialised agencies and other UN bodies to submit reports on the implementation of the UNCRPD in the areas that fall within their mandate (UNCRPD, 2006). As argued by Kallehaug (2009), the submission of high quality information by a range of external actors is important to provide a comprehensive picture and verify the content of state party reports. The importance of the shadow reports was emphasised by the European Commission's Independent Consultant:

“The reports are really important. It is a process of reflection where people really think precisely about where we are at, what the big issues are, what the evidence is saying and what the direction of travel is” (European Commission Independent Consultant Interview, 2017).

Similar to the UNCRPD, the UNCRC invites competent bodies to submit complementary compliance reports (UNCRC, 1989). Likewise, WADA recognises the importance of alternative, unbiased perspectives on anti-doping efforts within the anti-doping regime. For example, at the 2000 Sydney Olympics WADA launched the Independent Observer (IO) programme, which monitors and reports on doping control processes at major sport events (WADA Independent Observer, 2016).

As emphasised by Lang et al (2011), DPOs within the disability rights regime often have limited financial resources and insufficient staffing levels to meet their workload. As a result, many DPOs are unable to meet the costs associated with conducting primary research and struggle to commit the time and staff to complete a complementary compliance report. Furthermore, unlike the child rights regime, there is an absence of statistical data regarding disabled persons (Phillips, 2009). Similarly, Mwendwa et al (2009) stated that throughout much of the African continent, there is an absence of disability statistics. Therefore, in contrast to child

rights NGOs, DPOs are often unable to utilise secondary data in order to compile a complementary compliance report. As a result, Mwendwa et al stated that the ability of DPOs to use complementary reports as a method of holding governments accountable for non-compliance with the UNCRPD is currently limited. Furthermore, the national report 'Disability and Poverty in Uganda: Progress and Challenges in Poverty Eradication Action Plan Implementation 1997 – 2007' conducted by the 'Ministry of Finance, Planning and Economic Development' found that DPOs in Uganda have little interest in the complementary reporting process. Specifically, the report found that DPOs prioritise short-term, income generating projects with outputs that are easily measurable (examples of which include wheelchair making and poultry rearing) over long-term projects that do not yield immediate results (MFPED, 2008). Mwendwa et al (2009) stated that the decision of DPOs to focus upon income generating activities is a rational response to the reality that many disabled persons in developing countries live in extreme poverty that threatens their survival. Similar problems exist within the anti-doping regime. For example, as discussed by Houlihan (2002), performance indicators such as the number of tests conducted are often used to evaluate effectiveness. However, as argued by Houlihan, performance indicators are designed to measure outputs, rather than outcomes.

6.3.2.3 The Effectiveness of the Compliance Information System

Sow et al (2016) stated that numerous factors impact upon the effectiveness of the compliance information system. First, the compliance information system is impacted by the extent to which adequate resources are allocated by the government. The governments of many Eastern African countries distribute inadequate levels of funding for disability rights. Consequently, the governmental departments tasked with implementing the UNCRPD are faced with significant resource challenges, and, as a result, are often unable to conduct sufficient levels of data collection (Yokoyama. 2012). The ability of many EU states to further disability rights is also hindered by resource availability. This problem was emphasised by the

Academic Network of European Disability Experts representative:

“There are lots of practical reasons why good intentions don’t come about, austerity is one of them, it’s very difficult to enhance disabled people’s rights when there are social service cuts” (ANED Interview, 2017).

In addition to financial challenges, the United Nations (2008) stated that many government staff responsible for collecting disability data often lack statistical expertise and knowledge of disability issues. As a result, the accuracy and reliability of the data collected is affected. Similarly, limited resources and capacity problems were identified as key factors that hinder the effectiveness of the compliance information system within the child rights and anti-doping regimes (Sow et al, 2016; Houlihan, 2015).

Second, Mitchell and Chayes (1995) identified high quality data as an integral element of the compliance information system. However, the effectiveness of the compliance information system is affected by the system of government in place (Lang et al, 2011). In particular, Reif (2014), argued that the collection of quality data is more difficult in countries that operate under a decentralised system of government. In decentralised systems, legal and institutional responsibilities are transferred from the central to local governments. Therefore, in order to compile the UNCRPD’s mandatory report, the central government must collate data from the autonomous communities. With reference to Uganda, Yokoyama (2012) discussed how local disability units are required by law to send the national disability council biannual reports that outline the situation of disability. However, the failure of many local disability units to fulfill their reporting requirements makes it difficult for the national government to collate information and evaluate the situation of disability rights in Uganda as a whole. Further challenges are created by the local disability unit’s lack of institutional capacity for implementation. Likewise, decentralised systems of government incurred national data collection problems within the child rights regime. As argued by Lundy et al (2013), numerous problems including legislative fragmentation, lack of consistency in implementation practice, variations

in data collection methods and poor communication between national and local levels of government must be addressed to improve the effectiveness of the compliance information system within countries that operate under a decentralised system of government.

6.3.3 Non-compliance Response System: National Level Responses

The non-compliance response system is the final element of Mitchell and Chayes' (1995) compliance system and refers to the actors, processes and rules that govern the formal and informal responses used to encourage non-compliant actors to comply. Houlihan (2013) identified sanctions as the favoured response to non-compliance within many regimes, including the anti-doping regime. However, similar to the CRC, the CRPD lacks the authority to impose sanctions upon state parties that are non-compliant with the Convention. This problem was emphasised by the representative from the Academic Network of European Disability Experts, who stated "there are no sanctions, there is no hard power in the Convention other than the embarrassment of the state" (ANED Interview, 2017).

The absence of formal enforcement mechanisms is a common problem within human rights agreements that often leads to weak levels of compliance. As a result, although the UNCRPD and UNCRC refer to global moral concerns, the consequences of non-compliance are substantially confined within national boundaries (Stein, 2016). In contrast, within anti-doping, international bodies such as the IOC and IFs are able to enforce sanctions (Houlihan, 2013). At the national level, sanctions have been identified as a popular approach to address non-compliance. As outlined within Article 4 of the UNCRPD, state parties are required to ensure compliance amongst other actors, namely public authorities and institutions. To address non-compliance amongst authorities and institutions, the Australian Province of Victoria, Canadian Province of Ontario and countries such as Ukraine, have used financial penalties. For example, the Victorian Government's Disability Act (2006) states that if disability service providers fail to comply with the Disability Act, funding may be terminated

until the specified conditions are met (Victoria Disability Act, 2006). In Ukraine, Article 20 of the 'Law on the Basis of Social Protection of Invalids' states that companies will be fined if 'invalids' do not make up 5% of the total workforce. The fine is equivalent to the estimated average annual salary of employees and is paid to the 'All-Ukrainian Fund of Social Protection of the Disabled' (Law on the Basis of Social Protection of Invalids, 2001). However, as argued by Winter and May (2001), sanctions are most effective when compliance is driven by calculated motivations and the desire to maximise utility. Furthermore, the effectiveness of sanctions is dependent upon their potency and credibility. Phillips' (2009) research revealed that the Ukrainian government's non-compliance response of sanctions has been largely ineffective; the majority of companies are willing to pay the relatively small fine or avoid the sanction by pretending to employ disabled persons. Phillips identified negative attitudes towards disabled persons and low public interest in disability rights as the primary reasons behind the unwillingness of companies to comply with the Ukrainian government's disability legislation. Furthermore, Phillips stated that whilst legislative changes have been implemented, there is an absence of political desire to ensure compliance at varying levels of implementation. A similar observation was made within the CRPD's Concluding Observations, which argued that the Ukrainian government's legislative and policy references to 'invalids', undermines the social model of disability enshrined within the UNCRPD and instead reinforces the medical model of disability (CRPD Concluding Observations, 2015).

Similar to the disability rights regime, Houlihan (2013) identified sanctions as the favoured response to non-compliance within the anti-doping regime. Although WADA itself does not impose fines, the 2015 Code states that anti-doping organisations may enforce financial sanctions in instances where the maximum period of ineligibility for a doping violation has been imposed (WADA Code, 2015). Similarly, Schofield (2001) identified sanctions as a popular approach used within the child rights regime. However, Schofield argued that the effectiveness of sanctions is limited due to their reactive nature and their inability to address the underlying reasons behind non-compliance. For example, with reference to the sanctions

imposed by the Ukrainian government, they fail to address the negative attitudes towards disability that exist amongst society and the government (Phillips, 2009). In recognition of the limitations associated with sanctions, informal responses to non-compliance have developed within the disability rights regime.

6.3.4 Non-compliance Response System: Informal Responses

6.3.4.1 Lobbying

Similar to the child rights regime, the absence of a formal enforcement mechanism within the disability rights regime has resulted in the development of informal responses to address non-compliance. As previously mentioned, Article 33 of the Convention requires state parties to fully involve persons with disabilities and DPOs in the monitoring process (UNCRPD, 2006). Harpur (2012) argued that this official role enhances the credibility of disability rights organisations and provides them with the opportunity to engage in lobbying and advocacy activities. As discussed by Simmons (2009), the non-compliance response of lobbying is founded upon liberal theories, which argue that international institutions have the power to change state behaviour. However, as highlighted by Mwendwa et al (2009), within numerous countries, the ability of DPOs to engage in successful lobbying activities is hindered by capacity constraints, insufficient resources and poor knowledge of government structures. These problems were identified within the national report 'Disability and Poverty in Uganda: Progress and Challenges in Poverty Eradication Action Plan Implementation 1997 –2007'. Referring to the previous ten years of implementation, the 'Ministry of Finance, Planning and Economic Development' attributed the insignificant improvement in the wellbeing of disabled persons to the failure of DPOs. Specifically, the report concluded that DPOs had insufficient understanding of the policy decision-making process and had failed to make service providers aware of the needs of disabled persons and the benefits of investing in disabled persons (MFPED, 2008). Likewise, Lang (2008) stated that within Nigeria, many DPOs have a poor understanding of the social model of disability and, as a result, have engaged in inappropriate lobbying strategies that fail to promote the rights contained within the

UNCRPD. Similar to the disability rights regime, Houlihan (2003) identified domestic lobbying as an area within the anti-doping regime that requires greater support within major sports countries and IFs.

In contrast to both the disability rights and anti-doping regimes, Howe (2009) argued that within the child rights regime, the improvement of compliance with the UNCRC has largely depended upon public pressure and lobbying at the national and international level. In particular, Grugel and Peruzzotti (2010) identified high profile activists as an element that has been critical to maintaining high levels of publicity for child rights campaigns. The failure of the disability rights regime to involve high profile people in lobbying activities was highlighted by Phillips (2009). Referring to the Ukraine, Phillips stated that the positive public image associated with Ukrainian Paralympic athletes should be used within advocacy campaigns to advance disability rights. One similarity that does exist between the disability rights, child rights and anti-doping regimes, is the impact of resource constraints upon the effectiveness of lobbying activities. For example, within the anti-doping regime, Houlihan (2013) identified inadequate resources as one factor that hinders the development of independent watchdogs that could be responsible for domestic lobbying and monitoring of NADO activities. Similarly, Howe (2009) identified resource constraints as a common problem that impedes the ability of child rights advocates and NGOs to sustain lobbying efforts and achieve policy reform.

6.3.4.2 Education Responses to Non-compliance

Lewis (2010) argued that a stark gap exists between the rights and vision contained within the UNCRPD and reality. For example, research has identified large disparities between the Ukrainian and South African government's disability legislation and the everyday reality experienced by disabled persons (Phillips, 2009; Black and Matos-Ala, 2016). Lewis (2010) argued that this gap has been increased by the existence of discriminatory attitudes / stigmas towards disabled persons which are inconsistent with the UNCRPD's conceptualisation of disability. Similar problems exist within the

child rights regime. For example, Rasmusson (2016) discussed how, in contrast to the UNCRC's emphasis upon the individual rights of the child, African and Asian cultures perceive individual rights as subordinate to the collective family unit. Both the UNCRPD and UNCRC are therefore faced with the challenge of changing attitudes and addressing non-compliance at the societal level. In contrast, within the anti-doping regime, the problem of doping often occurs at club or squad level. As a result, action primarily focuses upon changing the behaviour of organisations and individuals within formal organisations.

With reference to the disability rights regime, Lewis (2010) argued that education initiatives at varying levels are essential to address discriminatory attitudes within society. Similarly, within the anti-doping regime, WADA has recognised the value of education as part of a comprehensive anti-doping programme (McDermott, 2015). Simultaneously, education campaigns used within the disability rights regime can contribute towards ensuring that state parties are compliant with Article 8 of the UNCRPD, which obliges states to combat disability prejudices by raising awareness throughout society (UNCRPD, 2006). However, recent evidence has revealed that challenges still exist in terms of eliminating prejudice towards disabled persons and that governments are failing to capitalise on educational initiatives. For example, a global study conducted by Scior et al (2016) evaluated the existence of stigmas towards intellectual disability and identified governmental responses to address the issue. Data was collected from government reports submitted to the CRPD and 667 disability organisations and experts from 88 countries. With reference to the existence of stigmas, Scior et al found that within Asia and Africa, deeply rooted prejudice and cultural beliefs about the causes of intellectual disability resulted in an active desire to segregate disabled persons from society. In contrast, in those countries with a combination of economic development and neoliberal ideologies, the public were more willing to recognise the importance of including intellectually disabled persons in work and school environments. However, despite this belief, there existed a persistent fear that such inclusion would negatively affect the achievements of, and resources available to, non-disabled persons. With reference to the responses of governments, the research found large differences between the

efforts taken to combat disability prejudices. As highlighted in Figure 6.1, the study revealed varying numbers of educational initiatives between the UN regions, an absence of educational and national initiatives in Asia and a lack of local and regional initiatives in the Middle East and North Asia.

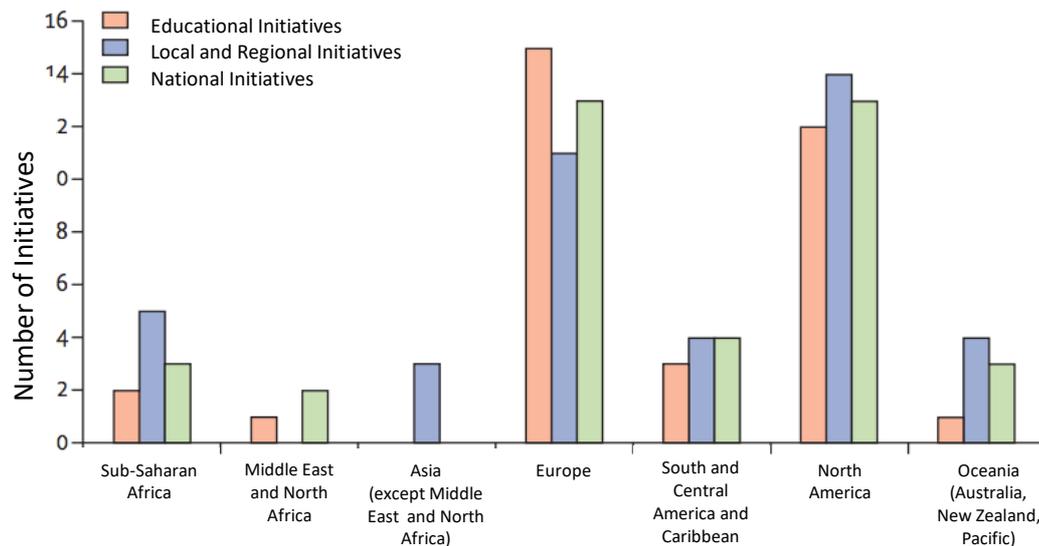


Figure 6.1: Number of Educational, Local and Regional and National Initiatives by UN Region (Scior et al, 2016; 294)

Educational programmes reflect a bottom-up attempt to change cultural norms, in this case the negative cultural attitudes towards disabled persons (Lee-Rife et al, 2012). However, Gaffney-Rhys (2011) contended that alone, the effectiveness of educational programmes is limited as they fail to address non-compliance caused by the realities of poverty. For example, Ravindram and Myers (2011) discussed how in poor countries, impoverished families may only have the resources to send one, if any, of its children to school. Given that a disabled child’s chance of survival is lower in undeveloped countries, Ravindram and Myers argued that a rationale strategy for the parents is to provide the healthier child with an education. To further complicate the issue, capacity problems within poor countries mean that many schools do not have the resources, staff and skills to meets the needs of a disabled child. Likewise, Stein (2016) identified capacity as a key factor that hinders the ability of many governments to comply with the UNCRC. Similarly, Houlihan (2013) identified

capacity as a problem within the anti-doping regime, and argued that as a result of resource limitations, many Eastern and Central European NADOs do not have the capacity to comply. In recognition of the multitude of factors that hinder compliance, Gaffney-Rhys (2011) suggested that a combination of responses is required to effectively address the social factors (cultural norms) and economic factors (poverty) that underpin non-compliance.

6.3.4.3 Capacity Building Responses to Non-compliance

As discussed by Houlihan (2013), the efficiency of the non-compliance response system varies according to the cause of non-compliance. Where non-compliance is caused by inability to comply, for example due to a lack of resources, Houlihan suggested that capacity building has the potential to be more effective than sanctions. Additionally, where the compliance information system primarily relies upon data collected through self-reporting mechanisms, as is the case within both the disability and child rights regimes, Zhao (2002) argued that compared to the threat of sanctions, the prospect of resource assistance is more effective at encouraging the reporting of non-compliance.

Article 32 of the UNCRPD acknowledges the variable capacities of countries and recognises that the ability of many developing countries to comply with the UNCRPD is dependent upon international assistance. Specifically, Article 32 emphasises the importance of international cooperation between state parties, and, where appropriate, states and civil society organisations. Additionally, state parties are required to facilitate and support capacity building activities (UNCRPD, 2006). The focus upon international cooperation within the disability rights regime was emphasised by the Academic Network of European Disability Experts representative:

“There is quite a lot of technical cooperation and the EU facilitates that. They facilitate technical cooperation and transfer of knowledge through experts from one country to another” (ANED Interview, 2017).

The Australian government has demonstrated a commitment to fulfilling the obligations outlined within Article 32 of the UNCRPD through its 'Development for All 2009 – 2014 and 2015 – 2020: Strategy for Strengthening Disability-inclusive Development in Australia's Aid Programme'. The purpose of the current 2015 – 2020 programme is to improve the quality of the lives of disabled persons living in developing countries, particularly the Indo-Pacific region. To achieve its aims, the programme focuses upon empowering people with disabilities, increasing their participation at government level, community level and within the private sector, reducing poverty amongst persons with disabilities and improving equality (Development for All, 2015). Regarding the UNCRPD's requirement for governments to provide support for capacity building activities, Australia's Development for All 2015 – 2020 strategy also funds the 'Include Disability Employ this Disability' (IDEA) initiative in Fiji. IDEA represents a joint collaboration between the government, DPOs, education providers and employers in Fiji. The initiative uses media campaigns to promote the capacity of disabled persons, arranges training workshops designed to improve the skills of disabled persons and provides on-the-job training to improve the capacity of DPO task force members (IDEA, 2016). The need for international cooperation has been emphasised within the anti-doping regime. For example, the Pound report stated that developed NADOs have a responsibility to assist developing NADOs (Pound Report, 2012).

Capacity building has also been used by DPOs and disabled focused NGOs to address the inability and failure of governments to comply with the UNCRPD. To use Sri Lanka as an example, Campbell (2008) stated that the need to focus upon the continuous military conflict has hindered the ability of the Sri Lankan government to give sufficient resources and attention to disability rights issues. Furthermore, the few capacity building activities that the Sri Lankan government were able to deliver were top-down in nature and limited to government ministers and parliamentary committees. Campbell therefore criticised the Sri Lankan government for failing to connect with disabled people at the community level. As argued by Lewis (2010),

capacity building directed towards disability organisations and persons with disabilities is essential if they are to effectively participate in disability public policy issues. As discussed by Campbell (2008), international organisations have recognised the resource constraints faced by the government and Sri Lankan DPOs, and, as a result, internationally funded DPOs largely outweigh domestic DPOs. For example, the Sri Lankan Disability Organisations Joint Front (DOJF) receives financial and technical assistance from the 'Swedish National Association for Persons with Intellectual Disability'. Through this assistance, DOJF has become increasingly involved in providing capacity building activities for disabled persons, particularly leadership training, public speaking, legal education and budget management (Disability Organisations Joint Fund, 2016).

6.4 Conclusion

The analysis in this chapter has revealed that a tangible disability policy rights regime exists. First, the regime is characterised by a top-down approach to implementation, with global level actors identified as the United Nations, the CRPD and international DPOs. At the national level, primary disability rights actors include national DPOs and local governmental organisations. Similar to the child rights regime, the logistical challenge of monitoring compliance with the UNCRPD is beyond the capacity of the UN. Consequently, in contrast to the ideal conceptualisation of implementation, the UN is largely dependent upon governments and other disability rights actors to translate the UNCRPD's international standards into practice at national and local levels. At the national level, governments were identified as the primary compliance agents responsible for UNCRPD implementation within their respective states, whilst local level actors were identified as governmental organisations and DPOs. However, as with the child rights regime, the top-down nature of implementation combined with the extensive infrastructure of organisations, means that the disability rights regime is particularly susceptible to policy dilution and erosion. Similarly, within the anti-doping regime, numerous organisations operating at regional, national and

global levels share responsibility for implementation of the Code. As a result, WADA faces the challenge of ensuring that a commitment, in this case towards achieving drug free sport, is sustained throughout all levels of implementation.

Second, cultural conceptualisations of disability, specifically those that conflict with the social model of disability enshrined within the UNCRPD, have largely contributed towards non-compliance. At the national level, deeply embedded cultural values that promote the medical model of disability have been used to inform the policy decision-making process, legislative changes and data collection methods used by many governments. Additionally, governmental norms informed by the medical model of disability are often accompanied by a lack of political desire to fulfil monitoring obligations and a willingness to overlook non-compliance. The inability of many governments to reconcile domestic norms with the UNCRPD's conceptualisation of disability has led to the fragmentation of ideas and policy initiatives within the regime. Such fragmentation has served to weaken the policy legitimacy, and the overall strength, of the disability rights regime. To further complicate the issue, formal enforcement mechanisms are absent within the disability rights regime. As a result of minimal repercussions for non-compliance, state parties that are driven by calculated motivations have little incentive to comply. Similar cultural challenges exist within the child rights regime, where many African cultures struggle to reconcile the UNCRC's notion of child participation with traditional values. However, in contrast to the disability rights regime, numerous child rights NGOs have adopted a bottom-up approach to implementation. Specifically, educational initiatives have been used as an attempt to change cultural values at the societal level. Additionally, international child rights institutions have played an important role in changing state behaviour through informal mechanisms. In particular, lobbying has been used to hold non-compliant governments accountable and mobilise domestic pressure for policy change. In contrast, within the disability rights regime, DPOs are primarily focused upon alleviating the extreme poverty that threatens the survival of disabled people within developing countries. As a result, DPOs prioritise short-term, income-generating projects over long-term strategies that aim to achieve policy reform. Similarly, the anti-doping regime faces

the challenge of ensuring that the regime's norms are widely shared by all actors. In particular, the anti-doping regime is tasked with suppressing the 'win at all costs' mentality. However, whereas the disability and child rights regimes must manage the conflicting pressures of national cultures, the anti-doping regime has to manage the implementation of anti-doping within a variety of national, and also sporting, cultures.

Third, resource availability was identified as a major factor responsible for variable levels of compliance. In many Eastern African countries where a top-down approach to implementation is adopted, the government often fails to distribute adequate levels of funding to the departments and organisations tasked with implementing the UNCRPD. In such instances, whilst the respective organisation may share the UNCRPD's ideals and remain committed to delivering disability policies, capacity constraints result in non-compliance. Additionally, in impoverished countries, many parents and schools adopt 'coping mechanisms' that are non-compliant with the UNCRPD. For example, the limited resources available are often invested in able-bodied children who have a higher chance of survival than their disabled siblings. However, this strategy does not necessarily reflect an unwillingness to comply with the UNCRPD, but rather a rational response to the realities of poverty. Similar challenges exist within the anti-doping regime. For example, as a result of resource limitations, many Eastern and Central European NADOs do not have the capacity to comply. Additionally, where resources restrict the number of doping samples that can be collected and analysed, anti-doping officials may resort to their developed 'coping mechanisms' of stereotyping and prioritise samples from the sports stereotypically known for higher levels of doping.

Finally, numerous tools to monitor and address non-compliance are used within the disability rights regime. In contrast to the UNCRC and the WADA Code, the UNCRPD requires state parties to establish independent monitoring mechanisms. The independent monitoring mechanisms were identified as an important element that contributes towards increasing the legitimacy of international norms and holding non-compliant governments accountable within the disability rights regime.

