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Where Should They Go? Why the United States Should Have Jurisdiction over Those Being Charged in the FIFA Corruption Scandal

MIKE LEARY*

I. INTRODUCTION

On May 27, 2015, Swiss authorities arrested seven *Fédération Internationale de Football Association* (“FIFA”) officials at the Baur au Lac hotel in Zurich on the eve of an important organizational meeting the next day.¹ The Swiss authorities arrested the individuals at the behest of the United States government, who indicted nine current and former FIFA executives and five sports marketing and broadcast executives with forty-seven charges of racketeering, bribery, money laundering and fraud.² The United States requested that Switzerland extradite these fourteen individuals to the United States to face the charges in front of the United States’ justice system.³ On the same day that the United States indicted these individuals, the Swiss Attorney General seized documents at FIFA headquarters in Zurich and opened criminal proceedings “against [FIFA] persons unknown on suspicion of criminal mismanagement and

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1. Michael E. Miller & Fred Barbash, U.S. Indicts World Soccer Officials in Alleged \$150 million FIFA Bribery Scandal, WASH. POST (May 27, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/05/27/top-fifa-officials-arrested-in-international-soccer-corruption-investigation-according-to-reports/>; see also Press Association, *Full Timeline of FIFA Corruption Scandal as Criminal Proceedings Are Opened Against Sepp Blatter*, DAILY MIRROR (Sept. 25, 2015), <http://www.mirror.co.uk/sport/football/news/full-timeline-fifa-corruption-scandal-6517127>.

2. Miller & Barbash, *supra* note 1; *FIFA Corruption Crisis: Key Questions Answered*, BBC NEWS (Sept. 25, 2015), <http://www.bbc.com/news/world-europe-32897066>.

3. Miller & Barbash, *supra* note 1.

of money laundering in connection with the allocation of the 2018 and 2022 Football World Cups.”⁴ According to the Swiss Attorney General, the two countries were acting independently of one another and at no point were operating together in a joint investigation.⁵ This begs the question then: if the United States and Switzerland are charging an international organization with practically the same crimes, and they are not acting as a joint investigation, which country should have jurisdiction over the entire case?

FIFA’s history of corruption dates back several decades.⁶ As a whole, the organization currently has a cloud of dishonesty and malfeasance surrounding it, placing society’s faith in the integrity of the international soccer community at an all-time low.⁷ Even long-time FIFA sponsors such as Visa and Coca-Cola are losing faith in the organization, threatening to withdraw their sponsorship of FIFA events until the organization rids itself of corruption.⁸ In order to eradicate the rampant corruption that infests FIFA and to restore honesty and integrity to the inner-workings of the world’s most popular sport,⁹ there must be a resolution to the situation that not only punishes FIFA executives and sponsors for their crimes, but also creates a change in the rules that govern an organization such as FIFA so that corruption of this magnitude is not allowed to happen again.

That is why the United States of America should retain jurisdiction over the individuals who have been charged in the scandal. As explained below, the United States has a fair and efficient system that will bring the

4. Statement from the Swiss Attorney General on Seizing Documents at the FIFA Headquarters (May 27, 2015), <https://www.news.admin.ch/message/index.html?lang=en&msg-id=57391>.

5. Statement from the Swiss Attorney General on Seizing Documents at the FIFA Headquarters, *supra* note 4.

6. See U.S. Department of Justice Press Release on the Indictment of FIFA Officials (May 27, 2015), <http://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and> (U.S. Attorney General Loretta Lynch states, “[The corruption] spans at least two generations of soccer officials who, as alleged, have abused their positions of trust to acquire millions of dollars in bribes and kickbacks.”).

7. See *FIFA’s Blatter Comes Out Fighting Despite Scandal and Divisions*, NBC NEWS (May 30, 2015, 10:34 AM ET), <http://www.nbcnews.com/storyline/fifa-corruption-scandal/fifas-blatter-comes-out-fighting-despite-scandal-divisions-n367031> (“[Blatter] now faces the daunting task of restoring public faith in an organization tainted by allegations of graft and deeply divided over his leadership.”).

8. Adam Withnall, *FIFA Key Sponsors Visa, Adidas and Coca-Cola Pile on Pressure in Wake of Corruption Scandal*, THE INDEPENDENT (May 27, 2015), <http://www.independent.co.uk/news/world/europe/fifa-key-sponsors-visa-adidas-and-coca-cola-pile-on-pressure-in-wake-of-corruption-scandal-10280496.html>.

9. Bernard Joy, *Football*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/sports/football-soccer> (last updated June 8, 2015).

quickest resolution to the problem. This is important because FIFA selects the hosts for some of the largest international soccer tournaments,¹⁰ including the World Cup, which is one of the biggest sporting events in the world.¹¹ Since the entire scandal began as a result of impropriety surrounding World Cup bids, it is important that the next bidding cycle for the World Cup be done fairly and without controversy in order to ensure that bidding countries receive a fair chance at receiving all of the revenue that comes along with hosting a World Cup. Therefore, time is of the essence in order to make sure that future World Cup bids are not tainted. The United States' system of transparency will also allow for the situation to be remedied properly, as opposed to the system in Switzerland. Finally, the United States has the power to retain jurisdiction over the case due to the alleged crimes occurring on United States soil and due to the substantial effect that the acts had on the United States economy.

Switzerland, on the other hand, is ill equipped to try these individuals for a multitude of reasons. First and foremost, Swiss law allows for lax oversight and scrutiny over organizations such as FIFA.¹² It is this "laissez-faire" attitude that allowed such corruption to go on for so long without any intervention from the Swiss government. Secondly, the Swiss legal system is not as efficient as the United States' legal system. Having Switzerland retain jurisdiction over the case would force the case to drag on for many years and would not allow the case to reach the speedy resolution that it needs. Lastly, past precedent shows that Switzerland can be reluctant to extradite its accused criminals over to the United States to face justice. Instead of deferring to the United States' wishes to turn over individuals accused of crimes in the United States, Switzerland has shown a preference for keeping individuals detained domestically and trying them in accordance with laws that do not allow for a proper remedy to the situation. Therefore, Switzerland should extradite the individuals to the United States and allow the country to retain jurisdiction over the case.

In addition, there is no international court that would be able to retain jurisdiction over this case. The International Court of Justice (ICJ),

10. FIFA STATUTES: REGULATIONS GOVERNING THE APPLICATION OF THE STATUTES & STANDING ORDERS OF CONGRESS, art. V, § 37 (2015), http://www.fifa.com/mm/document/affederation/generic/01/09/75/14/fifa_statutes_072008_en.pdf [hereinafter FIFA STATUTES].

11. Matt Slater, *Olympics and World Cup Are The Biggest, But What Comes Next?*, BBC NEWS (Dec. 4, 2014), <http://www.bbc.com/sport/30326825>.

12. Helena Bachmann, *Switzerland Plans to Close Loopholes that Let International Sporting Organizations Be Above the Law*, TIME MAG. (May 27, 2015), <http://time.com/3898210/switzerland-fifa-corruption/>.

the principal judicial organ of the United Nations,¹³ does not handle criminal cases such as the one here involving FIFA, only settling disputes between States with regards to international obligations between them.¹⁴ The ICJ would not be able to actually try the case, instead only settling any dispute over jurisdiction between Switzerland and the United States. Therefore, the ICJ cannot retain jurisdiction over the case. Furthermore, while the International Criminal Court (ICC) does retain jurisdiction over crimes of the most serious concern to the international community, the United States is not a party to the ICC and therefore is not bound by its rules and regulations.¹⁵ There is also serious doubt as to whether the crimes committed by FIFA rise to the level of “serious concern” to the international community. Therefore, the ICC is not a suitable court for this case to be tried and no international tribunal will be able to properly retain jurisdiction over the case.

Since the United States and Switzerland are the only two countries currently situated to retain jurisdiction over the case, the rest of this article will discuss which nation is best suited to retain that jurisdiction. Part II of this article will lay out the background to the FIFA corruption scandal: what gave rise to the indictments of the individuals, who is involved in the case, and the inner-workings of FIFA as a whole. Part III of this article will discuss why the United States and Switzerland have the power to retain jurisdiction over the FIFA corruption case. Part IV will explain why the United States is best suited to have jurisdiction over the case. Finally, Part V will summarize where the case stands today and reiterate why the United States is the best country to have jurisdiction over the case.

II. THE FACTS OF THE FIFA CORRUPTION SCANDAL

FIFA, which stands for International Federation of Football Association in English, is the governing body of worldwide international soccer.¹⁶ The organization oversees six confederations, each of which is responsible for governing the laws and regulations of a respective continent (North America, South America, Africa, Asia, Europe, and Australia area) in accordance with FIFA rules and regulations.¹⁷ As a

13. U.N. Charter art. 92, para. 1.

14. See Statute of the International Court of Justice arts. 34, 36.

15. *International Criminal Court, About the Court*, ICC-CPI.INT, https://www.icc-cpi.int/EN_Menus/ICC/Pages/default.aspx; *International Criminal Court, State Parties to the Rome Statute*, ICC-CPI.INT, https://www.icc-cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.

