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How the Foreign Corrupt Practices Act Can Help Referee FIFA

CATHERINE LEE[†]

INTRODUCTION

The Fédération Internationale de Football Association, known as FIFA, states that it “has a zero-tolerance policy towards wrongdoing of any kind and is committed to the principles of good governance and transparency in all areas of its operations.”¹ However, the organization has been plagued with allegations of world-wide criminal and civil trespasses for decades, gaining a reputation as “an international crime syndicate that occasionally organizes soccer matches.”² In 2015 alone, 41 individuals and entities involved with FIFA were arrested on corruption charges, including allegations of wire fraud, money laundering, and racketeering; twelve of those individuals and two sports marketing companies have already been convicted.³

For the last half-century, international efforts have focused on increasing accountability of international organizations and businesses to reduce corruption,⁴ yet many countries’ laws do not regulate the

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1. *Governance: The Reform Process*, F. . .D. . .RATION INTERNATIONALE DE FOOTBALL ASS’N [FIFA], <http://www.fifa.com/governance/how-fifa-works/the-reform-process.html> (last visited May 27, 2016).

2. *Last Week Tonight with John Oliver: Episode 46* (HBO television broadcast July 26, 2015).

3. *FIFA Crisis: US Charges 16 More Officials After Earlier Zurich Arrests*, BBC SPORT (Dec. 4, 2015), <http://www.bbc.com/sport/football/34991874>.

4. Specifically the Organization for Economic Co-operation and Development’s Anti-

actions of large-scale international sporting organizations, such as FIFA. For example, the United States' Foreign Corrupt Practices Act of 1977 (FCPA),⁵ designed to allow prosecution of bribers of foreign officials and officials of designated public international organizations, does not include FIFA, but should.⁶ Though there are other anti-corruption and anti-fraud statutes that the United States may use to prosecute international corruption and bribery, none of these statutes can be as effective and efficient as the FCPA because of their substantive and jurisdictional limitations.⁷

The United States should include FIFA on the list of public international organizations under the FCPA's purview to allow the prosecution of foreign corruption affecting arguably the most internationally recognized and influential sports organization in the world. FIFA is an ideal candidate for inclusion, based on its structure, resources, and international involvement. And its inclusion would coincide with the goals of the FCPA and its international counterpart, the Organization for Economic Cooperation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention).⁸ In addition, the United States' inclusion of FIFA under the FCPA could encourage other OECD member countries to use the OECD Convention's recommendations as a foundation to discourage corruption and include organizations, such as FIFA, under their jurisdiction.

This Comment has three parts. Part I describes FIFA's internal and international organization as the global organizer of soccer⁹ and discusses the development of the Foreign Corrupt Practices Act of 1977 as influenced by the OECD Convention.¹⁰ Part II argues that the

Bribery Convention. *See infra* Part I.B.2.

5. 15 U.S.C. § 78dd-1 (West 2016).

6. 22 U.S.C. § 288 (West 2016). A public international organization is an "organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter." *Id.* 83 organizations are included under this definition, discussed further in Part III.A of this paper. The FCPA's anti-bribery provisions could also be applied to other sports organizations, such as the International Olympic Committee; however, that is outside the scope of this article.

7. *See infra* Part II.B.2.

8. *See infra* Part III.A.

9. *See infra* Part I.A.

10. *See infra* Part I.B.

United States is ideally situated to use the FCPA against international bribery and corruption.¹¹ And Part III recommends FIFA's inclusion as an ideal public international organization for the purposes of the FCPA¹² and discusses the impact its inclusion could have on encouraging other countries to take similar steps consistent with the spirit of the OECD.¹³

I. FIFA, THE FCPA, AND THE OECD CONVENTION

A. *FIFA's Structure and International Delegation of Governance*

FIFA is a non-governmental organization, similarly structured to many modern-day governments, with a "Constitution" that establishes independent executive, congressional, and judicial bodies.¹⁴ FIFA is incorporated in Switzerland¹⁵ and governs the world of soccer through six individual federations with 211 member associations throughout the world.¹⁶ Notwithstanding its reach to every corner of the globe, legal governance of FIFA remains mostly internal, excepting occasional appellate review by the Court of Arbitration of Sport and Swiss courts, and the rare prosecution of FIFA officials and business partners by other countries' judicial systems.¹⁷

1. Internal Organization

FIFA's Constitution creates executive, congressional, and judicial branches.¹⁸ The FIFA Statutes make up the "Constitution" and

11. See *infra* Part II.A–B.

12. See *infra* Part III.A.

13. See *infra* Part III.B.

14. FIFA STATUTES art. 24–55 (FIFA 2016), http://resources.fifa.com/mm/document/affederation/generic/02/78/29/07/fifastatutsweben_neutral.pdf. See *Governance: How FIFA Works*, FIFA, <http://www.fifa.com/governance/how-fifa-works/index.html> (last visited Feb. 29, 2016). The term "Constitution" refers to the FIFA Statutes. *FIFA Statutes*, FIFA, <http://www.fifa.com/about-fifa/who-we-are/the-statutes.html> (last visited May 19, 2016).

15. *About FIFA*—, FIFA, <http://www.fifa.com/about-fifa/index.html> (last visited Feb. 29, 2016).

16. *Associations*, FIFA, <http://www.fifa.com/associations> (last visited May 31, 2016).

17. See, e.g., *FIFA Tells Michel Platini He Cannot Go Straight to Court of Arbitration for Sport*, GUARDIAN (Dec. 22, 2015), <http://www.theguardian.com/football/2015/dec/22/michel-platini-fifa-appeal-court-arbitration-sport-uefa>.

18. The creation of this FIFA "government" is set out in the FIFA Statutes. See generally FIFA STATUTES (FIFA 2016). Based on recent reforms, the term "Executive Committee" is being phased out in favor of the title "FIFA Council," though its formation and purpose

regulate everything from the voting and election procedures to reimbursement for referees and game-day officials.¹⁹ According to FIFA, “[t]hese documents and the key values of authenticity, integrity, performance and unity underpin FIFA’s mission: to develop the game, touch the world and build a better future.”²⁰

Under the FIFA Statutes, the Council and Congress govern most of the organization’s operations. The Council consists of thirty-seven members, all of whom may hold their positions for up to three four-year terms, including a President, eight vice-presidents, and twenty-eight members,²¹ to include at least one female member from each confederation.²² The president, FIFA’s main representative, chairs the Congress and Council meetings.²³ FIFA’s Congress consists of 211 member associations from six regional confederations.²⁴ Each member association is represented by up to three delegates,²⁵ but has only one vote through a single named delegate.²⁶ The Congress has many duties, including electing Council members, deciding on the addition of new national associations, approving the budget, and controlling FIFA’s governing statutes, with the ability to modify, implement, and apply the statutes.²⁷

2. Delegated Global Governance of Soccer

As the sole international governing body of soccer, FIFA delegates governance to six relatively autonomous regional confederations representing every region and recognized soccer club in the world. These include the Asian Football Confederation (AFC); the Confédération Africaine de Football (CAF); the Confederation of North, Central America and Caribbean Association Football (CONCACAF); the Confederación Sudamericana de Fútbol (CONMEBOL); the Union of European Football Associations

remains largely the same. *Id.* art. 75. This comment will use the term “Council” to remain consistent with the reforms.

