

***(Mis)Governing World Football?
Agency and (Non)Accountability in FIFA***

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1. *Introduction: Opportunism and Impunity in International Sporting Organizations (ISOs)*

FIFA, governing body of world football, experienced an existential crisis in 2015 when the FBI and US Department of Justice (FBI/IRS-CID) arrested and indicted many of its senior officials and associated personnel many of whom were subsequently sentenced in New York for fraud, money laundering, interstate and foreign travel in-aid-of-racketeering, obstruction of justice, bribes, and kickbacks. Their indictment effectively defined FIFA as a criminal enterprise rather than a global charity; ‘... the defendants and their co-conspirators rose to positions of power and influence in the world of organized soccer The corruption of the enterprise arose and flourished in this context’.¹ These criminal activities had already been exposed by investigative journalists and critical academics,² and could have continued indefinitely but for the US intervention, because they were ignored by FIFA’s officials and the National Football Associations (NFAs) and Confederations and concealed from its stakeholders – its clubs, players, fans, commercial partners, and the regulatory authorities.

We will therefore ask how FIFA’s leadership and that of its associated organizations could engage in criminal activities for so long, use their authority to claim excessive rewards, and respond to the 2015 crisis by making changes to the internal and external accountability mechanisms that should have obliged them to maximise the interests of their stakeholders, but have clearly failed to do so. These insights are also relevant to equally scandalous events that have occurred in other prominent International Sporting Organisations (ISOs).³

¹ Office of Public Affairs/U.S. Department of Justice, United States District Court Eastern District of New York (2015) ‘Webb et al. Indictment 15 CR 0252 (RJD) (RML)’ May 20 2015, para 74 at 31. <<https://www.justice.gov/opa/file/450211/>> accessed 14 May 2024 : ‘Over time, the organizations formed to promote and organize soccer in regions and localities throughout the world, including the United States, became increasingly intertwined with one another and with the sports marketing companies that enabled them to generate unprecedented profits through the sale of media rights to soccer matches’. The investigation is hereafter referred to as the work of the FBI/IRS-CID (Federal Bureau of Investigation and Inland Revenue Service-Criminal Investigation Department).

² The key texts covering these events are reviewed in Sahiba Gill, Edouard Adelus and Francisco Miguel de Abreu Duarte, ‘Whose Game?: FIFA, Corruption and the Challenge of Global Governance’ (2019) 30 European Journal of International Law 1041. These problems are not new, as we demonstrate in our historical narrative of the organization’s trajectory.

³ See eg Daniel S Mason, Lucie Thibault, and Laura Misener, ‘An Agency Theory Perspective on Corruption in Sport: The Case of the International Olympic Committee’ (2006) Journal of Sport Management 52. Also see ‘The IOC’s True Ideals: Corruption and Greed’, 29 July 2016 <<https://www.flotrack.org/articles/5053760-the-iocs-true-ideals-corruption-and-greed>> accessed 14 May 2024; Mark Johnson, ‘Hoberman ‘Q&A: Outlining corruption, doping collusion at the IOC, UCI’, 26 March 2020, University of Texas Velo/News <<https://velo.outsideonline.com/news/hoberman-qa-outlining-corruption-doping-collusion-at-the-ioc-uci/>> accessed 25 August 2024; John Leicester and Jerome Pugmire, ‘Trial of Diacks exposes dark backdrop of track golden era’, 18 June 2020, Associated Press <[Trial of Diacks exposes dark backdrop of track golden era \(local10.com\)](https://www.local10.com/news/sports/trial-of-diacks-exposes-dark-backdrop-of-track-golden-era/)> accessed 14 May 2024.

Answering these questions obliges us to address the two apparently separate issues that have enabled FIFA to evade reform – the weaknesses of its internal accountability mechanisms, and its ability to avoid the external legal, financial and social obligations that should govern the behaviour of all modern organizations. We do this by providing an interdisciplinary analysis of these procedures and mechanisms, one which attributes both of these failures to the limitations of the incentive and accountability mechanisms that regulate FIFA's dealings with its stakeholders. Doing this also enables us to identify the weaknesses of what Stephen Weatherill refers to as the 'external' and 'internal sports law' ethical standards and juridical procedures that govern the behaviour of all ISOs. According to Weatherill, ISOs are governed by both internal and external kinds of 'sports law', the former being 'the rules and practices according to which governing bodies structure their activities', the latter being 'the laws of the jurisdiction in which the sport is played'. The governing bodies typically claim that they 'deserve autonomy from legal regulation ... to protect the integrity of their sport, ... and that those rules should apply globally, free of fragmentation caused by compliance with the idiosyncrasies of local law'. However, he also points out that they are 'not typically allowed absolute autonomy ... [but] typically allowed conditional autonomy.' Hence 'laws are applied to sport with sensitivity to its special features which distinguish it from ordinary economic activity', but 'frictions arise in particular where the regulatory power enjoyed by governing bodies overlaps with their commercial incentives'.⁴