16. FIFA STATUTES, *supra* note 10, art. I, §§ 1, 2, 6.

17. *Id.* art. IV, § 20, ¶ 1 & 3.

whole, FIFA operates much like the United States government. It has a legislative and executive body for making rules, along with an administrative body called the General Secretariat.¹⁸ The organization does not have a judicial body.¹⁹ However, FIFA does have a president, Joseph Sepp Blatter (“Sepp Blatter”), who is responsible for implementing the laws that FIFA’s Congress creates.²⁰ Finally, FIFA is incorporated in Zurich, Switzerland and is registered as an association in accordance with the Swiss Civil Code, making the organization subject to Swiss law.²¹

The FIFA scandal can be traced back to December 2, 2010. That day, FIFA awarded the 2018 World Cup to Russia and the 2022 World Cup to Qatar.²² Two of the countries that Russia and Qatar beat for the right to host the World Cup were England and the United States, respectively.²³ The decisions to award the World Cup to Russia and Qatar were met with shock and outrage from England and the United States, with media outlets in both countries upset at how the bidding process unfolded.²⁴ Qatar’s winning bid especially raised eyebrows, since Qatar is a very small nation in terms of territory, has an average summer temperature of 108 degrees Fahrenheit, which is when the World Cup is played, and most importantly has never even played in a World Cup, failing to qualify for the event in its national team history.²⁵

Following the negative reactions to the 2018 and 2022 World Cup bidding processes, FIFA suspended several of its officials in 2011 after those individuals were found guilty of bribery, which only intensified the perception that the World Cup bidding processes had been conducted unfairly.²⁶ Then in July 2012, FIFA’s ethics committee appointed former United States attorney Michael Garcia to head an investigation into the

18. *Id.* art. V, § 21.

19. *Id.* art. V, § 21.

20. *Id.* art. V, § 32, & art. XIII, § 87.

21. *Id.* Art. I, § 1, ¶ 1; *see also* SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL SUISSE [CC] [CIVIL CODE] Dec. 10, 1907, SR 210, RS 210, art. 61 (Switz.).

22. *Russia and Qatar Awarded 2018 and 2022 World Cups*, FIFA.COM (Dec. 2, 2010), <http://www.fifa.com/worldcup/news/y=2010/m=12/news=russia-and-qatar-awarded-2018-and-2022-fifa-world-cups-1344698.html>.

23. *Id.*

24. Rachael Brown, ‘Why Bother’: Australia Warned Against Future Cup Bids, ABC NEWS (Dec. 3, 2010, 6:23 PM), <http://www.abc.net.au/news/2010-12-04/why-bother-australia-warned-against-future-cup-bids/2362352>.

25. *Qatar*, ENCYCLOPEDIA.COM (2007), <http://www.encyclopedia.com/topic/Qatar.aspx>; *Qatar’s National Team History*, FIFA.COM, <http://www.fifa.com/worldcup/teams/team=43834/index.html> (last visited Mar. 18, 2016).

26. *Full Timeline of FIFA Corruption Scandal as Criminal Proceedings Are Opened Against Sepp Blatter*, *supra* note 2.

corruption allegations.²⁷ Garcia said that FIFA's ethics code needed transparency and leadership as he undertook what would be a two-year investigation into the corruption allegations.²⁸ Specifically, Garcia investigated all nine bids for the 2018 and 2022 World Cups, travelling the world to speak to various bid officials and FIFA executives while looking for any evidence of wrongdoing in the controversial World Cup bids.²⁹ Garcia submitted his findings to the FIFA ethics committee in September 2014 in a 430-page report.³⁰ He called on FIFA to make the report public, but with redactions so that witness confidentiality was not compromised.³¹ However, FIFA rejected his request, instead allowing Hans-Joachim Eckert, the head of the adjudicatory arm of FIFA's ethics committee, to release his own 42-page summary of Garcia's findings.³²

Eckert's summary cleared both Russia and Qatar of any wrongdoing in the bidding process and stated that there was not sufficient evidence to justify stripping either nation of their respective World Cups.³³ Eckert also spoke out against publishing Garcia's report in full, adding,

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.³⁴

Eckert also considered the matter closed, stating, "The effects of these occurrences on the bidding process as a whole were far from reaching any threshold that would require returning to the bidding process, let alone reopening it."³⁵ President Sepp Blatter agreed with the

27. Austin Knoblach & Barry Stavro, *A Timeline on the FIFA Scandal*, L.A. TIMES (June 2, 2015, 4:40 PM PT), <http://www.latimes.com/sports/soccer/la-sp-fifa-scandal-timeline-20150603-story.html>.

28. *Michael Garcia: FIFA World Cup Bid Investigator*, BBC NEWS (Dec. 19, 2014), <http://www.bbc.com/news/world-30035670>; *FIFA World Cup Report: Michael Garcia Findings to be Released*, BBC NEWS (Dec. 19, 2014), <http://www.bbc.com/sport/0/football/30546139>.

29. *FIFA World Cup Report: Michael Garcia Findings to be Released*, *supra* note 28.

30. *Id.*; *Full Timeline of FIFA Corruption Scandal as Criminal Proceedings Are Opened Against Sepp Blatter*, *supra* note 1.

31. James Masters, *FIFA to Publish Michael Garcia Report – with Redactions*, CNN.COM (Dec. 19, 2014, 11:00 AM EST), <http://edition.cnn.com/2014/12/19/sport/fifa-garcia-report-decision/>.

32. Owen Gibson, *FIFA Report into Alleged Corruption Clears Qatar to Host 2022 World Cup*, THE GUARDIAN (Nov. 13, 2014, 5:52 EST), <http://www.theguardian.com/football/2014/nov/13/fifa-report-alleged-corruption-qatar-2022-world-cup>.

33. Masters, *supra* note 31.

34. Owen Gibson, *FIFA World Cup Bidding Report Cannot be Published for Legal Reasons – Judge*, THE GUARDIAN (Oct. 17, 2014, 5:49 EST), <http://www.theguardian.com/football/2014/oct/17/fifa-report-cannot-published-legal-reasons>.

35. Masters, *supra* note 31.

decision, saying, “We will not revisit the 2018 and 2022 vote and a report by independent, external legal experts commissioned by Mr. Scala [referring to FIFA head of compliance Domenico Scala] supports the view that there are no legal grounds to revoke the Executive Committee’s decision on the award of the 2018 and 2022 World Cups.”³⁶

Garcia was displeased by Eckert’s summary, stating that the summary “contained numerous materially incomplete and erroneous representations of the facts and conclusions.”³⁷ Garcia appealed to the FIFA ethics committee to have his report published in its entirety, but FIFA rejected his appeal.³⁸ The committee ruled that Eckert’s summary was an interpretation rather than an actual ruling and therefore it could not be appealed.³⁹ The committee added that witness confidentiality would be difficult to sustain if the report was published in its entirety.⁴⁰ Following the rejection of his appeal, Garcia resigned as FIFA’s chief ethics investigator.⁴¹ In his resignation statement, Garcia cited a “lack of leadership” within FIFA to become more transparent and ethical in its behavior in the face of widespread international ridicule.⁴² He added that his report had uncovered “serious and wide-ranging issues” regarding the bidding and selection process for the 2018 and 2022 World Cups and that “no independent governance committee, investigator or arbitration panel can change the culture of an organization.”⁴³ Finally, Garcia appeared to resign himself to the fact that his report would never be published, stating, “It now appears that, at least for the foreseeable future, the Eckert Decision will stand as the final word on the 2018 and 2022 FIFA World Cup bidding process.”⁴⁴

Some saw Garcia’s resignation as another sign that FIFA was unwilling to commit to fixing its corruption problem. For example, Bonita Mersiades, the head of communications for the Australian 2022 World Cup bid, agreed with Garcia’s decision to resign, stating, “[Garcia] agrees with what many of us have long stated—that FIFA is incapable of

36. Masters, *supra* note 31.

37. Sam Borden, *FIFA Rejects an Appeal by a Report’s Investigator*, N.Y. TIMES (Dec. 16, 2014), <http://www.nytimes.com/2014/12/17/sports/soccer/fifa-rejects-appeal-involving-world-cup-bid-investigation-report.html?ref=soccer>.

38. Borden, *supra* note 37.

39. *Id.*

40. Masters, *supra* note 31.

41. Jeré Longman, *FIFA Investigator Michael J. Garcia Quits in Dispute Over Report*, N.Y. TIMES (Dec. 17, 2014), http://www.nytimes.com/2014/12/18/sports/soccer/michael-j-garcia-resigns-as-fifa-prosecutor-in-protest.html?_r=0.