19. *Id.*

20. *About FIFA: FIFA Congress*, FIFA, <http://www.fifa.com/about-fifa/fifa-congress/all-you-need-to-know/index.html> (last visited Feb. 29, 2016).

21. FIFA STATUTES art. 33(1)–(4) (FIFA 2016).

22. *Id.* art. 33(5). In the event that a confederation does not elect at least one female member to the Council, that seat will remain unfilled and be deemed forfeited by that confederation. *Id.*

23. *Id.* art. 35.

24. *Associations*, *supra* note 16.

25. FIFA, Standing Orders of the Congress art. 1 (2016).

26. FIFA STATUTES art. 26 (FIFA 2016).

27. *Id.* at art. 28(2), 29.

(UEFA); and the Oceania Football Confederation (OFC).²⁸ Each of these confederations has numerous associations, with a maximum of one association per country,²⁹ totaling 211 associations within FIFA.³⁰

FIFA provides financial and logistical support to the associations in return for adherence to the statutes and promotion of the sport, as well as subjection to the jurisdiction of the FIFA judicial bodies and the Court of Arbitration for Sport.³¹ Lack of adherence to the statutes or the decrees of FIFA by a member could lead to financial sanctions and potential suspension or expulsion of national football associations.³² For example, in Canada's 2015 Women's World Cup, a group of participants challenged the use of artificial turf as inferior to the natural turf used in men's competitions.³³ FIFA allegedly made threats of reprisal against the women for challenging a FIFA decree³⁴ and told its member federations to punish players unless they removed their names from the lawsuits.³⁵ To date, there is no evidence that a country has ever legally challenged FIFA's authority to make such demands on member federations or players.³⁶

3. Judicial Processes

FIFA's judicial process begins with internal adjudication and then appellate jurisdiction through the Court of Arbitration for Sport (CAS) and Swiss courts.³⁷ In addition, countries such as the United States have laws that allow prosecution of crimes committed or facilitated within their borders.³⁸

28. *Associations*, *supra* note 16.

29. FIFA STATUTES art. 11(1) (FIFA 2016).

30. *Associations*, *supra* note 16.

31. FIFA STATUTES art. 11(4) (FIFA 2016).

32. *Id.* art. 16–17, 56.

33. Jeff Kassouf, *Lawyers: FIFA Threatens Retaliation Against Players Fighting Artificial Turf*, EQUALIZER (Oct. 27, 2014), <http://equalizersoccer.com/2014/10/27/lawyers-fifa-threatens-retaliation-players-artificial-turf-world-cup-noyola-abily>.

34. *Id.*

35. Kevin Baxter, *FIFA Allegedly Threatened Players Who Supported World Cup Lawsuit*, L.A. TIMES (Oct. 28, 2014), <http://www.latimes.com/sports/sportsnow/la-sp-sn-fifa-threatened-players-lawsuit-20141028-story.html>.

36. The author of this comment conducted a thorough search of past FIFA litigation and found no case where a country challenged FIFA's authority in this manner. *See generally* Roger Pielke, Jr., *How Can FIFA Be Held Accountable?*, 16 SPORT MGMT. REV. 255, 260–61 (2012) (discussing the “disincentive for national governments to exercise any supervision of FIFA”).

37. FIFA STATUTES art. 52–55, 57–59 (FIFA 2016).

38. Specifically, the Foreign Corrupt Practices Act of 1977 and the Racketeer Influenced

a. FIFA's internal judicial bodies

FIFA's judicial bodies include: the Disciplinary Committee, the Ethics Committee, and the Appeal Committee.³⁹ Per the FIFA Statutes, the judicial bodies are to be comprised of members that "together, have the knowledge, abilities and specialist experience that is necessary for the due completion of their tasks," and the chairmen and deputy chairmen shall be qualified legal practitioners.⁴⁰ The Disciplinary Committee passes decisions relating to the FIFA Disciplinary Code and has the authority to pronounce sanctions on members, subordinate clubs, officials, intermediaries, and licensed match agents.⁴¹ The Ethics Committee, which is governed by the FIFA Code of Ethics, pronounces sanctions per the Code of Ethics and the Disciplinary Code regarding Code of Ethics violations.⁴² Lastly, the Appeal Committee hears appeals regarding decisions rendered by the Disciplinary and Ethics Committees.⁴³ Decisions made by the Appeal Committee are considered irrevocable and binding, and are subject only to appeal at the Court of Arbitration for Sport.⁴⁴

An example of an internal investigation came in December 2015, when FIFA's Ethics Committee investigatory chamber charged FIFA President Sepp Blatter and UEFA President Michel Platini with "disloyal payment[s]" and conflicts of interest regarding questionable transactions.⁴⁵ As a result, the pair was fined a cumulative \$130,000 in addition to an eight-year ban on each from "all football-related activities."⁴⁶ In response to the sentence and the defendants' appeal to FIFA's Appeal Committee, the Ethics Committee counter-appealed, stating that the adjudicatory chamber's punishment was "too lenient."⁴⁷ After the Appeal Committee rejected Blatter's and Platini's appeals and requested reduction of their sentences, both appealed to the Court

and Corrupt Organizations Act. *See infra* Part II.B.

39. FIFA STATUTES art. 52 (FIFA 2016).

40. *Id.* art. 52(3).

41. *Id.* art. 53(1)–(2).

42. *Id.* art. 54(1)–(2).

43. *Id.* art. 55(2).

44. *Id.* art. 55(3).

45. *FIFA: Sepp Blatter and Michel Platini Get Eight-Year Bans*, BBC SPORT (Dec. 21, 2015), <http://www.bbc.com/sport/0/football/35144652>.

46. *Id.*

47. Graham Dunbar, *FIFA Prosecutors to Appeal for Tougher Blatter, Platini Bans*, ASSOCIATED PRESS (Jan. 12, 2016), <http://bigstory.ap.org/article/109896dc4f7f4224b60b0a1dfc3a77ad/fifa-prosecutors-appeal-tougher-blatter-platini-bans>.

of Arbitration for Sport.⁴⁸

b. The Court of Arbitration for Sport

The CAS is the arbitral body “devoted to resolving disputes directly or indirectly related to sport,”⁴⁹ and is the only court with appellate jurisdiction over decisions made by FIFA’s internal judiciary.⁵⁰ The CAS was formed by the International Olympic Committee in 1984 and, at that time, only heard general arbitrations.⁵¹ Alterations were made in 1994 that created two arbitration divisions: the Ordinary Arbitration Division and Appeals Arbitration Division.⁵² The Appeals Arbitration hears disputes arising from decisions taken by sports bodies,⁵³ including FIFA. FIFA recognizes the CAS’s authority “to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents,”⁵⁴ primarily by applying FIFA regulations and, secondarily, Swiss law.⁵⁵ The cases heard by CAS regarding FIFA, however, focus mostly on logistical and managerial matters.⁵⁶

c. Swiss jurisdiction

FIFA is incorporated in Switzerland, making it subject ultimately to Swiss law, though Swiss courts rarely hear matters involving the

48. *Sepp Blatter Takes FIFA Ban Appeal to the Court of Arbitration for Sport*, ESPNFC (Mar. 17, 2016), <http://www.espnfc.us/blog/fifa/243/post/2831497/sepp-blatter-takes-fifa-ban-appeal-to-cas>. While Blatter’s appeal before the CAS is still pending, CAS rendered a decision reducing Platini’s suspension by FIFA to four years. Press Release, Court of Arbitration for Sport, The Court of Arbitration for Sport (CAS) Lowers the Suspension of Michel Platini to 4 Years (May 9, 2016), http://www.tas-cas.org/fileadmin/user_upload/Media_release_4474_final_eng.pdf.