The mechanisms and procedures of transnational ruling bodies of sport therefore differ in fundamental ways from those that govern state agencies and private firms, as Allison and Tomlinson note.⁵ ISOs are membership organizations responsible to their stakeholders, not to the general public or shareholders. FIFA has therefore always been able to assert its right to operate as a democratic but non-political and non-profit organization, with a virtually unconditional right to control its own internal structures and finances, and the terms on which it relates to its stakeholders. However, the dramatic changes induced by economic growth, technological change and political contestation in the modern era, and in the role and economic significance of world sport, have constantly modified the balance of power between ISOs and stakeholders, so we can only 'determine whether our existing institutions further the goals by which they are usually justified' by showing how the way in which they have evolved 'influences our ability to reform them'.⁶

⁴ Stephen Weatherill, Clarendon Law Lecture Series 2022-23 (2022), Lecture 1, University of Oxford <<https://www.law.ox.ac.uk/content/event/clarendon-law-lecture-series-2022-23>> accessed 7 April 2024.

⁵ Lincoln Allison and Alan Tomlinson, *Understanding International Sport Organisations: Principles, Power and Possibilities* (Routledge 2017) 100.

⁶ Jack Knight, *Institutions and Social Conflict* (Cambridge University Press 1992) 2.

FIFA was founded in 1904 as a representative body to unify and manage the game across the world with Statutes that gave it the sole right to organize international championships and then gave the NFAs and then the Confederations the sole right to organize football in their respective countries and territories.⁷ This built-in monopoly then enabled FIFA to take control of every NFA and turn football into a major social and commercial success.⁸ It initially had very limited resources, but has been able to generate a huge income from sponsors and the media since the 1980s, without being subjected to the same constraints as private firms. However, it is also subject to the national and international law that regulates all formally constituted political, economic and social organizations, and is expected to meet the same normative standards. FIFA's weaknesses are therefore a function of the limitations of the legal and regulatory regimes that should oblige its leaders to maximise its contribution to the football community, but clearly fail to do so.

We will address these issues by first providing, in section 2, a historical review of how these initial weaknesses enabled FIFA's privileged insiders to abuse their authority for so long, were exposed and removed during the 2015 crisis but replaced by successors who captured the post-crisis reform programme. The history of FIFA's scandals will show the ways in which sport-based governance has been rendered vulnerable to exploitation by opportunistic football officials operating across and manipulating the dynamics of internal and external sports law. In section 3 we review the theoretical and conceptual approaches from legal studies, political science and organizational sociology that explain these long-term abuses and institutional failures. We review the strengths and weaknesses of the post-crisis reforms in section 4 and discuss possible reforms and the difficulties confronting those attempting to implement them in section 5.

2. Explaining the Crisis: The History, 1904-2022

The ability of FIFA's leaders to act with impunity has always depended on external and internal conditions that have changed dramatically over time. They operated as a small voluntary organization with limited resources until the 1970s when a new leadership emerged that was able to generate and abuse a massive increase in its income, until widespread criticism and the US intervention, that forced them to make internal reforms in 2002/3 under Sepp Blatter,⁹ and again

⁷ Pierre Lanfranchi, Christiane Eisenberg, Tony Mason and Alfred Wahl, *100 Years of Football: The FIFA Centennial Book* (Weidenfeld & Nicholson 2004) 59-61.

⁸ However, FIFA's early years were far from smooth, as outlined in section 2.

⁹ 'Sepp' Blatter, FIFA's president, had acknowledged, in 2014, the existence of earlier scandals but claimed that FIFA had introduced reforms that 'had placed the organisation at the forefront of governance standards in sport'. He was addressing the 1st World Summit on Ethics in Sport (WSES), organized by the World Forum for Ethics in Business (WFEB) which was hosted by FIFA and staged at its Zurich headquarters. See WFEB, '1st World Summit on Ethics in Sports: Sports meets Business – Shared Value and the Role of Sports

under Gianni Infantino after the 2015 crisis.¹⁰ We here describe and evaluate the outcomes, providing a detailed historical account of how different leaders have responded to the changing role and significance of football during the modern era.