42. Longman, *supra* note 41.

43. Longman, *supra* note 41.

44. Masters, *supra* note 31.

reform or cultural change with its current leadership.”⁴⁵ Another person who agreed with Garcia’s interpretation of FIFA was Phaedra Al-Majid, who worked as an international media officer for the Qatar 2022 World Cup bid.⁴⁶ Al-Majid proclaimed, “FIFA has no ethics. Its rules are a farce. Not even an extensive, purportedly independent, two year investigation and report could affect its culture.”⁴⁷ Both women provided evidence and spoke to Garcia for his report.⁴⁸ Blatter was disappointed that Garcia resigned, but vowed to continue the investigation and bring any individuals found guilty of violations to justice. Blatter stated,

‘It is important that the work of the ethics committee continues and that any instances of wrongdoing are fully investigated and their perpetrators pursued and sanctioned’ . . .

. . . .

‘The organization fully supports the rigorous pursuit of these cases. And, while FIFA as an organization does not have prosecutorial powers, we have provided information and the full report from Mr. Garcia to the Swiss General Attorney’s Office and have pledged our cooperation.’⁴⁹

However, as of September 2015, Eckert’s 42-page summary remains the only public source of information regarding the Garcia Report and no official version of the report has been made public.⁵⁰

In May 2015, the United States government charged the aforementioned fourteen individuals connected with FIFA with racketeering, bribery, money laundering, and fraud.⁵¹ Two days later, despite all of the controversy that surrounded the organization, incumbent President Sepp Blatter was re-elected as the President of FIFA for a fifth term.⁵² Blatter defeated his opponent, Jordanian Prince Ali Bin al-Hussein, 133 votes to 73, which was close enough to take the election to

45. John Sinnott, *Michael Garcia Resigns from FIFA Role*, CNN.COM (Dec. 17, 2014, 12:52 PM EST), <http://edition.cnn.com/2014/12/17/sport/football/michael-garcia-resigns-fifa-football/index.html?iref=allsearch>; Bonita Mersiades, *‘I Was Traduced by Judge Eckert over FIFA World Cup Bid Report’*, THE GUARDIAN (Nov. 17, 2014, 8:41 EST), <http://www.theguardian.com/football/2014/nov/17/i-was-traduced-by-judge-hans-joachim-eckert-fifa-world-cup-bid-report>.

46. Richard Conway, *FIFA Whistleblower Phaedra Al-Majid Fears for Her Safety*, BBC NEWS (Nov. 20, 2014), <http://www.bbc.com/sport/0/football/30122601>.

47. Sinnott, *supra* note 45; Conway, *supra* note 46.

48. Sinnott, *supra* note 45.

49. Masters, *supra* note 31.

50. *Full Timeline of FIFA Corruption Scandal as Criminal Proceedings Are Opened Against Sepp Blatter*, *supra* note 1.

51. Miller & Barbash, *supra* note 1.

52. Owen Gibson, *Sepp Blatter Re-elected as FIFA President for Fifth Term*, THE GUARDIAN (May 29, 2015, 1:59 PM ET), <https://www.theguardian.com/football/2015/may/29/sepp-blatter-re-elected-fifa-president-fifth-term>.

a potential second round, but al-Hussein withdrew instead.⁵³ Blatter again promised reform, saying in his acceptance speech, "For the next four years I will be in command of this boat called FIFA and we will bring it back ashore, we will bring it back to the beach."⁵⁴ However, he also tempered those thoughts by saying in the same speech, "We cannot possibly supervise everybody that's in football."⁵⁵

Most media outlets were amazed that Blatter was re-elected amid all of the corruption allegations that occurred on his watch.⁵⁶ Some saw Blatter's re-election as another sign of his political mastery, while others saw it as member nations being too afraid to allow their financial interests to be cut into as a result of new leadership.⁵⁷ But on June 2, 2015, just three days after being re-elected for a fifth term, Blatter resigned as the President of FIFA.⁵⁸ Blatter stated, "I felt compelled to stand for re-election, as I believed that this was the best thing for the organization. That election is over but FIFA's challenges are not. FIFA needs a profound overhaul."⁵⁹

Despite recognizing the need for change, Blatter refused to step down immediately, stating that he would stay on as President until the executive committee organized a new election for his successor.⁶⁰ Blatter set the date for the new election for February 26, 2016.⁶¹ It should be noted, however, that the executive committee that Blatter tasked with creating the new election is the same committee that saw some of its members get arrested on corruption related charges in Switzerland.⁶² In addition, the head of the executive committee is the President of FIFA,

53. *Id.*

54. *Id.*

55. Greg Botelho & Laura Smith-Spark, *FIFA Scandal: Sepp Blatter Wins Another Term as President*, CNN.COM (May 29, 2015), <http://edition.cnn.com/2015/05/29/football/fifa-congress-corruption-case-blatter-election/>.

56. *FIFA Re-elects Sepp Blatter as President*, BBC NEWS (May 29, 2015), <http://www.bbc.com/news/world-europe-32937639>.

57. Botelho & Smith-Spark, *supra* note 55; see also *The Guardian View on Sepp Blatter's Re-election: Football's Missed Chance*, THE GUARDIAN (May 27, 2015, 2:07 EST), <http://www.theguardian.com/commentisfree/2015/may/29/guardian-view-sepp-blatter-re-election-football-missed-chance>.

58. *Sepp Blatter Resigns as FIFA President – Full Statement*, THE GUARDIAN (June 2, 2015, 1:32 PM EST), <http://www.theguardian.com/football/2015/jun/02/sepp-blatter-fifa-resignation-statement-full-text>.

59. Elliott C. McLaughlin, *Sepp Blatter Stepping Down, Says FIFA Needs 'Profound Overhaul'*, CNN.COM (June 3, 2015), <http://edition.cnn.com/2015/06/02/football/fifa-sepp-blatter-presidency-successor-election/>.

60. *Id.*

61. *Full Timeline of FIFA Corruption Scandal as Criminal Proceedings Are Opened Against Sepp Blatter*, *supra* note 1.

62. Miller & Barbash, *supra* note 1.

which in this case is Sepp Blatter.⁶³ Furthermore, Blatter actually backed off of his resignation comments later that month, indicating that he was merely allowing another election to occur. Blatter told a Swiss newspaper in late June 2015, "I did not resign, I put myself and my office in the hands of the FIFA congress."⁶⁴

Since Blatter's "resignation," the allegations of corruption within the FIFA organization have only grown stronger. On June 3, 2015, former FIFA executive committee member and general secretary of FIFA's North American soccer confederation Chuck Blazer, who pleaded guilty to taking bribes back in 2013, publicly stated that he and other FIFA members had taken bribes in conjunction with selecting World Cup hosts dating as far back as 1992.⁶⁵ Blazer admitted,

'I agreed with others in or around 1992 to facilitate the acceptance of a bribe in conjunction with the selection of the host nation for the 1998 World Cup. I and others on the FIFA executive committee agreed to accept bribes in conjunction with the selection of South Africa as the host nation for the 2010 World Cup.'⁶⁶

More allegations of bribery and kickbacks arose over time, culminating in the postponement of the 2026 World Cup bidding process on June 10, 2015.⁶⁷

On July 2, 2015, the United States officially requested extradition of the seven FIFA individuals who were arrested at the Baur au Lac hotel in Zurich back in May.⁶⁸ Switzerland has granted the requests with respect to two people thus far: Jeffrey Webb, the former head of FIFA's North American confederation CONCACAF and FIFA Vice President, and Jose Maria Marin, the former head of Brazilian soccer and a key figure in helping land the 2014 World Cup in Brazil.⁶⁹ Webb did not contest his

63. *About FIFA: Executive Committees*, FIFA.COM, <http://www.fifa.com/about-fifa/committees/committee=1882019/index.html>; *Sepp Blatter: FIFA President Says He Did Not Resign*, BBC NEWS (June 26, 2015), <http://www.bbc.com/sport/0/football/33284185>.

64. *Sepp Blatter: FIFA President Says He Did Not Resign*, *supra* note 63.

65. Charles Sale, *FIFA Whistleblower Chuck Blazer Admits He and Other Committee Members Accepted Bribes for 1998 and 2010 World Cups*, DAILY MAIL (June 3, 2015, 3:03 EST), <http://www.dailymail.co.uk/sport/sportsnews/article-3109894/FIFA-whistleblower-Chuck-Blazer-admits-committee-members-accepted-bribes-1998-2010-World-Cups.html>.

66. *Id.*

67. *Full Timeline of FIFA Corruption Scandal as Criminal Proceedings Are Opened Against Sepp Blatter*, *supra* note 1.

68. Laura Smith-Spark, *United States Seeks Extradition of 7 FIFA Officials from Switzerland*, CNN.COM (July 2, 2015), <http://edition.cnn.com/2015/07/02/football/fifa-corruption-probe/>.

