An Interim Essay on FIFA's World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA

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I. THE INDICTMENTS

A. The May 27, 2015, Indictment

On May 27, 2015, the United States Department of Justice unsealed a 161-page indictment (the “Indictment”) in the United States District Court for the Eastern District of New York. A Brooklyn Grand Jury returned the Indictment against fourteen defendants, current or former officials of Fédération Internationale de Football Association, (“FIFA”) and five businessmen associated with businesses involved with FIFA. The public filing was coordinated with raids by United States and Swiss officials on FIFA facilities in Miami and at FIFA headquarters in Zurich. Swiss
authorities also conducted an early morning raid on Zurich’s luxury Baur du Lac Hotel arresting seven FIFA officials.\(^2\)

In addition to the fourteen individuals charged with various United States federal crimes, the Indictment described twenty-five unnamed co-conspirators, at least some of whom were identified to the Grand Jury.\(^3\) The Indictment related to the worldwide operations of FIFA, the governing body for international football, known as soccer in North America and Samoa. The Indictment described numerous acts committed within the territory of the United States, plus many funds transfers through the United States banking system.\(^4\) The crimes charged include $150,000,000 in bribes paid over a period of twenty years, often in connection with the selection of a host nation for the quadrennial FIFA World Cup or the sale of marketing and broadcast rights for FIFA events.\(^5\) The charges against the defendants included “RICO” counts (the Racketeering Influenced Criminal Organizations Act,\(^6\) originally enacted to secure convictions of Mafia members), plus wire fraud, conspiracy and other charges.\(^7\)

At the time the Indictment was unsealed, Loretta Lynch, the United States Attorney General, announced that guilty pleas had already been secured from four individuals and two corporate legal entities.\(^8\) The long-serving President of FIFA, Joseph (Sepp) Blatter, was not named in the Indictment and was reelected to a fifth four-year term as FIFA’s President just days after the raids, arrests and release of the Indictment.\(^9\) In the media storm that raged after the scope and gravity of the charges became known,

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5. Id.

6. 18 U.S. Code § 1961 et seq.


Blatter announced he would resign once a newly called Extraordinary Congress of FIFA member elected a new President in February 2016.\textsuperscript{10}

\textbf{B. The Superseding Indictment}

At 6 AM on December 3, 2015, Swiss police raided the Baur au Lac Hotel in Zurich and arrested two additional FIFA officials.\textsuperscript{11} Later that day a 236-page Superseding Indictment was unsealed by Attorney General Loretta Lynch.\textsuperscript{12} The Superseding Indictment describes payment of more than $200,000,000 in bribes and charges sixteen additional individuals associated with football in the Western hemisphere,\textsuperscript{13} bringing the total of individual and corporate defendants charged to forty-one. At the press conference announcing the Superseding Indictment and the arrest of two FIFA officials, Attorney General Lynch disclosed that eight additional individuals had pleaded guilty.\textsuperscript{14} Forfeitures already agreed to by the twelve persons who had pled guilty by that date totaled $190,000,000.\textsuperscript{15} The ninety-two count Superseding Indictment also refers to twenty-four unindicted co-conspirators.\textsuperscript{16} Many of these individuals should be easily identifiable to anyone who reads the Superseding Indictment, is familiar with FIFA and has access to Google.\textsuperscript{17} At her press conference Attorney General Lynch spoke directly to these as yet publicly unidentified co-conspirators: “The message from this announcement should be clear to every culpable individual who remains in the shadows, hoping to evade our investigation: You will not wait us out. You will not escape our focus.”\textsuperscript{18}

\begin{itemize}
\item \textsuperscript{10.} Sam Borden, \textit{FIFA Sets vote to Replace Sepp Blatter and Begins Overhaul Campaign}, N.Y. TIMES (July 20, 2015), http://www.nytimes.com/2015/07/21/sports/soccer/fifa-sepp-blatter-election-date.html? r=0.
\item \textsuperscript{11.} Alan Evans, \textit{Fifa corruption investigation: two more top officials arrested in dawn raids}, THE GUARDIAN (Dec. 3, 2015), http://www.theguardian.com/football/2015/dec/03/more-fifa-officials-arrested-in-corruption-investigation-reports-say.
\item \textsuperscript{12.} United States of America v. Jeffrey Webb et al. (Nov. 25, 2015), (No. 15-252 (s-1)).
\item \textsuperscript{13.} \textit{Sixteen, supra} note 8.
\item \textsuperscript{14.} \textit{Id.}
\item \textsuperscript{15.} \textit{Id.}
\item \textsuperscript{16.} United States of America v. Jeffrey Webb et al (Nov. 25, 2015), (No. 15-252 (s-1)).
\item \textsuperscript{17.} “...Co-Conspirator #3 was also the general secretary of the Copa America Centenario executive committee, a joint CONCACAF/CONMEBOL body that was created in 2014 to oversee the 2016 Copa America Centenario...” \textit{Id.} at para. 72.
\item \textsuperscript{18.} \textit{Sixteen, supra} note 8.
\end{itemize}
Given the twelve individuals who have already pled guilty and the twenty-four co-conspirators remaining unindicted, it is certain that there will be further indictments and/or guilty pleas.