However, it is important to recognise that their effectiveness and policy capacity is largely dependent upon resource availability and staff expertise. Within the anti-doping regime, a similar strategy could be adopted through the introduction of independent bodies responsible for testing and / or monitoring NADO activities. With reference to non-compliance responses, similar to the anti-doping regime, sanctions were identified as the favoured approach within the disability rights regime. However, the absence of political desire to ensure compliance at varying levels of implementation has undermined the potency and credibility of the sanctions within many countries. Furthermore, a major concern within the disability rights regime is that formal implementation (such as legislative changes) and formal responses to non-compliance (such as sanctions), are hiding tepid commitments amongst governments. Similarly, despite seemingly successful implementation outputs (for example Code signatories and testing numbers) within the anti-doping regime, the recent revelation of state-sponsored doping in Russia and widespread doping within athletics has highlighted the extent of the challenge that WADA faces in terms of engendering a deep commitment towards achieving the goal of drug free sport.

Chapter 7: The United Nations Convention Against Transnational Organised Crime (UNTOC)

7.1 Introduction to the UNTOC

The United States of America largely influenced the initial development of the anti-money laundering regime. To summarise, a large-scale money laundering drug scandal in Southern Florida placed money laundering on the agenda of the USA. In response to the scandal, and as part of its efforts to tackle drug crime, the USA criminalised money laundering in 1986. Subsequently, in 1989, the USA sought the support of the G7 members to establish an international anti-money laundering organisation. The persuasive efforts of the USA, combined with the prevalence of money laundering activities, the risk of financial instability and the threat that money laundering posed to financial integrity, prompted the G7 to establish the Financial Action Task Force (FATF) (Hülse and Kerwer, 2007). Betti (2003) likewise recognised the instrumental role played by the USA during the early stages of the anti-money laundering regime. Additionally, Betti identified the United Nations as a significant actor responsible for the establishment of a formal convention. As argued by Betti, of particular importance was the 1994 'United Nations Ministerial Conference on Organised Transnational Crime', where the UN called for enhanced international cooperation and an international treaty to address organised transnational crime, including money laundering. Following unanimous support for the UN's Political Declaration and Action Plan, an intergovernmental expert group was established and tasked with drafting the preliminary Convention. Between January 1999 and July 2000, the General Assembly's ad hoc Committee finalised the text of the United Nations Convention Against Transnational Organised Crime

(UNTOC). The key proponents of the anti-money laundering regime, specifically the United States of America and the United Nations, contrasts with the child rights and disability rights regimes where developments were primarily driven by NGOs and DPOs (Lang et al, 2011). However, similarities exist between the early development of the anti-money laundering and anti- doping regimes. For example, similar to the anti-money laundering regime, high profile scandals were responsible for placing doping on the agenda of the IOC. Additionally, whilst anti-money laundering efforts aimed to protect the integrity of the financial sector, anti-doping efforts sought to safeguard the integrity and 'spirit of sport' (Møller, 2009).

Adopted by the United Nations General Assembly in 2000 and currently ratified by 187 state parties, the UNTOC aims to strengthen the ability of the international community to combat organised transnational crimes (United Nations, 2017). The convention is significant in numerous ways. First, it represents the first global agreement to address organised crime at the international level (Betti, 2003). Although the Convention recognises that a range of criminal activities occur within a variety of sectors, four specific offences are described in detail: participation in an organised criminal group, money laundering, corruption and obstruction of justice; each of the components are inextricably linked to transnational organised crime (Convention Against Transnational Organised Crime, 2000). Second, the UNTOC is the most significant treaty in terms of combatting money laundering (Mugarura, 2011). Ekwueme and Baheri (2013) define money laundering as a process which involves the laundering of illegal crime proceeds to create the appearance of a legitimate origin and enable the funds to be reused. Although the 1988 'UN Convention Against Narcotic Drug Traffic and other Psychotropic Substances' addressed the issue of money laundering, criminalisation was limited to the proceeds of drug offences. In contrast, Article 6 of the UNTOC requires state parties to apply the money laundering articles to the "widest range of predicate offences". A predicate offence refers to a criminal offence from which proceeds could be generated, and which must be committed for a money laundering offence to be brought about. Additionally, the Article identified focus areas including customer identification, record keeping and the reporting of suspicious transactions

(Convention Against Transnational Organised Crime, 2000). Levi and Reuter (2006) stated that the UNTOC's specific reference to money laundering is intended to reduce the finances available for organised crime, limit the ability of criminals to avoid imprisonment and prevent criminals from enjoying the financial benefits gained through illegal activities.

7.1.1 Anti-money Laundering Regime: Areas of Controversy

As discussed by Frantzi et al (2009), a key critique of regime theory refers to the challenges of measuring policy regime effectiveness. In particular, Frantzi et al stated that the concept is particularly complex due to contrasting stakeholder conceptualisations of effectiveness. Within the anti-money laundering regime, contrasting perceptions have led to controversy regarding the appropriate measure of regime effectiveness. On the one hand, the financial sector considers a decrease in the number of money laundering occurrences as an indicator of success. Consequently, strategies that focus upon the process of achieving compliance through cooperation, persuasion and self-regulation are prioritised. On the other hand, law enforcement organisations concentrate upon the quantity of confiscated money and convictions. Strategic emphasis is therefore placed upon external regulation, sanctions and prosecutions (Tsingou, 2010). Although Harvey (2008) likewise identified the importance of convictions as an indicator of success, she argued that the percentage of prosecutions that lead to convictions are more important than the total number of convictions. Specifically, Harvey stated that this conversion rate provides greater insight into the quality of money laundering disclosures. However, Frantzi et al (2009) contended that single approaches are only partially able to evaluate the effectiveness of a regime. In order to select an appropriate measure that evaluates overall regime strength, the anti-money laundering regime faces the challenge of reconciling contrasting stakeholder opinions and facilitating cooperation between the financial and law enforcement sector. Similarly, the anti-doping regime faces the challenge of identifying a valid measure of effectiveness. For example, it is difficult to determine whether a

decrease in the proportion of samples that produce adverse analytical results indicates a reduction in the number of athletes doping, or the use of sophisticated drugs that are presently undetectable (Houlihan, 2016).

7.2 Anti-money Laundering Institutional Framework

7.2.1 International Institutional Framework

At the international level, numerous bodies operate alongside the United Nations to oversee the implementation of the UNTOC and monitor state compliance with anti-money laundering regulations. First, Alexander (2001) identified the FATF as a significant inter-governmental organisation that operates at the core of the anti-money laundering regime. Comprising of 35-member states and 2 regional organisations, the FATF describes itself as a ‘policy making body’ and states that its purpose is to establish anti-money laundering standards, encourage effective implementation and engender political commitment towards national legislative and regulatory reform. The FATF’s contribution towards the development of the anti-money laundering regime was emphasised by the Council of Europe Consultant:

“The FATF has created a global system, there is a minimum set of standards that most countries implement and there is a common understanding” (Council of Europe Consultant Interview, 2017).

To establish anti-money laundering standards and provide countries with an implementation framework, the FATF compiled 40 Recommendations. Following the 9/11 attacks, eight special Recommendations (recently extended to nine) were added to address the financing of terrorism (FATF, 2017). Despite being characterised as soft law, the FATF’s 40 Recommendations have been recognised as the international standard within the anti-money laundering regime (Ekwueme and Baheri, 2013). Such recognition is in line with Article 7 of the UNTOC, which encourages state parties to use initiatives of relevant anti-money laundering

organisations as a guideline (Convention Against Transnational Organised Crime, 2000).

In addition to the FATF, eight regional, anti-money laundering organisations referred to as the 'FATF-Style Regional Bodies' (FSRBs) support the FATF by developing strategies for local implementation (FATF, 2017). However, although the FSRBs are officially independent bodies, Hülse and Kerwer (2007) contended that their autonomy is reduced as a result of dependence upon the FATF for financial resources and technical assistance. Furthermore, Tsingou (2010) criticised the FATF for failing to encourage the establishment of independent standards and evaluation mechanisms. Instead the FATF prefers the FSRBs to adopt the FATF's 40 Recommendations and procedures. Similar to the anti-money laundering regime, issues surrounding organisational independence have transpired within the disability rights and anti-doping regimes. Within the disability rights regime, sub-national institutions commonly used within federal government systems have been criticised for insufficient levels of independence (Reif, 2014). With reference to anti-doping, within the Declaration of the 5th Olympic Summit, the IOC emphasised the need for greater independence and suggested that anti-doping testing should be made independent from sports organisations (IOC, 2016).

Second, Sagastume et al (2016) identified the World Bank (a specialised independent body of the UN) and the International Monetary Fund (an international intergovernmental organisation (IMF)) as important institutions within the anti-money laundering regime. As explained by Arnone and Padoan (2008), the FATF has an exclusive membership policy, which restricts membership to countries that are considered to be 'strategically important'. Although WADA does not explicitly discriminate, WADA implicitly focuses attention upon sports powers and high-risk sports. In contrast to the FATF, the IMF and World Bank are open to global membership. As a result, Arnone and Padoan argued that the IMF and World Bank play an important role in regulating the behaviours of a greater number of states. Likewise, Mugarura (2011) recognised the significance of the IMF and World Bank and highlighted their widespread role in initiating financial sector reforms and internalising international norms. For example, the World Bank reinforces the FATF's

international standards by providing technical support for countries implementing the 40 Recommendations. As stated by May (2015), interested actors (in this case the World Bank and the IMF) that endorse policies and express support for standards can contribute towards promoting desired norms and increasing the strength of the given regime.

7.2.2 National Institutional Framework

Garrigues et al (2011) stated that operationalisation of the UNTOC at national level most commonly begins with law reform. As specified within Article 6 of the UNTOC, state parties are required to adopt the necessary legislative measures to establish money laundering as a criminal offence. At a minimum, state parties are required to apply the crime of money laundering to 'serious offences' outlined within national law. Article 6 also encourages the criminalisation of money laundering to be applied to the "widest range of predicate offences" (Convention Against Transnational Organised Crime, 2000; 8). As discussed by Tsingou (2010), the flexibility contained within the Convention, specifically the ability of state parties to exclude certain predicate offences, has led to large legislative differences between state parties. To demonstrate the scale of variation, the UK and The Netherlands have extended their predicate offence list to include all crimes, whilst anti-money laundering legislation in Malaysia and the UAE has yet to incorporate all serious offences (Hamin et al, 2016; Alkaabi et al, 2014). As argued by Unger and Busuioc (2007), countries that fail to include all serious offences negatively impact the effectiveness of the anti-money laundering regime. Low prioritisation, combined with an absence of information regarding non-listed offences, impedes the investigation and prosecution of transnational money laundering. Furthermore, where predicate offences are concerned, the anti-money laundering regime is characterised by fragmented ideas, a problem caused by a lack of shared understanding regarding what crimes constitute a money laundering offence. In contrast, the FATF Representative argued:

“Countries may want to target specific predicate offences and focus resources on the crimes that they consider to be the most problematic and therefore imposing a list, a one size fits all, probably wouldn’t be the most effective approach” (FATF Representative Interview, 2017).

Similar to the UNTOC, a degree of flexibility is contained within the UNCRC and the UNESCO Convention Against Doping in Sport, which has led to legislative variations within the respective regimes. For example, the UNCRC provides state parties with the flexibility to develop their own definition of disability. However, such flexibility has meant that numerous national definitions of disability fail to include many persons that should be offered protection under the UNCRC (Schulze. 2010). Likewise, within the anti-doping regime, the UNESCO Convention Against Doping in Sport provides governments with the flexibility to decide how they will give effect to the Convention, either by way of regulation, legislation or policies (UNESCO, 2015).

In addition to outlining legislative obligations, the UNTOC makes reference to the national regulatory framework. Specifically, Article 7 of the UNTOC requires state parties to establish a domestic regulatory regime for financial and non-financial institutions (Convention Against Transnational Organised Crime, 2000). The UNTOC’s requirements have led to the development of extensive institutional frameworks. For example, the USA’s anti-money laundering regime initially involved financial institutions, financial intelligence units and financial regulatory bodies. In response to the UNTOC, the regime has expanded to include non-financial businesses such as casinos, pawnbrokers, car dealers and jewelers, which are required to report customers suspected of using money obtained through criminal activities (Levi and Reuter, 2006). However, Tsingou (2010) contended that the vast number of national institutions involved has created implementation problems. despite Mazmanian and Sabatier’s (1983) emphasis upon the importance of consistent and clear policy goals within top-down implementation frameworks, Tsingou (2010) highlighted how core USA anti-money laundering bodies, including the Treasury Department Authority, Department of Homeland Security and the Financial Crimes Enforcement Network, have expressed uncertainty over their roles. The lack of clarity regarding the

responsibilities of institutions, combined with the range of organisations involved, has resulted in institutional fragmentation within the USA anti-money laundering regime. Tsingou also stated that a lack of clarity regarding responsibilities has led to poor levels of enthusiasm amongst the financial regulatory departments. Variable levels of commitment amongst anti-money laundering organisations was also identified by the Royal United Services Institute (RUSI) representative:

“Banks have the lion share of reports, over 300,000, and the estate agent sector has 300. Banks are openly making an effort whereas other sectors have such low reporting. All of the sectors have to be responsible and show that they are prioritising anti-money laundering” (RUSI Interview, 2017).

Both institutional fragmentation and insufficient levels of enthusiasm undermine the USA’s anti-money laundering efforts and weaken the overall strength of the regime. Similarly, within the anti-doping regime, numerous organisations share responsibility for implementation of the Code. As a result, WADA faces the challenge of ensuring policy goals and responsibilities are clearly defined, and that a commitment, in this case towards achieving drug free sport, is sustained throughout all levels of implementation (Houlihan, 2002).

Article 7 of the UNTOC asks state parties to consider establishing and tasking a financial intelligence unit (FIU) with the responsibility of collecting, analysing and disseminating money laundering data (Convention Against Transnational Organised Crime, 2000). The requirement to establish an FIU is also included within the FATF Recommendations and the EU Anti-money Laundering Directives. However, in contrast to the FATF, the EU directive requires member states to establish an FIU that is independent and autonomous (EU AML Directives, 2015). As discussed by Sharman (2008), numerous countries have established and incorporated an FIU into their national anti-money laundering regime. Although not a compulsory requirement within the UNTOC, Sharman argued that many FIUs are established to meet social expectations of the anti-money laundering regime, and as a method of signaling state party intention to conform to international anti-money laundering

standards. However, with the requirement for independence being limited to the EU Directive, Mitsilega and Vavoula (2016) argued that national FIUs have varying levels of independence. The issue of organisational independence has also arisen within the disability rights and anti-doping regimes. Within the disability rights regime, sub-national institutions commonly used within federal government systems have been criticised for insufficient levels of independence. However, in contrast to the UNTOC and the FATF, independent monitoring mechanisms are a compulsory requirement of the UNCRPD. As a result, the UNCRPD is an important tool that can be used to hold governments accountable and create pressure for increased levels of organisational independence (Reif, 2014). With reference to anti-doping, within the Declaration of the 5th Olympic Summit, the IOC emphasised the need for greater independence and suggested that anti-doping testing should be made independent from sports organisations in order to reduce conflict of interests (IOC, 2016).

The absence of a specific FIU framework has meant that at the national level, FIUs have contrasting institutional frameworks, legal statuses and varying levels of authority and competency (Mitsilega and Vavoula, 2016). Although institutional variability was recognised by the FATF representative, he argued:

“Each of the models raise different issues that need to be addressed but as long as potential obstacles to the operations and the independence are addressed, each model can work” (FATF Interview, 2017).

First, countries such as South Korea, Slovenia and the USA have adopted administrative models. Within this framework, authorities that are external to judicial and law enforcement, usually the Finance of Ministry, are responsible for supervising and providing a budget for the FIU. Administrative models have also been established in countries such as Belgium, however, in line with the EU Directive, the FIU is an independent body. Gelemerova (2009) stated that financial institutions usually display greater levels of trust towards administrative institutions and, as a result, are more willing to disclose suspicious information. The role that administrative FIUs play in substantiating suspicions helps to alleviate fears that

unverified evidence will be used to wrongly accuse an individual; a situation that could lead to civil liability if the accused individual proceeded to sue. However, Gelemerova cautioned that administrative models must avoid limiting their work to the dissemination of information and ensure that they maintain high levels of analytical competence. Second, countries such as Germany, Iceland and Sweden have adopted law enforcement models, where the FIU is established as part of a law enforcement institution. Compared to administrative models, law enforcement FIUs usually have greater investigatory powers and are able to access criminal intelligence networks quicker. However, within law enforcement FIUs, internalised norms usually emphasise investigative rather than preventative measures. Furthermore, their effectiveness is dependent upon gaining the trust of financial institutions (IMF, 2004). The importance of public-private sector collaborations was emphasised by the RUSI representative:

“If the public-private sector work together and are able to share information better, then that can help banks comply and help law enforcement with active investigations” (RUSI Interview, 2017).

Third, Luxembourg and Cyprus have adopted the prosecutorial model, where FIUs are established within the judicial branch. Finally, a hybrid approach, which incorporates elements of at least two of the identified models (administrative, law enforcement and prosecutorial), has been adopted by Denmark and Norway. The rationale behind such an approach is to capitalise upon the benefits, and offset the disadvantages, of the different models. Milne (2015) identified a similar problem within the child rights regime. For example, within different countries, Children’s Rights Ombudsmen have contrasting legal powers and different procedural structures which have led to significant variations in terms of their ability to safeguard children’s rights. Likewise, the anti-doping regime must navigate the different institutional frameworks of national sporting federations (O’Leary, 2013).

7.3 Mitchell and Chayes' Compliance System

7.3.1 Primary Rule System

The primary rule system refers to the rules, procedures and actors and fulfills the purpose of determining who will be regulated and through what methods (Mitchell, 1988). As argued by Ekwueme and Baheri (2013), the UNTOC is the most significant treaty in terms of combating money laundering and the Convention is therefore identified as the primary rule system within the anti-money laundering regime. Article 7 of the UNTOC clearly identifies state parties as the primary actors who are responsible for undertaking the necessary measures to implement the Articles contained within the Convention (Convention Against Transnational Organised Crime, 2000). Similarly, countries, or state governments, are identified as the primary actors responsible for implementing the FATF Recommendations (FATF Recommendations, 2012). However, although the UNTOC intends for the anti-money laundering regime to be state driven, Tsingou (2010) contended that private actors, are, unofficially, the primary actors. Tsingou argued that financial institutions operate at the forefront of the anti-money laundering regime and are largely responsible, and accountable, for ensuring compliance. This view was shared by the Council of Europe Consultant:

“There is this sense that the private sector get held accountable for what the recommendations say even though they had no part in the agreement. The private sector is liable to fines and criminal action, but the policy makers and the public authorities are never held accountable other than in an evaluation process” (Council of Europe Consultant Interview, 2017).

Alexander (2001), stated that governments use the argument that criminal funds must filter through financial institutions, to justify redirecting the burden of anti-money laundering efforts towards financial institutions. Similar to the anti-money

laundering regime, private actors play a role in the disability rights regime. For example, although the UNCRPD clearly identifies state parties as the primary duty bearer, Goonatilake (2007) highlighted how in countries such as Sri Lanka, disability rights are primarily mediated by private, non-state actors. Likewise, private actors are heavily involved within the anti-doping regime. Casini (2009) described WADA as a hybrid organisation under public-private governance. Additionally, the IOC, NOCs and IFs are private sporting bodies that engage in public-private partnerships with states and public authorities.

Private institutions are identified as additional actors within the anti-money laundering regime. As outlined within Article 7 of the UNTOC, state parties are required to develop a domestic regulatory regime for financial and non-financial institutions that focuses upon customer identification, record keeping and suspicious transactions reporting (Convention Against Transnational Organised Crime, 2000). As a result, the UNTOC reflects a top-down approach to implementation, where international standards are translated from the global, to national, to local levels. In order to comply with the UNTOC's requirements and ensure that international norms are translated into practice at the local level, the majority of governments have imposed a range of procedures and regulations upon financial and non-financial institutions (Levi and Reuter, 2006). Most governments require financial and relevant non-financial institutions to apply due diligence or 'Know Your Customer' rules, which refers to the verification of the account holder's identity. The 'Know Your Customer' mantra represents an established norm that has been institutionalised within the anti-money laundering regime (Sharman, 2008). However, Alkaabi et al (2014) contended that in some countries, the domestic salience of the 'Know Your Customer' norm has been weakened by cultural traditions. For example, the UAE has a cultural tradition which values extended family relationships and close family ties. As a result, there is a concern that within such countries, front line employees within financial organisations often fail to conduct and comply with due diligence procedures. Similar to the anti-money laundering regime, the anti-doping regime focuses upon changing the behaviour of organisations and individuals within formal organisations. The problem of doping

often occurs at club or squad level. In contrast, the UNCRPD and UNCRC are primarily faced with the challenge of changing non-compliant attitudes and behaviours at the societal level (Me and Mbogoni, 2006; Grugel and Peruzzotti, 2010).

As previously mentioned, the FATF operates at the core of the anti-money laundering regime. Despite being characterised as soft law, the FATF 40 Recommendations have been recognised as the international standard for money laundering (Ekwueme and Baheri, 2013). The FATF clearly identifies a peer review process, referred to as 'Mutual Evaluations', as the method of assessing compliance amongst its member states. Evaluations are conducted by a team of independent assessors, which are selected from a trained pool of experts. Any country member to the FATF / FSRBs, in addition to FATF observer organisations, are able to put forward experts (from a range of sectors including legal, financial and enforcement services) for assessor training. According to Hülse and Kerwer (2007), the involvement of independent experts in the evaluation process contributes towards ensuring objective monitoring and indicates that the FATF is an impartial regulator. Additionally, Hülse and Kerwer stated that the backing and opinions of experts serves to increase the legitimacy of the FATF and its measures. However, as emphasised by the Council of Europe Consultant, a degree of bias exists within the mutual evaluation process:

“Individuals inevitably come with preconceptions about how their country does it. If your FIU is a law enforcement unit, and you come to evaluate an administrative FIU, there is quite a lot of bias which we need to make sure is removed” (Council of Europe Consultant Interview, 2017).

The evaluation process involves a legislative review, during which, a compliance rating is attached to each of the 40 FATF Recommendations. Additionally, an on-site visit is conducted to evaluate the system's effectiveness. Once the legislative review and the on-site audit are completed, a compliance report is submitted to the FATF

Plenary Meeting for a final review and publication (FATF, 2017). However, the RUSI representative questioned the extent to which the monitoring process is able to evaluate the depth of compliance:

“The way the compliance regime has formed, it’s become ticking certain boxes as opposed to actually changing the picture. So often, even if a country looks as though it is being compliant, it is generally still missing a few things” (RUSI Interview, 2017).

With regard to achieving compliance, Cassara (2006) argued that the peer review process is founded upon the idea that state parties are often driven by social motivations. Social motivation refers to an actor’s desire to earn the respect and approval of significant others. As discussed by Cassara, prior to an evaluation, numerous countries have enacted legislative changes in order to prevent embarrassment and shaming during the mutual evaluation process. The ability of the evaluation process to prompt policy change was also emphasised by the FATF representative, who stated that the “peer pressure associated with the assessments has worked very well to bring about legislative change” (FATF Interview, 2017). However, whilst Winter and May (2001) acknowledged that social motivation can result in normative commitment, they contended that the value of compliance has not been internalised. Furthermore, given that the mutual evaluation process focuses upon outputs rather than inputs and outcomes, it is difficult to assess the cost effectiveness and overall impact of anti-money laundering measures. The Council of Europe Consultant also highlighted measurability issues:

“What you get in a whole host of evaluations is this legislation has just come in or is in the process of being passed or it’s proposed. And there is no way of measuring the effectiveness, because of the time lag, the next evaluation doesn’t really help” (Council of Europe Consultant Interview, 2017).

The peer review process used within the anti-money laundering regime contrasts with the UNCRC, UNCRPD and UNESCO Convention Against Doping in Sport, where the primary method is a self-assessment report. However, similar to the FATF, WADA has recently recognised the importance of audits and independent experts. For example, as part of its Compliance Monitoring Programme, WADA announced the conduction of IF and NADO audits. As of March 2018, audits had been completed for 9 NADOs (Kenya, Brazil, India, Mexico, Argentina, Russia, China, Romania and Portugal) and 3 IFs (handball, football and gymnastics). In addition to trained WADA representatives, external experts are responsible for conducting the audits (WADA Compliance Monitoring Programme, 2018).