69. *Former FIFA Vice-President Jeffrey Webb Extradited to US on Bribery Charges*, THE GUARDIAN (July 17, 2015, 2:04 EST), <http://www.theguardian.com/football/2015/jul/17/former-fifa-vice-president-jeffrey-webb-extradited-us-bribery-charges>; *FIFA Crisis: Brazil's Jose Maria*

extradition while Marin eventually dropped his opposition to the United States' request.⁷⁰ The other five FIFA executives who were arrested in Zurich are still fighting their extraditions to the United States.⁷¹

On September 25, 2015, almost six months to the day from when the seven FIFA executives were arrested in Zurich, the Swiss Attorney General opened criminal proceedings against Sepp Blatter.⁷² Blatter was charged with suspicion of criminal mismanagement and misappropriation in violation of the Swiss Criminal Code.⁷³ These charges stemmed from Blatter's negotiation of a television contract with Jack Warner, the former President of CONCACAF (The Confederation of North, Central America and Caribbean Association Football) and one of the seven arrested in Zurich, which was unfavorable to FIFA and thus violated his fiduciary duties as president.⁷⁴ Blatter was also suspected to have made inappropriate payments to Michel Platini, the head of FIFA's European Confederation UEFA, FIFA's Vice-President, and ironically one of Blatter's biggest critics following his re-election, between 1999 and 2002.⁷⁵ Thus far, Switzerland is the only country to bring criminal proceedings against Blatter as the United States has yet to formally charge the FIFA President.⁷⁶ Despite the United States not formally charging Blatter with any crime, Blatter has limited his travel to only countries that do not have an extradition treaty with the United States.⁷⁷ Finally, a couple of weeks later, on October 8, 2015, FIFA's independent ethics committee suspended both Blatter and Platini from the

Marin Extradited over Bribery, BBC NEWS (Nov. 3, 2015), <http://www.bbc.com/news/world-europe-34713892>.

70. *Former FIFA Vice-President Jeffrey Webb Extradited to US on Bribery Charges*, *supra* note 69; John Revill, *FIFA's Former Brazil Chief José Maria Marin Agrees to Extradition*, WALL ST. J. (Oct. 28, 2015, 10:04 AM EST), <http://www.wsj.com/articles/fifas-former-brazil-chief-jose-maria-marin-agrees-to-extradition-1446041088>.

71. Revill, *supra* note 70.

72. Office of the Attorney General of Switzerland Press Release on the Criminal Proceedings Against the President of FIFA (Sept. 25, 2015), THE FEDERAL COUNCIL, THE PORTAL OF THE SWISS GOVERNMENT, <https://www.news.admin.ch/message/index.html?lang=en&msg-id=58891> [hereinafter "Press Release"].

73. *Id.*

74. *Id.*

75. Sam Borden, *FIFA President, Faces Criminal Investigation in Switzerland*, N.Y. TIMES (Sept. 25, 2015), <http://www.nytimes.com/2015/09/26/sports/soccer/sepp-blatter-fifa-switzerland-criminal-proceedings.html>; James Riach & Owen Gibson, *Sepp Blatter's FIFA Re-election Causes Anger but UEFA Divisions Weaken Cause*, THE GUARDIAN (June 1, 2015, 3:27 EST), <http://www.theguardian.com/football/2015/jun/01/sepp-blatter-fifa-reelection-uefa-divisions>.

76. *FIFA President, Faces Criminal Investigation in Switzerland*, *supra* note 75.

77. *Id.*

organization for 90 days.⁷⁸ Then, in December 2015, the United States charged sixteen more FIFA officials with counts of racketeering, bribery, wire fraud, and money laundering, among others.⁷⁹ This brings the number of individuals charged in connection with the scandal to a total of forty-one.⁸⁰ After the second round of arrests, FIFA decided to ban Blatter and Platini from “all football-related activities” for eight years, stating that both men had continually broken FIFA’s Code of Ethics.⁸¹ Blatter defiantly declared his intent to appeal the decision, saying, “We will go once again to the Appeal Committee. I’m a Swiss citizen. In the Swiss law you wouldn’t be suspended for eight years—you will have had to commit something very, very important.”⁸² These are the facts of the FIFA corruption scandal, which now brings forth the main issue this article seeks to address. With investigations open against several FIFA individuals in the United States and Switzerland, a separate criminal proceeding against Blatter in Switzerland, and more charges likely to come from both countries and maybe others, which country should retain jurisdiction over the entire case?

III. THE LAWS OF JURISDICTION FOR THE UNITED STATES AND SWITZERLAND

Thus far, only two countries have the ability to retain jurisdiction over the FIFA corruption case. The first is the United States, who, as mentioned above, claims to have jurisdiction over the case because the acts of corruption that each individual is charged with occurred within United States’ territory. The second country able to retain jurisdiction is Switzerland. Since FIFA is organized as an association in accordance with Swiss law and its headquarters are located in Zurich, Switzerland can also claim to have jurisdiction over the case. As explained in the introduction section, there is no suitable international tribunal that can properly exercise jurisdiction. Accordingly, this section will discuss the laws of jurisdiction for both the United States and Switzerland and how

78. Sam Borden, *Sepp Blatter and Other Top Officials Are Suspended, Deepening FIFA’s Turmoil*, N.Y. TIMES (Oct. 8, 2015), http://www.nytimes.com/2015/10/09/sports/soccer/sepp-blatter-michel-platini-jerome-valcke-fifa-suspended.html?_r=0.

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

80. Rebecca R. Ruiz et al., *A Hemisphere of Soccer Corruption*, N.Y. TIMES (Dec. 18, 2015), <http://www.nytimes.com/interactive/2015/05/27/sports/soccer/fifa-indictments.html> (article gives a full and complete list of all forty-one defendants who have been charged thus far).

81. Matthew Knight & Tom Sweetman, *Blatter Defiant over FIFA Ban: ‘Suspended Eight Years for What?’*, CNN.COM (Dec. 22, 2015), <http://edition.cnn.com/2015/12/21/football/fifa-blatter-platini-hearing/>.

82. *Id.*

each set of laws properly gives each country the authority to exercise jurisdiction over the case.

A. *The United States Law of Jurisdiction*

In the United States, courts must have two things to be able to hear a case: subject-matter jurisdiction (jurisdiction over the facts and law) and personal jurisdiction (jurisdiction over the parties).⁸³ United States courts can obtain subject-matter jurisdiction in one of two ways: either if the cause of action arises under the Constitution, laws, or treaties of the United States, or if the parties are “diverse” from one another, meaning the parties are from different States or one party is from one State and another party is from a foreign country.⁸⁴ If the United States is a party to the action, United States’ courts will also satisfy subject-matter jurisdiction.⁸⁵ Personal jurisdiction can be satisfied in a number of ways under United States law and the concept of personal jurisdiction has mostly been developed through the common law. The overarching principle of personal jurisdiction in the United States can be traced back to the Supreme Court case *International Shoe Company v. Washington*, 326 U.S. 310, 316 (1945). The Supreme Court held that if a person is not within the territory that seeks to exercise jurisdiction over that person, “due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.”⁸⁶ The Court elaborated that minimum contacts is satisfied when the contacts “[have] been continuous and systematic, [and] also give rise to the liabilities sued on,” with the latter sentence meaning that the contacts are related to the cause of action.⁸⁷ Other cases have expounded upon the central minimum contacts test established in *International Shoe*, but for purposes of the FIFA corruption scandal the most applicable standard is the minimum contacts test.⁸⁸

83. See FED. R. CIV. P. 12(b)(1); see also FED. R. CIV. P. 12(b)(2).

84. 28 U.S.C. § 1331 (1980); 28 U.S.C. § 1332 (2011).

85. U.S. CONST. art. III, § 2, cl. 1.

86. *Int’l Shoe v. Wash.*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

87. *Id.* at 317.

88. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (holding “where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, this ‘fair warning’ requirement is satisfied if the defendant has ‘purposefully directed’ his activities at residents of the forum”); see also *Calder v. Jones*, 465 U.S. 783, 789 (1984) (holding that jurisdiction over an out-of-state defendant was proper due to the defendant’s conduct having a substantial effect on the forum state).

Here, the United States can properly exercise both subject-matter jurisdiction and personal jurisdiction over the individuals who have been charged in scandal. United States Attorney General Loretta Lynch stated the reasons for why the United States has jurisdiction over the case: the suspects planned their crimes in the United States, they used the United States banks to further their crimes, and they targeted “the growing U.S. market for soccer.”⁸⁹ A key to this conclusion is the aforementioned Chuck Blazer, the former general secretary of CONCACAF.⁹⁰ The government used Blazer as a cooperating witness to help it establish whether any of the crimes occurred on United States territory.⁹¹ The government claims that the acts did occur on U.S. territory, in particular pointing to the actions of the former head of CONCACAF and FIFA Vice President Jeffrey Webb. The government claims that Webb “used his position of trust to solicit bribes from sports marketing executives,” and in return, the marketing executives provided media, marketing, and sponsorship rights to soccer matches in the Americas.⁹² Even if all of these acts occurred outside of United States territory, the government argues that the United States felt the effects of these criminal acts, therefore, giving the country jurisdiction over the matter.⁹³

Furthermore, the United States alleges that \$110 million in bribes changed hands in bringing the South American tournament Copa America to the United States in 2016.⁹⁴ Because the American television market is the largest for the World Cup and United States’ networks paid billions of dollars for those broadcasting rights, the United States claims that it was the target of the defendants’ criminal conduct.⁹⁵ Thus, the United States should have proper personal jurisdiction over the defendants based on the “effects test,” satisfied here.⁹⁶

The grand jury indictment of the fourteen individuals who were charged sheds more light on the bases for United States jurisdiction. In the indictment, the grand jury alleges that, “FIFA wired billions of dollars

89. Saeed Ahmed, *Why is the U.S. Bringing Down the Hammer on FIFA?*, CNN.COM (May 28, 2015), <http://edition.cnn.com/2015/05/27/us/fifa-corruption-investigation-why/>.