II. WHAT IS A FIFA?

FIFA is a not-for-profit association organized under the Swiss Civil Code.\(^{19}\) Its role is to govern international football. FIFA as a legal entity has not been charged with violations of United States law.\(^{20}\) As the global authority for international football, FIFA has 209 Members, one from each nation or territory with a national football association.\(^{21}\) FIFA members pay annual fees to FIFA and are required to be members of one of FIFA’s six continental confederations, Confederation of North, Central American and Caribbean Association Football (“CONCACAF”), Confederacion Sudamericana de Futbol (“CONMEBOL”), Union des Associations Europeennes de Football (“UEFA”), Confederation Africaine de Football (“CAF”), Asian Football Confederation (“AFC”), and Oceana Football Association (“OFC”). As set forth in the FIFA Statutes, these confederations have a significant role in FIFA.\(^{22}\)

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19. SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB] [CIVIL CODE] DEC. 10. 1907, SR 210, art. 60 (Switz.).

20. Pursuant to United States practice, as enthusiastically applied by the Justice Department over the past decade, legal entities, in particular business corporations, are subject to being charged with criminal violations of federal laws and regulations. The United States Supreme Court confirmed this practice of charging legal entities by abandoning centuries of prior common law. New York Cent. & H.R.R. Co. v. U.S., 212 U.S. 481 (1909).

Some of the earlier writers on common law held the law to be that a corporation could not commit a crime. It is said to have been held by Lord Chief Justice Holt (Anonymous, 12 Mod. 559) that ‘a corporation is not indictable, although the particular members of it are.’ In Blackstone’s Commentaries, chapter 18, § 12, we find it stated: ‘A corporation cannot commit treason, or felony, or other crime in its corporate capacity, though its members may, in their distinct individual capacities.’ Id. at 492.

We see no valid objection in law, and every reason in public policy, why the corporation, which profits by the transaction, and can only act through its agents and officers, shall be held punishable by fine because of the knowledge and intent of its agents to whom it has entrusted authority to act in the subject-matter of making and fixing rates of transportation, and whose knowledge and purposes may well be attributed to the corporation for which the agents act. Id. at 495.


More than 70% of FIFA’s revenues are tied to the sale of television and marketing rights to its World Cup and championship games which are conducted every four years. FIFA pays no taxes on its profits, including the $969 million of profits it earned between 2007 and 2014 on almost $10 billion in revenues.

A. FIFA and Corruption

The increased commercialization and globalization of football in recent decades has marvelously magnified the value of corporate sponsorships, marketing and broadcast rights, sales of football team-related items, etc. The Superseding Indictment alleges that many tens of millions of dollars in bribes have been paid in connection with the operations of FIFA and its continental confederations.

Over time, the organizations formed to promote and govern soccer in regions and localities throughout the world, including the United States, became increasingly intertwined with one another and with the sports marketing companies that enabled them to generate unprecedented profits through the sale of media rights to soccer matches. The corruption of the enterprise arose and flourished in this context.

These allegations of corruption will not surprise fans of football, who for decades have been hearing about FIFA scandals of all kinds, including gambling, game-fixing and money laundering, in addition to commercial bribery.

B. Can FIFA Officials Be Subject to United States Criminal Law?

Without doubt international football is the world’s most popular sport. It is played in every country, territory, and remote island on the planet, from North Korea and South Sudan to Antarctica. It is a game requiring no

24. Id.
25. Id.
elaborate infrastructure, no expensive equipment, and no extraordinary physical characteristics for those who simply want to kick a ball toward a goal without using their hands. At the height of professional football, of course, extraordinary skills are essential.

Football, played as "soccer" in the United States, Canada and American Samoa, has a long history in the United States. An American Football Association was organized in 1884. This regional group was replaced by the American Amateur Football Association in 1911, which changed its name to United States Football Association ("USFA") and was recognized by FIFA in 1913. The USFA added the word "soccer" to its name in 1945 and operated as the United States Soccer Football Association until 1974 when the word "football" was dropped. Since then it has operated as the United States Soccer Federation.

Soccer in the United States has grown in popularity in recent decades, in part, because parents have become more aware of the risks of severe injury for children playing traditional American football, and because of greater familiarity with the game encouraged by the United States hosting the 1984 Los Angeles Olympics and the FIFA World Cup in 1994. The United States Men's Team has qualified to participate in FIFA World Cup competitions since 1990. The United States Women's Team has won three of the seven FIFA Women's World Cups, which commenced in 1991.

While football is the number one sport in many other nations, it is only second, third or fourth in popularity in the United States. Most of the world's best teams and best players are not American, and it is generally accepted that the European football leagues play at the highest level. The European football confederation, UEFA, is comprised of fifty-three national


29. Id.

30. SPALDING'S OFFICIAL SOCCER FOOTBALL GUIDE 1914–15, AM. SPORTS PUB. CO., at 44.


football organizations. This includes perennial producers of champion athletes, France, Germany and England, as well as Andorra, the Faroe Islands, San Marino and Russia.

The comparatively insignificant position of soccer in the United States compared to football in the rest of the world may have been the reason President of Russia Vladimir Putin, in commenting on the Department of Justice May 27, 2015 Indictment, said: “This is another blatant attempt to extend [U.S.] jurisdiction to other states.” Putin perhaps believes the United States has no genuine interest in FIFA activities and had timed the release of the indictment and arrest of FIFA officials in Switzerland to impact the re-election of the FIFA President FIFA’s long-time President, Joseph “Sepp” Blatter.

Putin compared the Department of Justice’s “interference” in FIFA with the “persecution” by the United States of Julian Assange and Edward Snowden. President Putin’s not-so-subtle animus toward the United States may perhaps also be seen in a statement in support of FIFA’s President Sepp Blatter. Two months after release of the May 27, 2015 Indictment, at a July 25 meeting with Blatter in St. Petersburg, Putin referred to Mr. Blatter: “I don’t believe a word about him being involved in corruption personally.” Putin added: “[The] heads of big international sporting organizations . . . deserve special recognition. If there is anyone who deserves the Nobel Prize, it’s those people.”