49. *History of the CAS*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/general-information/history-of-the-cas.html> (last visited Feb. 29, 2016). The CAS is also located in Switzerland. *Id.*

50. Louise Reilly, *Introduction to the Court of Arbitration for Sport (CAS) & the Role of National Courts in International Sports Disputes*, A Symposium, 2012 J. DISP. RESOL. 63, 67 (2012).

51. *History of the CAS*, *supra* note 49.

52. *Id.*

53. *Code: Statutes of ICAS and CAS*, CT. ARB. FOR SPORT, <http://www.tas-cas.org/en/icas/code-statutes-of-icas-and-cas.html> (last visited Feb. 29, 2016). The Appeals Arbitration Division is responsible for “resolv[ing] disputes concerning the decisions of federations, associations or other sports-related bodies,” which includes organizations such as the International Association of Athletics Federation and the International Olympic Committee. *Id.*

54. FIFA STATUTES art. 57(1) (FIFA 2016).

55. *Id.* art. 57(2).

56. Reilly, *supra* note 50, at 69–70.

organization.⁵⁷ And because FIFA, along with many of the world's sporting organizations, is a non-profit organization based in Switzerland,⁵⁸ it has historically been exempt from Swiss anti-corruption laws and general financial disclosure rules.⁵⁹ Beginning in 2014, Switzerland began discussing laws that would make sport organizations' leaders considered "politically exposed persons," a title usually reserved for politicians and dictators, which would leave them open to charges of money laundering and other corruption charges.⁶⁰ Those laws were passed in September 2015 after sustained international pressure and the May 2015 arrests of numerous FIFA officials,⁶¹ and they will allow Swiss authorities to investigate suspected corruption without receipt of an internal complaint.⁶² Because of the recent passage of these laws, their potential impacts are so far unknown.⁶³

57. Joshua Keating, *Switzerland Enabled FIFA's Corruption for Years. Why It Stopped Now*, SLATE (May 27, 2015), http://www.slate.com/blogs/the_slatest/2015/05/27/fifa_arrests_switzerland_enabled_fifa_s_corruption_for_years_why_it_stopped.html.

58. For potential reasons as to why Switzerland is an attractive home for these organizations, see *How Switzerland Champions Champions*, SWISSINFO.CH, <http://www.swissinfo.ch/eng/how-switzerland-champions-champions/8149794>, which states, "The Swiss law on associations is extremely simple and hugely flexible. Furthermore, the slowness of the legislative process offers a lot of legal security."

59. Keating, *supra* note 57 ("One Swiss lawmaker calling for reform has noted contemptuously that a multibillion-dollar global organization like FIFA 'still has the same status as a Swiss mountain village yodeling association.'"). See also Helena Bachmann, *Switzerland Plans to Close Loopholes That Let International Sporting Organizations Be Above the Law*, TIME (May 27, 2015), <http://time.com/3898210/switzerland-fifa-corruption>.

60. *FIFA and Olympic Leaders Face New Financial Checks*, BBC NEWS (Dec. 12, 2014), <http://www.bbc.com/news/business-30451609>; Associated Press, *New Swiss Law Allows More Scrutiny of FIFA and IOC Finances*, GUARDIAN (Dec. 12, 2014), <http://www.theguardian.com/football/2014/dec/12/swiss-law-fifa-ioc-finances-scrutiny-sports-governing-bodies>.

61. Owen Gibson & Damien Gayle, *FIFA Officials Arrested on Corruption Charges as World Cup Inquiry Launched*, GUARDIAN (May 27, 2015), <http://www.theguardian.com/football/2015/may/27/several-top-fifa-officials-arrested>.

62. Joshua Franklin, *Swiss Lawmakers Pave Way for 'Lex FIFA' Anti-Corruption Law*, REUTERS (Sep. 11, 2015), <http://www.reuters.com/article/2015/09/11/us-soccer-fifa-swiss-lawmaking-idUSKCN0RB13720150911>.

63. These rules went into effect in April 2016. Michael Shields, *Swiss Crack Down on Bribery as 'Lex FIFA' Set to Take Force*, REUTERS (Apr. 20, 2016), <http://www.reuters.com/article/us-swiss-corruption-idUSKCN0XH1GE?>; Andrew Warshaw, *Swiss Bring in 'Lex FIFA' Laws Giving Power to Prosecute Sports Corruption*, INSIDE WORLD FOOTBALL (Apr. 21, 2016), <http://www.insideworldfootball.com/2016/04/21/swiss-bring-lex-fifa-laws-giving-power-prosecute-sports-corruption> ("[I]t is hoped that tightening the law will address gaps that previously made it difficult to prosecute private individuals who either offer or accept bribes.").

d. International jurisdiction

Foreign prosecution of FIFA and its officials has been rare, despite international movements to hold officials and businesses to stricter standards in order to reduce corruption.⁶⁴ However, within the last year, the United States has charged forty-one FIFA officials and sports marketing officials under its federal laws.⁶⁵ In May 2015, the United States used the Racketeering Influenced and Corrupt Organizations Act (“RICO”) to arrest FIFA officials and sports marketers on charges of racketeering, wire fraud, and money laundering.⁶⁶ In December 2015, sixteen additional individuals were arrested on similar charges.⁶⁷ The United States has not pursued charges under the Foreign Corrupt Practices Act because FIFA is not considered a public international organization under the Act’s purview.⁶⁸

B. The FCPA’s Development Has Been Influenced by the OECD Convention

The Foreign Corrupt Practices Act of 1977 is a powerful tool against international corruption perpetrated or facilitated within U.S. borders. The FCPA was enacted as a way to prosecute U.S. businesses for corruptly influencing foreign officials, but it has developed in large part from an international effort through the Organization for Economic Cooperation and Development (OECD) to broadly prosecute bribery of any public international organization official or its agents.⁶⁹

64. See *infra* Part I.B (discussing the impact of the OECD Anti-Bribery Convention on international corruption laws and its effects on the FCPA).

65. *FIFA Crisis: U.S. Charges 16 More Officials After Earlier Zurich Arrests*, BBC SPORT (Dec. 4, 2015), <http://www.bbc.com/sport/football/34991874>.