90. CONCACAF: STATUTES OF THE CONFEDERATION OF NORTH, CENTRAL AMERICA AND CARIBBEAN ASSOCIATION FOOTBALL DEFINITIONS, ¶ 8 (2015), <http://www.concacaf.com/wp-content/uploads/2015/05/CONCACAF-Statutes-Draft-2015-FINAL.pdf> [hereinafter CONCACAF STATUTES].

91. Ahmed, *supra* note 89.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Calder*, 465 U.S. at 789 (holding that jurisdiction over an out-of-state defendant was proper due to the defendant’s conduct having a substantial effect on the forum state).

from its accounts at a major Swiss financial institution into beneficiary accounts in the United States and throughout the world via a correspondent account at the U.S. branch of a major Swiss financial institution.”⁹⁷ This would give the United States jurisdiction on the basis that those accused used United States’ banks to send and receive the alleged bribes. The indictment outlines more instances of the accused using banks in the United States to commit their alleged acts of bribery, only reinforcing the United States’ case for having jurisdiction.⁹⁸ Therefore, even if the United States was unable to establish personal jurisdiction over the defendants based on the brunt of the harm being felt in the United States, it should be able to establish jurisdiction due to the use of United States banks in committing the alleged acts of bribery. Both the use of the banks in United States territory and the showing that the United States was the target of the alleged acts of bribery and racketeering should be sufficient to show that the FIFA executives established minimum contacts with the United States that are continuous, systematic, and related to the claim such that the United States can retain personal jurisdiction.

Subject-matter jurisdiction is a much easier test for the United States to satisfy in this case. As mentioned above, the United States can satisfy subject-matter jurisdiction if the cause of action arises under the Constitution, laws, or treaties of the United States, if the parties to the action are from different States or one is from a foreign country, or if the United States is a party to the action.⁹⁹ The United States can satisfy any of those three tests in this matter. First, the cause of action undoubtedly falls under the laws of the United States. By using the banks of the United States, those accused in the scandal violated numerous interstate and foreign commerce laws, including the federal laws relating to wire fraud, money laundering, and interstate and foreign travel in-aid-of racketeering.¹⁰⁰ Overall, there are forty-seven charges against the individuals involved in the scandal, with all forty-seven counts relating to some federal law that the individuals broke while on United States soil or using United States banks.¹⁰¹ Therefore, this case relates to the laws of

97. Grand Jury Indictment of the Defendants ¶ 90, *United States v. Webb*, 15-CR-252 (E.D.N.Y. filed May 20, 2015).

98. *Id.*

99. U.S. CONST. art. III, § 2, cl. 1; 28 U.S.C. §§ 1331, 1332.

100. Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266.

101. Stephanie Clifford & Matt Apuzzo, *After Indicting 14 Soccer Officials, U.S. Vows to End Graft in FIFA*, N.Y. TIMES (May 27, 2015), <http://www.nytimes.com/2015/05/28/sports/soccer/fifa-officials-arrested-on-corruption-charges-blatter-isnt-among-them.html>.

the United States and the United States can therefore claim subject-matter jurisdiction as authorized by the United States Constitution.

Should that argument fail, the United States can also claim subject-matter jurisdiction through diversity of citizenship under U.S.C. § 1332. This statute gives the United States jurisdiction over any matters between “citizens of a State and citizens or subjects of a foreign State, as long as the amount in controversy between the two parties exceeds \$75,000.”¹⁰² Here, nearly all of the defendants charged are citizens of a foreign State (examples include Argentina, Paraguay, and Venezuela)¹⁰³ while the United States is representing the citizens of New York, where a substantial part of the allegations took place.¹⁰⁴ In addition, the amount in controversy clearly exceeds \$75,000 since the United States is alleging (and it is generally accepted) that the bribes and kickbacks these individuals took involved millions of dollars.¹⁰⁵ Therefore, the case is between citizens of the United States and a foreign State and the amount in controversy clearly exceeds \$75,000, giving the United States diversity jurisdiction over the case. Finally, the United States is clearly a party to the action, as evidenced by the fact that United States Justice Department is the entity that charged the FIFA officials with these crimes.¹⁰⁶ It follows that the United States can claim subject-matter jurisdiction over these individuals by the fact that it is a party to the action.

In conclusion, the United States has both personal and subject-matter jurisdiction over the individuals charged in the scandal, giving it the ability to try the individuals in America. But as explained below, Switzerland also has jurisdiction over the case, giving rise to the problem of which country is better suited to bring the FIFA officials and the organization to justice.

B. Switzerland's Law of Jurisdiction

Before exploring the Swiss laws that govern its jurisdiction over domestic and foreign individuals, the structure of the Swiss government should be explored in order to better understand how its justice system works. As it turns out, Switzerland's political structure is very similar to that of the United States. Switzerland is made up of twenty-six States, or

102. 28 U.S.C. § 1332.

103. See Grand Jury Indictment of the Defendants, *supra* note 97, ¶¶ 29–41.

104. *Id.* ¶ 3.

105. *Id.* ¶ 46.

106. See Clifford & Apuzzo, *supra* note 101.

as Switzerland calls them “cantons.”¹⁰⁷ Similar to the individual States in America, the cantons are sovereign “except to the extent that their sovereignty is limited by the Federal Constitution,” meaning that they are sovereign to the extent that their laws do not conflict with anything that the Confederation (Switzerland’s “Federal State”) has passed down or to the extent that their powers do not conflict with those enumerated to the Confederation by the Federal Constitution.¹⁰⁸ There are three levels of government within Switzerland, with the Confederation making up the “Federal State,” the cantons making up the State level of government, and the municipalities making up the “local authority” branch of government.¹⁰⁹ At the federal level, Switzerland has an executive, judicial, and legislative branch called the Federal Council, the Federal Tribunal, and the Federal Assembly, respectively.¹¹⁰ The Federal Tribunal acts as the “Supreme Court of Switzerland” in a sense, while the subservient Federal Criminal Court acts as the court of first instance in matters of criminal law and the equally subservient Federal Administrative Court acts as an appellate body, reviewing decisions of the Federal Administration.¹¹¹

According to the Swiss Constitution, the Federal Supreme Court has jurisdiction concerning violations of federal law, international law, inter-cantonal law, cantonal constitutional rights, the autonomy of the communes and other cantonal guarantees in favor of public law corporations, and federal and cantonal provisions on political rights.¹¹² However, the Federal Supreme Court gives considerable power to the cantonal, or State, courts, with each cantonal court controlling its own organization and functioning of its courts according to the Federal Civil Procedure Code.¹¹³ The Swiss Federal Civil Procedure Code even states that, “cantonal law governs the material jurisdiction [subject-matter] and functional jurisdiction of the courts, unless the law provides

107. Gregory M. Bovey, *The Swiss Legal System and Research*, N.Y.U. SCHOOL OF LAW (Nov. 2006), http://www.nyulawglobal.org/globalex/Switzerland.html#_The_political_structure_of_Switzerl.

108. CONSTITUTION FÉDÉRALE [CST] [CONSTITUTION] Apr. 18, 1999, RO 101, art. 3, ¶ 1 (Switz.).

109. Bovey, *supra* note 107.

110. *Id.*

111. *Id.*

112. CONSTITUTION FÉDÉRALE [CST] [CONSTITUTION] Apr. 18, 1999, RO 101, art. 189, ¶ 1 (Switz.).

113. Baker & McKenzie, *Dispute Resolution Around the World – Switzerland*, http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_switzerland.pdf (last visited Jan. 29, 2016).

otherwise.”¹¹⁴ The Federal Supreme Court will typically only handle appeals from cantonal cases and only review the application of federal law in that case.¹¹⁵ As for personal jurisdiction, the Swiss Federal Act on Private International Law deals with the question of jurisdiction of Swiss courts in international cases.¹¹⁶ The Act “governs, in an international context, the jurisdiction of the Swiss judicial and administrative authorities.”¹¹⁷ Normally, the Swiss court that resides at the domicile of the defendant will have jurisdiction over the pending case.¹¹⁸ However, if the Code does not provide for jurisdiction in Switzerland and “if proceedings abroad are impossible or cannot reasonably be required to be brought, the Swiss judicial or administrative authorities *at the place with which the facts of the case are sufficiently connected* shall have jurisdiction.”¹¹⁹

It should be noted that Switzerland has yet to formally charge any individual connected with the FIFA corruption scandal, and the most that the Attorney General has done thus far is open a criminal investigation into Sepp Blatter’s and other FIFA officials’ alleged criminal mismanagement.¹²⁰ Should the criminal investigation turn into formal charges though, the cantonal court that would retain jurisdiction over the matter would be the Canton of Zurich. FIFA’s headquarters are located in Zurich, as previously mentioned, and since most of the defendants who were charged by the United States as well as most of the individuals who work for FIFA are not domiciled in Switzerland,¹²¹ the Swiss court where the “place with which the facts of the case are sufficiently connected” would retain jurisdiction.¹²² In this case, that would be the Canton of Zurich. The FIFA headquarters in Zurich is where the management offices are located, where many of the FIFA committees meet, and where

114. SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], CODE CIVIL PROCEDURE [CPC] [CIVIL PROCEDURE CODE] Dec. 19, 2008, SR 272, art. 4, ¶ 1 (Switz.).