While superpower politics may play a role in everything Mr. Putin says and does, his sensitivity about the FIFA Indictment was certainly based in part on the furor accompanying the selection of Russia as the venue for the 2018 World Cup. On December 2, 2010, the FIFA Executive Committee announced that Russia was to be the host nation for the 2018 FIFA World Cup and the tiny desert sheikdom of Qatar had been chosen as the host for

38. Blatter has suggested, however, that the Department of Justice moved against FIFA because it lost out to Qatar as the venue of the 2022 FIFA World Cup. Graham Dunbar, FIFA’s Blatter claims corruption probe is US payback for failed World Cup bid, THE TIMES OF ISREAL (May 30, 2015), http://www.timesofisrael.com/fifa-chief-suggests-us-probe-is-payback-for-world-cup-bid-loss/.
39. Sonne, supra note 37.
41. One suspects this is a not-so-subtle reference to the Nobel Peace Prize awarded to President Obama in 2009 during his first months in office. Id.
the 2022 FIFA World Cup.\textsuperscript{42}

Putin’s view of the American government’s self-image as the “world’s only Superpower” is well known, but it is, nevertheless, legitimate to consider the jurisdiction of the Department of Justice to indict FIFA officials and persons affiliated with FIFA when FIFA operates from Zurich, Switzerland as a Swiss non-governmental organization. A quick reading of the Indictment or the Superseding Indictment, however, makes clear that in this particular case the basis for jurisdiction was not merely the tenuous connection of wire transfers that sped fleetingly through banks in New York.\textsuperscript{43} There are FIFA offices in Miami, and United States citizens and residents are clearly identified in each of the indictments. Whatever stretches of jurisdiction have previously been asserted by the Department of Justice, a careful consideration of the facts alleged in the indictments establishes that the acts there described create a substantial basis for the exercise of traditional territorial jurisdiction.

C. Is FIFA a “Cesspit?”

In dealing with the charge that the United States should not have intervened in FIFA’s supervision and management of the world’s most popular sport, an Economist article notes: “America has a long history of being tougher on white collar crime and corruption than other countries.”\textsuperscript{44}

\begin{itemize}
\item \textsuperscript{42} The Qatar Organizers of The 2022 World Cup Are Tied to Terrorist Groups, The Roman Gate (Mar. 20, 2014), https://theromangate.wordpress.com/2014/03/22/the-qatar-organizers-of-the-2022-soccer-world-cup-are-tied-to-terrorist-groups/.
\item \textsuperscript{43} In two recent cases, however, one involving a non-U.S. company and the other two U.S. companies, the U.S. enforcement agencies went out of their way to assert that the FCPA’s territorial provisions, particularly as they apply to foreign companies, confer jurisdiction over foreign bank transfers whose only connection to the United States is the use of correspondent accounts at U.S. banks to clear foreign U.S. dollar transactions.
\end{itemize}
The *Economist* further commented, that while Mr. Putin expressed unhappiness with the May 27, 2015, Indictment, "Most of Europe is happy, believing that FIFA has long been a cesspit of corruption in desperate need of fresh faces and reform."\(^{45}\)

It is interesting to note that once the Department of Justice announced its indictment other nations suddenly discovered FIFA-related crimes worth investigating. The United Kingdom Serious Fraud Office disclosed in October 2015 that it was considering whether it could investigate money laundering claims against certain persons involved in the alleged payment of a United States $414,000 bribe paid from Sydney, Australia to a FIFA executive in Trinidad, which may have passed through London.\(^{46}\) The Swiss Federal Office of Justice has also recently discovered corruption within FIFA. It worked with the Department of Justice in coordinating the raids on FIFA in Zurich which resulted in the arrest of FIFA officials and is now also investigating possible money laundering violations by Swiss banks.\(^{47}\) In addition, in October 2015 Swiss authorities commenced an investigation of FIFA’s President, Sepp Blatter.\(^{48}\) Other investigations may well be triggered, but it is telling that there was no serious official concern about FIFA bribery and corruption prior to the filing of the May 27, 2015, Indictment.

III. SELECTION OF THE 2018/2022 WORLD CUP VENUES

Between 1984 and 2004 World Cup venues for FIFA World Cup Championships were selected separately, each chosen six years in advance.\(^{49}\) Following the 2004 decision to have the 2010 World Cup held in South Africa, however, procedures were changed to permit the FIFA Executive date of the United Kingdom’s Bribery Act 2010. No one can assert, even after five decades of the FCPA, that bribery in international business has been eliminated. Bribery Act 2010, c. 23 (Eng.), http://www.legislation.gov.uk/ukpga/2010/23/pdfs/ukpga_20100023_en.pdf.

45. M.V., *supra* note 44.


Committee to award both the 2018 and the 2022 World Cups in 2010.\textsuperscript{50} The selection of these venues was announced by the twenty-four Member Executive Committee on December 2, 2010.\textsuperscript{51}

\textbf{A. A Stunning Decision}

The selection of Russia for the 2018 World Cup and Qatar for the 2022 World Cup "could reasonably be described as having stunned nearly everyone."\textsuperscript{52} An integral part of the selection process had been an exhaustive due diligence investigation of each of the nations' bidding to host the 2018 and 2022 World Cups. All venues were ultimately rated "low risk" except for Qatar ("high risk") and Russia ("medium risk").\textsuperscript{53} Nevertheless, Russia and Qatar were the venues selected.