7.3.2 Compliance Information System

7.3.2.1 Data Collection: A Risk-based Approach

Mitchell and Chayes' (1995) compliance information system aims to ensure that high quality, relevant data is collected and that all data is rigorously analysed and widely circulated. With regard to data collection, the FATF's 40 Recommendations advise governments to adopt a risk-based approach (FATF Recommendations, 2012). To comply with the FATF Recommendations, numerous countries have transitioned from a rule-based to a risk-based data collection approach. On the one hand, the rule-based approach uses top-down implementation; governments introduce strict legislation that identifies specific financial transactions that must be reported to an FIU as suspicious. On the other hand, the risk-based approach uses bottom-up implementation (Unger and Waarden, 2009), in. As explained by Kawadza (2017), the risk-based approach recognises that front line employees possess useful 'real world' knowledge of financial conduct. Additionally, the reporting process provides private businesses with greater levels of flexibility and relies upon the expertise, knowledge and judgment of front line employees. Similarly, the child rights regime has adopted a bottom-up approach to data collection through the extensive involvement of children in the reporting process (Brems, 2013). In contrast, the anti-doping regime is largely characterised by a top-down approach to implementation.

However, as argued by Duval (2016), athletes, who may be considered as the equivalent of 'front line employees', are often the primary source of systemic doping information. In recognition of the important role that athletes play in enhancing the effectiveness of the compliance information system, WADA has recently launched 'Speak Up!', a secure online platform through which athletes can submit doping information (WADA Speak Up, 2017).

As discussed by Gelemerova (2009), within many countries, governmental support for the risk-based approach to data collection has been expressed through the introduction of extensive legislation. The scale of legislative implementation was emphasised by the FATF representative:

"As far as the legislation is concerned, it is probably one of the FATF's achievements that money laundering is criminalised in almost any country around the world" (FATF Interview, 2017).

Although the legislation remains flexible enough to allow private organisations to use their own judgment when determining which cases are suspicious, national legislation has made it compulsory for financial and relevant non-financial institutions to report suspicious transactions to the FIU. However, Chaikin (2009) argued that reporting officers are often fearful of submitting potentially incorrect evidence that could wrongly accuse an individual. As previously discussed, such a situation that could lead to civil liability if the accused individual proceeded to sue. In recognition of this problem, the FATF's 40 Recommendations state that governments should introduce legislation designed to protect financial institutions from civil liability in the event that suspicious transactions are mistakenly reported as money laundering cases (FATF Recommendations, 2014). However, as argued by Kawadza (2017), the integrity of the anti-money laundering regime and its compliance information system is hindered by the distrust felt by reporting officers. Specifically, Kawadza referred to the general perception that despite protective legislation, relevant organisations have insufficient capacity to protect reporting officers. Similarly, Overbye and Wagner (2014) identified trust as an important

element that must be developed within the anti-doping regime. In particular, Overbye and Wagner emphasised the importance of athlete trust towards the whereabouts system, which is an element of the anti-doping regime's compliance information system.

With regard to the legislative reporting requirements, Levi and Reuter (2006) identified numerous variations. For example, irrespective of the financial amount, The Netherlands requires all 'unusual' transactions to be reported to the FIU, whilst the USA requires 'suspicious' transactions that exceed US \$5000 to be reported. Chaikin (2009) identified Switzerland as a country that has implemented one of the narrowest data collection processes. In Switzerland, organisations are only required to report 'substantiated suspicions'. Chaikin suggested that the Swiss approach reflects an attempt by the government to reduce the amount of general, low level financial intelligence and increase the amount of high quality data pertaining to money laundering cases. Despite variations in the reporting requirements, Gelemorova (2009) stated that unprecedented levels of data have been collected within the anti-money laundering regime. However, Tsingou (2010) contended that there is an absence of high quality, meaningful data. Tsingou also stated that the data collection process is hindered by the illegal and secretive nature of money laundering. Furthermore, as argued by Viritha et al (2015), the problem of inadequate data quality is exacerbated by the failure of most FIUs to provide reporting institutions with feedback regarding useful data types. This view was shared by the RUSI representative:

"People in the private sector get very frustrated with the public sector because the public sector has all these demands but they don't give much back. All these reports go to the FIU but the banks will rarely get any feedback" (RUSI Interview, 2017).

Feedback processes are integral to sustaining high levels of commitment, strengthening the durability of the regime and determining whether or not ideas and norms are fragmented or coherent (May and Jochim, 2013). Similar data collection

problems exist within the disability rights and anti-doping regimes. Lewis (2010) identified the absence of meaningful statistics relating to disability rights as a significant area of weakness in many countries. Likewise, Mottram (2014) found that within the anti-doping regime there is an absence of meaningful data regarding the prevalence of PEDs. Furthermore, like money laundering, the prohibitive and secretive nature of doping creates challenges in terms of collecting honest survey data regarding PED use.

7.3.2.2 Compliance with Data Collection Procedures: Cultural Problems

Within the anti-money laundering regime, the extent to which front line employees are compliant with the data collection procedures is largely impacted by the cultural context. As previously mentioned, the FATF operates at the core of the anti-money laundering regime (Alexander, 2001). However, as argued by Alkaabi et al (2014), the FATF and its operations represent a Western construct. Alkaabi et al referred to the suspicious transaction reporting process, which has become embedded within the compliance information system and conflicts with cultural norms that exist within many non-Western countries. For example, the UAE's economy is cash based. As a result, large financial purchases and deposits represent a cultural norm and may not be reported as suspicious by compliance officers. Alkaabi et al therefore expressed concern that the UAE's financial system may be open to abuse by money launderers. Similar cultural problems exist within the child rights and anti-doping regimes. For example, Ansell (2014) stated that the type of child imagined within the UNCRC is that of a western, middle-class, able-bodied male. Ansell argued that as the circumstances of children become more distant from the Western norm, the relevance of the UNCRC articles decreases. Likewise, within anti-doping, Park (2008) stated that anti-doping regulations are a construction of the first world that is imposed upon poorer countries. Consequently, each of the regimes face the challenge of ensuring that international standards developed in a Western cultural context are effectively translated and embedded into contrasting non-Western cultures.

To further complicate the issue, the effectiveness of the anti-money laundering regime's compliance information system is affected by organisational, in addition to national, cultures. According to Garrigues et al (2011), the financial industry is largely characterised by a professional culture of non-intervention in financial operations. In light of this organisational culture, Garrigues et al argued that compliance amongst many banking officials is superficial. This view was shared by the Council of Europe Consultant:

“Compliance officers are seen as the part of the firm that holds back the risk takers, the people that are going to earn the money. So a lot of guys see compliance as something to satisfy rather than have a compliance culture in their heads. There is an issue around culture in firms which is long lasting and difficult to change” (Council of Europe Consultant Interview, 2017).

Additionally, Kawadza (2017) argued that the culture of non-intervention is deeply embedded within many Swiss financial organisations. Kawadza attributed this culture to Switzerland's long history of private banking and bank secrecy. The potential scale of the compliance problem was demonstrated by a banking scandal involving a HSBC bank in Switzerland. In 2007, the HSBC bank was found to be complicit in supporting client tax evasion. Additionally, it was revealed that the bank was intentionally failing to report clients that were depositing profits derived from criminal activities (Naheem, 2015). The HSBC scandal resonates with the recent anti-doping scandal, where, despite seemingly successful implementation outputs, Russia was found to be operating under a system of state-sponsored doping (WADA, 2015d). In light of the multiple cultural contexts, Naheem (2015) argued that in order for international norms to become internalised, cultural change must occur at the national and organisational level. Similar to the FATF, within the anti-doping regime, WADA faces the challenge of navigating multiple cultural contexts, specifically national and sporting cultures (Stambulova et al, 2009).

7.3.2.3 Data Collection: Whistleblowing

In light of the cultural challenges that threaten the effectiveness of the compliance information system, Gelemerova (2009) emphasised the importance of whistleblowing procedures as a method for reporting and detecting non-compliance. Similarly, the FATF representative stated that whistleblowing “would be part of any robust compliance regime” (FATF Interview, 2017). Yeoh (2014) considered a whistleblower as a current or former employee who discloses evidence of the organisation’s illegal or immoral activities. Evidence may be disclosed through internal whistleblowing channels or passed to external organisations, examples of which include law enforcement agencies and the media. As argued by Kawadza (2017), the effectiveness of whistleblowing procedures is largely dependent upon legislation that protects whistleblowers from retributive action, in addition to employee awareness of such legislation. South Africa provides an example of a country that has introduced governmental legislation, namely the ‘Protected Disclosures Act 26 of 2000’, that is designed to protect whistleblowers. However, although the Act offers whistleblowers protection, the legislation is limited in that it does not require organisations to implement whistleblowing procedures (Protected Disclosures Act, 2000). Additionally, the whistleblowing system is supported by ‘Whistle Blowers (Pty) Ltd’, an independent organisation that provides employees with an alternative channel through which allegations can be reported anonymously (Whistle Blowers Ltd, 2017). In contrast to South Africa and other jurisdictions, Kawadza (2017) identified Switzerland as a country that fails to provide statutory protection for whistleblowers in the financial industry. Ideals surrounding privacy and confidentiality rights are deeply embedded within the culture of the financial industry in Switzerland. Lack of legislative protection, combined with the prominent attitude that whistleblowers are ‘unprincipled individuals’, discourages whistleblowers from coming forward within the Swiss financial sectors. However, the revelation of the Swiss HSBC banking scandal demonstrates the potential impact that one whistleblower can have (Naheem, 2015). Similarly, within the anti-doping regime, the potential impact of whistleblowers was demonstrated through the revelation of state sponsored doping in Russia. To enhance the effectiveness of

whistleblowing procedures, it is important that the anti-doping regime learns from the anti-money laundering regime. For example, whereas many countries within the anti-money laundering regime have developed protective legislation and supportive procedures for whistleblowers, Yuliya Stepanova, the whistleblower that was responsible for revealing the system of state sponsored doping in Russia, was treated poorly by the IOC and refused participation at the Rio Olympic Games (Duval, 2016).

7.3.2.4 Data Analysis

With regard to data analysis within the anti-money laundering regime, the FATF Recommendations state that this responsibility should lie with an FIU (FATF Recommendations, 2012). Countries such as Australia, Canada and The Netherlands are compliant with this Recommendation. For example, whilst the private sector is obliged to report suspicious transaction information, the FIU is responsible for analysing the data and determining which transactions are considered to be low-level intelligence and which will be classified as potential money laundering cases (Levi and Reuter, 2006). In contrast to Australia, Canada and The Netherlands, where analytical responsibility lies with the FIU, Chaikin (2009) identified Switzerland as a country that has largely delegated analytical responsibility to the private sector; private businesses, rather than the FIU, are responsible for conducting the preliminary analysis and identifying transactions that are suspected as money laundering cases. Unger and Waarden (2009) argued that the delegation of analytical responsibility to the private sector increases governmental reliance upon private organisations. Furthermore, through such delegation, the government runs the risk that private organisations will submit arbitrary reports to FIUs. Similar to the FATF, WADA relies upon other organisations, specifically NADOs and IFs, to conduct doping tests. As a result, both the FATF and WADA face the challenge of ensuring that international standards are achieved within the multitude of national and international organisations responsible for data collection.

7.3.2.5 Effectiveness of the Compliance Information System

As stated by Viritha et al (2015), the effectiveness of the compliance information system is dependent upon sufficient human and financial resources. Research conducted by Tsingou (2010) found that as a result of insufficient staff levels and high workloads, compliance officers within financial organisations and FIUs struggle to monitor and analyse the available financial data. This problem was emphasised by the RUSI representative:

“The UK financial intelligence unit, which is required by the FATF, is really under resourced. And so there are thousands of reports that they can never look at” (RUSI Interview, 2017).

Additionally, as discussed by Sharman (2008), anti-money laundering organisations, particularly those operating within developing countries, have insufficient financial resources. As a result, their ability to invest in staff training programmes, which are essential to developing understanding of computerised data collection and compliance programmes, is restricted. Consequently, a large majority of the data analysis and suspicious transaction reports are of a low quality and / or not in line with the FATF regulations. In such instances, although a genuine commitment towards implementation may be displayed, non-compliance is inadvertently caused by capacity constraints (Houlihan, 2013). An alternative perspective is that a facade of compliance is presented and that a lack of political commitment has resulted in deliberate under resourcing. Similar problems exist within the disability rights and anti-doping regimes. For example, the United Nations (2008) stated that many governmental staff responsible for collecting disability data often lack statistical expertise and knowledge of disability issues. As a result, the accuracy and reliability of the data collected is affected. Within the anti-doping regime, Houlihan (2013) identified capacity as a problem, and argued that as a result of resource limitations, many Eastern and Central European NADOs do not have the capacity to comply. In recognition of the multitude of factors that hinder compliance, Gaffney-Rhys (2011) suggested that a combination of responses are required to effectively address areas

of weakness within the compliance information system that are caused by resource constraints and cultural conflicts.

7.3.3 Non-compliance Response System

7.3.3.1 Non-compliance Response: International Level Sanctions

The non-compliance response system refers to the actors, processes and rules that govern the formal and informal responses used to encourage non-compliant actors to comply (Mitchell and Chayes, 1995). The anti-money laundering regime's formal non-compliance response system comprises both prevention and enforcement tools. Prevention tools aim to discourage money laundering through the use of rules, sanctions and standards. In contrast, enforcement tools concentrate upon penalising money launderers through punishment, confiscation and prosecution (Levi and Reuter, 2006). Although enforcement institutions and officials exist within the anti-money laundering regime, Tsingou (2010) argued that the anti-money laundering regime primarily adopts a preventative regulatory framework. Similarly, preventative measures, particularly sanctions, were identified as a popular non-compliance response within the child rights, disability rights and anti-doping regimes.

With reference to the child rights and disability rights regimes, the monitoring bodies, specifically the CRC and the UNCRPD, lack the authority to impose sanctions upon state parties that are non-compliant with the respective Convention. As a result, the consequences of non-compliance are substantially confined within national boundaries (Fortin, 2003; Stein, 2016). In contrast, within the anti-doping regime, international bodies such as the IOC and IFs are able to enforce sanctions (Houlihan, 2013). Similar to the anti-doping regime, international sanctions exist within the anti-money laundering regime. The FATF has developed a series of graduated sanctions. However, it is important to recognise that such sanctions are restricted to FATF member states. Initially, non-compliant governments receive a letter from the FATF President, who proceeds to dispatch and lead a delegation to the country of concern. In more serious circumstances, the FATF recommends that

financial organisations worldwide closely examine all transactions of resident individuals, organisations and financial institutions of the respective country. The most severe sanction is to suspend the non-compliant country from the FATF (Mugarura, 2011). However, Tsingou (2010) contended that the FATF's sanction of expulsion from the organisation lacks credibility; the voluntary nature of membership means that sanctions could be escaped by leaving the FATF. Tsingou argued that the credibility of the sanctions have been undermined as the FATF rarely imposes reprimands upon non-compliant members. As argued by Winter and May (2001), in addition to reducing the effectiveness of the non-compliance response system, sanctions that lack credibility and potency undermine the overall strength of the regime. Similarly, within the anti-doping regime, it can be argued that the IOC and IFs have failed to impose credible and potent sanctions. Despite Brazil's listing as a non-compliant country within WADA's 2011 compliance report, Brazil was awarded hosting rights for the 2014 Football World Cup and the 2016 Olympic Games (Houlihan, 2013). Additionally, despite the revelation of a system of state sponsored doping within Russia, the IOC failed to follow WADA's recommendation and place a blanket ban upon Russia at the 2016 Rio Olympics. In contrast to the IOC, the IPC did impose a blanket ban upon Russian athletes at the Rio Paralympics (IOC, 2016).

7.3.3.2 Non-compliance Response: National Level Sanctions

Numerous governments have also introduced national level sanctions that target a range of actors. Within Switzerland, sanctions are used as a mechanism to encourage compliance with the compliance information system; failure to file a suspicious transaction report can lead to a maximum fine of 500,000 CHF (Federal Act on Combatting Money Laundering, 1997). Although numerous countries have imposed sanctions for reporting failures, Unger and Waarden (2009) identified over-reporting as a negative consequence that increases the FIU's analytical workload. This problem was emphasised by the RUSI representative:

“Often people are defensively reporting because they don’t want to get fined but that means there are a lot of useless suspicious activity reports” (RUSI Interview, 2017).

Within the USA, a financial sanction up to US \$500,000 is imposed upon anyone convicted of money laundering and is used as a deterrent mechanism (Bank Secrecy Act, 1970). However, as argued by Winter and May (2001), although sanctions may encourage actors driven by calculated motivations to comply, the value of compliance is rarely internalised. The RUSI representative also questioned the extent to which compliance has been institutionalised within the financial sector:

“Banks are committed, but do they comply because they are scared of fines or because there is a genuine effort to stop money laundering?” (RUSI Interview, 2017).

Although numerous countries have implemented a non-compliance response system, many of which include the use of sanctions, Heilmann and Schulte-Kulmann (2011) argued that in countries such as China, the non-compliance response system is subject to discretionary enforcement; the national norm and desire to protect the Chinese government’s power and cohesion overrides anti-money laundering concerns. As a result, leaders within China’s ‘Central Discipline Inspection Commission’ (an international organisation tasked with combatting corruption), often express an unwillingness to expose corruption and enforce sanctions upon party members. The problem of discretionary enforcement was also emphasised by the FATF Representative:

“If you look at certain reports, not only FATF but regional body reports, some of them point to a lack of political commitment to prosecute money laundering relating to certain predicate offences” (FATF Interview, 2017).

A similar problem exists within the anti-doping regime. For example, within Russia, a desire to protect the country's position as a powerful sporting nation, in addition to their system of state sponsored doping, resulted in the concealment of positive doping results (WADA, 2015d).

7.3.3.3 Additional Non-compliance Responses: Power Politics and Blacklisting

Although the FATF has developed a series of graduated sanctions, Hülse and Kerwer (2007) contended that the extent to which material incentives are effective is limited. This view was shared by the RUSI representative:

“Whether or not bigger fines make for more effective compliance I think is questionable. There are still massive cases of money laundering, adding another fine doesn't necessarily make a difference” (RUSI Interview, 2017).

Hülse and Kerwer (2007) argued that compared to material incentives, approaches such as the use of standards and power politics have been more effective at achieving compliance within the anti-money laundering regime. First, the FATF is an exclusive organisation that limits membership to countries that are considered to be of strategic importance. Given that the joint economic power of the FATF members outweighs that of non-members, Hülse and Kerwer argued that non-members will often express a desire to comply with the FATF's voluntary standards and international expectations. Governments strive for international legitimacy, and, as a result, will often make policy amendments in order to share the norms and values of the international community. In such instances, compliance is socially motivated and driven by the state party's desire to earn the respect and approval of significant others (Grasmick and Bursik, 1990). However, as argued by Winter and May (2001), whilst social motivation can result in normative commitment, the value of compliance has not been internalised. Whilst the collective power of member state parties is an important aspect of the anti-money laundering regime, powerful

individual states also have the ability to pressurise non-compliant states into policy reform. For example, after the USA threatened to bring criminal charges against the UBS (not only Switzerland's biggest bank but also the foundation of the Swiss economy), the Swiss government was forced to accept the disclosure of bank account details (Emmenegger, 2017).

Second, Sharman (2008) identified the FATF's 'High-risk and Non-cooperative Jurisdictions' blacklist as a calculated exercise of power, which is used by the FATF to drive compliance. Although formal sanctions are not imposed by the blacklist, the list publically condemns non-compliant member and non-member states. Additionally, the FATF recommends that all financial transactions involving blacklisted countries are highly scrutinised; a recommendation which, according to Sharman, has been successful in substantially reducing the financial flow to non-compliant countries. The effectiveness of the blacklist as a mechanism for improving compliance has been demonstrated on numerous occasions. For example, Malaysia, the Seychelles, Barbados and Mauritius undertook extensive legal reform in order to avoid FATF blacklisting and associated reputational damage (Hamin et al, 2016; Mugarura, 2011; Sharman, 2008). Similarly, Heilmann and Schulte-Kulmann (2011) identified a desire to avoid the blacklist as a key factor behind China's anti-money laundering reforms. However, the Council of Europe Consultant argued that the extent to which the blacklist is effective varies according to different countries:

“Going on that blacklist, particularly in an era of de-risking where banks are removing correspondent relationships from those on the FATF's list, has economic issues. Some of the African countries will worry about that, but countries like the UK probably worry a bit less” (Council of Europe Consultant Interview, 2017).

The blacklist represents a coercive tool that has been effective in obtaining compliance driven by calculated motivations (Sharman, 2008). As explained by Guzman (2008), calculated compliance occurs when the benefits of compliance outweigh the costs associated with non-compliance. In the case of the anti-money

laundering regime, the costs of compliance outweigh the costs (specifically reputational damage and financial losses) of being blacklisted as a non-compliant country. However, although numerous countries have engaged in policy reform as a result of the FATF's blacklist, Gelemerova (2009) contended that legislative compliance does not address weaknesses in the compliance reporting system, particularly insufficient resources, inadequate levels of quality data collection and non-compliance with reporting requirements. A similar response to non-compliance is adopted within the anti-doping regime. For example, WADA publishes the names of non-compliant countries and IFs (WADA, 2016a).

7.3.3.4 Non-compliance Response: Capacity Building

As discussed by Houlihan (2013), the efficiency of the non-compliance response system varies according to the cause of non-compliance. Where non-compliance is caused by inability to comply, Houlihan suggested that capacity building has the potential to be more effective than sanctions. The importance of variable responses to non-compliance was emphasised by the FATF representative, who stated "sanctions are certainly an important tool, but they're just one part of the tool box". Although the FATF favours the use of sanctions, there is some evidence of capacity building activities within the anti-money laundering regime. For example, in 2013, Ethiopia's Financial Intelligence Centre and the Ministry of Justice launched a seventeen-month capacity building initiative, which included a series of workshops designed to improve the analytical capacity of banks (Global Center, 2014). Additionally, the UK, a country that was identified by Tsingou (2010) as a leader within the anti-money laundering regime, has provided international assistance to other countries. In 2015, the UK delivered a five-day workshop in Laos, which was designed to strengthen the analytical capabilities of Laos' anti-money laundering officials (UK Gov, 2015).

In addition to initiatives developed at the governmental level, organisations such as the IMF have designed a global capacity development programme. The programme

focuses upon improving institutional and human capacity and has provided varying levels of support to all 189 members of the IMF. For example, in 2016, technical assistance was orientated towards developing countries, whilst policy training was directed towards emerging and middle-income countries. However, it is important to recognise that the ability of the IMF to deliver its capacity development programme is largely dependent upon donor financing (IMF, 2017). Similar to the anti-money laundering regime, governments within the disability rights regime have developed capacity building initiatives that aim to provide assistance to other countries (IDEA, 2016). Within the anti-doping regime, capacity building through international cooperation has been identified as an area that requires improvement. For example, as argued within the Pound Report (2012), developed NADOs have a responsibility to assist developing NADOs. Additionally, although UNESCO has a capacity building fund for the Convention Against doping in sport, the contributions to the fund are voluntary (WADA, 2016a).

7.4 Conclusion

Although the anti-money laundering regime is governed by a UN Convention, the FATF, rather than the UN, operates at the core of the regime and is recognised as the international standard setter. In addition to the FATF, global level actors include FSRBs, the World Bank and the IMF, whilst national level actors include governments, FIUs, financial institutions and financial regulatory bodies. Similar to the UNCRC and the UNCRPD, the UNTOC identifies state parties as the primary actors responsible for implementation. However, practicality has meant that private actors operate at the forefront of the anti-money laundering regime and are predominantly responsible for ensuring compliance. Consequently, in contrast to the ideal conceptualisation of top-down implementation, the anti-money laundering regime is largely dependent upon ‘front line employees’, specifically those within financial institutions, to implement the UNTOC. Additionally, although the UNTOC and FATF promote a top-down approach to implementation, the anti-money

laundering regime is characterised by a complex organisational network, rather than one single organisation. As a result of the extensive institutional framework, the anti-money laundering regime is susceptible to policy dilution. In particular, the regime faces the challenge of ensuring that international norms and a commitment to compliance are institutionalised within all organisations. Likewise, private actors are heavily involved within the anti-doping regime. For example, WADA is a hybrid organisation under public-private governance, whilst the IOC, NOCs and IFs are private sporting bodies that often engage in public-private partnerships with states and public authorities. Additionally, similar to the anti-money laundering regime, numerous organisations operating at regional, national and global levels share responsibility for implementing the Code. Consequently, WADA faces the challenge of ensuring that a commitment towards drug free sport is sustained across all levels of implementation.