115. Baker & McKenzie, *supra* note 113, at 3.

116. *Id.* at 1.

117. SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], BUNDESGESETZ ÜBER DAS INTERNATIONALE PRIVATRECHT [IPRG] [FEDERAL CODE ON PRIVATE INTERNATIONAL LAW] Dec. 18, 1987, SR 291, art. 1, ¶ 1 (Switz.).

118. *Id.* art. 2, ¶ 1.

119. *Id.* art. 3, ¶ 1 (emphasis added).

120. Office of the Swiss Attorney General Press Release on the Criminal Proceedings Against the President of FIFA, *supra* note 72.

121. See Grand Jury Indictment of the Defendants, *supra* note 97, ¶¶ 29–41.

122. SCHWEIZERISCHES ZIVILGESETZBUCH [ZGB], BUNDESGESETZ ÜBER DAS INTERNATIONALE PRIVATRECHT [IPRG] [FEDERAL CODE ON PRIVATE INTERNATIONAL LAW] Dec. 18, 1987, SR 291, art. 3, ¶ 1 (Switz.).

many of the officials gather to conduct organizational business.¹²³ In addition, Zurich is where FIFA holds its annual congress and is also the location where the Swiss authorities originally arrested the individuals charged in the separate United States investigation.¹²⁴ All of these incidents are sufficiently connected to the case and all of them took place in Zurich. Therefore, the Canton of Zurich would likely retain jurisdiction over the case should the investigation turn into formal charges from the Swiss Attorney General.

Furthermore, Switzerland would retain jurisdiction over the case because FIFA is registered in the Commercial Register in accordance with article 60 of the Swiss Civil Code, subjecting FIFA to the laws of Switzerland.¹²⁵ As a part of the Swiss criminal proceedings against Blatter and others tied to the 2018 and 2022 World Cup bids, the individuals are all being investigated for violations of the Swiss criminal code, in particular for suspicion of criminal mismanagement and money laundering through Swiss bank accounts.¹²⁶ Therefore, in accordance with the Swiss Constitution, the Federal Supreme Court would retain ultimate appellate jurisdiction over the case since it deals with the violation of Swiss federal law, once the appropriate cantonal tribunal hears the case.¹²⁷ Thus, it follows that Switzerland would retain proper jurisdiction over the individuals involved in the FIFA corruption scandal, should they choose to charge any individual in connection with their pending criminal proceedings against the organization.

Since both Switzerland and the United States could retain proper jurisdiction over the case, the question now becomes which country should try these individuals in order to bring about the best result for all parties involved, as well as, the international soccer community, and which country has the best means to efficiently bring the FIFA officials to justice?

123. *The Home of FIFA*, FIFA.COM, <http://www.fifa.com/about-fifa/administration/fifa-headquarters.html>.

124. Jethro Mullen, *FIFA Corruption Scandal: What Happens Next?*, CNN.COM (May 28, 2015), <http://edition.cnn.com/2015/05/28/football/fifa-corruption-investigations-what-next/>.

125. FIFA STATUTES, *supra* note 10, art. I, § 1.

126. Statement from the Swiss Attorney General on Seizing Documents at the FIFA Headquarters, *supra* note 4.

127. CONSTITUTION FÉDÉRALE [CST] [CONSTITUTION] Apr. 18, 1999, RO 101, art. 189, para. 1 (Switz.).

IV. THE UNITED STATES SHOULD HAVE JURISDICTION OVER THE FIFA CORRUPTION CASE

There are numerous reasons why the United States is the proper country to retain jurisdiction over the FIFA corruption case, each of which will be explained in the sections below. First and foremost, Switzerland is ill-equipped to provide a proper remedy to the case. Part of the reason that FIFA is incorporated in Switzerland is because of the lax oversight and scrutiny it receives from the Swiss government, which allowed a scandal like this to begin. In addition, the Swiss judicial system is not as efficient as the United States' system and the case would take too long to resolve. Furthermore, Switzerland has been reluctant in the past to extradite individuals who have been accused of crimes in other countries such as the United States, and has been criticized for its lack of transparency and willingness to bring the accused to justice.

The second reason the United States should retain jurisdiction is because they have the ability to extradite the individuals to the United States for this type of crime. Switzerland and the United States have an extradition treaty that allows for extradition of the individuals, and they should be tried according to the more efficient United States system that has more appropriate penalties that will bring a speedy and much-needed resolution to the case. Therefore, the United States should be the country that retains jurisdiction over the case.

A. The United States Can Provide the Proper Remedy to the Case, Unlike Switzerland

Switzerland has long been the target of criticism because it does not provide enough oversight for some of its domestic entities. For example, Swiss banks have long been accused of money laundering and tax evasion in part because of the freedom and lack of transparency they are allowed to operate with under Swiss law.¹²⁸ In fact, Swiss law makes it a crime for any bank to reveal the identity of a client,¹²⁹ making it easy for clients to hide the true value of their wealth and therefore evade higher taxes.¹³⁰ Some Swiss banks have also been tied to aiding clients who financed terrorism and other illegal activity because of the lax Swiss laws that

128. Bachmann, *supra* note 12.

129. SWISS FEDERAL ACT ON BANKS AND SAVINGS BANKS, CODE CIVIL [CC], CODICE CIVILE [CC] [CIVIL CODE] Feb. 2, 1934, SR 952.0, art. 47, ¶ 1 (Switz.).

130. *Don't Ask, Won't Tell*, THE ECONOMIST (Feb. 11, 2012), <http://www.economist.com/node/21547229>.

govern the transparency of banking.¹³¹ Many Swiss companies, including FIFA, take advantage of this type of secrecy and are able to funnel their illegal funds into various Swiss bank accounts without any fear of the Swiss government finding out who the account belongs to.¹³²

One other benefit FIFA enjoys being incorporated under Swiss law is that it operates under an “association” status, which means that FIFA is exempt from Swiss anti-corruption laws that govern all businesses.¹³³ Prior to this scandal, FIFA enjoyed light competition regulation and received favorable tax-exempt status that helped play a part in its financial malfeasance.¹³⁴ Swiss politician Roland Buechel recognized this problem, going as far as to say, “FIFA likes being based in Switzerland because it enjoys very loose governmental and financial oversight.”¹³⁵

This begs the question of why would the world, and in particular the international soccer community, trust the country whose laws helped create this scandal in the first place with reaching the proper resolution to this case? What FIFA needs most right now is transparency. Sending the case to Switzerland, where secrecy and a “laissez-faire” attitude seem to be at the forefront of most of the laws applicable to this case, would only serve to perpetuate the problem. While these individuals would likely be brought to some sort of justice in a Swiss court, their penalties would be too lenient compared to the ones they would receive in the United States. This would lead to FIFA continuing to operate as it has in years past since individuals would face less strenuous penalties from the Swiss government and, in turn, not be as deterred in committing future crimes of this magnitude. However, if these individuals knew that other countries, such as the United States, could punish their wrongdoings, where, as the indictment of the FIFA officials states, they could be charged with forty-seven different crimes and face significant jail time,¹³⁶ then they would be less likely to engage in the rampant corruption that has plagued FIFA for years. Most importantly, FIFA could finally get the reform it so desperately needs. Therefore, because the penalties are harsher in the United States than they are in Switzerland—something that

131. *HSBC Swiss Bank 'Aided Terrorists and Crooks'*, THELOCAL.CH (Feb. 8, 2015), <http://www.thelocal.ch/20150208/hsbc-swiss-bank-helped-terrorists-and-criminals>.

132. See Bachmann, *supra* note 12.

133. *Id.*

134. *New Swiss Law Allows More Scrutiny of FIFA and IOC Finances*, THE GUARDIAN (Dec. 12, 2014), <http://www.theguardian.com/football/2014/dec/12/swiss-law-fifa-ioc-finances-scrutiny-sports-governing-bodies>.

135. Bachmann, *supra* note 12.

136. See Grand Jury Indictment of the Defendants, *supra* note 97, at 113.

is needed given the magnitude and amount of individuals involved in this case—Switzerland's laws do not provide the proper remedy for the case.