A. From Voluntary Club to Global Corporation 1904-1974

Just seven European nations set up FIFA in Paris in May 1904, and the organization was initially run by a tiny staff with limited resources; its committee members claimed expenses but drew no salaries. It only staged its inaugural world championship in 1930 and had to deal with difficult disputes over the rules and organization of the game, but its membership continued to grow. It enabled national teams to participate at the 1912 Stockholm Olympic Games, a first step ‘along the road which would lead to the total control of the world football tournament’; and 40 members attended the first post-war Congress in Geneva in 1923, when it had already become the world’s largest sporting federation, despite its origins as a privileged voluntary group with no headquarters.¹¹ FIFA was able to establish a form of control over the development of the game, even though its ownership of the laws of the game or the emerging competition calendar remained dubious, because the NFAs accepted its authority and the permissive nature of Swiss law meant that its decisions were unlikely to be legally challenged once it moved to Zurich and was reconstituted under the Swiss Civil Code in 1932.

FIFA revised and rewrote its statutes after World War II and had established and reorganised regional Confederations by the 1960s, against the will of the long-standing (1921-1954) French president Jules Rimet. It was led by Englishman Sir Stanley Rous from 1961 to 1974 who lived on his pension and FIFA expenses. He expedited FIFA’s modernisation and international expansion, transcending the parochial Eurocentrism of Rimet, by travelling the world promoting the game.¹² He turned the presidency into a globally significant role, but ignored FIFA’s commercial potential because of his voluntarist principles.

in Solving Societal Problems’, 19 September 2014 (at 6) <http://ethicsinsports.ch/bilder/Speaker_Book.pdf> accessed 22 April 2024. For a summary of the event see WFEB, ‘World Forum for Ethics in Business: World Summit on Ethics in Sports – FIFA 2014’ (2015) <<https://wfeb.org/world-summit-on-ethics-in-sports-fifa-2014/>> accessed 22 April 2024.

¹⁰ Gianni Infantino claimed that their post-2015 reforms had produced ‘a transformational restructuring’ that would ensure that its resources would ‘be invested back into the game’ and would guarantee that FIFA’s systems would meet contemporary demands ‘when it comes to accountability, transparency, and inclusivity’. *FIFA 2.0: The Vision for the Future* (2017) <<https://digitalhub.fifa.com/m/154c905313d5fa69/original/drnd5smfl6dhxgiyqmx-pdf.pdf>> accessed 6 January 2024.

¹¹ Lanfranchi and others (n 7) 64 and 68.

¹² Alan Tomlinson, *Sir Stanley Rous and the Growth of World Football: An Englishman Abroad* (Cambridge Scholars Publishing 2020).

B. *Snouts in the Trough - Elite Capture and Impunity 1974-2010*

In 1974 Dr João Havelange defeated Rous in the FIFA presidential election and revolutionised global sport governance during the next 24 years. He was Chairman of Brazil's Sports Federation, had been a member of the IOC and an ally of its future President Juan-Antonio Samaranch who was responsible for the IOC's later corruption scandals.¹³

Havelange had campaigned for the presidency by challenging the European domination of the game, promising the NFAs more tournaments, more World Cup places, and more money, and presenting himself as the face of the future. He built lucrative partnerships with commercial sponsors and sold broadcasting rights for FIFA-owned events, supported by Horst Dassler, the boss of Adidas. Their deals secured major international sponsors like Coca-Cola, which 'became the blueprint for everyone who wanted to try and bring money into international federations through this source'.¹⁴ These initiatives led to the creation of International Sport and Leisure (ISL), the firm that dominated FIFA's deals until its bankruptcy in May 2001, after which FIFA brought its commercial deal-making in-house.

This income enabled Havelange and Blatter, then Secretary General, and leaders of NFA's and Confederations, to siphon off resources with no apparent fear of punishment. Havelange and his son-in-law, Ricardo Texeira, president of Brazil's football association, received illicit payments of more than \$22million in secret deals with ISL according to the Swiss prosecutor; while Nicolás Leoz, the president of CONMEBOL, also accepted large handouts from ISL until it was bankrupted. They were protected from prosecution at the time not only because these deals were conducted in secrecy, but also because Swiss Law treated such payments as legitimate 'commissions', which enabled FIFA-connected officials to exploit leadership positions as 'viable financial opportunities.'¹⁵

¹³ Andrew Jennings, 'A foul band reeking of corruption and manipulation', GreenNet (26 January 2014) <<https://www.greennet.org.uk/community/blogs/meet-ioc-foul-band-reeking-corruption-and-manipulation-andrew-jennings>> accessed 10 November 2021.

¹⁴ John Sugden and Alan Tomlinson, *FIFA and the Contest for World Football; Who Rules the Peoples' Game?* (Polity Press 1998) 87. The quote is from Patrick Nally, who worked closely with Horst Dassler in this formative period.