Within the anti-money laundering regime, conflicting cultural values have hampered the institutionalisation of international norms and caused non-compliance. In particular, problems have occurred due to the FATF's emphasis upon due diligence. As a Western construct, the 'Know Your Customer Mantra' has failed to resonate within many non-Western countries, where the cultures value family relationships and close family ties. Consequently, a number of front line employees within non-Western financial organisations have demonstrated a lack of commitment towards, and failed to comply with, the compliance information system. Additionally, variations in cultural values have led to fragmentation and reduced the legitimacy of policy within the anti-money laundering regime. Unlike the child rights and disability rights regime, the anti-money laundering regime also faces the challenge of navigating organisational, in addition to national, cultures. For example, within many financial organisations, a professional culture of non-intervention in financial operations is institutionalised and has led to superficial levels of compliance. Similar challenges exist within the anti-doping regime. Arguably, anti-doping regulations are construction of the first world that is imposed upon poorer countries. As a result, both of the regimes face the challenge of ensuring that international standards developed in a Western cultural context are effectively translated and embedded

into non-Western cultures. Additionally, the anti-doping regime must ensure that appropriate strategies are in place to address a variety of national and sporting cultures. In addition to potentially conflicting cultural values, capacity constraints were identified as a major factor responsible for variable levels of compliance within the anti-money laundering regime. Analysis of the anti-money laundering regime evidenced how, despite a genuine commitment to compliance, non-compliance can be inadvertently caused by limited resources. In such instances, financial personnel exhibited behaviours associated with the bottom-up approach to implementation, specifically the development of coping mechanisms. However, it is also possible that within the anti-money laundering regime, some governments present a facade of compliance to disguise a lack of political commitment and deliberate under-resourcing. Capacity challenges also exist within the anti-doping regime. For example, as a result of resource limitations, many Eastern and Central European NADOs do not have the capacity to comply. Furthermore, where resources restrict the number of doping samples, anti-doping officials may resort to their developed 'coping mechanisms' of stereotyping and prioritising samples from sports stereotypically known for higher levels of doping.

With reference to monitoring and responding to non-compliance, numerous approaches have been used within the anti-money laundering regime. First, similar to the disability rights regime, independent monitoring mechanisms have been implemented. The conduct of on-site audits by independent experts was identified as a successful element of the anti-money laundering regime that increases objective monitoring. The approach also increases the legitimacy of the anti-money laundering regime and contributes towards holding non-compliant governments accountable. Learning from the anti-money laundering regime, the anti-doping regime could benefit from the introduction of independent audits of anti-doping organisations and the establishment of independent bodies responsible for testing. Second, whistleblowing procedures were identified as an important method of data collection. However, it is clear from the anti-money laundering regime that in order for whistleblowing to be effective, protective legislation must be accompanied by efforts to instill a supportive whistleblowing culture. As an area that has recently

received increased attention within the anti-doping regime, ADOs must ensure that implementation of whistleblowing procedures also focuses upon tackling the norm of silence that exists within many sporting cultures. Third, sanctions were identified as the anti-money laundering regime's favoured response to non-compliance. However, the effectiveness of money laundering sanctions was hindered by credibility and potency issues, which subsequently undermined the overall strength of the regime. In contrast to the FATF, WADA is unable to impose sanctions (apart from withdrawing the accreditation of laboratories). As the core organisation within the anti-doping regime, WADA needs sufficient levels of independence and the power to sanction non-compliant ADOs. Finally, in addition to sanctions, the anti-money laundering regime has addressed non-compliance through collaborative capacity building activities. The inclusion of capacity building within the anti-money laundering regime indicates an awareness that numerous approaches are necessary to deal with the multiple causes of non-compliance, including varying capacity and cultural diversity. Within the anti-doping regime, greater emphasis could be placed upon capacity building activities, whereby developed NADOs are responsible for supporting developing NADOs.

Chapter 8: The Anti-doping Regime

8.1 Anti-doping Institutional Framework

Similar to the child rights, disability rights and anti-money laundering regimes, implementation of the Code occurs through a top-down approach. However, in contrast to Gunn's (1978) ideal conceptualisation of implementation, the anti-doping regime is characterised by an extensive network of organisations (see Figure 8.1).

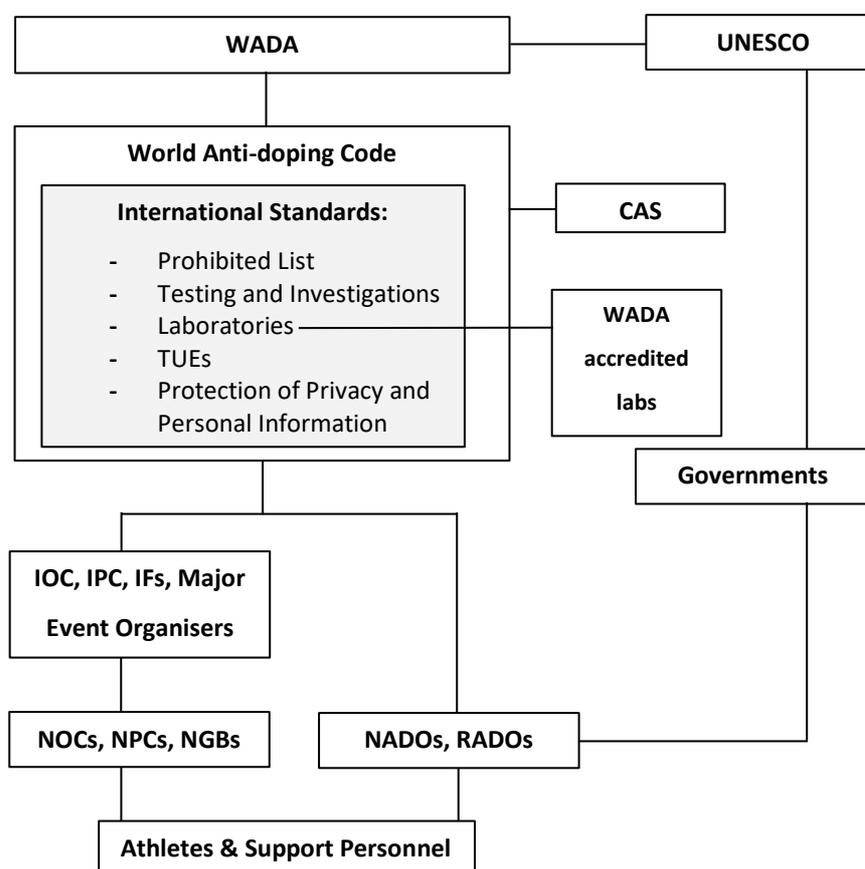


Figure 8.1: The Structure of Anti-doping within the Context of the Code (adapted from Chester and Wojek, 2014; 41)

8.1.1 International Institutional Framework

WADA operates at the core of the anti-doping regime and may be described as a hybrid organisation with a quasi-legal structure. As a result, WADA's operations lie somewhere between formal legal regimes that use hard law and informal regulatory regimes that use soft law (Henne, 2010). Founded in 1999, WADA aims to bring global consistency to regulations and anti-doping policies within sport organisations and governments (WADA, 2016a). To encourage consistency, WADA fulfils normative functions such as the articulation of values within the anti-doping regime (Houlihan and Preece, 2007). WADA's operations are supported by regional anti-doping organisations (RADOs), which fulfil numerous functions. First, RADOs contribute towards maintaining the network of relationships between key actors. Second, RADOs facilitate implementation of the Code in regions with inadequate anti-doping activities. Third, RADOs contribute towards ensuring that all athletes are subject to the same standard of anti-doping processes. To achieve this aim, in countries where a NADO is not fully operational, NADO responsibilities may be fulfilled by the RADO (Cléret, 2011). Although Herman Ram recognised the significance of RADOs, he argued that their ability to effectively fulfil a NADO's role is limited by a lack of cultural understanding:

“RADOs are doing a really good job of testing, but because of cultural differences and cultural problems, RADOs cannot do everything that a NADO could do” (Dutch Doping Authority Interview, 2017).

Within the anti-doping regime, WADA is recognised as the international standard setter. However, as discussed by Casini (2009), WADA is reliant upon IFs to institutionalise anti-doping norms within their respective sports. In turn, IFs are dependent upon national federations to institutionalise norms and regulate sport at the national level. Consequently, anti-doping norms are susceptible to dilution at various levels of implementation. Similarly, within the child rights and disability rights regime, the logistical challenge of implementation is beyond the capacities of

the UN. As a result, the UN is largely dependent upon governments and other actors to translate the international standards into practice at national and local levels (Lewis, 2010).

In addition to WADA, numerous international level actors share responsibility for implementing and monitoring compliance with the Code. For example, IFs are responsible for conducting in-competition and out-of-competition testing within their respective sports and events (Miller, 2011). However, as argued by Houlihan (2002), the fragmented development of anti-doping policies in different sports and countries, especially prior to the introduction of the WADA Code, resulted in jurisdiction clashes between IFs and NADOs. In particular, fragmentation resulted in duplicate testing by IFs and NADOs at sporting events. To address this issue and increase the effectiveness of anti-doping programmes, Miller (2011) emphasised the importance of cooperation between ADOs. Specifically, Miller stated that IFs should share test distribution plans with NADOs to prevent resources being wasted on duplicate testing. To further complicate the issue, Hanstad and Loland (2005) argued that the relationship between many IFs and NADOs is characterised by mutual distrust regarding the other's abilities to conduct an efficient anti-doping programme. Furthermore, Duval et al (2016) suggested that IF and NADO cooperation is hindered by conflicting cultures, history and traditions. Similar problems exist within the anti-money laundering regime. For example, Gelemerova (2009) found that information sharing and cooperation between financial institutions and FIUs was hindered by feelings of mistrust. In order to reduce mistrust, Gelemerova emphasised the importance of relationship building between core actors.

Chester and Wojek (2014) identified the IOC as a key actor within the anti-doping regime. The Olympic movement and governments have equal representation on WADA's Executive Committee and provide equal funding for WADA. Although a formal relationship exists between the IOC and WADA, Houlihan (2012) suggested that informal links have strengthened their accord. For example, WADA's first President, Richard Pound, was previously Vice President of the IOC, whilst WADA's

former Vice President, Arne Ljungqvist, was President of the IOC's Medical Commission. Furthermore, Henne (2010) suggested that the shared values of 'fair play', 'clean sport' and the 'spirit of sport' have reinforced the relationship between WADA and the IOC. As argued by May and Jochim (2013), shared values provide important foundations for policy and contribute towards overall regime strength. More recently, recent Russian doping scandal has placed strain upon the relationship between WADA and the IOC. First, the McLaren Report (2016) implicated the Russian government and claimed that a state-dictated failsafe system, which aimed to protect athletes who doped, was in operation at the Moscow Laboratory. However, the accusation conflicted with the IOC's policy against the articulation of a corrupt government discourse (Wagner and Pederson, 2014). Second, the IOC failed to follow WADA's recommendation and place a blanket ban upon Russia at the 2016 Rio Olympic Games. WADA openly expressed its disappointment in the IOC and stated that the decision signified a lack of harmonisation within the anti-doping regime and undermined anti-doping efforts (WADA, 2016d). The Russian scandal emphasised the weaknesses of WADA, particularly its lack of independence and inability to impose sanctions upon non-compliant parties. Although arguments have been made for the need to increase the independence and sanctioning powers of WADA, as argued by the Institute of National Anti-doping Organisations, the IOC is reluctant to relinquish its control within the anti-doping regime (INADOA, 2017). This view was shared by Andy Parkinson, who stated "politically, it is particularly unsavoury for the IOC to have anyone impose consequences other than themselves" (UKAD Interview, 2017). In contrast to WADA, the FATF is able to impose sanctions upon non-compliant member states. However, despite the FATF's sanctioning capabilities, the credibility of the sanctions within the anti-money laundering regime have been undermined as the FATF rarely imposes credible sanctions upon non-compliant members (Tsingou, 2010).

Finally, Houlihan (2007) identified the 'Court of Arbitration for Sport' (CAS) as an important international level actor that increases the legitimacy of WADA and the Code. Originally established by the IOC, CAS has operated as sport's independent dispute settlement body since 1994. With reference to anti-doping, appeals against

the decisions of ADOs may be submitted through CAS's 'Appeal Arbitration Procedure' (CAS, 2017). According to Lipicer and McArdle (2014), the establishment of CAS reflects the IOC's attempt to accommodate legal norms whilst maintaining the autonomy of the anti-doping regime; as a quasi-judicial body, CAS prevents the involvement of external courts in litigation processes. In addition to increasing the legitimacy of WADA, Houlihan (2007) argued that CAS increased athlete confidence in the fairness of the anti-doping regime and contributed towards increasing the consistency of NADO decisions. This view was shared by Herman Ram:

“There has been reasonable harmonisation of systems. If you look at the outcomes of the disciplinary proceedings, the majority are in line with the Code or can be corrected with an appeal to CAS” (Dutch Doping Authority Interview, 2017).

8.1.2 National Institutional Framework

With regard to the institutional framework at the national level, key actors include governments and National Anti-doping Organisations (NADOs). As previously discussed, governments signify their commitment towards the Code through ratification of the UNESCO Convention Against Doping in Sport (see Chapter 4, Section 4.3.3 for an overview of UNESCO's involvement in the anti-doping regime). Although ratification of the Convention commits state parties to the principles outlined within the Code, similar to the UNCRC, the Convention presents governments with a large amount of flexibility. In particular, governments are able to decide how they will give effect to the Convention, either by way of regulation, legislation or policies (UNESCO, 2015). Consequently, as discussed by Hickie (2016), numerous variations have occurred in terms of the legislative framework at national level. Within Italy, France and Austria, law reform has included the introduction of anti-doping legislation that criminalises the use of substances on WADA's Prohibited Substance List. On the one hand, McNamee and Tarasti (2009) argued that the criminalisation of doping has meant that some athletes are subject to punishment

under criminal law, in addition to a disciplinary sanction by the relevant sporting organisation. Additionally, Casini (2009) stated that implementation of the Code may be complicated by the introduction of national legislation, especially since the Code is not an instrument of criminal law. On the other hand, WADA's former Director General, David Howman, suggested that more countries should introduce legislation that criminalises doping. Howman also stated that compared to a suspension from sport, an athlete's fear of imprisonment arguably acts as a greater doping deterrent (WADA, 2015b).

Currently, of the 185 governments that have ratified the UNESCO Convention Against Doping in Sport, 141 have an established NADO that is a signatory of the Code (WADA, 2017b). However, as organisations primarily funded by governments, NADOs are subject to substantial variations in capacity (Hanstad and Loland, 2005). For example, during the 2015 - 2016 period, the UK Anti-Doping Agency (UKAD) had an annual budget of £5.4million, whilst the Jamaican Anti-Doping Organisation (JADCO) had a budget of £81,000 (Butler, 2015). Despite varying resources, in contrast to both the UNCRC and the UNCRPD, the Code does not take into account the variable capacity and resources of states. Instead, compliance is determined by absolute criteria, rather than relative / progressive criteria (WADA Code, 2015). As stated by Lipsky (1978), where resource limitations place constraints upon policy delivery, employees may resort to their developed 'coping mechanisms'. With reference to the anti-doping regime, where resources restrict the number of doping samples, NADO officials may resort to stereotyping and prioritising samples from sports stereotypically known for higher levels of doping. In such instances, where a genuine commitment towards achieving the goal of drug free sport is expressed, non-compliance may be attributed to the NADO's inability to comply and / or lack of resources (Houlihan, 2013). However, it is also possible that some governments present a facade of compliance to disguise a lack of political commitment and deliberate under-resourcing. This view was shared by Anders Solheim:

“It is a lack of commitment in some countries because they can send a huge number of athletes to the Olympic Games, so there is some money available” (Anti-doping Norway Interview, 2017).

Despite NADOs being funded by governments, WADA’s aim is for all NADOs to deliver a national anti-doping and testing programme that is independent from government influence. To achieve this aim, Houlihan and Preece (2007) emphasised the importance of ensuring that anti-doping activities are separate from the development of elite athletes. Prior to the establishment of UKAD as an independent body in 2009, the UK’s anti-doping activities were fulfilled by its NADO, the ‘Drug Free Sport Directorate’. However, given that the Drug Free Sport Directorate was located within UK Sport (the organisation responsible for increasing elite sport success), concerns existed over potential conflict of interests. Although the importance of NADO independence has been emphasised within the anti-doping regime, Pound et al (2012) identified government interference in NADO activity as an area of weakness. The extent to which NADOs can be subject to government influence was recently highlighted through the Russian doping scandal. The 2015 Independent Commission report found evidence of state interference and intimidation, specifically through the presence of security services at the Moscow and Sochi laboratories (Pound et al, 2015). To a certain extent, the scandal highlights the problems associated with resource dependency. Resource dependency occurs, the resource holder (in this case the government) can possess significant influence over the policy of the resource dependent organisation (in this case the NADO) (Benson, 1982). The Independent Commission report also concluded that a culture of cheating had been institutionalised; it was found that RUSADA doping control officers were susceptible to bribes and that laboratory personnel manipulated doping control processes to enable systemic cheating (Pound et al, 2015).

8.2 The Issue of Compliance

As previously discussed, Houlihan (2013) distinguished between adherence (otherwise known as acceptance or ratification), implementation and compliance. With reference to the anti-doping regime, WADA's definition of Code compliance states:

“Firstly, an ADO must accept the Code. By doing this, it agrees to the principles of the Code and agrees to implement and comply with the Code. Secondly, the ADO must implement the Code by amending its rules and policies to include mandatory articles and principles of the Code. These anti-doping rules must be submitted to WADA for review, in order for the rules to be pronounced in line with the Code. Lastly, the ADO must enforce its amended rules and policies in accordance with the Code” (WADA, 2016a).

The last requirement comes closest to the definition of compliance used within this paper, which suggests that compliance exists where a deep, intense commitment is exhibited towards reaching the goal of drug free sport (Hanstad and Houlihan, 2015). In addition to providing a broad definition of compliance, Houlihan (2013) argued that WADA, and as a result, numerous NADOs, commonly fail to differentiate between the concepts of implementation and compliance, with the two terms often being treated as interchangeable. However, using implementation outputs (particularly signatory and testing numbers) as evidence for compliance can lead to misleading results. As a result, this paper is concerned with the depth of commitment amongst actors within the anti-doping regime. Furthermore, anti-doping testing programmes return 1 – 2% of positive test results. In contrast, a study commissioned by WADA in 2011 and published by the Department for Digital, Culture, Media and Sport, estimated doping prevalence at 25 – 49% (Parliament UK, 2015). To further complicate the issue, some governments have been accused of fulfilling the UNESCO Convention Against Doping in Sport's obligations in a dilatory

manner. For example, as discussed by Houlihan (2015b), in the six months prior to the London 2012 Summer Olympic Games, it was estimated that the JADCO only conducted between one and ten anti-doping tests.

Numerous high profile doping cases, the revelation of state sponsored doping in Russia and the persistence of doping in countries such as India and former European communist states, has placed the issue of compliance at the forefront of the anti-doping regime. As discussed by López (2015), doping scandals have prompted policy changes that aim to increase compliance amongst ADOs. Furthermore, scandals have placed the issue of anti-doping on the agenda of governments. This view was shared by Yaya Yamamoto:

“Governments are not in the situation to say we don’t care about anti-doping anymore. Russia came into the spotlight and a lot of countries are now realising that we should do something about doping, they cannot ignore it” (JADA Interview, 2017).

However, many of the major events that have increased the focus upon compliance were the consequence of external organisations, rather than the effectiveness of the Code. The actions of the FBI, drug enforcement agency and internal revenue service resulted in the revelation of the BALCO scandal in 2003. In May 2010, a federal case was opened to investigate doping allegations by professional cyclist, Floyd Landis, against his teammate Lance Armstrong. Although the case was discontinued in 2012, the US Anti-doping Agency (USADA) promptly opened investigations of its own (Dimeo, 2013). According to Pielke (2016), had the federal government not prompted USADA’s investigation, it is likely that Armstrong would have continued to successfully engage in doping. More recently, in 2016, Russian hackers released details of Bradley Wiggin’s therapeutic use exemptions. Subsequently, the House of Commons’ Culture, Media and Sport Committee opened an inquiry into doping in UK Sport (Parliament UK, 2016). Finally, the German television channel ARD was responsible for exposing the Russian doping scandal after they received evidence from whistleblowers (Erickson et al, 2017). As argued by Duval et al (2016), the

inability of WADA to detect the system of state sponsored doping within Russia has undermined WADA's anti-doping efforts and reduced the legitimacy of the anti-doping regime. Additionally, argued that the repeated announcement of high-profile athletes committing doping violations (many of whom have successfully passed regular doping tests throughout their career), does not offer sport organisations and the public reassurance that drug users in sport are being caught. Instead, the revelations increase questions surrounding the effectiveness of the global anti-doping efforts and WADA's compliance system (Hanstad and Houlihan, 2015).

8.3 Mitchell and Chayes' Compliance System

8.3.1 Primary Rule System

the primary rule system refers to the rules, procedures and actors, and fulfills the purpose of determining who will be regulated and through what methods (Mitchell, 1988). As stated by Houlihan (2015), where anti-doping activity is concerned, WADA is accepted as the central organisation, whilst the Code and the UNESCO Convention Against Doping in Sport create a global regulatory structure for anti-doping efforts. Together, the Code and the Convention represent the primary rule system within the anti-doping regime. WADA defines the Code as the core document that globally harmonises anti-doping rules, regulations and policies amongst public authorities and sporting organisations. The Code currently operates in conjunction with six International Standards, namely the Prohibited List, Laboratories, Testing and Investigations, Therapeutic Use Exemptions (TUEs), Protection of Privacy and Personal Information, and Code Compliance by Signatories, each of which are intended to enhance implementation of the Code (WADA, 2016b). Wagner and Hanstad (2011) identified the international standards as key documents that help to regulate operational and technical elements of the anti-doping regime.

Article 20 of the Code clearly identifies the responsibilities of Code signatories, specifically the IOC, IPC, National Olympic / Paralympic Committees, IFs, NADOs and

major event organisers. The responsibilities of additional stakeholders, including athletes, athlete support personnel, regional anti-doping organisations and governments, are outlined within Articles 21 – 22 of the Code (WADA Code, 2015). As discussed by Casini (2009), private actors are largely responsible for implementation of the Code. For example, WADA is a hybrid organisation under public-private governance, whilst the IOC, NOCs and IFs are private sporting bodies that engage in public-private partnerships with states and public authorities. Similarly, within the anti-money laundering regime, private actors, particularly financial institutions, operate at the forefront of the anti-money laundering regime and are responsible for ensuring compliance (Tsingou, 2010). In contrast, the UNCRC and UNCRPD clearly identify state parties as the primary actors who are responsible for undertaking the necessary measures to implement the rights recognised within the respective Convention (UNCRC, 1989; UNCRPD, 2006).

Due to the non-governmental status of the Code, governments cannot be legally bound by the document. Instead, governments signify their commitment to the Code through ratification of the UNESCO Convention Against Doping in Sport (Casini, 2009). Abbott et al (2000) suggested that the dimensions of obligation, precision and delegation may be used to evaluate international legal instruments. First, obligation refers to the extent to which actors are bound to the set of rules. Given that Article 39 of the UNESCO Convention Against Doping in Sport enables state parties to denounce the Convention within six months of giving written notice, the Convention lies at the weak end of the obligation spectrum (UNESCO Convention, 2005). In contrast to the Convention, the UNCRC, UNCRPD and UNTOC may be denounced one year after written notice (UNCRC, 1989; UNCRPD, 2006; UNTOC, 2000). Second, precision is the extent to which the rules are unambiguous (Abbott et al, 2000). As argued by Houlihan (2005), the obligations contained within the Convention are imprecise and provide governments with a large amount of flexibility. For example, Article 3 of the Convention requires state parties to:

“Adopt appropriate measures at the national and international levels which are consistent with the principles of the Code” (UNESCO Convention Against Doping in Sport, 2005; 4).

As a result, governments are able to decide how they will give effect to the Convention, either by way of regulation, legislation or policies. However, although the Convention provides governments with the discretion to decide upon the methods through which the Convention will be operationalised, certain expectations, particularly the requirement to support domestic sport organisations and liaise with international partners, are made clear. Hanstad (2015) identified institutional collaboration as an important element that contributes towards achieving deeper levels of compliance within the given regime. Compared to the Convention, the UNCRRPD contains higher levels of precision through the inclusion of specific obligations in terms of operationalisation (UNCRRPD, 2006). Third, delegation refers to the extent to which third parties have been delegated the authority to implement the agreement and resolve disputes (Abbott et al, 2000). As argued by Houlihan (2013), in terms of delegation, the Convention primarily depends upon normative pressure, rather than legal recourse. Similarly, delegation is weak within the child rights and disability rights regimes, where, similar to the anti-doping regime, the Conventions are primarily dependent upon normative pressure.