66. Indictment at 113–19, *United States v. Webb*, No. 15 C.R. 0252 (E.D.N.Y. May 20, 2015). It is likely that the extraterritorial application of RICO to some FIFA officials without direct ties to the United States will be questioned, which may nullify the charges. This possibility furthers this article’s argument that the FCPA should be extended to allow prosecution of charges relating to FIFA. For a discussion of RICO’s limitations in this context, see *infra* Part II.B.1.

67. Aruna Viswanatha, Joshua Robinson & John Revill, *U.S. Indicts 16 New Suspects in FIFA Corruption Case*, WALL ST. J. (Dec. 3, 2015), <http://www.wsj.com/articles/authorities-making-new-fifa-arrests-in-switzerland-1449123950>.

68. See *infra* Part III (arguing that FIFA should be included as a public international organization under the FCPA).

69. U.S. DEP’T OF JUSTICE, PROPOSED LEGISLATIVE HISTORY: INTERNATIONAL ANTI-BRIBERY ACT OF 1998, <http://www.justice.gov/sites/default/files/criminal-fraud/legacy/2012/11/14/leghistory.pdf> (last visited Feb. 29, 2016).

1. FCPA as a Reaction to International Corruption

The FCPA was enacted in 1977 to criminalize payments by U.S. businesses to foreign government officials in order to obtain or retain business.⁷⁰ The need for this legislation came after more than 400 U.S. corporations admitted to paying over \$300 million to foreign government officials, politicians, and political parties.⁷¹ The House of Representatives Report stated that legislation was necessary because payments made by U.S. businesses “erode[d] public confidence” in the free market system and businesses and created foreign policy and business issues for the United States.⁷² The original FCPA referred only to payments by U.S. businesses to foreign officials and political candidates (or their agents); it made no mention of officials of international organizations.⁷³

2. FCPA’s Expansion in Light of the OECD Anti-Bribery Convention

In 1988, in addition to making minor amendments to the FCPA,⁷⁴ Congress encouraged the Executive Branch to pursue a similar international agreement with member countries of the OECD.⁷⁵ This led to the OECD Convention, signed by thirty-three countries in December 1997.⁷⁶ The Convention “establishes legally binding

70. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494; *see also Foreign Corrupt Practices Act: An Overview*, U.S. DEP’T JUSTICE, <http://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act> (last visited Feb. 29, 2016).

71. H.R. REP. NO. 95-640, at 4 (1977). The report did not list the organizations but did state that they included “some of the largest and most widely held public companies in the United States; over 117 of them rank in the top Fortune 500 industries.” *Id.*

72. *Id.*

73. *Id.* at 7.

74. Foreign Corrupt Practices Amendments of 1988, Pub. L. No. 100-418, §§ 5001–5003, 102 Stat. 1107, 1415–26. Relevant changes to the FCPA include adding that payments must be made to induce action against the foreign official’s “official function” or “in violation of his legal duty”; adding prohibited actions to include “procurement of legislative, judicial, regulatory, or other action in seeking more favorable treatment”; allowing the defense for payments “expressly permitted under any law or regulation” within the foreign official’s country; and prohibiting the inclusion of prosecution for violation, or conspiracy to violate, of the mail or wire fraud statute. *Id.*

75. U.S. DEP’T OF JUSTICE, *supra* note 69. The OECD is “foremost an economic organization dedicated to the principles of market economies, economic growth, and world trade,” and secondarily a “high-powered research institution” designed as a forum for member and non-member government bodies to discuss matters concerning international economic and business policies. *See* James Salzman, *Decentralized Administrative Law in the Organization for Economic Cooperation and Development*, 68 LAW & CONTEMP. PROBS., 189, 191, 92 (2005).

76. *Id.*; Organization for Economic Co-operation and Development [OECD], Convention

standards to criminalise [sic] bribery of foreign public officials in international business transactions,”⁷⁷ and encourages member countries to assert territorial jurisdiction broadly, when possible, so that “an extensive physical connection to the bribery act is not required.”⁷⁸

In 1998, Congress made substantial changes to broaden the FCPA.⁷⁹ These amendments expanded the FCPA’s definition of *foreign official* to include an official of a “public international organization” that is designated by Executive Order pursuant to the International Organizations Immunities Act.⁸⁰ This inclusion far exceeded the recommendations of the Convention, which focused on foreign public and government officials.⁸¹ In addition to including U.S. persons (instead of individuals acting only on behalf of U.S. businesses), the amendments expanded the FCPA’s breadth, pursuant to the OECD Convention, to include the prosecution of any act “in furtherance of the bribe [taken] within the territory of the United States.”⁸² This allowed for the prosecution of bribery of foreign officials when *any act* in “furtherance of the bribery” was conducted within the United States.⁸³

The OECD made additional recommendations to members in 2009 to further combat corruption.⁸⁴ These recommendations were adopted “to enhance the ability of States Parties to the Anti-Bribery

on Combating Bribery of Foreign Public Officials in International Business Transactions, Nov. 21, 1997, https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf [hereinafter OECD Convention].

77. *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD, <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> (last visited Feb. 29, 2016) [hereinafter *OECD Convention Website*].

78. U.S. DEP’T OF JUSTICE, *supra* note 69. *See also* OECD Convention, *supra* note 76, art. 4.

79. International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105-366, 112 Stat. 3302.

80. *Id.* § 3(c).

81. *See generally* OECD Convention, *supra* note 76 U.S. DEP’T OF JUSTICE, *supra* note 69.

82. International Anti-Bribery and Fair Competition Act § 2. This is pursuant to the OECD’s requirement that each party “take such measures as may be necessary to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.” OECD Convention, *supra* note 76, art. 4(1).

83. S. REP. NO. 105-277, at 5 (1998).

84. OECD, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Nov. 26, 2009, <http://www.oecd.org/daf/anti-bribery/44176910.pdf>.

Convention to prevent, detect and investigate allegations of foreign bribery,”⁸⁵ and included a list of best practices.⁸⁶ The best practices encourage member countries to review the structure and enforcement of their laws implementing the OECD Anti-Bribery Convention in order to most effectively prevent the international bribery of foreign public officials.⁸⁷

3. FCPA’s Current Language and Use

Currently, the United States’ FCPA governs the bribing of officials from at least 80 public international organizations,⁸⁸ in addition to providing prosecutorial power over the bribery of any foreign governmental official.⁸⁹ The present language of the FCPA reflects its purpose to discourage payment or gifts with the intent to illegally influence or disrupt official actions of a foreign government or public international organization official.⁹⁰ Based on the 1998 amendments, per the OECD Convention, the term *foreign official* now includes “any officer or employee of . . . a public international organization, or any person acting in an official capacity for or on behalf of any such . . . public organization.”⁹¹ A public international organization is defined as

(i) an organization that is designated by Executive Order pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. § 288); or

(ii) any other international organization that is designated by the President by Executive order for the purposes of this section⁹²

The designation as a public international organization comes in two ways. The typical designation requires (1) the statutory description

85. *OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD, <http://www.oecd.org/daf/anti-bribery/oecdantibriberyrecommendation2009.htm> (last visited Feb. 22, 2016).

86. OECD, *Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Nov. 26, 2009, Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Annex I, <http://www.oecd.org/daf/anti-bribery/44176910.pdf>.

