

WHAT THE UNITED NATIONS CONVENTION AGAINST CORRUPTION CAN TEACH FIFA

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I) Introduction

Sports, and especially soccer, as one of the most popular sport activities, have a major significance for many people. Therefore, the Fédération Internationale de Football Association (FIFA) has a high responsibility. Sports can support respect and tolerance for others. They can teach fair play and the importance of rules. Nevertheless, they can create emotions. The general teaching of fair play and following the rules might be foiled if FIFA, as the soccer's world organization, has corruptive practices. Due to the high importance of soccer, FIFA has a responsibility to react to the latest crisis, and to create a new system which is able to prevent corruption.

This article deals with the question of how the United Nations Convention Against Corruption (UNCAC) can teach FIFA to implement structural reforms that enable FIFA to investigate corruption in the past, and to prevent corruption in the future. First, the article examines the structure of FIFA and its problems. Second, the article describes the recent developments regarding the arrest of FIFA officials charged with corruption. Third, the article presents the relevant provisions of the UNCAC, and examines how these provisions can give an orientation to implement effective structural reforms, and to implement transparency, accountability, and consistency. The article concludes with the author's ideas on which steps have to be taken by FIFA immediately (V).

II) FIFA's Structure

FIFA has a problematic structure. FIFA is an association based in Zurich.¹ It has 209 member associations, and according to their webpage, its goal "is the constant improvement of football."² FIFA is

¹ FIFA, *Who We Are*, <http://www.fifa.com/about-fifa/who-we-are/index.html>.

² Matt Apuzzo et al., *FIFA Officials Arrested on Corruption Charges; Blatter Isn't Among Them*, THE NEW YORK TIMES (May 26, 2015), http://www.nytimes.com/2015/05/27/sports/soccer/fifa-officials-face-corruption-charges-in-us.html?_r=0.

responsible for the promotion and the regulation of soccer worldwide. FIFA is a non-governmental organization and a global company with a revenue of \$5.7 billion from 2011 to 2014.³ FIFA has long been criticized due to its lack of transparency.⁴ In other multinational companies, the managers have to be accountable to shareholders.⁵ But, the mandate of FIFA derives from FIFA member federations.⁶ So, FIFA is answerable to the 209 national football organizations, but those organizations are dependent on funds that they receive from FIFA.⁷ The president and the heads of the six regional confederations are part of FIFA's Executive Committee, which is the main decision-making body, and votes on where a World Cup should be hosted.⁸ The Executive Committee, a small group of officials, makes the decision without debate or explanation.⁹ Without the approval of FIFA, a national federation is not able to build a national team to compete with other national teams.¹⁰ FIFA members have an equal vote in FIFA proceedings and every member receives an equal share of FIFA revenues.¹¹ It can be stated that both sides have "fewer incentives for good governance than they have for keeping each other happy."¹²

In recent years, there were a lot of critics of FIFA regarding corruption issues. The 2018 and 2022 FIFA World Cups to Russia and Qatar have been very controversial, since there were allegations that votes were manipulated and bought.¹³ Another example is Brazil, where many people protested on the streets

³ *Id.*

⁴ Roger Pielke Jr., *How Can FIFA Be Held Accountable*, 16 *SPORTS MGMT*, REV. 255-267 (2013).

⁵ See Sylvia Schenck, *Safe Hands, Building Integrity and Transparency at FIFA*, *TRANSPARENCY INTERNATIONAL 2* (2011),

http://www.transparency.org/whatwedo/publication/safe_hands_building_integrity_and_transparency_at_fifa.

⁶ *Id.*

⁷ *Id.*

⁸ Ishaan Tharoor, *How FIFA Became the World's Most Powerful and Loathed Sports Organization*, *THE WASHINGTON POST* (May 27, 2015), <http://www.washingtonpost.com/blogs/worldviews/wp/2015/05/27/how-fifa-became-the-worlds-most-powerful-and-loathed-sports-organization/>.

⁹ Apuzzo et al., *supra* note 2.

¹⁰ George Quraishi, *Who Owns Soccer?*, *THE NEW YORK TIMES* (June 17, 2015), <http://www.nytimes.com/2015/06/17/magazine/who-owns-soccer.html>.