With reference to the method of assessing compliance, this is made clear within the Code and the UNESCO Convention. Article 23.5 of the Code states that signatories must submit a report to WADA, which includes an explanation of the reasons behind non-compliance (WADA Code, 2015). Similarly, Article 31 of the UNESCO Convention requires governments to submit biennial reports to the Conference of State Parties (UNESCO Convention, 2005). The biennial report required by WADA takes the form of a self-report survey, which includes a range of fixed responses. Building upon WADA’s survey, UNESCO developed the ‘Anti-Doping Logic System’, an online questionnaire comprising of 28 closed questions. Using analysis software, the Anti-Doping Logic System provides an overall assessment of compliance graded between one and ten, with ten representing high levels compliance. Although the surveys aim

to evaluate compliance, Houlihan argued that the surveys more successfully gauge the breadth, rather than depth of commitment (Houlihan, 2013). Additionally, as discussed by McGoldrick (1991), the effectiveness of self-reporting systems depends upon the cooperation and honesty of state parties. This problem was emphasised by Andy Parkinson, who stated “the problem with the surveys is that you are self-reporting, so you can put down whatever you like” (UKAD Interview, 2017). The extent to which self-reporting systems may inaccurately portray compliance has recently been highlighted within the anti-doping regime. For example, after completing the 2015 UNESCO compliance survey, Russia was found to have an overall compliance rating inside of UNESCO’s benchmark (see Figure 8.2). However, in November 2015, the Independent Commission concluded that a system of state sponsored doping was operating within Russia (Pound Report, 2015).

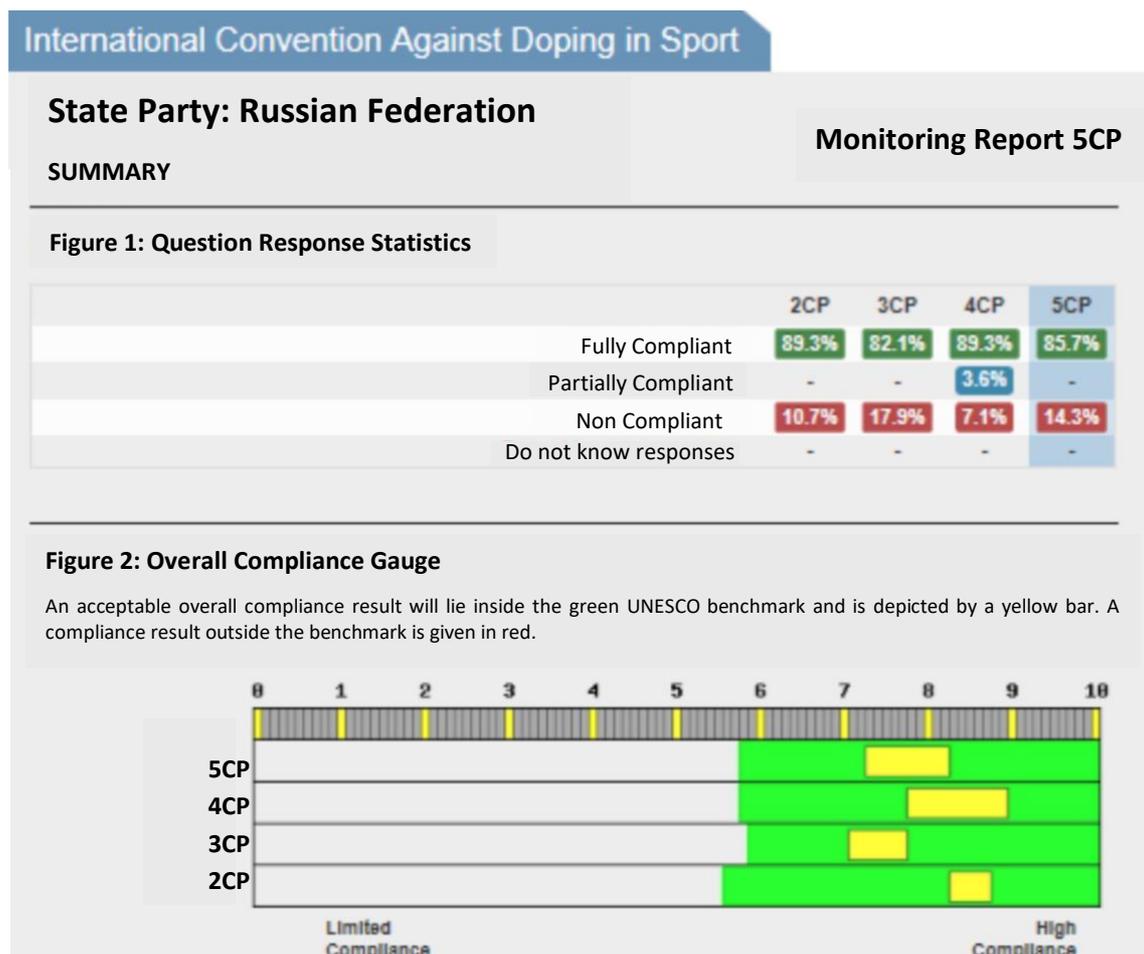


Figure 8.2: *Russia's Compliance with the UNESCO Convention (Conference of State Parties 5th Session, 2015; 142)*

The problems of measuring and improving good governance within international sports organisations was highlighted through the Sports Governance Observer (SGO), a report commissioned by the Danish Institute for Sports Study's 'Play the Game' initiative. The SGO is a benchmarking tool designed to evaluate the extent to which IFs comply with four dimensions of governance (transparency, democratic process, checks and balances and solidarity). Despite FIFA's ongoing corruption scandal, out of the 35 IFs evaluated, the rigorous analytical tool ranked FIFA second with an overall score of 67.8% (Sports Governance Observer, 2015). Echoing earlier work by Hoye and Cuskelly (2007), this finding demonstrates how implementation structures alone do not guarantee good governance. Instead, the dominant culture within an IF plays an important role in the achievement of good governance. The finding further highlights the challenges of determining an appropriate compliance measurement system that is able to provide an accurate measure of the depth of commitment and the extent to which policy is embedded in organisational culture. Similar to the anti-doping regime, the UNCRC and UNCRPD use a self-reporting process as the primary mechanism for monitoring compliance. However, whereas WADA and UNESCO require signatories to complete a self-assessment survey, the UNCRC and UNCRPD require state parties to submit a written report (UNCRC 1989; UNCRPD, 2006). In contrast, the anti-money laundering regime's primary mechanism for monitoring compliance is a peer review process conducted by independent experts. In response to the scale of the compliance problem that WADA currently faces, WADA recently announced an enhanced compliance monitoring programme, which is designed to assess signatory compliance in greater depth (WADA Compliance Monitoring Programme, 2017).

8.3.2 Compliance Information System

8.3.2.1 Independent Observer Programme

The aim of Mitchell and Chayes' (1995) compliance information system is to ensure that high quality, relevant data are collected and that all data are rigorously analysed and widely circulated. As discussed by Pound (2011), at the time of WADA's establishment, data collection procedures within the anti-doping regime were subject to legitimacy issues. For a long time, the public believed that the IOC concealed positive doping tests in order to protect the integrity of the Olympic Games. Although the IOC dismissed such allegations, WADA recognised that a similar statement put forward by an independent commission would have greater success in changing the public's opinion. For example, the involvement of independent experts demonstrates objective monitoring, whilst their opinions contribute towards increasing the legitimacy of an organisation and its measures (Hülse and Kerwer, 2007). As a result, at the Sydney 2000 Olympic Games, WADA launched the Independent Observer (IO) Programme. The programme involves a team of independent anti-doping experts, who, using an audit style approach, monitor and report on all aspects of doping control and results management processes at major sports events. The IO team is also responsible for completing a report for each mission. Within the report, the team certifies that the doping control programme has been conducted correctly and makes recommendations for improvement (IO Programme, 2017).

As stated by Andy Parkinson, "the IO missions without a shadow of a doubt give an independent assessment of an event" (UKAD Interview, 2017). With reference to compliance with anti-doping programmes at the Olympic Games, the most recent IO reports have identified various concerns. For example, the Rio 2016 IO team identified multiple failures. First, inadequate training and support was provided for doping control personnel and chaperones. Second, Olympic IFs and NADOs failed to

fulfil their testing responsibilities prior to the Olympic Games. For example, of the 11,470 registered athletes, 4,125 had no test history for the 2016 period. Third, similar to previous Olympic Games, insufficient whereabouts information led to the abandonment of doping tests. The IO report concluded:

“It was only due to the enormous resourcefulness and goodwill of some key doping control personnel working at the Games that the process did not breakdown entirely” (Independent Observer Report, 2016; 7).

To address the identified problems, the IO reports include a number of recommendations. However, their effectiveness as a mechanism for improving compliance is dependent upon the willingness of ADOs to take the recommendations on board. Andy Parkinson adopted a positive perspective on this issue:

“Some really good lessons have come out of IO missions and been picked up by the anti-doping community. It shows that the programme has a lot of value” (UKAD Interview, 2017).

However, as emphasised within the Sochi 2014 IO report, the anti-doping regime lacks a monitoring system that is able to evaluate the extent to which IO recommendations have been implemented (Independent Observer Report, 2014). In addition to the lack of monitoring, Anders Solheim emphasised the absence of repercussions for failing to implement the recommendations and stated “what are the consequences if you don’t follow the recommendations? That is maybe the biggest challenge” (Anti-doping Norway Interview, 2017). Similar to the anti-doping regime, the child rights regime faces the challenge of ensuring that relevant actors actively respond to the recommendations contained within the Concluding Observation reports. For example, Krommendijk (2014) found that since the mid-1990s, of the 1000 plus Concluding Observations for Finland, The Netherlands and New Zealand, only 74 resulted in behavioural changes. With regard to those Concluding Observations that were effective in encouraging behavioural change,

Krommendijk attributed this success to domestic actors who placed pressure upon the government and persuaded them to act upon the CRC's recommendations. As discussed by Houlihan (2013), in contrast to the child rights regime, advocates within the anti-doping regime have rarely used the IO recommendations to legitimise their arguments and lobby for policy change.

Additionally, the ability of the IO Programme to identify non-compliance has recently been called into question. For example, although an IO team evaluated the Sochi 2014 Winter Olympics, it was an Independent Commission that revealed the existence of a systematic cover-up involving doping manipulation at the Sochi Olympics (McLaren Report, 2016). With reference to the Russian case, Fred Donzé stated:

“When you have the secret services of one of the most powerful countries in the world involved, I think we have to manage expectations. There are limitations of what we can detect when there is such level of cheating and subversion of the system” (WADA Interview, 2017).

However, other anti-doping interviewees raised concerns regarding the ability of the IO teams to effectively identify non-compliance. Jeremy Luke argued that the IO teams “tend to lack the expertise needed if they are to truly assess compliance” (CCES Interview, 2017). Andy Parkinson shared this view and stated “you need to bring more experts in, not individuals like me who happen to know something about anti-doping” (UKAD Interview, 2017).

8.3.2.2 Whistleblowing

Yeoh (2014) defined a whistleblower as a current or former employee who discloses evidence of the organisation's illegal or immoral activities. Evidence may be disclosed through internal whistleblowing channels or passed to external organisations, examples of which include law enforcement agencies and the media.

As discussed by Erickson et al (2017), recent high profile whistleblowing cases within the anti-doping regime have led to heightened interest in the concept of whistleblowing. Of particular significance was the 2014 case, where Russian athlete Yuliya Stepanova and RUSADA employee Vitaly Stepanov provided investigative journalist Hajo Seppelt with evidence of state sponsored doping in Russia. Using the information, the German television channel ARD aired the documentary 'Top Secret Doping: How Russia Makes Its Winners', which alleged a system of state sponsored doping in Russia and implicated RUSADA, the Moscow WADA accredited laboratory, the ARAF, the IAAF, Russian athletes, support personnel and officials. Prompted by the documentary, WADA formed an Independent Commission to investigate the allegations. The report concluded that a widespread culture of cheating exists in Russia and found evidence of bribery and corruption within the IAAF (Pound Report, 2015). However, Girginov and Parry (2018) criticised the McLaren report for failing to question the credibility of the whistleblowers. Additionally, they questioned whether the McLaren report contained sufficient evidence to support the subsequent policy decisions (including the recommendation to ban Russia from the 2016 Rio Olympic Games).

The Russian whistleblowing case exemplifies how exogenous events, specifically doping scandals, have prompted anti-doping inquests, policy reappraisals and policy changes which aim to improve the effectiveness of the anti-doping regime (López, 2015). At WADA's 13th Annual Symposium in 2017, WADA announced a new Whistleblowing Policy, which outlines the procedures in place for reporting doping offences (WADA Whistleblowing Policy, 2016). Additionally, WADA launched Speak Up, a secure online platform through which athletes and other persons can anonymously report anti-doping violations (WADA Speak Up, 2017). A similar approach has been adopted within the anti-money laundering regime, where independent organisations such as the 'Whistle Blowers (Pty) Ltd' have provided an alternative channel through which allegations can be anonymously reported (Whistle Blowers Ltd, 2017). However, although whistleblowing platforms are an important element of the compliance information system, resources limit the extent

to which information can be analysed. This problem was emphasised by Tim Ricketts:

“We need to think of resources. We cannot deal with the multiplicity of information that we receive in terms of Speak Up!” (WADA Interview, 2017).

Additionally, Kawadza (2017) argued that the effectiveness of whistleblowing procedures, and the willingness of individuals to come forward, is largely impacted by legislation that protects whistleblowers from retributive action and cultural norms. This view was shared by Yaya Yamamoto, who stated “we need to protect athletes to create a culture of speaking out” (JADA Interview, 2017). With reference to protective legislation, Article 10.6.1 of the Code states that it is possible for athletes who provide substantial assistance that results in an ADRV, to receive a reduction in their sanction (WADA Code, 2005). Section 3.3 of WADA’s new whistleblowing policy also states that whistleblowers will be provided anonymity, protected from retaliation and, if necessary, WADA will liaise with the relevant law and police authorities to provide physical protection for the athlete and their family (WADA Whistleblowing Policy, 2016). However, as discussed by Duval (2016), despite Article 10.6.1 of the Code, the IOC treated Yuliya Stepanova poorly and refused her participation at the 2016 Rio Olympic Games. Additionally, the 2012 Working Group, which was established by WADA to investigate the apparent lack of testing effectiveness within the anti-doping regime, revealed that athletes are reluctant to come forward with doping information. Specifically, athletes expressed concern that compared to athletes who dope, whistleblowers are subject to harsher treatment and isolation (Pound Report, 2012). To date, WADA has also found it difficult to encourage the introduction of, and to foster, a culture that is supportive of whistleblowers.

With reference to cultural norms, Uys and Senekal (2008) argued that individuals face a serious dilemma when confronted with a potential whistleblowing situation. On the one hand, the ‘morality of principle’ prioritises the organisation and its

ethical requirements over relationships with other individuals. On the other hand, the 'morality of loyalty' prioritises relationships with individuals over any organisational expectations. Within the sporting context, the morality of loyalty is exemplified when relationships with fellow athletes are perceived to be of greater importance than WADA's anti-doping obligations. Uys and Senekal stated that in order to conform to the morality of loyalty principle, individuals adopt a code of silence. As argued by McLaren (2010), a code of silence is deeply embedded within the athlete community and protects athletes who dope from exposure and punishment. Whitaker et al (2014) made a similar assertion, however, they contended that the extent to which the norm of silence has been embedded varies according to different sports. Sporting cultures are characterised by shared values, expectations and practices, each of which governs the acceptability of specific behaviours, including whistleblowing. Whitaker et al found that compared to track and field athletes, rugby league players were more likely to adopt the morality of loyalty and adhere to a code of silence. To explain this result, Whitaker et al suggested that the importance of team cohesion within team sports contributes towards increased feelings of loyalty. Within other sports, researchers have found that athletes are reluctant to come forward due to fear of isolation by teammates. For example, Hardie et al (2012) found that within cycling, where the culture is arguably supportive of doping, the fear of being ostracised discouraged whistleblowers from disclosing information. Negative attitudes towards whistleblowing also exist at the national level. This problem was emphasised by Herman Ram, who stated "fundamentally, the culture is against whistleblowers, snitching in The Netherlands is looked upon very negatively" (Dutch Anti-doping Authority Interview, 2017). Similar to the anti-doping regime, the effectiveness of whistleblowing procedures within the anti-money laundering regime is hindered by cultural norms. For example, ideals surrounding privacy and confidentiality rights are deeply embedded within the culture of Switzerland's financial industry and discourage whistleblowers from coming forward (Kawadza, 2017). Consequently, in addition to developing whistleblowing platforms, ADOs at all levels of implementation within the anti-doping regime must attempt to change, albeit slowly, the code of silence that exists in certain sporting and national cultures.

8.3.2.3 Compliance Monitoring Programme

The revelation of state sponsored doping within Russia, combined with a number of high profile doping cases, has placed the issue of compliance at the forefront of the anti-doping regime. In response to the scale of the doping problem, WADA recently announced an enhanced compliance monitoring programme comprising numerous activities. First, in 2015, WADA established the Compliance Review Committee, an independent body that comprises compliance experts from non-sporting sectors, in addition to athlete, government and sport representatives. As stated by WADA, the primary role of the compliance review committee is to provide advice and recommendations to the Foundation Board on issues relating to signatory compliance. Specifically, recommendations are made using information received from the internal compliance task force (WADA Compliance Monitoring Programme, 2017). Efverström et al (2016) argued that the compliance review committee signifies WADA's attempt to improve the harmonisation of processes within the anti-doping regime. The role of the compliance review committee may be recognised further through specific reference to the committee in the 2021 Code.

The establishment of a monitoring committee is a popular approach taken within many human rights regimes, including the child rights and disability rights regimes (Lewis, 2010). However, as argued by Stein (2016), the ability of human rights committees to strengthen compliance is weakened by the absence of formal enforcement mechanisms. Similarly, the compliance review committee does not have the authority to impose sanctions. Furthermore, whereas the child rights and disability rights committees make recommendations directly to signatories (state parties), the compliance review committee provides recommendations to WADA's Foundation Board. Subsequently, the Foundation Board is responsible for initiating policy changes and declaring a signatory non-compliant (WADA Compliance Monitoring Programme, 2017). The compliance review committee was discussed by Jeremy Luke:

“The compliance review committee is a good initiative. It is viewed as independent which is critical because of the perceived conflict of interest within WADA. But it could have gone one step further so that the CRC had the authority to make decisions” (CCES Interview, 2017).

Second, a team of WADA representatives and external anti-doping experts are responsible for conducting a minimum of 10 IF / NADO audits during 2017 (WADA Compliance Monitoring Programme, 2017). Müller (2017) identified audits as an important aspect of WADA’s compliance system that contribute towards the harmonisation of anti-doping processes. Additionally, as argued by Hülse and Kerwer (2007), the involvement of independent experts demonstrates objective monitoring, whilst their opinions contribute towards increasing the legitimacy of an organisation and its measures. Within the anti-doping regime, WADA’s internal compliance task force is responsible for selecting the ADOs to be audited. To date, audits of NADOs in Kenya, Brazil, India, Mexico and Argentina have been announced (WADA Compliance Monitoring Programme, 2017). However, although Müller (2017) recognised the benefits of intelligence led audits, he emphasised the importance of random audits as a mechanism for monitoring compliance. The challenges of ensuring a sustainable commitment to compliance were commented on by Fred Donzé:

“If you just want to please WADA, you will make the changes and then go back to a certain routine. That is one of the challenges, to see how we can ensure by spot checks and other means that signatories have made sustainable changes” (WADA Interview, 2017).

A similar process of data collection and monitoring is adopted within the anti-money laundering regime. Referred to as ‘Mutual Evaluations’, the process includes an on-site audit conducted by a team of independent assessors (FATF, 2007). However, in contrast to the anti-doping regime, all members of the FATF are subject to mutual

evaluations that are conducted through a peer review process. The absence of peer reviews within the anti-doping regime was emphasised by Yaya Yamamoto:

“There needs to be other assessments, where bigger NADOs not just assist, but also assess other NADOs. Sport federations could do that as well, they could assess each other” (JADA Interview, 2017).

8.3.3 Non-compliance Response System

8.3.3.1 Non-compliance Response: Sanctions

The non-compliance response system refers to the actors, processes and rules that govern the formal and informal responses used to encourage non-compliant actors to comply (Mitchell and Chayes, 1995). As previously discussed, the CRC and CRPD lack the authority to impose sanctions upon non-compliant state parties. As a result, the consequences of non-compliance are substantially confined to national boundaries (Fortin, 2003; Stein, 2016). In contrast, international level sanctions are imposed within the anti-doping regime. However, as discussed by Houlihan (2013), WADA does not have the authority to sanction non-compliant signatories. Instead, the responsibility primarily lies with the IOC and IFs. Müller (2017) identified WADA’s inability to impose sanctions as a key weakness within the anti-doping regime. This view was shared by Andy Parkinson who stated “you cannot effectively have a compliance regime unless you are able to impose consequences” (UKAD Interview, 2017).

Under Article 20.1.8 of the Code, the IOC is required to only accept Olympic Game bids from countries that are compliant with the Code. Similarly, under Article 20.3.11, IFs are required to award World Championships to countries with Code compliant NADOs (WADA Code, 2015). Despite the Articles contained within the Code, Houlihan (2013) argued that a degree of skepticism has surrounded the credibility of sanctions within the anti-doping regime. Despite Brazil’s listing as a non-compliant country within WADA’s 2011 compliance report, Brazil was awarded

hosting rights for the 2014 Football World Cup and the 2016 Olympic Games. This problem was emphasised by Yaya Yamamoto:

“It is in the Code that world championships should not be awarded to non-compliant countries, but they are. So that part is failing in terms of the response to non-compliance by IFs” (JADA Interview, 2017).

Other countries with weak anti-doping programmes have also hosted world championships. For example, Kenya has suffered from a multitude of doping violations and allegations of collusion between doctors and athletes (Houlihan, 2015b). Nevertheless, in 2017, Kenya hosted the IAAF World U18 Championship (IAAF, 2017). Following allegations of institutionalised doping in Russia, WADA recommended that Russia be banned from the Rio Olympics. This recommendation was criticised by Girginov and Parry (2018), who argued that WADA adopted a political stance, thereby undermining its historical position of neutrality. In line with WADA’s recommendation, the IPC imposed a blanket ban upon Russian athletes at the Rio Paralympics. In contrast, the IOC delegated the responsibility for imposing bans to IFs. Although the IOC did not follow WADA’s recommendation, they did conduct retests of samples from the Beijing and London Olympic Games. Following the identification of positive tests, medals were reallocated to the rightful winners (IOC, 2016). As argued by Winter and May (2001), in addition to reducing the effectiveness of the non-compliance response system, sanctions that lack credibility, consistency and potency undermine the overall strength of the regime. The implications of the fragmented response to the Russia situation were discussed by Fred Donzé:

“There was a disjointed response and in terms of clarity and visibility of anti-doping, it is probably detrimental at the end when you have different organisations making different decisions” (WADA Interview, 2017).

In response to mounting pressure to increase the credibility of sanctions within the anti-doping regime, WADA has announced the development of a new graded sanction system (WADA, 2017c). Similarly, within the anti-money laundering regime, the FATF has implemented a graduated sanctioning system for non-compliant member states. However, in contrast to WADA, the FATF has the authority to impose the sanctions and is not dependent upon other organisations (Mugarura, 2011).

Within the anti-doping regime, financial sanctions are also imposed upon non-compliant organisations. Under Articles 20.1.3 and 20.3.9 of the Code, the IOC and IFs are required to withhold funding from non-compliant sport organisations. Additionally, under Article 10.10, ADOs may enforce financial sanctions in instances where the maximum period of ineligibility for a doping violation has been imposed (WADA Code, 2015). The International Weightlifting Federation fines member federations according to the number of athletes or affiliated persons who have committed doping violations. Within a calendar year, fines range between US \$50,000 for three violations, to US \$500,000 for 9 or more violations (IWF, 2014). As discussed by Guzman (2008), where compliance is driven by calculated motivations, coercion-based non-compliance models that incorporate sanctions can be used to manipulate a state party's utility calculations and encourage compliance. With reference to the anti-doping regime, Houlihan (2013) stated that the numerous NGBs have insufficient financial resources and are dependent upon governmental funding. As a result, the desire to avoid financial sanctions may act as a driver of compliance. However, as argued by Winter and May (2001), although sanctions may encourage actors driven by calculated motivations to comply, the value of compliance is rarely internalised. Similar to the anti-doping regime, the disability rights regime has implemented sanctions to address non-compliance. However, the sanctions have had variable levels of success. For example, Philips (2009) found that the majority of Ukrainian companies preferred to pay a small fine, rather than employ disabled persons. Philips continued to argue that in order to be effective, sanctions must have a significant financial consequence upon the non-compliant organisation.