87. *Id.*

88. See *infra* Appendix A for a full list of public international organizations designated by executive order.

89. 15 U.S.C. §§ 78dd-1 to -3 (West 2016).

90. *Id.* § 78dd-1(a)(1) (West 2016).

91. *Id.* § 78dd-1(f)(1)(A) (West 2016).

92. *Id.* § 78dd-1(f)(1)(B) (West 2016).

as an organization in which the United States participates under a treaty or under the authority of a federal statute and (2) an Executive Order.⁹³ For example, a number of the organizations—such as the United Nations, the African Development Bank, and the World Trade Organization—are Intergovernmental Organizations (IGOs) established by treaties.⁹⁴ An organization can also be designated a public international organization through presidential designation stating that it meets the criteria set forth in the International Organization Immunities Act.⁹⁵ In practice, many of the Executive Orders are issued based on the United States' involvement in the public international organization.⁹⁶ Currently, there are at least 80 organizations designated by Executive Order under the International Organizations Immunities Act falling under the purview of the FCPA.⁹⁷

II. THE FCPA AND THE UNITED STATES ARE UNIQUELY SITUATED TO HANDLE PROSECUTORIAL POWER OVER CORRUPTION INVOLVING FIFA

Despite potential criticisms, there are a number of reasons why the United States government can be particularly effective and efficient in combatting international bribery and corruption by using the FCPA.

A. *The United States is Uniquely Situated to Deal with FIFA*

There is ongoing debate over whether or not the United States should take on a world policing role;⁹⁸ however, the United States' unique financial, legal, and social situation allows it to have a large

93. 22 U.S.C. § 288.

94. *Intergovernmental Organizations (IGOs)*, HARV. L. SCH., <http://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-international-law/intergovernmental-organizations-igos> (last visited May 24, 2016).

95. *Weidner v. Int'l Telecommunications Satellite Org.*, 392 A.2d 508 (1978).

96. *See, e.g.*, Exec. Order No. 13240, 66 Fed. Reg. 66,257 (Dec. 18, 2001) (finding “that the Council of Europe in Respect of the Group of States Against Corruption (GRECO) is a public international organization in which the United States participates within the meaning of the Act.”); Exec. Order No. 9698, 11 Fed. Reg. 1,809 (Feb. 19, 1946) (finding “that the United States participates in the [the Food and Agriculture Organization, the International Labor Organization, and the United Nations] pursuant to a treaty or under the authority of an act of Congress authorizing such participation or making an appropriation therefor.”).

97. *See supra* text accompanying note 91.

98. *See, e.g.*, Shane Croucher, *FIFA Corruption Scandal: Maybe Team America Should Police the World After All*, INT'L BUS. TIMES (June 4, 2015), <http://www.ibtimes.co.uk/fifa-corruption-scandal-maybe-team-america-should-police-world-after-all-1504441>.

impact on the conduct of individuals and businesses likely to bribe international organizations. Because of this position, the United States has taken on an influential, international leadership role that can further the goals of the OECD by adopting a broader definition of organizations under the purview of the FCPA.

The United States has the financial and legal resources to successfully prosecute international crimes. The United States government has annual revenue of \$3.251 trillion⁹⁹ and spends the third highest amount, per capita, on policing and prosecutorial expenditures.¹⁰⁰ In 2016, the Department of Justice was allotted a budget of \$28.7 billion.¹⁰¹ With such vast resources and the propensity to spend a large amount of money on criminal justice matters, the United States is uniquely situated to act as a positive and influential leader in matters of international crime and corruption.

In addition, the United States is socially ideal to prosecute FIFA because “America doesn’t like soccer.”¹⁰² In the United States, soccer is a niche sport that “[doesn’t] capture the imagination of the general public, except when national pride is at stake.”¹⁰³ While this may be a sad realization for U.S. soccer fans, it makes the United States an ideal candidate to take on FIFA—using RICO, the FCPA, or any other available criminal statutes—because the possibility of reprisal or retaliation from the organization may not weigh as heavily on the United States’ decision. For example, in 2011, when the Belize government attempted to hold its national association under the scrutiny of its domestic laws, FIFA suspended Belize from participating in the World Cup until it complied with FIFA’s demands,

99. *The World Factbook: Budget*, U.S. CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html> (last visited Feb. 23, 2016).

100. GRAHAM FARRELL & KEN CLARK, EUR. INST. FOR CRIME PREVENTION & CONTROL, WHAT DOES THE WORLD SPEND ON CRIMINAL JUSTICE? 15 figs.1 & 2 (2004), http://www.heuni.fi/material/attachments/heuni/papers/6KtlkZMtL/HEUNI_papers_20.pdf (showing that the only countries that spend more per capita on policing are Switzerland and Hong Kong; the only countries that spend more per capita on prosecution than the United States are Switzerland and Germany).

101. *Compare* U.S. DEP’T OF JUSTICE, FY 2017 BUDGET REQUEST AT A GLANCE 1, <https://www.justice.gov/jmd/file/821916/download> with *Funding*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Funding> (last visited May 25, 2016) (disclosing Interpol’s 2015 budget of 79.8 million Euros, or \$89.1 million).

102. Stephan Faris, *Why America Doesn’t Like Soccer, and How That Can Be Changed*, TIME (Jun. 12, 2014), <http://time.com/2864483/world-cup-2014-soccer-brazil-america>.

103. Chris Chase, *Americans Don’t Care about the FIFA Scandal*, USA TODAY: FOR THE WIN (May 29, 2015), <http://ftw.usatoday.com/2015/05/fifa-scandal-americans-usa-wont-care-sepp-blatter-election>.

citing “severe government interference.”¹⁰⁴ Because of the control over players’ and countries’ involvement in some of the most important sporting events in the world, there is fear of reprisal or retaliation for legally challenging FIFA’s decisions and actions.¹⁰⁵ In addition, fans and sponsors may be willing to turn a blind eye to inconvenient or distasteful requirements by FIFA in order to allow international competition to continue.¹⁰⁶ However, because of the United States’ general apathy toward soccer, and the U.S. government’s overall lack of involvement in soccer events, these same fears may not deter the United States from legally challenging FIFA.

B. The FCPA is the Best Way for the United States to Prosecute FIFA’s Corruption

The United States has numerous anti-corruption and anti-fraud laws that govern corruption, but the FCPA is the most effective anti-corruption law because of jurisdictional advantages as a foreign-focused statute and its unique international support because of its basis in the OECD Convention.

1. Other Anti-Corruption and Anti-Fraud Laws Would Not Be as Effective Against FIFA

RICO¹⁰⁷ is a strong weapon against corruption, but has certain parameters that limit its ability to effectively govern corruption aimed at organizations such as FIFA. RICO was added to Title 18 of the U.S. Code through the Organized Crime Control Act of 1970¹⁰⁸ in order to combat organized crime and racketeering that was infiltrating legitimate organizations at that time.¹⁰⁹ Issues have been presented regarding the extraterritorial application of the statute because of RICO’s recent use against foreign companies. The Supreme Court has stated that there is an assumed lack of extraterritorial application when extraterritoriality is not explicitly stated within a statute.¹¹⁰ Continued

104. *FIFA Suspended Belize Football Association*, AL JAZEERA (June 18, 2011), <http://www.aljazeera.com/sport/football/2011/06/2011618115332875255.html>.