¹⁵ Ken Bensinger, *Red Card: FIFA and the Fall of the Most Powerful Men in Sports* (Profile Books 2018) 34. Hans-Joachim Eckert, chair of FIFA's Adjudicatory Chamber, referred to the 'deliberately fraudulent and disloyal conduct' that characterized the practices of ISL-FIFA dealings, adding that 'it is certain that not inconsiderable amounts were channelled to former FIFA President Havelange and to his son-in-law Ricardo Texeira as well as to Dr. Nicolas Leoz, whereby there is no indication that any form of service was given in return by them. These payments were apparently made via front companies in order to cover up the true recipient and are to be qualified as "commissions", known today as "bribes". Known payments in this regard were made between 1992 and May 2000', 'Statement of the Chairman of the FIFA Adjudicatory Chamber, Hans Joachim Eckert, on the Examination of the ISL Case, 29.04.2013' 3 <<https://www.sportsintegrityinitiative.com/wp-content/uploads/2015/12/islreporteckert29.04.13e.pdf>>

Blatter won the presidency in 1998 by allocating a million dollars to each NFA with voting rights just 17 days before the presidential election, directly appealing to the ‘less privileged’ associations with ‘tailor-made solutions’ for ‘those who need our support’.¹⁶ He then confronted a financial and organizational crisis after the ISL bankruptcy when eleven members of the Executive Committee (ExCo) and Michel Zen-Ruffinen, the Secretary General, activated a Criminal Complaint against him in 2002, ‘concerning Suspicion of Breach of Trust and Dishonest Management’.

These charges constituted ‘crimes and not mere offences’ under Swiss law and could have led to imprisonment. Zen-Ruffinen sent a paper to the ExCo that accused ‘the President’ of unifying ‘the management and administration of FIFA’ and ‘working with a few persons of his trust’ to ‘manipulate the whole network ... to the benefit of third persons and his personal interests. FIFA today is run like a dictatorship’.¹⁷ The document listed examples of secret payments to individuals around the globe and exposed the worthlessness of KPMG’s audit of its finances and was lodged less than a month before the 2002 election for the FIFA presidency.¹⁸

Blatter overcame this threat by doubling his majority in 2002, helped again by generous allocations to vote-holding NFA representatives, and then consolidated his control by replacing Zen-Ruffinen and most of his opponents on the ExCo. He responded to these internal pressures and international criticism by introducing an Audit and Ethics Committees in 2003/4 run by a succession of supposedly independent, but generally ineffective chairs,¹⁹ but it was powerless in practice and allowed him to preside over an embedded system of collusion and corruption until the 2015 crisis.

C. Exposure, Crisis, and Retribution 2011-15

Qatar was chosen for the 2022 World Cup in 2010 after what has been described as ‘the most corrupt World Cup bidding contest in history,’²⁰ a deal brokered by Mohamed Bin Hammam, a

accessed 20 September 2024. Eckert also identified the flow of ‘three-figure million sums’ in Swiss francs and US dollars that ‘were agreed upon as compensation for FIFA’ (p 2) in these transactions.

¹⁶ The text of the letter sent to the NFAs is published in John Sugden and Alan Tomlinson, *Badfellas: FIFA Family at War* (Mainstream Publishing 2003) 150.

¹⁷ Alan Tomlinson, *FIFA: The Men, the Myths and the Money* (Routledge 2014) 133.

¹⁸ *ibid* 134. The criminal complaint was submitted to the office of the Zurich prosecutor Urs Hubmann, who announced in December 2002 that he was taking no action, discontinuing two of the allegations that he did consider credible ‘for lack of sufficient evidence’, and questioning the validity of the others, referring to them as ‘bordering on false accusation’; former UEFA president Lennart Johansson, who had lost the vote to become president to Blatter in 1998, saw this as ‘a missed opportunity’ by Hubmann to ‘clean up FIFA ... and that action at that time could have avoided more years of mismanagement’, David Conn, *The Fall of the House of FIFA* (Yellow Jersey Press 2017) 70-71.

¹⁹ The task facing such chairs and committee members was, it should be recognized, a Herculean one in a period in which former ISL (International Sport and Leisure) executive and architect of UEFA’s Champions League, Jürgen Lenz, observed that: ‘FIFA’s now so corrupt that it no longer knows that it’s being corrupt’, *ibid* 3.