As discussed by Efverström et al (2016), due to the top-down nature of implementation within the anti-doping regime, WADA faces the challenge of ensuring that the sanctions imposed by ADOs are consistent with the Code. Where variations in rule enforcement occur, Efverström et al argued that the legitimacy of regulating bodies is undermined. To limit the number of inconsistencies, WADA is responsible for monitoring the disciplinary procedures and sanctions imposed by anti-doping organisations. To fulfill this role, Article 14.1 of the Code requires anti-doping organisations to notify WADA of anti-doping rule violations (WADA Code, 2015). Geeraert (2013) argued that the application of sanctions within the anti-doping regime is also strengthened by the jurisprudence of CAS. In those instances where WADA has concerns regarding the sanctioning procedures or results, WADA has the right to appeal to CAS. For example, in 2014, the Australian Sports Anti-Doping Authority (ASADA) alleged that during the 2012 season, Essendon Football Club players were using the banned substance thymosin beta-4. Although the ASADA initiated action via the Australian Football League Tribunal, in 2015, the tribunal concluded that it was unclear as to whether an ADRV had been committed. Dissatisfied with this decision, WADA appealed to CAS to sanction 34 of the Essendon players. CAS upheld the appeal and sanctioned the players with a two-year period of ineligibility. In addition to the Essendon case, there are numerous examples of instances where CAS has upheld an appeal by WADA (CAS, 2016). As stated by Foster (2006), IFs often fear litigation and the potential costs of defending their decisions to CAS. Consequently, it may be argued that ADOs are reluctant to impose sanctions out of fear of litigation. Instead, ADOs decide against sanction, knowing that WADA will appeal the decision. In such instances, compliance is subcontracted to WADA, who also has to pay the costs associated with submitting an appeal to CAS. This problem was emphasised by Anders Solheim, who stated “you need to regulate the judicial part to make it better so that WADA doesn’t have to appeal so many cases” (Anti-doping Norway Interview, 2017).

With reference to the sanctions imposed upon athletes, athletes are subject to legal sanctions in the form of a sporting ban (Duval et al, 2016). As specified within Article 10.2.1 of the Code, the potential default sanction period for intentional dopers,

including first offenders, is four years (WADA Code, 2015). Similarly, the anti-money laundering regime has focused upon legal sanctions, specifically imprisonment, as a mechanism to deter money launderers (Tsingou, 2010). However, in addition to legal sanctions, Strelan and Boeckmann (2003) argued the importance of social and self-imposed sanctions. With reference to the anti-doping regime, Strelan and Boeckmann stated that social sanctions include condemnations from fellow athletes, the public and the media, whilst self-imposed sanctions include feelings of guilt. Research conducted by Overbye et al (2015) investigated the extent to which elite Danish athletes perceived legal, social and self-imposed sanctions as a deterrent of doping. Their research found that compared to legal sanctions, 77% and 54% of athletes perceived social and self-imposed sanctions to be a greater deterrent of doping. Consequently, Overbye et al suggested that compared to legal sanctions, deterrent strategies that emphasise the social and moral implications of doping have the potential to be more effective at encouraging compliance.

8.3.3.2 Non-compliance Response: Education

Where non-compliance is caused by inadvertence, for example by lack of knowledge, Houlihan (2013) suggested that education programmes have the potential to be more effective than sanctions. Additionally, Lee-Rife et al (2012) identified education as an effective approach that can be used to change, albeit slowly, cultural norms. With reference to the anti-doping regime, education has the potential to reinforce anti-doping norms and change the code of silence that is embedded within the athlete community. According to Cléret (2011), although WADA plays an important role in the development of education tools, the responsibility for implementation primarily lies with ADOs. The top-down approach to implementation is recognised within Article 18 of the Code, which states that within their respective jurisdiction, each signatory is required to implement education programmes for all persons who participate in sport. At a minimum, education programmes are required to include information on the prohibited substance list, ADRVs, TUEs, doping control / whereabouts procedures, the consequences of doping, the rights and responsibilities

of athletes and personnel and the negative impact of doping on the spirit of sport (WADA Code, 2015). As argued by Patterson et al (2016), due to the top-down nature of implementation, WADA faces the challenge of ensuring that all actors at each level of implementation are delivering effective education programmes that promote the ideology of clean sport. Similarly, within the disability rights regime, the CRPD faces the challenge of addressing variable levels of implementation. For example, Scior et al's (2016) research found disproportionate implementation of education initiatives across UN regions.

As discussed by Müller (2017), to increase the harmonisation of education within the anti-doping regime, WADA has developed a range of educational tools. Launched at the 2010 Singapore Youth Olympic Games, WADA's 'Play True Generation Programme' uses a value-based approach to encourage young athletes to promote clean sport. As explained by Muller, value-based education uses decision-making situations to develop understanding and increase moral reasoning. For example, WADA's 'Play True Challenge' is a computer simulation game where athletes are faced with numerous choices, including doping, that may be used to enhance their performance. Following their decisions, athletes are shown the consequences and impact upon their career (Cléret, 2011). The importance of value-based education was emphasised by Andy Parkinson:

“Education needs to be about behaviours. How do we get our youngsters understanding that they will need to make a decision to say yes or no to doping and that they need to make the right decision” (UKAD Interview, 2017).

In addition to athlete education programmes, Overbye et al (2015) emphasised the need for educational strategies that target the range of actors within an athlete's sporting environment. As argued by Erickson et al (2015), athlete support personnel are important actors that are capable of shaping athlete norms and behaviours regarding doping. The importance of diverse education programmes that target a variety of stakeholders has been recognised by WADA. In 2010, WADA launched the

CoachTrue Programme, which comprises both informative slide shows and scenario-based exercises. The aim is to encourage coaches to consider their decision-making process and their potential to influence athletes (WADA Education, 2017). However, although WADA has developed a number of education programmes, the responsibility for implementation primarily lies with ADOs (Cléret, 2011). Research conducted by Patterson et al (2016) identified variable levels of implementation. In particular, Patterson et al criticised IFs and NGBs for failing to provide differentiated education programmes that target specific actors. Additionally, although Müller (2017) recognised WADA's contribution towards education, Müller argued that bottom-up education initiatives that target grass root sports are important to foster an anti-doping culture. The importance of bottom-up education initiatives have been recognised within the child rights regime. For example, actors at the community level have implemented programmes that aim to educate communities and parents on the negative consequences of child marriage (Lee-Rife et al, 2012).

Numerous factors have reduced the effectiveness of education programmes within the anti-doping regime. First, NGBs reported minimal knowledge regarding the required standards of education provision. Patterson et al attributed the lack of knowledge to poor levels of NGB communication with IFs, NADOs and WADA (Patterson et al, 2016). Gunn (1978) identified clear communication is an integral element of top-down implementation. Recently, WADA's Foundation Board has recognised the importance of providing ADOs with an international standard for education. For example, in May 2018, WADA's Executive Committee is scheduled to evaluate an international education standard that is currently being developed by a working group (WADA, 2017c). In addition to providing ADOs with specific standards for education programmes, it is important that they also possess a sufficient understanding of compliance. This view was shared by Yaya Yamamoto:

“You need many education programmes. Educating international federations and anti-doping organisations on compliance, that part is important too, not just educating athletes” (JADA Interview, 2017).

Following the establishment of the international education standard, it is likely that the 2021 Code will include adaptations with regard to education.

Second, Patterson et al (2016) found that anti-doping education is subject to limited monitoring. Whilst NGB staff submitted reports to their line managers, official reports were rarely provided to NADOs or IFS. As argued by May and Jochim (2013), monitoring and feedback processes contribute towards the harmonisation of implementation processes. Third, Lipicer and McArdle (2014) identified resource constraints as a common reason behind the lack of education programmes. On the one hand, where genuine resource constraints exist, Hanstad and Loland (2008) recommended that ADOs shared education tools. For example, if copyright allows, NADOs could incorporate other NADO's education leaflets or videos onto their websites. On the other hand, Mountjoy et al (2017) contended that ADOs often fail to implement extensive education programmes due to the prioritisation of, and direction of resources towards, testing structures. For example, during 2015, education expenditure only accounted for 2.9% of the overall budget of summer IFs.

8.3.3.3 Non-compliance Response: Capacity Building

Where non-compliance is caused by resource constraints, Houlihan (2013) suggested that capacity building has the potential to be more effective than sanctions. With reference to WADA's financial capacity, WADA has an annual budget of approximately US \$30 million and is equally funded by the Olympic Movement and governments (WADA, 2016a). Prompted by the revelation of state sponsored doping within Russia, WADA appealed for increased levels of funding. In response, the French government provided an additional US \$159,544, whilst Poland provided US \$50,000 (WADA, 2017d). Despite such contributions, Møller (2017) argued that since its establishment, WADA and its anti-doping activities have been constrained by insufficient funding. Similarly, Tim Ricketts stated:

“WADA only has a certain amount of resources so we are looking at our fellow stakeholders to step in and help out” (WADA Interview, 2017).

To put WADA's budget into perspective, the figure is dwarfed by the annual value of the global sports industry, which was estimated at US \$145 billion in 2015 (PWC, 2015). As stated by Müller (2017), sports sponsors, broadcasters and major event organisers have an interest in, and benefit from, clean sport. As a result, Müller argued that such organisations have a responsibility to provide additional funding for anti-doping activities. WADA's President recently put forward a similar argument and called upon sponsors and broadcasters to consider contributing funds to the anti-doping cause. However, despite the mismatch between the investment in doping and the global value of sport, WADA has struggled to persuade broadcasters and sponsors to commit money to the fight against doping (McDermott, 2015). Anders Solheim also recognised WADA's struggle to secure revenue from broadcasters and stated, "I do not think broadcasters will pay the money to WADA, I think that is farfetched, it is a long way away" (Anti-doping Norway Interview, 2017). Whilst the anti-doping interviewees did not foresee funding from commercial partners as a realistic strategy for the immediate future, sponsors were identified as potential advocates of clean sport. For example, Jeremy Luke stated:

"Maybe sponsors could become more of an advocate by saying if we are going to enter into an arrangement with you, you have to have a quality anti-doping programme in place" (CCES Interview, 2017).

WADA relies upon a range of organisations to implement the Code. However, as argued by Houlihan and Garcia (2012), the ability of many countries and ADOs to deliver an effective anti-doping programme, and comply with the Code, is restricted by capacity constraints. For example, as government funded organisations, NADOs are dependent upon the government for resources. Furthermore, significant variations exist between the ability and also the willingness of governments to commit resources to anti-doping. The resource constraints faced by numerous countries was discussed by Herman Ram:

“In developing countries, if you live in Syria or the Palestine territories, governments have other business to attend to and that is more than understandable it is completely logical” (Dutch Anti-doping Interview, 2017).

With reference to the financial capacity of IFs, research conducted by Mountjoy et al (2017) identified significant variations between the annual budgets of summer Olympic IFs. During 2015, the annual expenditure of 6 IFs exceeded US \$1 million and accounted for 80% of overall spending. In contrast, the annual expenditure of 17 IFs was less than US \$300,000. As discussed by Houlihan and Garcia (2012), in addition to financial constraints, the ability of ADOs to comply is often hindered by lack of expertise. This problem was also identified in the 2016 Rio Olympic Games IO Report. The report identified insufficient levels of expertise amongst chaperones and doping control officers as one factor that contributed to the failure of the Olympic anti-doping programme. Despite the variable levels of capacity amongst ADOs, the Code determines compliance by absolute criteria (WADA Code, 2015). In contrast, the UNCRC and the UNCRPD include a progressive realisation clause. Brown and Guralnick (2012) stated that the progressive realisation clause reflects a realistic strategy that seeks to enable eventual compliance. As a result, a country is considered compliant if it is moving in the direction of the principles contained within the UNCRC and UNCRPD.

In recognition of the capacity problems within the anti-doping regime, in 2008, the ‘UNESCO Fund for the Elimination of Doping in Sport’ was established. The fund enables state parties to apply for a national grant up to US \$20,000 or a regional grant up to US \$50,000 for projects focusing upon capacity building, policy advice or education programmes that target youths and sport organisations. To provide an example of capacity building, in 2016, a regional grant of US \$16,078 was awarded to Mongolia. The project aimed to strengthen the institutional capacity of Mongolia’s NADO and involved training to improve the ability of doping control officers to implement the Code (UNESCO, 2017). However, although UNESCO is supportive of capacity building programmes, the resources of the fund are limited; the fund is

reliant upon the voluntary contributions of member states and private organisations (Houlihan, 2013). Similar to the anti-doping regime, the anti-money laundering regime has recognised the importance of capacity building activities. For example, the IMF (2017) focuses upon improving institutional and human capacity and has provided varying levels of support to all 189 members of the IMF. However, similar to UNESCO, the ability of the IMF to deliver its capacity development programme is largely dependent upon donor financing.

Müller (2017) emphasised the importance of capacity building through cooperation between countries with established, and countries with developing, anti-doping systems. As discussed by DiMaggio and Powell (1991), bilateral agreements aim to achieve deeper levels of compliance through mimetic isomorphism. Mimetic isomorphism refers to the process where an organisation (in this case a NADO), undergoes institutional change in order to resemble successful actors (in this case another NADO). To assist the implementation of bilateral agreements, in 2014, WADA published guidelines for the development of NADO to NADO partnerships (WADA / Anti-doping Norway, 2014). Within the anti-doping regime, Hanstad and Houlihan (2015) identified Norway as a country that has engaged in a number of bilateral agreements. For example, inter-governmental agreements have occurred between Norway and China, Cuba, Denmark, France, Russia and South Africa. At the organisational level, anti-doping Norway supported the development of Greece and Japan's NADOs, cooperated with Poland to develop an international doping control team and worked with RUSADA to develop international testing standards. However, although a number of NADO to NADO collaborations exist, there are minimal bilateral agreements between IFs. This view was shared by Yaya Yamamoto who stated "I don't see much collaboration between sports federations which is a shame" (JADA Interview, 2017). The need to expand collaborations was recognised by Tim Ricketts who added that WADA is "looking to broaden the agreements with IFs being involved with other IFs" (WADA Interview, 2017). However, the effectiveness of bilateral agreements is dependent upon the willingness of NADOs to engage in the programme and divert resources. This view was shared by Andy Parkinson:

“It relies on your government body to accept that you are going to do that as part of your global citizen work and that money will be diverted from your own programme to another programme” (UKAD Interview, 2017).

Furthermore, although bilateral agreements have the potential to achieve deeper levels of compliance, Gaffney-Rhys (2011) emphasised that a multi-faceted response system is essential to effectively address the variable causes of non-compliance.

8.4 Conclusion

WADA operates at the core of the regime and is recognised as the global standard setter. However, the logistical challenges of implementation and monitoring compliance transcend the capacities of WADA. As a result, a complex network of organisations share responsibility for Code implementation and monitoring compliance with the Code. In contrast to the child rights and disability rights regimes, the anti-doping regime’s organisational network largely comprises private actors. For example, WADA is a hybrid organisation under public-private governance, whilst the IOC, NOCs and IFs are private sporting bodies that engage in public-private partnerships with states and public authorities. As a result of the top-down approach to implementation, WADA is reliant upon IFs to institutionalise anti-doping norms within their respective sports. In turn, IFs are dependent upon national federations to institutionalise norms and regulate sport at the national level. Consequently, WADA faces the challenge of ensuring that a commitment towards drug free sport is sustained across all levels of implementation. Similarly, in contrast to the ideal conceptualisation of implementation, the UN is largely dependent upon governments and other child rights and disability rights actors to translate the UNCRC and CRPD’s international standards into practice at national and local levels.

The analysis of each international agreement identified cultural values as a key factor that hampers the institutionalisation of international norms and contributes towards non-compliance. In contrast to the child rights and disability rights regimes, the anti-doping regime faces the challenge of navigating national, in addition to sporting, cultures. At the national level, the potential discord between international anti-doping norms and national cultures was demonstrated through the revelation of institutionalised cheating in Russia. With reference to the sporting level, the dominant culture influences the acceptability of behaviours such as doping and the extent to which the 'code of silence' is embedded. Additionally, conflicting sporting and organisational cultures have led to the fragmentation of anti-doping efforts. In particular, conflicting cultures, history and traditions have hindered the effectiveness of IF and NADO collaborations. Similar problems exist within the anti-money laundering regime where financial institutions and FIUs are reluctant to share information and collaborate. As a result, in addition to developing strategies that aim to embed international norms at the national and sporting level, the anti-doping regime faces the challenge of building relationships between core actors in order to reduce fragmentation.

Similar to the child rights and disability rights regimes, capacity constraints were identified as a major factor responsible for variable levels of compliance within the anti-doping regime. For example, as a result of resource limitations, many African, Eastern and Central European NADOs do not have the capacity to comply. Where resources restrict the number of doping samples, anti-doping officials may exhibit behaviours associated with the bottom-up approach to implementation, specifically the development of coping mechanisms. For example, anti-doping officials may prioritise samples from sports or countries stereotypically known for higher levels of doping. It is important to recognise that even the wealthiest of ADOs have insufficient resources to effectively implement the Code and monitor compliance. In such instances, although a genuine commitment to compliance may exist, insufficient resources inadvertently cause non-compliance. However, similar to the anti-money laundering regime, it is possible that some governments present a

facade of compliance to disguise a lack of political commitment and deliberate under-resourcing.

In addition to facing challenges caused by conflicting cultural values and capacity constraints, the ability of the anti-doping regime to detect non-compliance has recently been called into question. For example, despite operating under a system of state sponsored doping, Russia received an acceptable compliance score in the 2015 UNESCO compliance survey. Additionally, although the Independent Observer (IO) programme operated at the 2014 Sochi Olympic Games, the IO team was unable to detect the systematic manipulation of doping control processes. Both incidents have undermined the legitimacy and credibility of monitoring procedures within the anti-doping regime. As a result, WADA faces challenges in terms of determining an appropriate compliance measurement system that can accurately measure the depth of commitment. The recent introduction of an enhanced compliance monitoring programme has numerous parallels with the analysed regimes. For example, similar to the child rights and disability rights regimes, WADA has developed a compliance review committee, a development which signifies WADA's attempt to improve the harmonisation of processes within the anti-doping regime. Additionally, similar to the anti-money laundering regime, the anti-doping regime has implemented audits as part of its review process. On-site audits by independent experts were identified as a successful element of the anti-money laundering regime that increases objective monitoring and the legitimacy of the regime. However, in contrast to the anti-money laundering regime, where all members are subject to peer review audits, the anti-doping audits are limited to ADOs selected by WADA's international compliance task force.

Finally, with regard to the non-compliance response system, sanctions were identified as the favoured response within the anti-doping regime. However, in contrast to the FATF (the core actor within the anti-money laundering regime), WADA lacks the authority to impose sanctions upon non-compliant ADOs. WADA's lack of independence has led to numerous concerns regarding the credibility and potency of sanctions, which, in turn, has undermined the overall strength of the anti-

doping regime. Of particular significance was the IOC's failure to follow WADA's recommendation to ban Russia from the Rio Olympics after the revelation of state sponsored doping. Consequently, network management poses problems for WADA. In particular, WADA faces the challenge of ensuring that ADOs act and respond to non-compliance in the desired manner. In addition to sanctions, the anti-doping regime has addressed non-compliance through education and capacity building. The inclusion of education and capacity building within the anti-doping regime indicates an awareness that multiple approaches are necessary to deal with the range of causes of non-compliance, including variable capacities and cultural diversity. In line with the anti-doping regime's top-down approach to implementation, WADA has developed a range of educational tools that may be adopted by ADOs. However, as demonstrated through the child rights regime, bottom-up education initiatives play an important role in fostering the desired culture at the community, or in the case of the anti-doping regime, grass roots level. With reference to capacity building, the UNESCO Fund for the Elimination of Doping in Sport reflects a clear attempt to address the resource constraints of ADOs. However, similar to the IMF within the anti-money laundering regime, the ability of UNESCO to deliver its capacity development programme is dependent upon voluntary contributions. Consequently, there is a need to increase capacity at all levels of implementation within the anti-doping regime.

Chapter 9: Conclusion

9.1 Introduction

The aim of this study was to analyse the problems of achieving compliance with the World Anti-Doping Code. As previously outlined within Chapter 1, the following research objectives were developed:

- To explore the techniques for, and problems of, achieving compliance in three similar international agreements and to analyse the context within which the international agreements operate.
- To assess the effectiveness of the World Anti-doping Agency and its major partners in achieving compliance in anti-doping.
- To assess the utility of Mitchell and Chayes' analytical framework and implementation theory.
- To identify techniques and strategies that might strengthen compliance with the WADA Code.

This chapter is divided into three sections. First, the empirical findings within Chapters 5 – 8 are reviewed. Specifically, the continuities and variances between the four regimes and their compliance systems are analysed. To add depth to the analysis, this section is informed by the theories discussed within Chapter 2. Second, the usefulness of Mitchell and Chayes' compliance framework, implementation theory and regime theory are discussed. Throughout these sections, techniques and strategies that might strengthen compliance with the WADA Code are also identified. The final section of the chapter provides a reflection upon the research process.

9.2 Empirical Findings

9.2.1 Top-down Approach to Implementation

The first theme to recur was the adoption of a top-down approach to implementation by the anti-doping, child rights, disability rights and anti-money laundering regimes. However, although each of the regimes had developed clear top-down implementation frameworks, the logistical challenge of implementation and monitoring compliance transcended the capacities of the core actors. Consequently, in contrast to Gunn's (1978) ideal conceptualisation of top-down implementation, the regimes are characterised by, and core actors dependent upon, an extensive network of organisations. Many of these actors are accountable to independent international policy actors such as IFs or national policy actors such as NADOs and governments. To exemplify the top-down framework of implementation, WADA is reliant upon IFs to institutionalise anti-doping norms within their respective sports. In turn, IFs are dependent upon national federations to institutionalise norms and regulate sport at the national level. However, due to the number of actors involved, WADA faces the challenge of ensuring that a commitment towards anti-doping is sustained at all levels of implementation. Similarly, the UN is largely dependent upon governments and other child rights and disability rights actors to translate the UNCRC and UNCRPD's international standards into practice at national and local levels. The extensiveness of each regime's organisational network is outlined in Table 9.1.

	Anti-doping Regime	Anti-money Laundering Regime	Disability Rights Regime	Child Rights Regime
Core Actors	- WADA / UNESCO	- UN / FATF	- UN / CRC	- UN / CRPD
International Level Actors	- IOC - IPC - IFs	- FSRBs - World Bank - IMF	- International DPOs	- UNICEF - International NGOs
National Level Actors	- NOCs - NPCs - NGBs	- FIUs - Financial Institutions - Financial Regulatory Bodies	- National DPOs	- Governments - National NGOs

Table 9.1: Organisational Network of the Four Regimes

The extent to which core actors are dependent upon other organisations varies in each of the regimes. Of the four regimes analysed, the child rights and disability rights regimes displayed the weakest top-down implementation framework. In particular, limitations related to the non-compliance response system. For example, interviewees attributed low levels of compliance to the inability of the CRC and CRPD to impose sanctions, and the absence of formal enforcement mechanisms at the international level. In contrast, within the anti-doping regime, non-compliant actors are liable to, at least in theory, numerous international level sanctions. In addition to requiring funders to withhold funding from non-compliant organisations, the Code requires that non-compliant countries are not awarded hosting rights for the Olympic Games and World Championships (WADA Code, 2015). Although sanctions are available, it is important to recognise that WADA does not possess sanctioning powers. Instead, WADA is dependent upon organisations such as the IOC and IFs to impose international sanctions that are in line with the Code. However, a number of decisions have led to scepticism surrounding the credibility and potency of sanctions within the anti-doping regime.

Notable examples include the IOC's failure to ban Russia from the 2016 Rio Olympics despite the revelation of state sponsored doping and the awarding of the 2014 Football World Cup and 2016 Olympic Games hosting rights to Brazil despite the country's listing as non-compliant within WADA's 2011 compliance report (IOC, 2016). The given examples highlight the challenges that WADA faces in terms of ensuring that ADOs respond to non-compliance in accordance with the Code. This problem has recently been recognised during 2021 Code review process (WADA, 2018). As a result, it is possible that the 2021 Code will include enhanced clarification regarding the expectations of signatories, particularly their requirements when responding to non-compliance. One significant difference exists between the anti-doping and the anti-money laundering regime; in contrast to WADA, the FATF has the authority to impose sanctions upon non-compliant member states. Due to its sanctioning powers, the FATF's dependence upon other actors is reduced. Table 9.2 outlines the key differences between the four regime's and their compliance systems.