105. Maggie Lin, *Caricatures of Critique: Is FIFA Rotten to the Core?*, SOCCER POLITICS BLOG, <http://sites.duke.edu/wcwp/tournament-guides/world-cup-2014/fifa-institutional-politics/caricatures-of-critique-is-fifa-rotten-to-the-core> (last visited May 25, 2016).

106. *Id.*

107. 18 U.S.C. §§ 1961–68 (West 2016).

108. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922.

109. Ann. K. Wooster, Annotation, *Validity, Construction, and Application of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.A. §§ 1961 et seq.*, 171 A.L.R. Fed. 1 Art. 2[a], 4 (2016).

110. *Morrison v. National Australia Bank, Ltd.*, 130 S.Ct. 2869 (2010); *see also* *Kiobel v.*

questions regarding the extraterritorial application of RICO¹¹¹ make it a less-than-ideal tool to combat bribery involving foreign participants, such as FIFA.

The “Travel Act” is also a part of the Organized Crime Control Act of 1970, and is a supplemental anti-corruption statute.¹¹² It focuses on “interstate and foreign travel or transportation in aid of racketeering enterprises,” and criminalizes travel or use of mail services that promote illegal activities, such as gambling, distributing illegal controlled substances, and human trafficking.¹¹³ Because the Travel Act is under the same statutory framework as RICO, it faces the same issues of extraterritoriality and is therefore not an ideal tool against international corruption.

Mail and wire fraud statutes will face similar limitations. The Mail Fraud statute targets the international use of mail services to commit a fraud or the receipt of money “by means of false or fraudulent pretenses.”¹¹⁴ Because it focuses on the use of the U.S. Postal Service, it has limited application to charges of international corruption of the nature that FIFA, a largely foreign-run entity, would be involved in. The Wire Fraud statute similarly focuses on fraud or money received via fraudulent means, focusing on the use of wire transmission.¹¹⁵ While the statute includes internet activity, it also has limitations. Both of these statutes focus on a limited scope of fraudulent activity—namely, fraud or receipt of payments—and both raise questions about extraterritorial application, similar to the RICO Act.

2. The FCPA Is the Most Effective and Efficient Anti-Corruption Law to Use against FIFA

Unlike other anti-corruption and anti-fraud statutes,¹¹⁶ the FCPA has a jurisdictional advantage since it is specifically designed to deal with instances of foreign and international corruption. It has none of

Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013) (applying the *Morrison* holding directly to the extraterritorial application of RICO).

111. See U.S. § & Exch. Comm’n v. Chi. Convention Ctr., LLC, 961 F.Supp.2d 905 (N.D. Ill. 2013) (allowing an exception to the *Morrison* holding based on the specific circumstances of the case).

112. 18 U.S.C. § 1952 (West 2016).

113. *Id.*

114. 18 U.S.C. § 1341 (West 2016).

115. 18 U.S.C. § 1343 (West 2016).

116. See *supra* Part II.B.1.

the extraterritorial issues of application, so long as *any* act in furtherance of bribery or corruption takes place within the borders of the United States.¹¹⁷ It therefore takes into account the use of the U.S. Postal Service, internet and cellular servers, and banks, in addition to the physical location of potential parties when the bribery or corrupt act(s) takes place.¹¹⁸

In addition, the United States' use of the FCPA has large international backing because of its basis in the OECD Convention.¹¹⁹ The OECD Convention set minimum "legally binding" standards for all 34 members countries, meaning all of those countries have some rendition of a statute similar to the FCPA.¹²⁰ Broader use of the FCPA by the United States may encourage other countries to update and extend their current laws to meet the higher standards being set forth, using the OECD Convention as a foundational model for combatting international bribery and corruption.¹²¹

III. FIFA SHOULD BE INCLUDED AS A PUBLIC INTERNATIONAL ORGANIZATION CONSISTENT WITH THE GOALS OF THE FCPA AND THE OECD CONVENTION

This section argues that FIFA is an ideal candidate for inclusion under the FCPA in direct promotion of its goals and the goals of the OECD Convention. In addition, it considers the potential effect of FIFA's inclusion as a public international organization on international efforts against corruption and bribery

A. Including FIFA as a Public International Organization Is Consistent with the FCPA and the OECD Convention

FIFA has numerous characteristics that make it a prime candidate for inclusion on the list of public international organizations consistent with the goals and spirit of the FCPA.

These include its breadth of international membership; its considerable size and influence; its status as a non-governmental non-profit; and its government-like organization.

117. S. REP. NO. 105-277, at 5 (1998).

118. *Id.*

119. *See supra* Part I.B.2.

120. *OECD Convention Website, supra* note 77.

121. *See infra* Part III.B.

1. FIFA's International Membership Makes It a Highly Influential Global Organization

Membership numbers of currently designated public international organization range from two member nations¹²² to 195 member nations.¹²³ These organizations have vast geographic reaches, and the majority of the organizations have between 50 and 180 member states. FIFA has 209 members,¹²⁴ with only eight internationally recognized countries not represented.¹²⁵ With representatives acting on behalf of each of its members, and local offices and subordinate organizations in most member countries, FIFA is ripe for corruption from local and international businesses.¹²⁶ Under the broad application encouraged by the OECD Convention,¹²⁷ the United States should include FIFA under the FCPA as an organization that performs substantial business within its borders with the ability to impact nearly every country, and many territories, throughout the world.

2. FIFA's Size and Influence Are Larger than Most Designated "Public International Organizations"

FIFA's breadth of international representation and its large budget make it one of the largest, most powerful international organizations in the world—on par with the United Nations and the International Red Cross in terms of membership and finances.¹²⁸

122. These include bilateral organizations, such as the Border Environment Cooperation Commission (between the United States and Mexico), the Great Lakes Fishery Commission (between the United States and Canada), and the Israel-United States Binational Industrial Research and Development Foundation (between the United States and Israel). *See, e.g., About Us*, BORDER ENV'T COOPERATION COMMISSION, <http://www.becc.org/about-us> (last visited Feb. 20, 2016) (describing the Border Environment Cooperation Commission between the United States and Mexico); GREAT LAKES FISHERY COMMISSION, <http://www.glfsc.org> (last visited May 25, 2016); *What Is BIRD*, BIRD FOUND., <http://www.birdf.com/?CategoryID=317&ArticleID=374> (last visited May 25, 2016).

123. *E.g., List of the 195 Members (and the 10 Associate Members) of UNESCO and the Date on Which They Became Members (or Associate Members) of the Organization*, U.N. EDUC. SCI. & CULTURAL ORG. [UNESCO], <http://www.unesco.org/new/en/member-states/countries> (last visited Feb. 20, 2016).

124. *About FIFA: Who We Are*, FIFA, <http://www.fifa.com/about-fifa/who-we-are/index.html> (last visited Feb. 20, 2016).