While both Russia and Qatar have well-deserved cloudy reputations for honesty in business and government, the selection of Qatar raised even more questions than the selection of Russia. While Russia is the largest country in the world by land area, Qatar is number ranked 166, with an area slightly smaller than Connecticut.\textsuperscript{54} This sheikhdom, part of the United Arab Emirates, does not have a strong tradition of playing football, has no indigenous football fan base and its teams have never qualified for World Cup play. Daytime temperatures at the normal time of year for playing the World Cup exceed 120 degrees Fahrenheit. This is in addition to the fact that

\begin{footnotesize}
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\item \textsuperscript{50} See FIFA Statutes, supra note 22, at Art. 25.2(s).
\item \textsuperscript{51} Russia and Qatar awarded 2018 and 2022 FIFA World Cups, FIFA, http://www.fifa.com/worldcup/news/y=2010/m=12/news=russia-and-qatar-awarded-2018-and-2022-fifa-world-cups-1344698.html. The FIFA Statutes have since been amended to expand the Executive Committee to twenty-five. Consistent with FIFA's perfect lack of understanding of anything to do with current standards of international corporate governance, the FIFA Statutes now permit a single female member of the Executive Committee, referred to therein as "the female Member." While other nominees to the Executive Committee must be nominated one month prior to the date of the Congress at which they may be elected, nominations for "the female member" must be notified four months in advance. FIFA Statutes, supra note 22, at Art. 24.2 & 24.3.
\item \textsuperscript{52} Mikhail Reider-Gordon, \textit{Money Laundering, Corruption and the World Cup: In the Wake of Brazil 2014}, 21 Sw. J. Int'l Law 97, 104 (2014).
\end{itemize}
\end{footnotesize}
Qatar does not have adequate number of football stadiums and could possibly present an attractive target for terrorists from the region.

B. FIFA's Reaction to Corruption Generally

An instantaneous explosion of media criticism followed the 2010 announcement of the selection of Russia and Qatar as future World Cup venues. The media crisis did not abate. As a result, FIFA finally took a number of "actions" which it highly publicized. It convened an Independent Governance Committee that included truly independent experts in international corporate governance, amended its organizational document, the FIFA Statutes, to empower the Congress of 209 Member Associations, and not the Executive Committee, to "vote on" future World Cup venues. FIFA also issued press statements in support of "reform" and revised its recently established Ethics Code and the structure of its Ethics Committee. The FIFA Ethics Code includes all the right words. Its Preamble states:

FIFA bears a special responsibility to safeguard the integrity and reputation of football worldwide. FIFA is constantly striving to protect the image of football, and especially that of FIFA, from jeopardy or harm as a result of illegal, immoral or unethical methods and practices.

The restructuring of the Ethics Committee established two new "chambers." An Investigatory Chamber was created, and Michael J. Garcia, a totally independent former United States Attorney for the Southern

55. Led by Prof. Dr. Mark Pieth, the International Governance Committee included truly independent, non-FIFA notables. See FIFA, BASEL INSTITUTE ON GOVERNANCE, https://www.baselgovernance.org/fifa (last visited Feb. 6, 2016).

56. FIFA Statutes, supra note 22.

57. Id. at art. 25.2; id. at art. 31.9. It remains to be seen what entity will investigate the competing hosts and, more significantly, what choices will actually be presented to the Congress for this "vote."


60. Id. at art. 26.
District of New York, was hired as its Chairman. Dr. Hans-Joachim Eckert, a German judge was hired as Chairman of the Adjudicatory Chamber.

C. The Garcia Report

Michael Garcia and the Investigatory Chamber conducted an eighteenth month investigation into the 2018/2022 bidding process that in 2010 had resulted in the unlikely selection of Russia and Qatar.\(^{61}\) This was not a criminal investigation, as Garcia was asked only to determine whether the 2010 selection of Russia and Qatar as World Cup host nations had been compromised in some way. Once the Investigatory Chamber’s work had been completed, pursuant to the procedures established by the Ethics Committee, Garcia submitted a confidential 450-page Report of findings to the Adjudicatory Chamber of the FIFA Ethics Committee.\(^{62}\)

Hans Eckert reviewed the Garcia Report and refused to make it public,\(^{63}\) but did produce a forty-two page summary.\(^{64}\) Eckert’s summary states that the Garcia investigation, together with a prior Ethics Committee investigation, “established a prima facie case that serious violations of bidding rules and the FIFA Code of Ethics have occurred.”\(^{65}\) The Eckert summary included a description of a previously reported incident where a Qatari businessman and FIFA official distributed envelopes containing $40,000 in cash to voting members of the FIFA Executive Committee.\(^{66}\)

Notwithstanding this prima facie case and the stark details of the Qatari bribes, Eckert announced that the Ethics Committee had concluded that the selection of Russia and Qatar for the 2018 and 2022 World Cups was not the result of bribery and corruption.\(^{67}\) Eckert’s summary announcing this


63. “Publishing the report in full would actually put the FIFA Ethics Committee and FIFA itself in a very difficult situation legally. What is more, we have to respect the personal rights of the people mentioned in the report, which in the case of full publication of the report would in all likelihood not be possible.” Id.