	Anti-doping Regime	Anti-money Laundering Regime	Disability Rights Regime	Child Rights Regime
Primary Rule System	- WADA Code / UNESCO Convention Against Doping in Sport	- UNTOC / FATF Recommendations	- UNCRPD (includes progressive realisation clause)	- UNCRC (includes progressive realisation clause)
Compliance Information System	- State party reports - Audits - Whistleblowing - IO Programme	- Risk based approach - Mutual Evaluations (peer review audits) - Whistleblowing	- State party reports - DPO reports	- State party reports - NGO reports - Kidsright Index
Non-compliance Response System				
<i>International Sanctions</i>	√ (Imposed by the IOC, IPC and IFs)	√ (Imposed by the FATF on member states)	<i>No formal international enforcement mechanism</i>	<i>No formal international enforcement mechanism</i>
<i>National Sanctions</i>	√	√	√	√
<i>Blacklisting</i>	√	√		
<i>Lobbying</i>				√
<i>Whistleblowing</i>	√	√		
<i>Education</i>	√	√	√	√
<i>Capacity Building</i>	√	√	√	√

Table 3: A Comparison of the Regime’s Compliance Systems

9.2.2 Cultural Variations

Within each of the regimes, the achievement of compliance has been hindered by cultural variations. First, challenges have arisen due to the cultural context within which the primary rule systems were developed. Specifically, the interview data supported previous arguments that the Code, UNCRC and FATF Recommendations are constructs substantially of the Western world that are imposed upon non-Western cultures (Park, 2008; Rasmusson, 2016; Alkaabi et al, 2014). As argued by Ansell (2014), as the contextual circumstances become more distant from the Western norm, the relevance of articles contained within the international agreement decreases. In particular, assumptions regarding the homogeneity of value reference points have created challenges in terms of translating the Western conceptualisations contained within the respective Convention into non-Western cultures. With reference to the anti-doping regime, the idea that doping contradicts the spirit of sport lies at the heart of anti-doping policy and the Code (WADA Code, 2015). However, research conducted by Houlihan et al (2017) found variations between the reference points used in the UK and Japan when deciding upon the morality of sporting behaviours such as doping. For example, UK respondents referred to values specific to the sporting context, whilst Japanese respondents primarily referred to wider social values. Similarly, the anti-money laundering regime has struggled to institutionalise international norms. In particular, Western constructs such as the 'Know Your Customer Mantra' have failed to resonate with many non-Western cultures (Alkaabi et al, 2014).

Second, in contrast to the child rights and disability rights regimes, the anti-doping regime is challenged with navigating national, in addition to sporting, cultures. At the national level, the revelation of institutionalised cheating in Russia highlighted the potential disconnect between international anti-doping norms and national cultures (McLaren Report, 2016). At the sporting level, a code of silence has been embedded to varying degrees within different sports (Whitaker et al, 2010). Whilst the code of silence exists, athletes who dope are protected from exposure and punishment.

Furthermore, the effectiveness of the compliance information system, particularly whistleblowing, has been reduced (McLaren, 2010). As previously discussed, high profile whistleblowing cases within the anti-doping regime have recently led to heightened interest in whistleblowing (Erickson et al, 2017). However, in the past, WADA has found it difficult to foster a culture that is supportive of whistleblowing. To address this problem, in November 2016, WADA's foundation board approved a new whistleblower programme and policy. The initiative included a digital whistleblowing platform and a legal framework that outlined protection and confidentiality procedures. Possibly, the 2021 Code will also make more explicit reference to the protection of whistleblowers. In addition to developing whistleblowing platforms, ADOs at all levels of implementation within the anti-doping regime must develop strategies that focus upon changing, albeit slowly, the code of silence that exists in certain sporting and national cultures. Similar to the anti-doping regime, various cultures, specifically national and organisational cultures, exist within the anti-money laundering regime. For example, Garrigues et al (2011) stated that the financial industry is largely characterised by a professional culture of non-intervention in financial operations. In light of this organisational culture, Garrigues et al argued that compliance amongst many banking officials is superficial. Additionally, Kazawada (2017) stated that a culture of non-intervention is deeply embedded within many Swiss financial organisations and attributed this culture to Switzerland's long history of private banking and bank secrecy.

Third, implementation structures do not guarantee compliance and good governance. Instead, compliance and good governance are impacted by the dominant national and sporting cultures. For example, despite seemingly successful implementation outputs, Russia was found to be operating under a system of state-sponsored doping (WADA, 2015d). Additionally, the Sports Governance Observer benchmarking tool evaluated the extent to which IFs were compliant with four governance dimensions: transparency, democratic process, checks and balances and solidarity. Despite FIFA's ongoing corruption scandal, out of the 35 IFs evaluated, FIFA ranked second (Sports Governance Observer, 2015). Both findings highlight the challenges of determining an appropriate compliance measurement system that is

able to provide an accurate measure of the depth of commitment and the extent to which policy is embedded in organisational culture.

9.2.3 Resource Constraints

Within each of the regimes, resource constraints were identified as a recurrent problem. With reference to the primary rule systems, the impact that variable resources have on an actor's ability to comply is addressed differently. For example, one factor that distinguished the UNCRC and UNCRPD from the Code was the inclusion of a progressive realisation clause. As argued by Brown and Guralnick (2012), the progressive realisation clause reflects a realistic strategy that seeks to enable and encourage eventual compliance. Countries are considered compliant if they demonstrate progress towards the principles contained within the Convention. In contrast, the Code determines compliance using absolute, rather than relative / progressive criteria; signatories are categorised as compliant or non-compliant (WADA Code, 2015). However, whilst the anti-doping interviewees acknowledged that variable resources hinder compliance, they identified absolute compliance criteria as the most appropriate approach. Specifically, interviewees argued that progressive or tiered criteria suggest that variable levels of compliance are acceptable. In contrast, interviewees stated that absolute criteria clearly convey the expectation that all signatories must have rigorous anti-doping systems. Furthermore, interviewees expressed concern that tiered criteria could negatively impact NADO funding. For example, Jeremy Luke stated:

“There are challenges in our country. Is what we are doing compliance or above compliance? If it's above compliance, the government says can we fund you less?” (CCES Interview, 2017).

In particular, financial constraints were identified as a major factor that hinders compliance and limits policy decision making. As previously discussed, since its establishment, WADA has been constrained by insufficient funding. Additionally,

there is a mismatch between WADA's annual budget (US \$29.7 million in 2017) and the estimated value of the global sports industry (\$145 billion in 2015) (PWC, 2015). However, as discussed by McDermott (2015), although WADA's budget is dwarfed by the annual value of the global sports industry, WADA has struggled to persuade broadcasters and sponsors to commit money to the fight against doping. Furthermore, although sponsors, broadcasters and major event organisers have an interest in, and benefit from, clean sport, the anti-doping interviewees did not perceive direct funding from commercial partners as a viable revenue source in the future. In recognition of the need to increase its financial capacity, WADA recently announced plans to investigate alternative funding strategies, including private donors, corporations and foundations (WADA, 2017d). Similar funding strategies are used to address resource constraints within the child rights regime. For example, UNICEF is not in receipt of UN funding and instead relies upon voluntary contributions from corporations, foundations and private individuals (UNICEF, 2015).

In addition to WADA, resources have restricted the capabilities of NADOs and IFs. For example, as a result of resource limitations, many African, Eastern and Central European NADOs do not have the capacity to comply (Houlihan, 2013). However, it is important to recognise that where resources are concerned, even the wealthiest of ADOs face challenges in terms of implementing and monitoring compliance with the Code. As stated by Herman Ram, "the Code demands much more than even the most developed NADOs can realise" (Dutch Doping Authority Interview, 2017). As a result, although a genuine commitment to compliance may exist, insufficient resources inadvertently cause non-compliance. Additionally, as suggested by Lipsky (1978), employees may resort to their developed coping mechanisms in response to resource limitations. For example, where resources restrict the number of doping samples, NADO officials may resort to stereotyping and prioritising samples from sports stereotypically known for higher levels of doping. Similarly, within the anti-money laundering regime, financial personnel exhibited behaviours associated with the bottom-up approach to implementation. In particular, where resource constraints exist, financial personal use their judgement and stereotypes to identify which potential money laundering cases require further investigation (Kawadza,

2017). However, although countries suffer from genuine resource constraints, numerous interviews within each of the regimes suggested that some governments present a facade of compliance to disguise a lack of political commitment and deliberate under-resourcing.

9.2.4 Practical Recommendations

The preceding discussion analysed a range of strategies that have been used to enhance compliance within the comparative regimes. Although the strategies have had modest and variable success in improving compliance, they have the potential to address the problems of achieving compliance with the WADA Code. Consequently, there are numerous recommendations for WADA and the anti-doping regime that could be implemented to enhance the compliance system.

9.2.4.1 Recommendations to enhance the compliance information system:

- **Implement a global compliance index.**

In the child rights regime, one distinctive approach is the implementation of an annual global compliance index (the KidsRights Index). As argued by Kallehauge (2009), global indexes are particularly effective when governments place value upon comparing favourably against other governments. For actors who are socially motivated, compliance indexes also provide an opportunity for actors to earn the respect and approval of significant others. Similarly, rapidly expanding economies (such as Brazil and India) have used the hosting of major sporting events to signify their arrival on the international stage and improve their national branding (Grix and Houlihan, 2013). Furthermore, with reference to the KidsRights Index, Smits (2015) identified this as a useful tool that provides governments and other child rights stakeholders with an important insight into the extent to which state parties are equipped to implement the UNCRC. The development of a

global compliance index is a strategy that could be implemented within the anti-doping regime.

- The empirical findings identified whistleblowing as an important element that contributes towards the revelation of non-compliance. However, the willingness of whistleblowers to come forward is, in part, hindered by the existing 'code of silence'. Consequently, in addition to implementing whistleblowing platforms (such as Speak Up), the anti-doping regime must develop strategies, including educational campaigns, that focus upon changing the code of silence that exists in certain sporting and national cultures.

9.2.4.2 Recommendations to enhance the non-compliance response system:

- **WADA must obtain the authority to impose sanctions.**

To strengthen compliance within the anti-doping regime, WADA also needs the authority to impose sanctions. Although this strategy would help to counter credibility issues and reduce WADA's dependence upon other ADOs, it is unlikely to receive sufficient support in the near future to be included as an amendment in the 2021 Code. Although arguments have been made for the need to increase the independence and sanctioning powers of WADA, as argued by the Institute of National Anti-doping Organisations, the IOC is reluctant to relinquish its control within the anti-doping regime (iNADOa, 2017).

- **More intensive lobbying to foster a commitment towards anti-doping.**

One factor that distinguished the child rights regime from the anti-doping, disability rights and anti-money laundering regimes was the use of lobbying to address non-compliance caused by cultural norms. As discussed by Grugel and Peruzzotti (2010), Argentina's cultural norm of the Ley del Patronato (Law of Trusteeship), violated the UNCRC's conceptualisation of children as

individuals with rights. However, as a result of the intense lobbying, the Argentinian government passed Law 26061 'The Law of Integral Protection of the Rights of the Child' in 2005. Additionally, Krommendijk (2014) identified lobbying within the child rights regime as a key factor that has persuaded numerous governments to act upon the CRC's recommendations. In contrast, within the anti-doping regime, lobbying has rarely been used to achieve policy change (Houlihan, 2013). Nevertheless, interviewees for the anti-doping case study identified lobbying as a strategy that could be used to foster a commitment towards anti-doping. In particular, interviewees stated that sponsors could play a more significant role in advocating the importance of clean sport. To demonstrate their potential, Bayle (2015) identified sponsors as a key stakeholder that placed significant pressure on FIFA for policy reform.

9.2.4.3 Additional recommendations:

- **Secure additional sources of funding (e.g private donor funding).**

WADA recently announced plans to investigate alternative funding strategies, including private donors, corporations and foundations (WADA, 2017d). To address the financial constraints at various levels of implementation within the anti-doping regime, it is important that WADA continue to investigate, and secure, additional funding sources. Similar funding strategies are used to address resource constraints within the child rights regime. For example, UNICEF is not in receipt of UN funding and instead relies upon voluntary contributions from corporations, foundations and private individuals (UNICEF, 2015).

9.3 Theoretical Assessment

As previously discussed, the analysis was informed by the theories discussed in Chapter 2, specifically Mitchell and Chayes' compliance framework, implementation theory and regime theory. This section considers the utility and limitations of each theory, including their potential to explore the techniques for, and problems of, achieving compliance with international agreements.

9.3.1 Mitchell and Chayes' (1995) Compliance System

Mitchell and Chayes' (1995) compliance system is a useful framework that focuses upon the impact that factors endogenous to the regime have upon compliance. Compared to implementation and regime theory, the compliance system adopts the narrowest view of compliance. Specifically, emphasis is placed upon three key elements: the primary rule system, the compliance information system and the non-compliance response system. Overall, the compliance system is a useful organisational tool that can be used to generate themes for data collection and guide the analysis. Using the three subsystems, researchers and practitioners can identify components of the compliance system, including the regulatory approaches, data collection methods and the responses used to address non-compliance. Additionally, the structural framework provided by the compliance system aids analysis. For example, the application of the compliance system to multiple regimes aids the identification of continuities and variances. However, although the compliance system proffers multiple advantages, the analytical effectiveness of the subsystems varies.

Of the three subsystems, the non-compliance response system has the greatest analytical value. First, the non-compliance response system has the scope to explore the broad reasons behind non-compliance, namely incapacity, inadvertence and deliberate violations. Second, in recognition of the variable causes of non-compliance, the non-compliance response system emphasises the importance of,

and examines, the likely effectiveness of differentiated responses. Specifically, the subsystem suggests that resources and technical assistance are appropriate to address incapacity, that information, training and resource assistance are appropriate to address inadvertence, and that sanctions, blacklisting and advocacy are appropriate to address deliberate violations. As a result, the non-compliance response system is a useful analytical tool that explores the relationship between the reasons for non-compliance and the most appropriate responses. However, one limitation of the non-compliance response system is its failure to consider the motivations for compliance. If the theory were refined to consider calculated, normative and social motivations, the non-compliance response system could provide a deeper understanding of the drivers of compliance. Additionally, by recognising the various compliance motivations, the analytical power of the non-compliance response system could be enhanced. For example, the appropriateness of responses could be evaluated according to two dimensions: the motivations for compliance and the reasons behind non-compliance.

With reference to the compliance information system, this is more effective at describing the regime's methods of data collection and at identifying the strategies used to determine compliance. Although the subsystem recognises that differences exist between the quality of information systems, variability is only explained by capacity constraints. As a result, one significant limitation of the compliance information system, and the framework as a whole, is its failure to consider the impact of culture. To provide a more sophisticated understanding of the factors that contribute towards variable levels of compliance, the framework could be refined to consider cultural variations, for example at the national and organisational level. The significance of culture was emphasised in this study, which found that culture impacts upon the extent to which international norms are institutionalised and influences an actor's willingness to comply with procedures. The primary rule system is also more effective at describing the compliance system, rather than explaining the problems of achieving compliance. As a descriptive tool, the primary rule system is useful at highlighting the rules, actors and methods of regulation. However, the subsystem does not consider the complexities of network management and the

challenges of ensuring that an actor's commitment is sustained across all levels of implementation (the issue of network management will be discussed in the subsequent section).

With reference to the theories discussed in Chapter 2, Mitchell and Chayes' compliance system links neatly with top-down implementation theory. As previously stated, top-down implementation begins with the formation of policy objectives and believes that implementation occurs in a linear fashion. Additionally, the approach focuses upon developing a control programme designed to reduce deviation from the central actor's goals that are outlined within the original policy (Gunn, 1978). The compliance system is also concerned with the structures of implementation. Similar to top-down implementation, the compliance system begins with the identification of the policy document and core actors. The non-compliance response system also complements top-down implementation theory and enhances understanding of an effective 'control programme'. As a result, the compliance system provides a useful insight into the practical application of top-down implementation. However, whilst the compliance system and top-down implementation are complementary bodies of theory, other theories of implementation are necessary to address the analytical limitations of the compliance system and provide a richer understanding of policy success and failures regarding compliance.

9.3.2 Implementation Theory

Top-down implementation is a useful theory that provides insight into the structural components of a regime. As previously discussed, when utilised alongside Mitchell and Chayes' compliance system, top-down implementation is effective at describing the regime's hierarchy and the implementation and control processes. With reference to specific top-down implementation theories, Gunn's (1978) perfect model of implementation is a useful ideal type checklist that helps to evaluate the extent to which a regime exhibits top-down structures. Sabatier and Mazmanian's (1980) theory also possesses analytical value and contributes towards explaining

variations in implementation success. For example, Sabatier and Mazmanian outline six variables that impact the effectiveness of implementation: socio-economic conditions and technology; media attention to the problem; public support; attitudes and resources of constituency groups; support from sovereigns; and commitment and leadership skills of implementing officials. Within the six variables, some emphasis is placed upon factors that are exogenous to the regime, specifically socio-economic and political pressures. Consequently, in contrast to Mitchell and Chayes' compliance system, top-down implementation contributes towards understanding how external factors impact implementation effectiveness. However, most empirical studies of implementation focus on single countries where there is a high level of cultural, organisational and legal homogeneity. There are fewer studies and less theorisation of implementation at the global level, where the implementation process functions within a much more dynamic and heterogeneous environment.

With reference to the analytical effectiveness of top-down implementation theory, this is limited by its emphasis on hierarchical structures. Although consideration is given to the variables that affect implementation, top-down implementation overemphasises structure at the expense of culture. Furthermore, the theory argues that top-down structures can ensure that actor's behaviours are kept within acceptable boundaries. However, it is clear that alone, such structures do not guarantee good governance and compliance. In sport, this was exemplified through the Sports Governance Observer, a benchmarking tool that evaluates the extent to which IFs comply with four basic dimensions of governance (transparency, democratic process, checks and balances and solidarity). Despite FIFA's ongoing corruption scandal, out of the 35 IFs evaluated, this rigorous analytical tool ranked FIFA second with an overall score of 67.8% (Sports Governance Observer, 2015). Gunn (1978) also identified a single implementing agency as a key condition for perfect implementation. Where additional agencies are involved, Gunn stated that dependent relationships must be minimal. As a result, where a complex network of interdependent organisations is responsible for policy decision-making and implementation, the relevance of top-down theory decreases. To overcome these

limitations and develop a more sophisticated understanding of implementation and compliance, it is important to integrate contemporary implementation theories, including bottom-up implementation.

As discussed in Chapter 2, one critique of top-down implementation theory relates to its emphasis upon a central decision-making body. In response to the limitations of top-down implementation, Hjern and Porter (1983) introduced the concept of implementation structures (structures that comprise groups of organisations and actors) and claimed that programmes are implemented through a matrix of organisations. As a result, bottom-up implementation is a useful mechanism that aids the identification of actors responsible for implementation; starting with local level actors, the theory proceeds to identify regional, national and international level actors. The significance of implementation structures was emphasised in this study; each of the analysed regimes was characterised by a complex network of actors. Additionally, the theory's focus upon networks provides an opportunity to explore the interactions between, and interdependency of, policy actors at various levels of implementation. In this study, the core actors were highly dependent upon other organisations. In each of the regimes, the logistical challenge of implementation and compliance is beyond the capacity of the core actors. Consequently, core actors are dependent upon a network of actors to implement, and monitor compliance with, the respective Convention. However, such dependency creates network management challenges. In particular, core actors face the challenge of ensuring that actors at all levels effectively implement the Convention, and that a commitment towards compliance is sustained at all levels of implementation. Furthermore, this study emphasised the challenges that cultural variations impose upon effective network management. For example, in each of the regimes, conflicting national and organisational cultures impact the extent to which international norms are institutionalised. Although cultural homogeneity would enhance the ability of core actors to manage networks, this is difficult to achieve, particularly for international agreements that must navigate diverse national and organisational cultures.

Another critique of top-down implementation theory is its failure to consider the extent to which policies may be changed during the implementation process. In contrast, Lipsky's (1978) argued that street-level bureaucrats at the micro-implementation level display a high degree of discretion that cannot be controlled by central planners at the macro implementation level. As a result, bottom-up implementation theory is useful as it directs attention towards the discretionary behaviours of local implementers. Specifically, Lipsky argued that the system engenders practices that facilitate the development of coping methods (including proceeding in ways that are relatively stereotyped and routine) to help manage the work pressures that street level bureaucrats face. By analysing the behaviours of local implementers, bottom-up implementation provides insight into the gaps between the actual and desired policy implementation. Additionally, the theory's emphasis upon working environment pressures (inadequate resources, large caseloads, client unpredictability and professional norms) enhances understanding of the factors that cause implementation and compliance variances at the local level. Although the compliance system and top-down implementation theory also consider factors that hinder compliance, in contrast to bottom-up implementation, the theories do not consider cultural components such as professional norms. As a result, bottom-up implementation redresses the balance between structures and culture and provides a useful starting point for exploring the impact of culture on compliance. Furthermore, through its consideration of professional norms, bottom-up implementation theory complements broader theories, including policy regime theory.

9.3.3 International Relations and Regime Theory

The international relations theory identified in Chapter 2 was of value in guiding the application of the selected middle range theories, particularly regime theory. Furthermore, the findings confirmed the importance and value of international relations theory. For example, in part, the research findings supported the neoliberal perspective of international relations. In particular, the significance of non-

governmental organisations, especially WADA, but also IFs, was confirmed. However, given the extent to which regime effectiveness is dependent on state support and cooperation, the findings also emphasised the need for caution in down-grading the significance of states / governments in policy regimes.

With reference to regime theory, Krasner (1982; 186) defined international regimes as “sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area”. Through its emphasis upon norms, regime theory provides a useful counter balance to top-down implementation theory’s overemphasis on structure. Furthermore, limitations of Mitchell and Chayes’ compliance system are addressed. The primary rule system focuses upon rules and regulations that are specified within the core policy document. In contrast, regime theory provides an opportunity for researchers to explore the implicit rules and norms that govern cooperation, behaviour and compliance. With reference to this study, regime theory’s focus upon implicit norms helped to explain non-compliance with the Code and the compliance information system. In the anti-doping regime, implicit norms govern the acceptability of behaviours, including doping and whistleblowing. With reference to whistleblowing, the exploration of norms, specifically the code of silence, helped to explain an athlete’s unwillingness to comply with whistleblowing procedures. However, although the exploration of norms aided the analysis within this study, it is important to recognise that the perceived usefulness of norms as an analytical unit varies according to one’s theoretical positioning. For example, constructivists believe that norms lie at the heart of regime formation and transcend behaviour regulation; norms constitute actor’s identities and interests. In contrast, neoliberals state that norms are limited to regulatory functions, whilst neorealists identify power maximisation as the prevailing norm.

Krasner’s definition is also useful as the breadth enables the application of regime theory to a range of contexts. The wide applicability of regime theory was useful for this study, where the theory was used to analyse the child rights, disability rights, anti-money laundering and anti-doping regimes. Furthermore, the broad context

provides a useful setting for the integration of more precise theories such as Mitchell and Chayes' compliance system and implementation theory. However, the broad conceptualisation can make regime theory difficult to operationalise. To address this problem and add precision to Krasner's definition, May and Jochim (2013) suggested that ideas, institutional arrangements and interests underpin regimes. The specific components identified by May and Jochim provide a useful starting point for exploring the governing arrangements of a regime and guided the analysis within this study.

First, ideas emphasise the importance of shared norms and shared understanding regarding the policy purpose. Norm evaluation is particularly useful as it offers insight into cultural variations; by analysing the extent to which international norms have been institutionalised at the national level, it is possible to identify conflicting cultural norms. As previously discussed, this study identified cultural variations as a key factor that has caused variable levels of compliance in each of the analysed regimes. Second, institutional arrangements refer to the implementation structures and organisational relationships. Alone, this component has limited analytical effectiveness; it is more effective at describing a regime's institutional design. To address this limitation and add analytical depth, this study integrated precise implementation theories, including top-down and bottom-up implementation theories. As a result, rather than describing the anti-doping regime's institutional design, it was possible to analyse the interactions between, and interdependency of, policy actors at various levels of implementation. Through the incorporation of complementary theories, regime theory could provide a more sophisticated understanding of the institutional arrangements and the implementation process. Third, interests consider the extent to which there is support for, or opposition to, the policies. This component is useful as it highlights the range of interests that a regime needs to be aware of and take into account. Furthermore, interests explore the capacity of interest groups to shape policy agenda and encourage policy reform. In this study, the potential influence of interest groups was primarily highlighted through the child rights regime. For example, the improvement of compliance with the UNCRC has largely been the consequence of public pressure and lobbying at the

national and international level. Furthermore, the anti-doping regime demonstrated the impact that external interests can have upon compliance. For example, the Russian doping scandal demonstrated how sport may be used for a government's diplomatic purposes.

The three regime components identified by May and Jochim also provide additional analytical insights. In particular, re-evaluation of a regime's ideas, institutional arrangements and interests can help to identify and explain regime changes. The analytical capabilities of the components were demonstrated through the anti-doping regime. For example, the IOC's decision to convene the 1999 World Conference on Doping in Sport, and the subsequent formation of WADA, was largely driven by increased government interest in doping. Additionally, May (2015) argued that strong regimes are characterised by policy norms that are widely institutionalised, institutional arrangements that focus on policy goals and a supportive constituency. As a result, the three characteristics provided a useful opportunity to draw conclusions regarding the overall strength of the anti-doping, anti-money laundering, child rights and disability rights regimes.