125. Megan Lane & John Walton, *Fifa: Six Facts About World Football's Governing Body*, BBC NEWS (June 1, 2011), <http://www.bbc.com/news/magazine-13616328> (including countries such as Vatican City, Kiribati, and Monaco).

126. *See infra* Part III.A.2–4.

127. U.S. DEP'T OF JUSTICE, *supra* note 69 (stating that members should "assert territorial jurisdiction broadly and, where consistent with national legal and constitutional principles, to assert nationality jurisdiction").

128. *See Growth in United Nations Membership, 1945-Present*, U.N.,

According to FIFA's financial statement, its revenue from 2011 to 2014 was \$5.718 billion, with expenditures of \$5.38 billion.¹²⁹ For 2013 alone (a year not including the revenue from a FIFA World Cup¹³⁰) FIFA reported \$1.386 billion in revenue with \$1.314 billion in expenditures.¹³¹ FIFA's annual revenue is higher than the revenue reported by over 70 countries in the world,¹³² placing it in a similar financial position as the governments of Malawi, the Virgin Islands, and Fiji.¹³³ Though the FCPA prohibits the bribing of government officials from these countries, it does not account for FIFA as a public international organization even though it has a potentially larger budget and global influence.¹³⁴ With such a high volume of international currency flowing through the organization, there is no question that FIFA is a likely target for the corruption that is at the heart of the FCPA and the OECD Convention's formation.

3. FIFA's Government-Like Organization Makes It Ideal for Inclusion Under the FCPA

FIFA's hierarchical organizational structure,¹³⁵ internal judiciary methods,¹³⁶ and geographically decentralized associations¹³⁷ make it similar to many governments whose vulnerability to corruption led to the formation of the FCPA.¹³⁸ The original FCPA was specifically designed to deter bribery aimed at influencing government officials

<http://www.un.org/en/members/growth.shtml> (last visited Feb. 27, 2016) (showing UN membership at 193 since 2011); Press Release, General Assembly, Secretary-General Unveils \$5.4 Billion 2014-2015 Budget to Fifth Committee, Net Reduction of Posts Draws Mixed Reviews from Delegates, U.N. Press Release GA/AB/4080 (Oct. 28, 2013), <http://www.un.org/press/en/2013/gaab4080.doc.htm> (stating that the United Nations had a proposed budget of \$5.4 billion from 2014-2015); *Annual Report 2014*, INT'L COMMITTEE RED CROSS, <https://www.icrc.org/en/document/ICRC-annual-report-2014> (last visited Feb. 20, 2016) (showing that the International Committee of the Red Cross carried out activities in over 80 countries and had a \$1.38 billion budget in 2014).

129. FIFA, FINANCIAL REPORT 2014, at 14, http://resources.fifa.com/mm/document/affederation/administration/02/56/80/39/fr2014weben_neutral.pdf.

130. *Id.* at 16 (showing that the sale of television rights for the FIFA World Cup is FIFA's largest source of income, bringing in an estimated \$2.428 billion in 2014 for the World Cup in Brazil).

131. *Id.* at 15.

132. *See The World Factbook: Budget*, *supra* note 99.

133. *Id.*

134. *See id.*

135. *See supra* Part I.A.1.

136. *See supra* Part I.A.3.a.

137. *See supra* Part I.A.2.

138. *See supra* notes 74-76 and accompanying text.

acting in their official capacities.¹³⁹ Because many FIFA officials, such as FIFA Executives and Committee officials, are acting in government-like authoritative and administrative positions, it is logical that the FCPA would target bribes made to them. By including FIFA as a public international organization, the FCPA could be applied to bribery of FIFA officials congruent with the expectations of the OECD Convention and the FCPA by deterring bribery of them as foreign officials acting in a public realm with large resources and influence at their disposal.

4. FIFA's Status as a Non-Governmental, Non-Profit Does Not Bar It from Inclusion as a "Public International Organization"

While the majority of the designated public international organizations are commissions, banks, and intergovernmental organizations, non-profits can also be included on the list.¹⁴⁰ For example, the International Fertilizer Development Center is a private, non-profit corporation founded in 1976 and was designated a public international organization in 1977 by presidential order.¹⁴¹ FIFA's similar non-profit status, therefore, does not prevent it from consideration as a public international organization; it may even be a more attractive candidate for inclusion because of its large membership and expansive global influence.

5. Including FIFA as a Public International Organization is Consistent with the Spirit of the OECD Convention

The inclusion of FIFA as a public international organization under the FCPA is consistent with the spirit of the OECD's enactment and later amendments. During the original promulgation of the OECD Convention, countries were encouraged to "assert territorial jurisdiction broadly and, where consistent with national legal and constitutional principles, to assert nationality jurisdiction,"¹⁴² and the Convention still touts itself as "the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction."¹⁴³ Including organizations not originally in the purview of

139. *See supra* notes 74-77.

140. *See infra* Appendix A (listing the current public international organizations).

141. *History*, INT'L FERTILIZER DEV. CENTER, <http://ifdc.org/history> (last visited Feb. 20, 2016).

142. U.S. DEP'T OF JUSTICE, *supra* note 69.

143. *OECD Convention Website*, *supra* note 77.

the OECD—such as FIFA—is consistent with its encouragement to have a broader definition of the type of organization falling under statutory enactments.

It can be inferred from the OECD's language and tone that it sets a minimum standard of criminalization, without mention of a ceiling for the standards that member countries may impose individually. A number of countries directly follow the OECD Convention's explicit definitions and expectations by limiting public officials and public enterprises to those that perform a governmental function or are under governmental influence or control.¹⁴⁴ However, the United States has gone above and beyond in including organizations that are not directly related to or under the control of foreign governments.¹⁴⁵ Including FIFA as a public international organization, either under the International Organizations Immunities Act¹⁴⁶ or through presidential order, would coincide with the spirit of the OECD Convention, which included concerns for public policy, protection of business transparency, and international promotion of fair trade.¹⁴⁷

C. Including FIFA May Encourage Other OECD Countries to Follow Suit

By including FIFA as a public international organization under the FCPA, the United States may encourage other signatory countries of the OECD Convention to expand their laws and take similar steps to prevent corruption relating to FIFA and other international sports organizations.¹⁴⁸ The OECD Anti-Bribery Convention currently has 34 signatory members¹⁴⁹ and seven non-OECD members,¹⁵⁰ all of whom

144. Joel M. Cohen et al., *Under the FCPA, Who Is a Foreign Official Anyway?*, 63 *BUS. LAW.* 1243, 1261–63 (2008) (discussing Japan, Australia, and France's adoption of the OECD Convention).

145. *See infra* Appendix A.

146. 22 U.S.C. § 288a (West 2016).

147. *See generally About*, OECD, <http://www.oecd.org/about> (last visited Feb. 20, 2016).

148. Other sports organizations, such as the IOC may be treated similarly under this article's arguments but are outside the scope of the current arguments and recommendations.

149. *Members and Partners*, OECD, <http://www.oecd.org/about/membersandpartners> (last visited Feb. 27, 2016) (citing current members Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States).