64. Eckert Statement, supra note 53.

65. Id. at 6.3.5.


conclusion included this comment: “To assume . . . that envelopes of full of cash [$40,000] are given in exchange for votes on a World Cup host is naïve.”68 Eckert’s conclusion on behalf of the Adjudicatory Chamber that the 2018/2022 selection process was not compromised is final and, from all appearances, the 2018 World Cup will take place in Russia and the 2022 World Cup will be held in Qatar.69

Michael Garcia immediately objected to Eckert’s conclusion and his summary of the Report’s findings.70 He demanded the publication of the entire Garcia Report. When Eckert refused, Garcia appealed. When his appeal was rejected he resigned in protest.71 Garcia disputed Eckert’s handling of the Investigatory Chamber’s Report, declared that Eckert’s statement on the Report contained, “materially incomplete and erroneous representations of facts and conclusions” and later concluded that, “no principled approach could justify the Eckert Decision’s edits, omissions, and additions.”72

London’s Independent notes in this connection—“FIFA has descended yet further into farce.”73

D. Charade or Farce?

FIFA has a long, undistinguished history of involvement in scandals and allegations of bribery and corruption.74 Over the decades FIFA has regularly “responded” to public outrage over corruption allegations with various highly visible and entirely ineffective maneuvers. There have been

68. Id. at 8.3.


73. Tom Peck, Eckert: FIFA summary was word for word, INDEPENDENT (Nov. 14, 2015), http://www.independent.co.uk/sport/football/news-and-comment/eckert-fifa-summary-was-word-for-word-9862663.html.

74. Reider Gordon, supra note 52; Miles, supra note 40; Roger Pielke Jr., How can FIFA be held accountable?, 16 SPORT MGMT. 255 (2013).
uncountable FIFA-organized investigations, statements, reforms, commissions, task forces, solutions committees and even an Independent Governance Committee. These have been advertised by FIFA as addressing such allegations. FIFA’s repeated displays of new window dressing have had no discernible impact on its pervasive culture of corruption.

FIFA’s highly successful campaign of action without impact continued as Sepp Blatter, who is 79, announced he would resign as President once a new FIFA President was elected at the February 26, 2016 FIFA Congress. He also announced that a new independent reform task force would be established. This group was to be “overseen by the independent [sic] bodies of FIFA, namely the Audit & Compliance, the Disciplinary and the Ethics Committees.” As the handling of the Garcia Report illustrated, FIFA’s many so-called reform activities appear to have been designed to get in each other’s way.

In August, Francois Carrard, who is 77 years old and was Director-General of the International Olympic Committee from 1989 to 2003, accepted the position as Chair of this latest task force, now labeled the FIFA 2016 Reform Committee. As initially reported, this Committee was to include two representatives nominated by each continental confederation of FIFA Members, plus two nominated by FIFA’s major commercial sponsors. Carrard later announced that the sponsors would not serve on the Reform Committee but would be part of a five person “Advisory Board” to be selected by Carrard to “review his panel’s work.” Even this transparently absurd negation of good corporate governance for the management of inherent conflicts, however, has not been honored.

75. Peilke, supra note 74.
76. Borden, supra note 10.
81. Id.
The FIFA Executive Committee met on December 2 and 3, 2015, to consider Carrard’s 2016 FIFA Reform Committee proposals. One day prior to this meeting, on Tuesday, December 1, five major sponsors\(^{82}\) of FIFA football found it necessary to publish an open letter to the FIFA Executive Committee which, quite politely, pointed out:

We want to emphasize to you the values and characteristics that we believe should be incorporated through the reforms. Transparency, accountability, respect for human rights, integrity, leadership and gender equality are crucial to the future of FIFA. Reforms can set the proper framework for these characteristics, but a cultural change is also needed.\(^{83}\)

This letter, carefully crafted not to offend FIFA and thus risk offering their competitors the opportunity to displace them in sponsoring the world’s most popular sport, makes perfectly clear that the sponsors themselves are not persuaded that there has been any meaningful independent input into the Reform Committee’s work.

We are aware of the positive work that the Reform Committee has been doing on governance reform, but we still believe any reforms should be subject to independent oversight. It has also become clear to us that such independent oversight needs to run long-term through the implementation and evolution of the reform process. We encourage you to become champions of this independent oversight as it will only enhance FIFA’s credibility.\(^{84}\)

If the sponsors believe they must state that they are merely “aware” of the work the Reform Committee has done, this surely means that these sponsors understand that they have had no substantive input to their work. The Reform Committee’s Report, dated December 2, 2015,\(^{85}\) assures us that the Committee “has also engaged with the commercial partners of FIFA, in particular, FIFA’s primary sponsors, and has carefully listened to their views on the subject of FIFA reform.”\(^{86}\)


\(^{83}\) Id.

\(^{84}\) Id.


\(^{86}\) Id.
FIFA has convincingly established that it is a master of public relations spin and meaningless, hypocritical statements of "reform." Its press releases and publicly available documents read wonderfully. Madison Avenue should be envious. On the other hand, the Constitution of the Union of Soviet Socialist Republics ("USSR") also read wonderfully. The facts belie FIFA press releases and public documents. Carrard's platitudinous dog and pony PowerPoint presentation to FIFA's Executive Committee on December 3 has a similar feel. The Financial Times has also deemed such FIFA moves as "farce."

Mr. Blatter controls an awesome spin machine without a doubt that is worthy of a world class politician. The FIFA-selected members of the 2016 FIFA Reform Committee have made proposals, which, if accepted by the Executive Committee, will then be presented to the full FIFA Congress on February 26, 2015. Based upon prior decades of FIFA charades, we can be certain the corrupt culture of FIFA will continue to operate as before. It will be corruption as usual.

It would be pointless and unproductive to track the many additional carefully crafted, optimistic, enthusiastic, and genuinely meaningless press releases issued by FIFA over the decades in response to unceasing reports of scandals, bribes and corruption. Nor have the impressive names FIFA has hired or consulted had significant impact on how FIFA actually operates. Each such announcement, committee and outside expert has turned out to be nothing more than part of FIFA's hypocritical attempt to make it appear it was serious about eliminating corruption.