¹¹ *Id.*

¹² *Id.*

¹³ *Corruption And Sport: Building Integrity to Prevent Abuses 4* (Transparency International, Working Paper # 2/14).

against the rising costs of staging the World Cup, the assumed corruption, poor working conditions, and higher living costs.¹⁴

FIFA markets the World Cups, which is a lucrative business. The revenues from the last tournament in 2014 came to \$4 billion.¹⁵ There also has to be considered the fact that World Cup generates more revenue than it costs.¹⁶ The clubs, the players, and the host nation, which provides all infrastructure, get little.¹⁷ In a situation with such a large profit, there is a high incentive for people to not follow the rules.¹⁸

III) The Recent Developments

At the end of May, fourteen FIFA officials were accused of corruption. On May 27, 2015 the US Department of Justice unsealed a 47-count indictment “charging 14 defendants with racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with the defendants’ participation in a 24-year scheme to enrich themselves through the corruption of international soccer”.¹⁹ Swiss authorities arrested several top soccer officials in order to extradite them to the United States.²⁰ The charges, backed by an F.B.I. investigation, include fraud, bribery and money laundering over the past twenty years.²¹ Senior officials at a Zurich Hotel were arrested as well, and Swiss authorities announced an investigation into the awards of the 2018 and 2022 World Cups.²² Jeffrey Webb and Jack Warner, the current and former presidents of the Confederation of North and Central American and Caribbean

¹⁴ *Id.*

¹⁵ Quraishi, *supra* note 10.

¹⁶ Stefan Szymanski, *How Fifa Can Find a New Direction and Start the Clean-Up of Corruption*, THE GUARDIAN (May 30, 2015), <http://www.theguardian.com/football/2015/may/30/fifa-new-direction-corruption-sepp-blatter>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Office of the Att’y Gen., USAO – New York, Eastern District, *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption*, Department of Justice, Office of Public Affairs (May 27, 2015), <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>.

²⁰ Matt Apuzzo, Stephanie Clifford, William K. Rashbaum, *FIFA Official Arrested on Corruption Charges; Blatter Isn’t Among Them*, THE NEW YORK TIMES (May 26, 2015), <http://www.nytimes.com/2015/05/27/sports/soccer/fifa-officials-face-corruption-charges-in-us.html>.

²¹ *Id.*

²² Claire Phipps & Damien Gayle, *FIFA Crisis: Visa Sponsorship Threat Compounds Calls for Blatter to Resign*, THE GUARDIAN (May 28, 2015), <http://www.theguardian.com/football/2015/may/28/fifa-crisis-blatter-calls-resign-sponsors-disappointment>.

Association Football are both charged with racketeering and bribery offenses.²³ U.S. and South American sports marketing executives allegedly paid, and agreed to pay, over \$150 million in bribes to corrupt media rights and marketing right in the Americas.²⁴ Attorney General Loretta Lynch states the “indictment alleges corruption that is rampant, systemic, and deep-rooted both abroad and here in the United States.”²⁵ For example, Nike, who is the sponsor of the Brazil national team, found itself in trouble as well since the US indictment states that in 1996 a global sports company sponsoring the Brazilian national team paid an additional \$40 million to someone who is affiliated of the team’s marketing agent using a Swiss bank account.²⁶

The US investigators made clear that they see organizational corruption within FIFA, which means “people both up, down and sideways”.²⁷ FIFA President Sepp Blatter, who has been the President of FIFA since 1974, was re-elected on May 29, 2015, right after the arrests.²⁸ It was his fifth term, but, at a press conference at the FIFA headquarters on June 2, 2015 he said he will resign from his position.²⁹

IV) The UNCAC and Necessary Reform Steps

The UNCAC can be used as a model for how FIFA can tackle the problem of corruption in reforming their organization. As Article 1 states, the purpose of the UNCAC is to “promote and strengthen measures to prevent and combat corruption more efficiently and effectively.”³⁰

Article 12 of the UNCAC addresses the private sector, of which FIFA is part.³¹ According to Article 12(1) of the UNCAC, the State Parties should take measures to prevent corruption in the private sector. As

²³ Office of the Att’y Gen., *supra* note 19.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Phipps & Gayle, *supra* note 22.

²⁷ Robert Harris, *Why Did Blatter Resign and What Now for FIFA*, THE WASHINGTON POST (June 3, 2015), http://www.washingtonpost.com/world/europe/key-questions-why-did-blatter-resign-and-what-now-for-fifa/2015/06/03/b0339784-09ba-11e5-951e-8e15090d64ae_story.html.