The laxity of Swiss law is not the only problem with allowing Switzerland to retain jurisdiction over the case. The Swiss judicial system is also not as efficient as the United States' judicial system and it would take years for the case to even be brought before a Swiss tribunal. According to a spokesman for the Swiss Attorney General, "it will take at least five years for [the investigations] to come to court, if it even comes to that."¹³⁷ The Swiss legal system is known to be notoriously slow and bureaucratic¹³⁸ while the United States system moves much faster. For comparison, in the five years it would take to get the case in front of a Swiss judge, the United States will have most likely brought the case to a resolution, as most criminal trials in the United States are completed within two years from when the arrest took place.¹³⁹ The United States is already moving much faster and more efficiently than Switzerland in this case, as the United States has already charged more than forty defendants from twenty-four different countries and has received guilty pleas from nearly a third of those defendants.¹⁴⁰ Some of the defendants have also already appeared in United States courts.¹⁴¹ By contrast, Switzerland has yet to formally charge anyone connected with the scandal and is merely continuing its investigation into each of the claims of bribery, fraud, and racketeering that the United States already found enough evidence to bring charges for.¹⁴²

While the United States could be accused of overreaching its jurisdiction into what should purely be a Swiss problem, the alternative appears to be to let the Swiss investigation drag out while a corrupt organization continues to operate without oversight, in turn, potentially costing several countries and people a chance at a fair opportunity to host what is one of the biggest sporting events in the world.¹⁴³ As one FIFA source put it, "Criminal action should act as a deterrent, to stop future corruption around areas like the World Cup bidding process. What is the point if cases are brought against individuals after Russia 2018 has taken

137. Vivek Chaudhary, *FIFA Investigation Could Take Five Years - Swiss Attorney General*, ESPNFC.COM (Dec. 2, 2015), <http://www.espnfc.com/blog/fifa/243/post/2736523/fifa-investigation-could-take-five-years-swiss-ag>.

138. *Id.*

139. *Criminal Law – How Long Does a Trial Last*, CRIM. L. INFO. BLOG (Jan. 2012), <http://gunsandbutter.blogspot.com/2012/01/criminal-law-how-long-does-criminal.html> (last visited Mar. 18, 2016).

140. *A Hemisphere of Soccer Corruption*, *supra* note 80.

141. Chaudhary, *supra* note 137.

142. Press Release, *supra* note 72.

143. Slater, *supra* note 11.

place?”¹⁴⁴ By waiting until after the 2018 World Cup, or even the 2022 World Cup in Qatar, should the investigation last that long, those executives who were able to secure the winning bids for their countries through bribery will have already got what they paid for, while the nations who were defrauded out of a chance to cash in on the sponsorship deals and other benefits that go along with hosting the World Cup will have lost an opportunity that only comes along once every few decades. That does not feel like true justice or a desirable outcome to any of the parties involved. Therefore, the individuals charged in this case should be tried in the more efficient system of the United States, where not only can they be brought to justice for their crimes before benefitting from their illegal deals, but also so that FIFA can move on the fast track towards reform and prevent future World Cup selections from being tainted like 2018 and 2022 World Cups already have been.

Although it has been established that the Swiss legal system is not the proper forum to provide an efficient resolution to the case, it still must be established that the United States can bring about the proper remedy to the case. Part of the reason why the United States should have jurisdiction over the case is because of the transparency that its judicial system emphasizes. The United States Constitution explicitly states, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.”¹⁴⁵ While the Swiss Constitution does say that every person has the guarantee of facing an impartial, public court,¹⁴⁶ Switzerland is also much more protective of people’s privacy, guaranteeing it as a right under its Constitution¹⁴⁷ and, as mentioned above, emphasizing privacy as an important right in the way that it carries out its laws procedurally. Transparency is very important in this case because of the secrecy surrounding the World Cup bids and FIFA’s reluctance to make documents, such as the Garcia Report, public. If the case were to be tried in Switzerland, FIFA could hide behind Swiss privacy laws and, in particular, would not have to reveal anything regarding the Swiss bank accounts it used to funnel its bribes and kickbacks. By contrast, if the case were to be tried in the United States, FIFA could not hide behind said privacy laws, and instead would be forced to provide more information regarding its misdeeds. Therefore,

144. Chaudhary, *supra* note 137.

145. U.S. CONST. amend. VI.

146. CONSTITUTION FÉDÉRALE [CST] [CONSTITUTION] Apr. 18, 1999, RO 101, art. 30, ¶¶ 1, 3 (Switz.).

147. *Id.* art. 13, ¶ 1.

because of the transparency that the United States emphasizes in its judicial system, the case should be tried in the United States.

Apart from the aforementioned secrecy and privacy that Swiss law is known for, Switzerland has also been known to be less than cooperative when it comes to international cases. For example, in 2009, the United States Justice Department brought criminal charges against Swiss bank UBS for conspiring to defraud the United States.¹⁴⁸ UBS helped some of the its American clients evade taxes by creating accounts in the names of sham entities, thus concealing the true value of those clients' wealth and hiding income from the IRS.¹⁴⁹ However, when the United States Justice Department asked for the names and identities of the clients who had concealed funds from the IRS, Switzerland hid behind its privacy laws and was reluctant to turn over that information to the United States.¹⁵⁰ Eventually the two nations did come to a settlement agreement that allowed for the disclosure of the wrongdoer's identities.¹⁵¹

In this case, Switzerland is again showing reluctance to turn over key evidence to the United States, and by extension the world. Because FIFA is situated in Zurich, Swiss authorities have better access and hold key evidence that could help the United States advance its case against the forty-one defendants the United States has charged.¹⁵² However, they are refusing to turn over said evidence to the United States for fear that doing so would weaken its status as an enforcer in this case, and furthermore giving the perception that Switzerland is really just a puppet for the United States Justice Department.¹⁵³

While it may be noble for Switzerland to flex its muscle in this instance and show that it can handle its own investigation, now is probably the time to defer to another country whose investigation is further along and who can bring these individuals to justice now, since time is of the essence in this case. By showing reluctance to cooperate, Switzerland is only delaying this case further and, as mentioned above, waiting to try these individuals after the tainted World Cups have already occurred does not produce a desirable outcome for anybody. Switzerland

148. Sara Hansard, *UBS Fined \$780 Million in Tax Evasion Scandal*, INVESTMENT NEWS (Feb. 19, 2009 1:15 PM), <http://www.investmentnews.com/article/20090219/FREE/902199983/ubs-fined-780-million-in-tax-evasion-scandal>.

149. *Id.*

150. Lynnley Browning, *Settlement Reached in UBS Tax Case*, N.Y. TIMES (July 31, 2009), <http://www.nytimes.com/2009/08/01/business/01ubs.html>.

151. *Id.*

152. Rebecca R. Ruiz, *In FIFA Inquiry, Switzerland Aids U.S. But Is Wary of Being Eclipsed*, N.Y. TIMES (Dec. 5, 2015), <http://www.nytimes.com/2015/12/06/sports/soccer/in-fifa-inquiry-switzerland-aids-us-but-is-wary-of-being-eclipsed.html>.

153. *Id.*

obviously does have an interest in conducting its own investigation since FIFA is incorporated within its borders, but this is a world investigation and the world has an interest in seeing the scandal come to the proper outcome.

FIFA is made up of 209 associations from 209 different countries, each with a financial interest in how the company does its business.¹⁵⁴ In the interest of fixing FIFA's corruption problems in the most efficient and transparent way possible, Switzerland should allow the United States to continue its investigation and cooperate with the United States Justice Department as a secondary helper. By hiding behind its privacy laws and conducting its own internal investigation in the usual secretive way that Switzerland is accustomed to, Switzerland is hurting the world's interest in eliminating FIFA's corruption and restoring the integrity of international soccer. As the UBS tax evasion case showed, simply claiming that Swiss privacy and secrecy laws preclude the government from cooperating to the fullest extent with international investigations only serves to frustrate and delay true justice being served. Transparency is the only way for this case to get the remedy it needs and to restore integrity to the selection process for World Cups and for the selection of marketing and television sponsors that go along with the World Cup. Because the United States emphasizes that transparency in its investigations and judicial system more so than Switzerland, the case should be tried in the United States.

B. The United States Can Extradite the Accused as a Part of its Treaty with Switzerland

While it has been shown that Switzerland cannot provide the proper remedy to this case and the United States can, the last hurdle to clear is extraditing these individuals to the United States to face justice. The forty-one defendants who have been indicted by the United States Justice Department form twenty-four different nationalities, with most coming from North, Central, and South America.¹⁵⁵ This could undoubtedly create a jurisdictional nightmare for the United States in its case against the accused, but because of the extradition treaty between the United States and Switzerland, the United States Justice Department can extradite these individuals back to the United States to face these charges.

154. *Associations*, FIFA.COM, <http://www.fifa.com/associations/> (last visited Mar. 18, 2016).