As an association organized under Article 60 of the Swiss Civil Code, FIFA is entirely self-governed; it is not responsible to any public or independent entity or authority. Even worse, FIFA President Blatter has

88. 2016 FIFA Reform Committee Report, supra note 85.
89. The Farce at FIFA that Shames Global Football, FINANCIAL TIMES (Nov. 13, 2014), http://www.ft.com/intl/cms/s/0/830965f0-6b35-11e4-ac52-00144feabdc0.html#axzz3ljBBeqxS.
92. United States of America v. Jeffrey Webb et al. (Nov. 25, 2015), (No. 15-252 (s-1)); SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB] [CIVIL CODE] DEC. 10. 1907, SR 210, art. 60 (Switz.).
complete control over FIFA and has created an internal organization entirely subservient to him and his staff. According to one former FIFA vice president, no one knows how much Blatter pays himself or the Executive Committee Members. It is understood, however, that for Executive Committee Members first class travel for two, five star hotels and bespoke suits are among the perquisites of FIFA affiliation. This apparently buys a good deal of loyalty.

With a Congress of 209 member organizations and an Executive Committee designed by Sepp Blatter, there are, in fact, absolutely no governance controls, limits or constraints on Blatter. Blatter appears to administer FIFA’s billions the way Congressional Committee chairs dole out favors to keep lesser Congressmen in line. Blatter has successfully “bought” sufficient support to have been elected FIFA President five times since 1998.

E. A Perfect Corporate Governance Vacuum

The basic principles of modern corporate governance and corporate responsibility are unknown to Blatter and totally absent from FIFA, which enjoys a perfect corporate governance vacuum. In October 2015, the FIFA Ethics Committee, the risible entity with an embarrassing track record of handling the Garcia Report, was confronted with a Swiss criminal investigation into a $2,000,000 “disloyal payment” made from FIFA funds by Blatter as well as allegations that Blatter had entered into a contract with a FIFA vice president that was “unfavorable to FIFA.” The “disloyal” payment was incontrovertibly made to Michel Platini, the President of UEFA, the European football confederation. As a result the Committee


temporarily banned the FIFA President from football activities for 90 days.98

The Platini $2,000,000 payment was made in 2011 pursuant, as both Platini and Blatter have said, to no written agreement.99 They claim that Platini had worked for Blatter between 1998 and 2002 and that this arrangement with Blatter ended in 2002 when Platini became a member of the FIFA Executive Committee, also a paid position.100 In 2011, according to Blatter, Platini asked for additional funds stemming from his work eight years earlier, and Blatter authorized the payment by FIFA.101 It has been suggested that this payment, made with FIFA funds, may have been made to persuade Platini not to run against Blatter for FIFA President in 2011.102

F. How Did We Get Here?

Swiss law establishes no effective means of insuring honest, effective, independent governance at FIFA. Given that FIFA has become a multi-billion dollar enterprise and in light of the facts set out in the Superseding Indictment, this is a genuine problem. As President, Blatter directs FIFA through its administrative staff, which is completely under his control, and through the occasional meetings of the Executive Committee. Blatter is answerable to no one. The mere concept of "corporate governance" is totally foreign to FIFA and certainly to Mr. Blatter. There are no controls or limits on how Blatter disburses FIFA’s billions. While corporate governance standards have developed significantly since 1990, FIFA is entirely innocent of any limits on how Blatter operates. Indeed, as noted, a former FIFA vice president has charged that even the Executive Committee does not know how much Blatter pays himself in salary and benefits.103

Blatter has recently demonstrated his complete lack of any conception of, or interest in, accepted standards of corporate governance, including the fiduciary duties FIFA officials owe to FIFA itself and to the millions of stakeholders of the Beautiful Game.104 In an interview in October 2015, shortly after the Swiss Attorney General had commenced its criminal investigation of Blatter and the Ethics Committee had suspended him from

98. Conn UEFA, supra note 95.
99. Dunbar, supra note 97.
101. Id.
102. Draper, Harris, & Warshat, supra note 96.
103. Task Force, supra note 78.
104. Sam Borden, supra note 48.
football for 90 days, Blatter characterized the suspension as "total nonsense . . . I put these people into the office, where they are now, and they don't even have the courage to listen."105

Blatter dug himself an even deeper hole by asserting that the Ethics Committee had the nerve to state that, "we [the Ethics Committee] are not at the service of the president, we are totally independent." Blatter then exclaimed, "This is wrong. They can be independent but they don't need to be against me."106

To be kind to one who so clearly wants to make it known he has no conception of his fiduciary duties as President, it appears that at age 79, Sepp Blatter has missed the developments in corporate governance internationally over the past twenty-five years. Indeed, it might be said that the Mafia, and perhaps even North Korea's Kim Jong-un, are subject to more effective corporate governance than FIFA and its President.

IV. IMMEDIATE PROSPECTS FOR FIFA—"SEVEN DWARVES AND NO SNOW WHITE"

Assuming Blatter resigns as he has promised, the Extraordinary FIFA Congress called for February 26, 2016, will elect his successor. There were initially seven serious candidates to succeed Blatter. Each has history with FIFA and, if one is looking for fundamental and dramatic change in the operations and culture of FIFA, these candidates are not inspiring. Indeed, the original list of seven was referred to as "Seven dwarves with no Snow White in sight."107 Of the original seven candidates, Musa Bility of Liberia has been disqualified by FIFA for an improper nomination. He is appealing.108

Another, UEFA's President, Michel Platini, who had been widely expected to succeed Blatter, is currently under investigation by the Swiss Attorney General in connection with the $2,000,000 payment made by Blatter to Platini in 2011.109 As a result Platini too has been suspended from


109. Conn UEFA, supra note 95.
football by the Ethics Committee until early January. Platini still believes he can be elected in February and, so far as the $2,000,000 payment is concerned, he claims that he is "bulletproof", which we know is not French for "innocent".