Although a number of uses are associated with regime theory, due to the indiscrete nature of policy regimes, it is difficult to determine a regime's boundaries. To further complicate the issue, the boundaries between regimes are blurred. The extent to which regimes overlap with others is demonstrated through the anti-doping regime. For example, with reference to the recent Russian doping scandal, WADA's independent commission found that actions "extended beyond mere administrative violations into potentially criminal acts" (Pound et al, 2015; 22). As a result, INTERPOL, a core body within the international law enforcement regime, launched Operation Augeas to investigate allegations of international corruption involving sporting athletes and officials (INTERPOL, 2016). Additionally, the Pound Report (2012; 12) stated that athletes are accessing and becoming increasingly involved in the "criminal underworld". Consequently, there is an overlap between the anti-doping regime and the international drug control regime, which combats criminal activities, including the manufacturing, trafficking and supply of illegal drugs. Whilst

the law enforcement and international drug control regimes address criminal elements beyond the jurisdiction of the anti-doping regime, other regimes share WADA's ideals. For example, there is an overlap between the anti-doping and the world health regime, which, similar to WADA, shares the ideal that doping is detrimental to the health of an athlete. The overlap of regimes has implications for the analysis of policy effectiveness. The impact of alternative policies (both internal and external to the regime), are difficult to isolate. As a result, when drawing conclusions regarding policy effectiveness, it is important to demonstrate an awareness of interlinking policies.

9.4 Reflections on the Research Process

To conclude, the chapter includes a reflection on the research process. Specific consideration is given to the aspects of the research that went well, in addition to the main challenges that were experienced. As discussed in Chapter 8, WADA may be described as a hybrid public-private organisation with a quasi-legal structure. Furthermore, the anti-doping regime is characterised by a network of organisations, many of which are private actors (for example the IOC, NOCs and IFs). As a result, private regulatory regimes, including the banking and insurance regimes, were identified as case studies that would also provide good comparative analysis to the anti-doping regime. However, whilst the regimes were considered, logistically, it was too difficult to gain access to relevant organisations and interviewees.

Data was collected through qualitative document analysis and semi-structured interviews. Throughout the document analysis process, no problems arose. All of the policy documents that were required for analysis were publicly available on the Internet. As a result, the core documents were easily accessed through the websites of relevant organisations, examples of which include WADA, UNESCO, the United Nations, UNICEF and the FATF. Additionally, article searches were conducted through academic databases, including Sport Discus, Lexus Nexus and Web of Science. After identifying the most effective search terms, the abstracts were sifted

to identify relevant articles. During this stage, journal accessibility was very good and only a small number of noteworthy articles were unavailable. To overcome this problem, unavailable documents were accessed using Loughborough University's inter-library loan service. To demonstrate the successful of the article search, a number of articles relevant to the research questions and appropriate for analysis were identified for each of the empirical chapters.

With reference to the semi-structured interviews, the sourcing of interviewees went very well. Initially, potential participants were identified using the websites of relevant organisations. Given that each of the websites included an email and / or postal address, it was easy to initiate contact with desired staff members. Snowball sampling was also used to gain recommendations of other people who might meet the interview criteria. Fortunately, the prospective interviewees were willing to participate in the research. In line with the selection criteria outlined in Chapter 3, all of the interviewees held a senior position within their organisation, the participants were not condescending during the interview process. Instead, they expressed interest in the research area and sought to provide as much information as possible. Their willingness to help, combined with their expertise, resulted in the production of rich narratives. Although the interviews went well, the data collection process was limited by resource constraints. In particular, financial resources restricted the number of interviews conducted. Consequently, for each of the regimes, the interview samples were skewed towards representatives of rich countries. With reference to the anti-doping regime, had further resources been available, a more representative sample of NADOs would have been interviewed. For example, interviewees would have been sourced from poorer countries such as Jamaica and Kenya, both of which have recently experienced compliance issues. To increase the representativeness of the sample, NADOs within European ex-communist countries would also have been interviewed. Similarly, for the child rights, disability rights and anti-money laundering regimes, additional organisations would have been contacted to gain a first-hand account of the challenges faced in developing countries. Although constraints were placed on the data collection process, the interviewees that were spoken to, in addition to the documentary sources, provided a high degree

of confidence in the conclusions. However, due to the global nature of the agreements, it is recognised that three interviews for each of the comparative regimes was not enough to reach saturation. Furthermore, in recognition that some voices were beyond reach due to resource constraints, appropriate caution was taken when drawing conclusions.

To strengthen the data collection process, consideration was given to the theoretical frameworks discussed in Chapter 2. In particular, Mitchell and Chayes' (1995) compliance framework provided a useful structure when developing the interview schedule. For example, the compliance system was used to generate subheadings for the interview schedule. Whilst the framework provided a useful guide, methodological challenges related to the development of interview questions. In particular, as emphasised by Murchison (2010), it was important that the interview questions did not suggest a specific answer to the interviewee. To ensure that this problem did not occur, numerous strategies were adopted. First, as recommended by Bryman (2008), the interview questions were carefully written so that they encouraged discussion without steering the interviewee towards specific ideas. The PhD supervisory team also confirmed that the proposed interview questions were appropriate. Second, in line with the semi-structured interview approach, open-ended questions were used. As discussed by DiCicco-Bloom and Crabtree (2006), open-ended questions are advantageous as they provide the interviewee with the opportunity to provide a narrative in their own words. Third, probes were used to explore topics that arose during the interview discussion. In addition to generating a complete narrative, the probes placed emphasis upon the interviewee's responses, rather than the questions. The adoption of these strategies contributed towards the production of rich narratives. With reference to the evaluation of the interview data, this stage was enhanced by the application of theories identified in Chapter 2. In particular, implementation theory provided a broad theoretical context within which the interview data could be evaluated.

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Appendix 1: Key Search Words

- Anti-doping compliance
- Anti-doping implementation
- Anti-doping policy implementation
- Anti-money laundering compliance
- Anti-money laundering implementation
- Child rights compliance
- Child rights implementation
- CRPD implementation
- Disability rights implementation
- Disability rights compliance
- UN Convention implementation
- WADA Code compliance

Appendix 2: List of Interviewees

Date	Interviewee	Position	Organisation
11/10/16	Gerison Lansdown	Independent Consultant	United Nations
09/12/16	Sam White	Head of Domestic Policy	UNICEF UK
09/06/17	Simon Hoffman	Co-Director	Wales Observatory
01/06/17	Rosalind Tyler-Grieg	Policy Officer	Inclusion Scotland
19/06/17	Mark Priestley	Scientific Director	ANED
07/08/17	Neil Crowther	Independent Consultant	Council of Europe
14/06/17	Florence Keen	Research Analyst	RUSI
11/07/17	David Artingstall	Independent Consultant	European Commission / AML Global Consulting
10/07/17	Olivier Kraft	Former Policy Analyst	FATF
15/08/17	Andy Parkinson	Former UKAD Chief Executive	UKAD
30/08/17	Muyumi Yaya Yamamoto	Senior Manager	JADA
22/09/17	Herman Ram	Director	Dutch Doping Authority
25/10/17	Anders Solheim	CEO Anti-Doping Norway Chair of the Council of Europe Anti-Doping Monitoring Group	Anti-Doping Norway
06/11/17	Fred Donzé	Chief Operating Officer	WADA
06/11/17	Tim Ricketts	Director, Standards and Harmonisation	WADA
08/11/17	Jeremy Luke	Senior Director	CCES

Appendix 3: Example Interview Schedule

1. Is the Code's absolute definition of compliance a problem?
2. What are the most significant barriers to achieving greater compliance?
3. Are the articles contained within Code clear and unambiguous?
4. What are the methods of data collection?
5. What changes have been made to make data collection systems more effective?
6. What innovations have there been to improve compliance?
7. Are the existing responses to non-compliance effective?

Appendix 4: Example Transcript

Interview 7: Jeremy Luke, CCES

Date: 10/11/17

Time: 10.30am

[00.00]

Stacie: Is the Code's absolute definition of compliance a problem?

Jeremy: I think there are challenges. I think it's probably the most appropriate one but there are challenges associated with it. The reason I say it is the most appropriate one is because within the anti-doping context, there are athletes and they want to compete on a level playing field. If there is any form of tiered compliance, then it provides a disadvantage to some athletes and not others. I'm not sure how you come up with an approach that would look at compliance in a tiered way because we have thought about whether there is a gold standard or silver standard and bronze standard, but the challenge is with one compliant standard, where does it fit. Because you have some countries like Canada and probably the UK who are going to have compliance at a really high level, and you have other countries who for whatever reason are at a lower level, so where do you set the bar to determine compliance because what you don't want is the lowest common denominator. There are challenges. There are challenges in our country in terms of whether, is what we are doing compliant or above compliance and if it's above compliance do we need to fund you to the level you are being funded to or can we fund you less. There are issues, but I think that it makes the most sense to say are you compliant or not rather than tiered compliance. Although the monitoring of compliance, with the new international standard for Code compliance, it doesn't introduce tiers but it puts you into areas where you need to correct certain things and you are still compliant while you do that but to a certain extent, you would be at a different tier as you work your way through the corrective actions.

[02.48]

Stacie: What are the most significant barriers to achieving greater compliance?

Jeremy: Cost is a big one. Financially it is quite expensive to try and meet all of the regulations that WADA has put in place. I would say that is probably a big one, particularly for some parts of the world. Competence maybe, to some extent, again in some parts of the world. There is a lot of, there is legal, science, administrative, medical, there are a lot of different areas of expertise in the Code so being able to have people who know those things and can execute on them is challenging. So that is another barrier. I don't know if it is a barrier but there is a view of, if other countries aren't doing certain things, then why would we. There is a sense that you are being disadvantaged somehow if you have quality anti-doping which I don't agree with, but there is that view. That is a barrier that may feed into funding. We have tried for a number of years in Canada, but we haven't had any success as far as getting direct sponsorship into doping, we haven't had any success.

[03.15]

Stacie: You said you haven't had any success gaining direct sponsorship into doping. Do you see that happening in the future?

Jeremy: I probably don't see it happening, but there are other ways it could happen. I think there is a challenge with having a corporate sponsor directly with an anti-doping organisation. But the sponsor has interest in the product of sport which anti-doping is contributing to, so there is probably a way to work through that type of mechanism. If you look at the IOC and said that 5% of every sponsorship agreement that is signed has to go to anti-doping, maybe there is a way to link things in from that point of view. Maybe there is a time where sponsors become more of an advocate by saying if we are going to enter into an arrangement with you, you have to have a quality anti-doping programme otherwise we don't want to be associated with you. In which case, wherever the dollars directly flow, it is going to drive funding towards anti-doping. You have seen that, maybe not so much in anti-doping, but if you think of FIFA and the scandal they went through with their president, that seemed to be driven a lot by corporate sponsors eventually saying get rid of this person because

we don't like this. The same thing might happen in anti-doping. I think there are genuine cases of not a lot of resources in many countries, and if you go around the world you can identify that pretty quickly. To put money into basic needs that citizens have or anti-doping, anti-doping will take a lesser priority. But at the same time, I think from a government point of view there needs to be a recognition of the value that sport plays in society and protecting the integrity of sport. There is that challenge. It's not just governments. When we think about funding of anti-doping and sport, in countries even with limited resources they have an NOC, the NOC participates in the Olympic Games which makes millions of dollars, so why is it that there isn't funding falling back into those countries to help facilitate anti-doping from that point of view given the limited resources the government might have. There needs to be an emphasis placed on that. And there could be for sure institutionalised doping in other countries, and that speaks to the need for WADA to be able to do more significant investigations, so the extent that they did with the McLaren report. There is the recent report on China with some doctors saying they have been doing this as well, who knows whether it is legitimate or not but it probably is happening in other places, it would be naïve to not think that it is.

[09.30]

Stacie:

Are the articles contained within the Code clear and unambiguous?

Jeremy:

There are parts of the Code that are very clear. I think probably the one area that isn't very clear is that roles of stakeholders. I think those things tend to be blurred and it enables people to point the finger at other people as to why things aren't happening. I think in the next version that needs to be made a lot clearer. If you think of Russia as one example, who is actually responsible for what happened. You have the international athletics federation responsible for implementing the Code, with a member federation, the Russian athletics federation not doing what it was supposed to do. And the IAAF isn't sanctioned for that, they are not deemed to be non-compliant for that, but they should be responsible for member federations so, but that didn't quite happen. And then you have the NOC as well, again, the NADOs deemed non-compliant, governments doing things they shouldn't do, but the NOC still goes to the RIO Olympics and that isn't very clear as to how that works.

[11.10]

Stacie: What are the methods of data collection?

Jeremy: The Code compliant questionnaire is interesting, it is self-reporting so there is going to be, as far as monitoring compliance goes, people can answer it however they want to answer it. There is some data that you can look at and say does it make sense by going into ADAMs and other places and saying are these accurate responses? It is self-reporting, so I think I would be aware of that. But it generates a lot of data, it gives you a sense of where people are at, maybe identifies some areas of where to be improved upon. I think it is a good initial step and something that should happen. It is quite comprehensive, it is over 300 questions, took a long time to complete, I think it would identify pretty quickly organisations that are not resourced to the level they need to be or are not currently complying likely due to either resources or competency. It's not going to pick up instances of state sponsored doping where you can answer the questions, provide the templates, indicate here is my plans and all that stuff looks perfect when you submit it in a questionnaire. The independent observer programme is, I have been on it and I have been subject to one having run the Olympic and Paralympic Games in the Vancouver Olympics. I don't think they're that effective. They tend to lack the expertise that are needed if they are to truly assess compliance. The people that are on those missions don't have the expertise and I don't think there is much work done in advance of those games to truly assess what has happened prior to the plans and what you would be looking for. I think there is some element of, whether it is a nice opportunity for people to attend the games and this is a role that they can play. So would not look at them as if they are an audit or any formal sense of compliance. They likely pick up major things that are obvious but that is about it. I think there needs to be a decision made about what it is they are doing. WADA has a compliance standard now, so they have the questionnaire and they have what they have referred to as audits and they are auditing programmes to assess compliance and then writing corrective actions and then you can find yourself non-compliant based on those audits. The IO programme is just something that is whatever it is, but what is it. The question is, are you auditing the anti-doping programme that exists at a major games? Then do it in a way that your auditing procedures have been identified, follow them, but the people you have identified as auditors

in place and audit them properly. But the IO programme, there is no requirement to implement those recommendations and if you do an analysis from games to games to games, they are inconsistent. One will say you should do this, another will say you shouldn't do this. Prior to Vancouver we examined every IO report to try and make sure we were doing the best job we could and they were all over the place and there is no, very little value in them. I think it is getting ahead of yourself to look at who should be on them, I think it should be what is the purpose of these things and if it is truly to assess compliance then I would do it through an audit which every other stakeholder is subject to, aside from where WADA chooses to have an IO programme. I haven't seen the recommendations be implemented, there is no requirement, and some of the recommendations are inconsistent with the Code themselves. There is a need to review that. And independent observer, independent from whom, independent from WADA or independent from the sport or the countries participating? I would move to figuring out what the purpose is and probably doing an audit.

Whistleblowing has been huge and will be huge going forward as well. In Canada, we haven't had a lot of success with whistleblowing, through substantial assistance is one example, so someone who commits a violation and then saying to them how did this happen, where did you get the stuff and maybe get a reduction in your sanction, we haven't had any athlete willing to do that. So that is one example. We have people who call our anonymous tip line though and we have pretty good, over 100 tips per year so that is positive. I think part of it is probably, we have got to get to a point culturally within our sport system where people just don't tolerate doping anymore, then it becomes, more people will be willing to report it when it gets to that place. Interestingly, we had a major issue in American football in Canada where 9 or 10 athletes on a team tested positive and the team has 60 players and the university shut the team down. Speaking with some of the other athletes afterwards, some of the perspectives were that they admired the fact that a teammate would put their career on the line by using PEDs. So why would they report that. That is an odd view but an interesting one.

[20.49]

Stacie: Do you think the audits and compliance review committee are a good addition to the programme?

Jeremy: They need to do more audits. They are a great thing to be done, you have the right people there. Having some external people, and I have been on an audit, it's not just WADA people so I think this is a good area and they need to do more of them, if they can get resources to do more of them that would be great. The CRC is a good initiative. It is viewed as independent which I think is critical because of the perceived conflict of interest within WADA to have the foundation board making decisions when the foundation board is the sports and governments that are being assessed for compliance. I think it could have gone one step further with a proposed standard so that the CRC had the authority to make decisions instead of making recommendations and WADA making decisions. It would be stronger if the CRC made the decisions outright. That was a recommendation from Canada. My understanding is that the CRC recommendations will be public so if the WADA executive committee doesn't endorse recommendations they will have to have some serious rationale for that.

[23.48]

Stacie: What innovations have there been to improve compliance?

Jeremy: There should be, if there isn't, a trend towards value-based education. I don't think people fully understand what that means. Some countries do it well and in Canada it has been a big emphasis of ours, the rationale for that is that it's not just value-based education but it is value-based sport. If you have a sporting culture that is, you come up through as a young athlete and it is driven by a set of values, respect fairness and all those kind of things, you are far less likely to find yourself in a situation where you are going to be exposed to doping or encouraged to dope. The more we can do that the better in all countries. That is challenging in some countries culturally just those values might not fit within other parts, or the way they operate. I think there is a, there is a trend to appreciate that doping doesn't exist in isolation of other ethical issues, so how that fits together will be something that emerges more. Athletics for example has an integrity unit which is then dealing with things that go beyond doping.

In Canada we have, we are looking at it through that lens as well. An individual who is doping is not doing that in isolation of other things, whether they are cheating in some other way, I think that is something that we will see. Whether WADA broadens its mandate to deal with the other integrity based issues, perhaps there is another organisation that deals with those things but I think that is something that we will see on the radar. There is also the new independent testing authority. I don't think it is defined really, it depends on how you define it but I think if you take a step back, generally speaking removing the testing authority from sports is a good thing, I think there is a conflict of interest when an international sport is policing itself when it comes to anti-doping and we have seen that occur in some sports in the past. I think that is a positive step. From that point of view I think it is a good thing and then the next question will be how does it run, does it cooperate with other anti-doping organisations is it truly independent. It now has a board of five people which has three people from sport on the board, which makes you question whether or not it is independent. There is an example in Canada where we view ourselves as independent from sport and government, we don't have any people from the sport community on the board, that's not allowed, we don't have any people from government on the board. So that is one way we monitor our independence and we don't have anyone who works in the organisation who is affiliated with a sport or has been affiliated with a sport over a period of time. To try and manage that independence. I don't think they have really started out in the best way by having this structure in place without being able to explain it to the outside world as to how that means it is independent. Maybe it does, but I don't think it has been explained. So what lot of people are expressing concern around whether that structure is independent or isn't independent. Having said that, I think what is desperately needed is for WADA to define independence. Everyone is using the term now, everyone has to be independent from everybody, there are some arguments made that NADOs shouldn't test their own athletes because you have a national interest, we have an interest in our athletes to do well, so to actually define what independence means and then organisations can be held to that standard. But now, it is, what does that actually mean. I think there needs to be a definition of what independence means from a governance point of view by WADA and that would help. There are some countries where the NADO is an arm of government and exists within governments reporting to the

minister of sport or the leader of government in some cases. That may be a problem. In some countries the NADO is the NOC and the NOC is clearly involved in the sport. I think the first step would be what do we mean by independence from a governance point of view and then apply it across the board to NADOs. And then we can take stock of whether there are issues in certain countries where there continues to be some conflict. But it is interesting to me, as this debate has arisen, some views are that of course there is a conflict right, your country has an interest in the number of medals it wins, and therefore you could dope, and that is what we saw in Russia was national interest in doing well at the Olympics. But in our country, maybe we are unique in some way, the country has a national interest in a healthy sport system first and foremost for the citizens that live here and the health benefits that go that and meaning that they don't go into crime. The country, I wouldn't say, has a huge national interest in any way with the number of medals that we win at an Olympics Games. I mean they are interested but it's not something that we do. I totally appreciate that in other countries that may not be the case and we have got to figure out how to deal with that when it comes to code compliance. We did a survey before Rio, public opinion in Canada with 2000 people representative of citizens and asked them a number of questions. One of them was on a scale of the, I think it was eight things we had identified of things that could go wrong at Rio, how would you rate them as being the most concerning. There was a terrorist attack, a major health epidemic, Canadian athlete caught doping, Canadian medallist caught doping, Canadians not winning any medals, all these things. And the response was that the first concern was a major terrorist attack, the second concern was a Canadian athlete winning a medal and being stripped of it for doping and then it went down the list and the last concern was whether we came home with no medals at all. That wasn't something that was ranked very high, which was interesting, but we also had a major incident in 1988 with Ben Johnson in Seoul and I think a lot of Canadians haven't forgotten that. Whether that is top of mind or not I think it is still a concern.

[32.20]

Stacie: Do you think RADOs play an important role?

Jeremy: RADOs are often in places where there are limited resources, so I think that challenge goes hand in hand with them. But I think it is a good model and a smart model to come up with to try and group these small countries together to be able to implement the Code. With how complex and comprehensive the Code is I think implementing it when you only have a really small group of athletes is challenging so I think it is a good idea. I think it could be extended frankly to some of the IFs and grouping them together. The ITA will likely do that anyway but when you have a number of smaller IFs having one group of people being able to manage anti-doping across them might be a more efficient way to do things.

[33.11]

Stacie: Are the existing responses to non-compliance effective?

Jeremy: I don't think sanctions were effective in the past, I think it was pretty difficult to understand how a country can have a state sponsored doping regime and participate in an Olympic Games. I think going forward though that this new standard has done a good job. The challenge with it is the amount of time that it takes to work through that, so it will be interesting from a comparative perspective with some of the other industries you have looked at if there are models that work more quickly. Because first there is an issue, then it takes four months or something to be able to get, to determine whether or not you are able to rectify the issue, then there is another four months provided, then they allege non-compliance and then you have to go to CAS to determine non-compliance which is going to take a long time, then you can appeal it, so I think once you get to sanctions I think they are good. The challenge is the amount of time it takes to get to that point. And with Russia, following the second McLaren report, WADA came out and said that our recommendation is that Russia should be banned from the Olympics and the IOC didn't agree. I appreciate that there are different views on that, but the idea is we have, what we are supposed to have is a global regulator to make these decisions on behalf of the community and it is therefore challenging when you have the regulator saying this is what we think makes sense and an organisation that is conflicted saying well we don't agree. I appreciate there are arguments either way, collective responsibility, not enough evidence, all those types of things, but I think we need to have a system where we have and independent

regulator that we all agree to follow. And I think that is one of the lessons coming out of the Russia situation is that we need a strong WADA that everybody is comfortable. I think it seems like everyone is trying their best to get to that place with a working group on WADA governance and a working group on the ITA, the CRC, the new international standard for code compliance being developed, I'm certainly hopeful that that's where we can get to. Bilateral agreements are also important. We have been involved in a number of those types of initiatives, most recently with Jamaica. There is tremendous value, particularly if the culture is somewhat aligned. Jamaica and Canada are part of the commonwealth, speak the same language, so that is helpful because the resources are the same, procedures and processes are the same, so the starting point is to be able to help leverage the resources that we have and the processes and the knowledge so that they can use those things right away and get them in place. I think that is really helpful. Being available to just answer questions and provide advice on a daily basis seems to be really helpful for them to. There are benefits coming back to the experienced NADO as well. Sometimes with developed countries there is a view of a really high compliance standard because you have the resources to do it, you have got 7 people in investigations and intelligence department, and when you have a partnership with a country in a developing world who is able to say the whereabouts for this person is, they don't have an address, so you can't put it into ADAMS, you take a step back and appreciate that global compliance standard is going to need to be a little different than what it would be if it was just dealing with developed nations. I think it is everyone's responsibility. From a NADO point of view, can we help, sure, and we are more than happy to help. And there are ways to help without even necessarily putting resources in, there are things like intellectual property value and we don't charge for that and those types of things. There are ways to reduce cost from that point of view. The government of the country may have interest in the larger opportunities within the country. This is a part of a larger initiative to work with that country, whether it is around trade or around a number of different things and trying to put it all together into a bit of a package. From a sport point of view, I think there should also be a sense of the value of a sport, the business of the sport, is based upon its global representation and all those types of things. If you think about a country like Jamaica in track and field, the Canada government may have an interest in helping Jamaica somewhat, but I

would hope that the IAAF would also have a big interest in trying to help Jamaica have a credible anti-doping programme. There is a sport responsibility as well. And in education, we help IFs all the time so that isn't an issue. I think there are different types of education and there is a new standard that is being developed around education. There is information to start with which is probably critical to ensure that people who are subject to the rules know that they are subject to the rules and that they have got places to go to get answers so that you are not dealing with inadvertent cases of doping. There have been a number of those cases of that, so there needs to be a uniformed way that if you are testing an individual there needs to be a record of that person having been adequately informed of the set of rules that are applying to them. In the absence of that then you can't touch them or the test is void. I think that should happen around the world and IFs need to do a better job of that, not necessarily trying to delegate that to the NADO or the country. And beyond education there is value-based education which I think is set mainly with NADOs to do more than information and to try and create a culture within their sport that is consistent with the values in the Code.

- End of Transcript -