150. OECD, *ABOUT THE 2009 RECOMMENDATION FOR FURTHER COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS*, http://www.oecd.org/daf/anti-bribery/2009_Anti-Bribery_Recommendation_Brief.pdf (last visited Feb. 27, 2016) (stating non-OECD members include Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia, and

have embraced the goal of the Convention to discourage corruption. By raising the bar above the Convention's base standard, the United States' inclusion of FIFA under the purview of its domestic statute may lead other countries to take a more active role to ensure they are following the high standards set by fellow OECD participants. In the wake of the United States' arrests of FIFA and related business officials using RICO in May and December of 2015, a number of other countries have begun their own investigations against FIFA.¹⁵¹ Having an additional tool, such as the FCPA, would allow the United States to lead as an example using extraterritorial laws similar to those used by OECD Convention countries.

IV. CONCLUSION

Including FIFA as a public international organization would coincide with the goals and embrace the spirit of the Foreign Corrupt Practices Act and the OECD Convention to discourage international corruption while promoting business and governmental transparency. Not only does FIFA fit the mold of an ideal international public organization, but allowing the United States to prosecute such a large and influential organization would deter corruption and may encourage other OECD member countries to take similar steps to combat corruption falling within their jurisdictions. At the least, inclusion of FIFA as a public international organization under the FCPA would trigger broader conversation regarding international corruption and may lead to a reconsideration of international corruption laws and their ineffectiveness in dealing with large, profitable, and generally unregulated non-governmental non-profits, such as FIFA.

South Africa).

151. *Fifa Scandal: Around the World in Football Investigations*, BBC NEWS (June 2, 2015), <http://www.bbc.com/news/world-us-canada-32965432> (discussing investigations in Brazil, Costa Rica, Switzerland, and the United Kingdom).

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APPENDIX A

List of Public International Organizations Designated by Executive Order¹⁵²

African Development Bank, Ex. Ord. No. 12403, Feb. 8, 1983, 48 F.R. 6087.

African Development Fund, Ex. Ord. No. 11977, Mar. 14, 1977, 42 F.R. 14671.

African Union, Ex. Ord. No. 13377, Apr. 13, 2005, 70 F.R. 20263.

Asian Development Bank, Ex. Ord. No. 11334, Mar. 7, 1967, 32 F.R. 3933.

Border Environment Cooperation Commission, Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.

Caribbean Organization, Ex. Ord. No. 10983, Dec. 30, 1961, 27 F.R.32.

Commission for Environmental Cooperation, Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.

Commission for Labor Cooperation, Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.

Commission for the Study of Alternatives to the Panama Canal, Ex. Ord. No. 12567, Oct. 2, 1986, 51 F.R. 35495.

Council of Europe in Respect of the Group of States Against Corruption (GRECO), Ex. Ord. No. 13240, Dec. 18, 2001, 66 F.R. 66257.

Customs Cooperation Council, Ex. Ord. No. 11596, June 5, 1971, 36 F.R. 11079.

European Bank for Reconstruction and Development, Ex. Ord. No. 12766, June 18, 1991, 56 F.R. 28463.

European Space Agency, Ex. Ord. No. 11318, Dec. 5,

152. Public International Organizations Covered by the Foreign Corrupt Practices Act, ICI.ORG, https://www.ici.org/pdf/webinar_11_fcpa_org.pdf.

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1966, 31 F.R. 15307; Ex. Ord. No. 11351, May 22, 1967, 32 F.R.7561; Ex. Ord. No. 11760, Jan. 17, 1974, 39 F.R. 2343; Ex. Ord. No. 12766, June 18, 1991, 56 F.R. 28463.

Food and Agriculture Organization, Ex. Ord. No. 9698, Feb. 19, 1946, 11 F.R. 1809.

Global Fund to Fight AIDS, Tuberculosis and Malaria, Ex. Ord. No. 13395, Jan. 13, 2006, 71 F.R. 3203.

Great Lakes Fishery Commission, Ex. Ord. No. 11059, Oct. 23, 1962, 27 F.R. 10405.

Hong Kong Economic and Trade Offices, Ex. Ord. No. 13052, June 30, 1997, 62 F.R. 35659.

Inter-American Defense Board, Ex. Ord. No. 10228, Mar. 26, 1951, 16 F.R. 2676.

Inter-American Development Bank, Ex. Ord. No. 10873, Apr. 8, 1960, 25 F.R. 3097; Ex. Ord. No. 11019, Apr. 27, 1962, 27 F.R. 4145.

Inter-American Institute of Agricultural Sciences, Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.

Inter-American Investment Corporation, Ex. Ord. No. 12567, Oct. 2, 1986, 51 F.R. 35495.

Inter-American Statistical Institute, Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.

Inter-American Tropical Tuna Commission, Ex. Ord. No. 11059, Oct. 23, 1962, 27 F.R.10405.

Intergovernmental Maritime Consultative Organization, Ex. Ord. No. 10795, Dec. 13, 1958, 23 F.R. 9709.

International Atomic Energy Agency, Ex. Ord. No. 10727, Aug. 31, 1957, 22 F.R. 7099.

International Bank for Reconstruction and Development, Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.

International Boundary and Water Commission, United States and Mexico, Ex. Ord. No. 12467, Mar. 2, 1984, 49 F.R. 8229.

International Centre for Settlement of Investment Disputes, Ex. Ord. No. 11966, Jan. 19, 1977, 42 F.R. 4331.

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International Civil Aviation Organization, Ex. Ord. No. 9863, May 31, 1947, 12 F.R. 3559.

International Coffee Organization, Ex. Ord. No. 11225, May 22, 1965, 30 F.R.7093.

International Committee of the Red Cross, Ex. Ord. No. 12643, June 23, 1988, 53 F.R. 24247.

International Cotton Advisory Committee, Ex. Ord. No. 9911, Dec. 19, 1947, 12 F.R. 8719.

International Cotton Institute, Ex. Ord. No. 11283, May 27, 1966, 31 F.R. 7667.

International Criminal Police Organization (INTERPOL) (limited privileges), Ex. Ord. No. 12425, June 16, 1983, 48 F.R. 28069; Ex. Ord. No. 12971, Sept. 15, 1995, 60 F.R. 48617; Ex. Ord. No. 13524, Dec. 16, 2009, 74 F.R. 67803.

International Development Association, Ex. Ord. No. 11966, Jan. 19, 1977, 42F.R. 4331.

International Development Law Institute, Ex. Ord. No. 12842, Mar. 29, 1993, 58 F.R. 17081.

International Fertilizer Development Center, Ex. Ord. No. 11977, Mar. 14, 1977, 42 F.R. 14671.

International Finance Corporation, Ex. Ord. No. 10680, Oct. 2, 1956, 21 F.R. 7647.

International Food Policy Research Institute (limited privileges), Ex. Ord. No. 12359, Apr. 22, 1982, 47 F.R. 17791.

International Fund for Agricultural Development, Ex. Ord. No. 12732, Oct. 31, 1990, 55 F.R. 46489.

International Hydrographic Bureau, Ex. Ord. No. 10769, May 29, 1958, 23 F.R. 3801.

International Joint Commission—United States and Canada, Ex. Ord. No. 9972, June 25, 1948, 13 F.R. 3573.

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