The remaining currently eligible candidates for President are:

1. Prince Ali bin al-Hussein, 39, President of the Jordan Football Association, founder and president of the West Asian Football Federation and Former FIFA vice-president;
2. Jerome Champagne, 57, a former French diplomat, who worked for FIFA for eleven years as an executive and an advisor to president Sepp Blatter, before leaving in 2010;
3. Gianni Infantino, 45, General Secretary of UEFA since 2009;
4. Sheikh Salman bin Ebrahim al-Khalifa, 49, Asian Football Confederation president and FIFA vice-president; and
5. Tokyo Sexwale, 62, South African former government minister and a key member of the bidding team which brought the World Cup to Africa for the first time. The South African winning bid is described in the Superseding Indictment as having been secured by a $10,000,000 bribe.

Each of these men has history inside the corrupt FIFA ecosystem. FIFA’s major sponsors have called for "independent oversight" of FIFA operations, and there is no basis for hoping, much less believing, that without other changes, any of these candidates will institute the overdue process of bringing modern corporate governance to FIFA, its President, its continental confederations, or its Members. Independent oversight is a well-established and uncontroversial principle that has been applied for decades to business

110. Id.
113. Id.
114. The Coca-Cola Company, supra note 82.
entities. This principle must now be applied to FIFA, a billion dollar enterprise.

V. CONCLUSION: WHAT IS TO BE DONE?

If all goes as planned the February 26, 2016, FIFA Extraordinary Congress will elect a new FIFA President, a man who will be fully familiar, and from all appearances, comfortable with the FIFA culture of corruption. We shall then have some marvelously phrased press releases, inevitably followed by business as usual throughout the FIFA empire. The breadth, depth, and pervasive nature of corruption in international football has been noted by Transparency International,115 the Financial Action Task Force,116 the United States Department of Justice’s Indictment and Superseding Indictment, Play the Game, a Danish NGO, Global Witness,117 TRACE, an international non-profit entity concerned with eliminating bribery in business,118 law review articles119 and innumerable articles in the popular press. All to no avail.

In 2002, Michel Zenn-Ruffinen, former FIFA General Secretary, issued a report detailing accusations of more than $500,000,000 in corruption and financial mismanagement, including false accounting practices.120 Following the release of the Superseding Indictment in December 2015, it became known that João Havelange, the FIFA President immediately prior to Blatter’s election in 1998, told the United States Federal Bureau of Investigation that Blatter, who was serving as secretary-general of FIFA at the time, was fully aware of payments made to top FIFA officials in exchange for a grant of television and marketing rights in the 1990’s.121


117. Tip of the Iceberg: the Role of the Banks in the FIFA Story, GLOBAL WITNESS (June 19, 2015), https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/banks/tip-iceberg-role-banks-fifa-story/?gclid=Cj0KEQilAZSszBRDp3ITHm5KO_JYBEiQA1j9HHAckyyZG0i8gEcWEUEMG08OU8_Q-rafOENYAMfamMkaAn1G8P8HAQ.


119. See, e.g., Gibson, supra note 61.


A leading German periodical, *Der Spiegel*, has recently reported that the German World Cup organizing committee, which staged the 2006 World Cup, had a slush fund of $6,000,000 to secure votes for Germany as host.\(^{122}\) The article refers specifically to a “financial deal between Sepp Blatter and Franz Beckenbauer,”\(^{123}\) who led the German bidding Committee seeking to have Germany selected as the World Cup venue in 2006. Beckenbauer, the only person to win a FIFA World Cup both as a player and as a coach, admits that payments were made, but that they were a “mistake” and were not intended to buy votes.\(^{124}\)

Recent books on FIFA corruption have similarly had no impact on the closed and corrupt FIFA ecosystem. These include *Foul!: The Secret World of FIFA: Bribes, Vote Rigging and Ticket Scandals*,\(^{125}\) *The Dirty Game: Uncovering the Scandal at FIFA*,\(^{126}\) and *The Ugly Game: The Corruption of FIFA and the Qatari Plot to Buy the World Cup*, which is said to be based upon leaked FIFA emails.\(^{127}\)

Until the United States, a minor player in international football, commenced criminal actions in May 2015, corruption of all kinds in football was widely known and unchallenged throughout the world. Corruption within the international football ecosystem is an accepted aspect of the culture of FIFA. It is as normal as cigarette smoking in the United States in much of the 20th Century. FIFA’s culture of corruption is as broadly accepted today as slavery and male-only suffrage was in the 18th and much of the 19th Century.

The phrase “culture of corruption” well describes how pervasive corruption is within international football and how acceptable the football world finds this. This is hardly unique to football. Kickbacks and bribery in

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international business were accepted as normal and legal until 1977, when the Foreign Corrupt Practices Act ("FCPA") was enacted.\textsuperscript{128}

The Superseding Indictment will certainly result in impressive fines, disgorgement of fairly large sums, and prison terms for assorted FIFA associated persons. This will profoundly affect those individuals but will have no important impact on the culture within FIFA. The pervasiveness of resistance to any change in FIFA's corrupt culture is made clear in this example. After two years of work the Independent Governance Committee submitted its Final Report to FIFA.\textsuperscript{129} The Committee expressed its concern over the negative reaction to its modest reform proposals from Members of UEFA, the most important of FIFA's continental confederations.