155. *A Hemisphere of Soccer Corruption*, *supra* note 80.

The United States and Switzerland signed an extradition treaty in 1990 that entered into force in 1997.¹⁵⁶ Article 1 of the treaty states that each State is obligated to extradite to the other pursuant to the provisions of the Treaty persons charged with or found guilty of an extraditable offense, or subject to a detention order in the Requesting State.¹⁵⁷ Article 2 clarifies what an extraditable offense is, saying one can be extradited if the crime “is punishable under the laws of both Contracting Parties by deprivation of liberty for a period exceeding one year.”¹⁵⁸ This means that for any individual to be extradited from Switzerland to the United States, the crime that individual is charged with in the United States must also be a crime in Switzerland.¹⁵⁹ However, the crimes need not be the exact same offense. For example, theft in one country can also be considered embezzlement in the other.¹⁶⁰ All that is needed to satisfy an extradition request between the two countries is that the Requesting State shows a “reasonable basis to believe that the person sought committed the offense for which extradition is requested.”¹⁶¹ But the Requesting State must also show that its “laws provide that an offense committed outside its territory is punishable in similar circumstances.”¹⁶² Under normal circumstances, extradition requests must be put on hold until the criminal proceedings in the State to which the request is being made have run their course.¹⁶³ However, in this case, the Swiss have not charged the same individuals as the United States has, having only opened criminal proceedings against Sepp Blatter,¹⁶⁴ so the United States can extradite these individuals right away.¹⁶⁵

Extraditing an individual from Switzerland to the United States is a three-step process,¹⁶⁶ but the most important step for the purposes of this case is the first step. The second and third steps involve the defendant

156. Extradition Treaty Between the Government of the United States of America and the Government of the Swiss Confederation, U.S.-Switz., Nov. 14, 1990, [No U.S. treaty citation available] [hereinafter Extradition Treaty]. See also 18 U.S.C. § 3181 (2002).

157. Extradition Treaty, *supra* note 156, art. 1, ¶ 1.

158. *Id.* art 2, ¶ 1.

159. Nicole Hong, *How Will the U.S. Extradite FIFA Officials From Switzerland?*, WALL ST. J. (May 27, 2015, 3:16 PM ET), <http://blogs.wsj.com/law/2015/05/27/how-will-the-u-s-extradite-fifa-officials-from-switzerland/>.

160. Clive Coleman, *FIFA, Extradition and Blatter: How Will It Play Out?*, BBC NEWS (June 2, 2015), <http://www.bbc.com/news/world-32973203>.

161. Extradition Treaty, *supra* note 156, art. 9, ¶ 3(b).

162. *Id.* art 1, ¶ 2(a).

163. Coleman, *supra* note 160.

164. Office the Swiss Attorney General Press Release on the Criminal Proceedings Against the President of FIFA, *supra* note 72.

165. Coleman, *supra* note 160.

166. *Id.*

appealing his extradition request once the first element is met and the third step involves the Swiss Federal Office of Justice Extradition (FOJ) ruling on that appeal.¹⁶⁷ The all-important first step requires the FOJ to accept the extradition request and then examine it in order to make sure that each element for extradition is satisfied.¹⁶⁸ Here, this should not be a problem as every crime that the United States charged the defendants with is also a crime in Switzerland. Wire fraud,¹⁶⁹ money laundering,¹⁷⁰ bribery,¹⁷¹ tax evasion,¹⁷² racketeering,¹⁷³ and obstruction of justice¹⁷⁴ are all crimes in Switzerland as well as the United States, though Switzerland uses different language than the United States in defining those crimes, such as prohibiting general fraud rather than specifically defining what kind of fraud the individual is being charged with.¹⁷⁵ Even though some of the crimes occurred before the treaty entered into effect,¹⁷⁶ the extradition treaty between the United States and Switzerland has a retroactivity clause that allows for extradition for offenses committed before the treaty entered into force.¹⁷⁷ Therefore, since the offenses the individuals have been charged with constitute crimes in both the United States and Switzerland and are punishable by imprisonment for more than a year,¹⁷⁸ the offenses are extraditable offenses and Switzerland is obligated under the United States-Switzerland Extradition Treaty to extradite the individuals to the United States, should the United States request it.

Thus far, extraditing all of these individuals will not be a problem for the United States since none of the individuals charged are of Swiss nationality.¹⁷⁹ However, if the United States does end up charging anyone

167. *Id.*

168. *Id.*

169. Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266; SCHWEIZERISCHES STRAFGESETZBUCH [STGB], CODE PÉNAL SUISSE [CP] [CRIMINAL CODE] Dec. 21, 1937, SR 311, RS 311, art. 146 [hereinafter Swiss Criminal Code].

170. Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266; Swiss Criminal Code, art. 305.

171. Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266; Swiss Criminal Code, art. 322.

172. Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266; Swiss Criminal Code, art. 146.

173. *See* Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266; Swiss Criminal Code, arts. 146, 156, 322.

174. Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 266; Swiss Criminal Code, art. 305.

175. *See* Swiss Criminal Code, arts. 146–47.

176. *See* Grand Jury Indictment of the Defendants, *supra* note 97, ¶ 76.

177. Extradition Treaty, *supra* note 156, art. 22.

178. 18 U.S.C. § 1957 (2012); 18 U.S.C. §§ 1343, 1512 (2008); 18 U.S.C. § 1952 (2014).

179. *A Hemisphere of Soccer Corruption*, *supra* note 80.

involved in the scandal that is of Swiss nationality, say for example Sepp Blatter, then they will not be able to extradite that person unless Switzerland amends its laws.¹⁸⁰ Under Swiss law, Switzerland is not allowed to extradite a national unless that person consents,¹⁸¹ which would be highly unlikely in this case given the swifter and stiffer punishments that would await that national in the United States. The only thing the United States would be able to do directly is ask the Swiss government to try the case on its behalf with regards to that Swiss national.¹⁸² The United States could also issue what are called “red notices” to the international community, which practically serve as international arrest warrants and extradition requests to the international community at large should the Swiss national in question choose to leave Switzerland.¹⁸³ Though not ideal since the individual could simply refuse to leave his native country, issuing “red notices” at least confines the individual to a country that could still prosecute him or her for his or her crimes domestically. Although this could be a problem down the road, for now, the United States has every right to request that Switzerland extradite the individuals charged thus far in the FIFA corruption scandal and Switzerland is obligated to extradite said individuals under its treaty with the United States.

Since Switzerland is ill-equipped to provide the proper remedy to the case, the United States is better situated to provide the proper remedy, and the United States has the ability to extradite every non-Swiss national involved in the case, which to date includes everyone charged. As such, the United States should retain jurisdiction over the FIFA corruption scandal.

V. CONCLUSION

So where does this case stand today? Of the defendants who have been charged as of 2016, twelve have pleaded guilty, five have pleaded not guilty, and twenty-four have yet to have their fates resolved.¹⁸⁴ Six individuals have been extradited to the United States, one to Uruguay to face prosecution for domestic laws broken there, and two remain in Swiss custody as they fight their extraditions to the United States.¹⁸⁵ FIFA has a

180. See Extradition Treaty, *supra* note 156, art. 1, ¶ 1.

181. *Id.*

182. *Id.*

183. Coleman, *supra* note 160.

184. *A Hemisphere of Soccer Corruption*, *supra* note 80; Rebecca R. Ruiz, *FIFA Match Agent Pleads Guilty in U.S. Corruption Case*, N.Y. TIMES (Mar. 8, 2016), <http://www.nytimes.com/2016/03/09/sports/soccer/fifa-match-agent-pleads-guilty-in-us-corruption-case.html>.

185. *FIFA Match Agent Pleads Guilty in U.S. Corruption Case*, *supra* note 184.

new president, electing Swiss-Italian Gianni Infantino as its new leader on February 26, 2016,¹⁸⁶ while FIFA's former president, Sepp Blatter, is suspended from all soccer-related activities for six years after his previous eight-year suspension was reduced.¹⁸⁷ FIFA has also taken steps to reform its broken organization, starting with getting rid of its formerly corrupt executive committee.¹⁸⁸ While there are surely signs that FIFA is finally trending in the right direction, it will take years for the soccer world to fully recover from a scandal that was so widespread and affected the sport so greatly. The question still remains on how to best handle those who put the soccer world in this precarious position in the first place. But the answer should be simple: the United States started this investigation and put FIFA on the road to recovery. It should be the one to finish it and bring the individuals to the justice they deserve.

186. Owen Gibson, *Gianni Infantino Elected FIFA President After Zurich Election*, THE GUARDIAN (Feb. 26, 2016, 12:00 EST), <http://www.theguardian.com/football/2016/feb/26/gianni-infantino-elected-fifa-president-election>.

187. *Id.*

188. Sam Borden, *Gianni Infantino to Lead FIFA Into New Era*, N.Y. TIMES (Feb. 26, 2016), <http://www.nytimes.com/2016/02/27/sports/soccer/gianni-infantino-is-elected-fifa-president.html>.