²⁸ *Id.*

²⁹ Sam Borden et al., *Sepp Blatter Decides to Resign as FIFA President in About-Face*, THE NEW YORK TIMES (June 2, 2015), <http://www.nytimes.com/2015/06/03/sports/soccer/sepp-blatter-to-resign-as-fifa-president.html>.

³⁰ United Nations Convention Against Corruption (UNCAC), G.A. Res. 58/4 of 31, Art. 12 (Oct. 2003), https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

³¹ *Id.*

the UNCAC states that bribery and embezzlement in the private sector should be considered a criminal offense in domestic laws, it seems useful that FIFA take all possible measures to prevent that such crimes are committed within FIFA.

It seems an effective step to support the integrity of a private entity. Article 12(2)(b) of the UNCAC states that one of these measures is to support the development of “standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honorable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest” in the private sector. Business organizations have the obligation to make a profit on one hand,³² and on the other hand, they have obligations imposed by the stakeholder.³³ Many organizations decided to implement codes of conduct, ethics, or corporate governance programs to address these different interests.³⁴ FIFA has a “Code of Ethics”.³⁵ Applying Article 12(2)(b) of the UNCAC to FIFA, it seems necessary that FIFA reviews its own Code of Ethics of 2012. This code includes provisions about how to deal with a conflict of interest (19) and how to deal with offering and accepting gifts (20).³⁶ However, there are no provisions of how employees have to report invitations, and how corruption in high-risk areas can be prevented.

Transparency plays an important role. Private entities being transparent, accessible, accountable, and open to their own employees, and to the outside world, will be the most effective step towards preventing corruption. Article 12(2)(c) states that another measure is “promoting transparency among private entities.”³⁷ There are different measures in the discussion to develop more transparency within FIFA. It seems necessary that FIFA implements an impartial and external form of oversight, which could

³² UN, *Technical Guide to the United Nations Convention Against Corruption*, 58 (2009)

³³ *Id.*

³⁴ *Id.*

³⁵ FIFA, *Code of Ethics* (3rd ed. 2012),

http://www.fifa.com/mm/document/affederation/administration/50/02/82/codeofethics_v211015_e_neutral.pdf.

³⁶ *Id.*

³⁷ UNCAC Art. 12, *supra* note 30.

be done by a governance committee.³⁸ A multi-stakeholder group, drawn from FIFA's stakeholders, could be built by this committee.³⁹

Transparency International developed "Business Principles for Countering Bribery".⁴⁰ Some of these principles seem important to implement by FIFA. FIFA has to commit to zero tolerance of bribery and must monitor and evaluate this commitment.⁴¹ It should develop a program, which articulates values, policies and procedures against bribery, reflecting potential risk factors and the culture of the organization, which is consistent with all laws existing, and determines all internal and external matters to implement the program.⁴² To implement such a program, FIFA should develop a strategy to communicate about these issues within the organization.⁴³ Furthermore, the program should be monitored by an external body, with this body reporting to key management⁴⁴.

Internal control is another important issue. Article 12(2)(f) of the UNCAC states that another measure is ensuring "that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting act of corruption."⁴⁵ Furthermore, the accounts and required financial statements should be subject to appropriate auditing and certification procedures. Regarding FIFA, it seems useful that FIFA reviews its own organizational structure. For example, the last three FIFA presidents served an average of 18 years.⁴⁶ There is a proposal that FIFA reduces the possibility to serve in a position as key management for two terms, and that the elections and

³⁸ Transparency International, *supra* note 13.

³⁹ *Id.*

⁴⁰ TRANSPARENCY INTERNATIONAL, *Business Principles For Countering Bribery, A Multi-Stakeholder Initiative 3* (3d ed. 2012),

https://issuu.com/transparencyinternational/docs/business_principles_web_final/1?e=2496456/6040471.

⁴¹ *See also id.*

⁴² *See also id.*

⁴³ *See also id.*

⁴⁴ *See also id.*

⁴⁵ *Supra* note 37.