However, the [Committee] was surprised and actually worried about the seriousness of some of the key opinion leaders in football, when a declaration of the Presidents and Secretaries of all 53 Members Associations of UEFA was published on January 24, 2103, which fell short of fundamental requirements of modern governance in essential parts.\textsuperscript{130}

So long as FIFA officials know that they may react to allegations of

\textsuperscript{128} For example, under the Internal Revenue Code bribes were not excluded from deductible business expenses in the United States until 1969. See 26 U.S.C. Sec. 162 (c)(1) added by the Tax Reform Act of 1969, PL 91-172, section 902 (b), (83 Stat. 710);

\textbf{BRIBES AND ILLEGAL KICKBACKS.}

(1) \textbf{ILLEGAL PAYMENTS TO GOVERNMENT OFFICIALS OR EMPLOYEES.}

No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or employee of a foreign government, the payment would be unlawful under the laws of the United States if such laws were applicable to such payment and to such official or employee. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or would be unlawful under the laws of the United States) shall be upon the Secretary or his delegate to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

\textsuperscript{129} \textbf{THE INDEP. GOVERNANCE COMM., FIFA, FIFA GOVERNANCE REFORM PROJECT 10 (2014),}


\textsuperscript{130} \textbf{FIFA Governance Reform Project, BASEL INSTITUTE ON GOVERNANCE (Apr. 22, 2014),}

corruption by merely talking about change, they will continue to act with impunity as they extort payments in exchange for access to broadcast and marketing rights and votes for hosting FIFA events. This moral hazard, so obvious in FIFA’s past history, must be eliminated.

If started, the process of reforming FIFA will be a lengthy one. Our five decades of experience with the FCPA enacted to effect change in the accepted culture of extortion and bribery in the conduct of international business, has produced mediocre results. This gives a hint of the enormity of the FIFA corrupt culture problem and the decades it might take to install FIFA with effective corporate governance.

Michael Garcia, the former head of the Investigative Committee of the FIFA Ethics Committee who resigned in disgust, has concluded that FIFA cannot be reformed from inside.131 An organization, NEW FIFA NOW, agrees, noting:

FIFA is one of the most discredited organizations in the world with serial allegations of corruption plaguing almost its every move off-the-field, symptomatic of a crisis of leadership, governance and accountability.

The Executive Committee’s decisions of December 2010 that saw Russia and Qatar win the rights to host the 2018 and 2022 World Cup tournaments respectively have been the focus of attention for more than four years.

Yet these decisions follow a litany of scandals that have plagued the organization for decades.132

David Beckham, English football’s leading personality, also condemns corruption at FIFA, labeling it “disgusting.”133 The FIFA website proudly displays “Milestones” of the FIFA Ethics Committee activities since July 2012.134 This document lists more than thirty corrupt football officials banned from participating in football activities for varying periods of from 90 days to life. These individuals come from more than twenty countries,


ranging from the United States, France, Germany and Spain to Brazil, Chad, India, Laos, Mongolia and New Caledonia. All this corrupt activity in just over three years. This record alone, without any intervention by the Justice Department, should have raised red flags, alerting FIFA and its honest stakeholders to the corrupt, hypocritical nature of the FIFA ecosystem.

Further evidence of the endemic, inbred culture of thoroughgoing corruption and hypocrisy throughout football would be superfluous in this Interim Essay. One small step football fans might hope for as they await fundamental change in FIFA’s culture is an amendment to the FCPA. At the moment this act criminalizes bribes paid to foreign officials, including officials of “public international organizations.” The President of the United States is authorized to add entities to the list of such international organizations, which already includes organizations such the United Nations and the World Trade Organization, as well as the International Fertilizer Development Center and the Pacific Salmon Commission.

If FIFA were added to this list, bribes paid to or extorted by FIFA officials would be subject to the provisions of the FCPA, and anyone with a connection to the United States paying such a bribe would be paying to an FCPA “foreign official” and thus would be subject to the criminal provisions of the FCPA.

Any argument that a mere international sports organization should not be considered such a public international organization was answered by Blatter himself. In an interview during which he challenged the power of the FIFA Ethics Committee to suspend him from football, Blatter announced that only the FIFA Congress, and not the Ethics Committee, can remove him from office. The report of the interview continued: “Comparing himself to a state president, Blatter told Swiss broadcaster SRF: ‘If one wants to revoke an elected president, only parliament can ask for that.” If Blatter sees himself as a Head of State, that is precisely the category of bribe taker the FCPA was designed to address.

While we wait for the next chapter in the FIFA Farce, it is certain that hundreds of millions of people will continue to play the “beautiful game,” no

135. Id.


138. 22 U.S.C § 288.

139. Silke Koltrowitz, Humiliated Blatter says on FIFA Congress can ban him, REUTERS (Nov. 25, 2015, 4:59 PM), http://www.reuters.com/article/us-soccer-fifa-blatter-idUSKBN0TE2TR20151125
matter how slow this reform process is and regardless of how ugly FIFA turns out to be. And FIFA will continue to operate with no accountability to anyone for anything.

VI. EPILOGUE

On February 26, 2016, Gianni Infantino, 45, General Secretary of UEFA since 2009 was elected President of FIFA. A number of “reforms” were also adopted. The next few years will make clear whether a totally corrupt organization can be reformed from within.

Any bets?