⁴⁶ Daniel Abebe & William Birdthistle, *Making the Beautiful Game Beautiful Again*, THE CHICAGO TRIBUNE, June 7, 2015, <http://www.chicagotribune.com/news/opinion/commentary/ct-fifa-soccer-blatterqatar-scandal-corruption-perspec-0608-20150607-story.html>.

the appointment processes have to be transparent and competitive.⁴⁷ Furthermore, FIFA should develop a strategy to prevent corruption especially in high-risk areas such as the selection of the World Cup host, financial support, bonuses and payments to officials, TV and sponsorship, and ticket sales and distribution.⁴⁸ There also is the idea to separate the commercial organization of the World Cup, which has to be considered as a business separate from the charitable activities of FIFA.⁴⁹ That would have the consequence of making the FIFA Executive Committee no longer responsible for allocating the contracts associated with the World Cup, and would remove one of the main sources of corruption.⁵⁰

It seems useful to support financial transparency as well. Article 12(3) of the UNCAC states that the State Parties should take measures “regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards” to prohibit the “establishment of off-the books accounts”, “making of off-the-books or inadequately identified transactions”, “recording on non-existent expenditure” or “intentional destruction of bookkeeping documents earlier than foreseen by the law.”⁵¹ FIFA could make sure that all transactions are reviewed by at least three people. FIFA could publish how much money each confederation and member federation receives and how much income the Executive Committee and all other key management has.⁵² There is no apparent reason why the income of the president and other key management is not published yet.⁵³

Article 13 of the UNCAC points out how important the participation of civil society is.⁵⁴ Transparency International states that the civil society can play an important role in demanding accountability.⁵⁵ There has to be a “co-ordinated and systematic stakeholder involvement through stronger partnerships between

⁴⁷ Transparency International, *supra* note 4.

⁴⁸ *Id.*

⁴⁹ Szymanski, *supra* note 16.

⁵⁰ *Id.*

⁵¹ *Supra* note 37.

⁵² Transparency International, *supra* note 5.

⁵³ Abebe & Birdthistle, *supra* note 46.

⁵⁴ UNCAC Art. 13, *supra* note 30.

⁵⁵ *Corruption And Sport: Building Integrity to Prevent Abuses 4* (Transparency International, Working Paper # 2/14).

civil society organizations, governments, sponsors, fans and sporting organizations.”⁵⁶ Regarding that, FIFA should implement its own independent Ethics Committee to investigate how corruption took place within FIFA.⁵⁷

This Independent Ethics Committee can be created with the participation of the civil society. In this context, FIFA should consider implementing a protection for whistleblowers. However, the Ethics Committee has to be independent. After the scandals in 2010 and 2011, FIFA’s Executive Committee appointed an Ethic Committee, which raised doubt about how independent this committee would be.⁵⁸ A new Independent Ethics Committee could include people experienced in anti-corruption investigations. The work of the Independent Ethics Committee should be supervised by an independent body.⁵⁹ A first step could be to publish the report of U.S. Attorney Michael Garzia.⁶⁰ In 2012, FIFA appointed him to investigate corruption allegation but after he finished his report FIFA decided to quash it.⁶¹ It would be a first step to make the report public.

V) Conclusion and Necessary Immediate Steps

To sum up, there are many possibilities to change the structure of, and to prevent corruption in FIFA. The UNCAC can provide FIFA with a model for how to implement effective reform steps that support transparency, accountability and consistency. However, FIFA has to decide whether it wants a new start or not. If yes, FIFA has to start to investigate their past and to implement fundamental reforms to change the structure of the organization.

At the very least, FIFA has to make new decisions about the 2018 World Cup in Russia and the 2022 World Cup in Qatar. Russia should be prevented from exploiting migrant workers again like they did in the Sochi Olympics.⁶² The working conditions in Qatar are also not acceptable. No sports fan wants to

⁵⁶ *Id.*

⁵⁷ Transparency International, *supra* note 5.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Abebe & Birdthistle, *supra* note 46.

⁶¹ *Id.*

⁶² *Id.*

watch a game in a stadium where workers died during the construction process.⁶³ Sponsors should not support games in repressive countries where critics are threatened and jailed.⁶⁴

Article 16 of the UNCAC states that each State Party shall adopt legislative, which criminalizes the bribery of officials of public international organizations.⁶⁵ There is no reason why officials of multi-national organizations like FIFA are not included. The UNCAC should address State Parties as well, to criminalize not only officials of a public international organization, but moreover every official of an international organization.

There are many ways that FIFA can investigate corruption during the recent years, and prevent corruption in the future. The key is the will to change. To demonstrate that will, FIFA has to act immediately.

⁶³ Minky Worden, *Dispatches: FIFA Should Fix More Than Blatter*, HUMAN RIGHTS WATCH (June 2, 2015), <http://www.hrw.org/news/2015/06/02/dispatches-fifa-should-fix-more-blatter>.

⁶⁴ *Id.*

⁶⁵ UNCAC Art. 16, *supra* note 30.