²⁰ Heidi Blake and Jonathon Calvert, *The Ugly Game: The Qatari Plot to Buy the World Cup* (Simon & Schuster 2015) 3.

billionaire Qatari businessman. He had been a long-standing member of the FIFA and Asian Football Confederation (AFC) Executive Committees (ExCos), and AFC president from 2002. He had funded Blatter's successful 1998 presidential campaign,²¹ but subsequently been alienated by Blatter who had failed to support Bin Hamman's own claim for the presidency in 2007. Nevertheless, he was able to mastermind Qatar's successful World Cup bid by paying off corruptible FIFA ExCo members, clearly exposing the weaknesses of its regulatory framework and 'the ugly venality of the men who control the beautiful game'.²²

Bin Hammam used Jack Warner, president of CONCACAF, the Confederation comprising North and Central American and Caribbean NFAs, to persuade the Caribbean Football Union's (CFU) officials to support his bid for the presidency in 2011 by handing envelopes containing US\$40,000 to each of its national representatives in a hotel room at a CFU conference in Port of Spain. They were told, on Bin Hammam's behalf, that the officials had distributed the money so that no one should feel that 'anybody has any obligation for your vote because of what gift you have given them'. Significantly, the money had been sent via bank accounts in New York city to fund the bribes, and again to another US account shortly 'after the scheme had been uncovered' and Warner had resigned; these transfers enabled the FBI and DoJ to intervene.²³

Chuck Blazer, the CONCACAF general secretary, alerted Blatter to the plot, so Bin Hammam withdrew his candidacy, was suspended by FIFA, and resigned from the AFC and Blatter was re-elected in June 2011. The scandals continued as did the exposés by investigative journalists and academics. In 2012, alerted by Andrew Jennings's earlier revelations,²⁴ the FBI/IRS(CID) pressurised Blazer to wear a wire in the committee rooms and hotel lobbies of FIFA representatives

²¹ Tomlinson (n 17) 136, 146 and 147.

²² Blake and Calvert (n 20) 3.

²³ Office of Public Affairs/U.S. Department of Justice (n 1) 89-94.

Warner's long-term collusion with Chuck Blazer was exposed two years later in The Confederation of North, Central American and Caribbean Association Football (CONCACAF) *Integrity Committee, Report of Investigation, presented to the Executive Committee of CONCACAF*, 18 April 2013 <<https://barbadosfreepress.wordpress.com/wp-content/uploads/2013/05/concacaf-report.pdf>> accessed 20 September 2024: 'The evidence shows that, at a minimum, Blazer's abdication of his responsibilities to CONCACAF gave Warner the freedom he needed to engage in an ongoing pattern of fraudulent conduct over a period of many years', para 7.23, 98. Warner, the report concluded, had in his 'self-dealing through fraud' thereby 'violated the FIFA Ethics Code', para 7.25, 99. Blazer, the report stated (para 7.27, p 99) had 'misappropriated at least \$15 million in compensation payments' during his time as General Secretary', taking (p 100) (i) 'more than \$11 million in commissions; (ii) more than \$3 million in fees; and (iii) more than \$837,000 in rent expense payments'. Blazer's fraudulent expenditure at the expense of CONCACAF bought him luxury apartments in Miami and the Bahamas, and subsidised the rent on his New York Trump Tower residence.

²⁴ Andrew Jennings, *Foul: The Secret World of FIFA: Bribes, Vote Rigging and Ticket Scandals* (HarperSport 2006) narrates numerous stories and cases of corrupt networks in FIFA and across the confederations during the early years of Blatter's presidency.

at the London 2012 Summer Olympics, and worked with the DoJ, to amass the evidence that precipitated the 2015 crisis. At the end of the following year, in a sealed court in Brooklyn New York, Blazer himself faced a number of charges relating to corruption, ‘to events involving an exchange of illicit payments for one purpose or another’, identifying ‘FIFA and its attendant or related constituent organization as what we call an enterprise, a RICO enterprise’ a ‘Racketeering Influenced Corrupt Organization’. ‘Conspiracy’ is the foremost charge in the proceedings, alleging ‘a conspiracy to corrupt this enterprise through the anticipated payment of funds pursuant to various criminal schemes ... A conspiracy to use wire transfers to effect the payment of monies’.²⁵

Havelange resigned from his honorary presidency 11 days before the FIFA Adjudicatory Committee report in April 2013 reprimanded him, his son-in-law, and top CONMEBOL official Nicolás Leoz, for receiving huge ‘bribes’ (not though recognised as bribes under Swiss law) from ISL between 1992 and 2000, when Blatter had been general secretary and then president; Blatter himself could not, though, be directly implicated and Eckert, chair of the FIFA Ethics Committee’s Adjudicatory Chamber, merely described Blatter’s conduct as ‘clumsy’.²⁶ This confirmed the looseness and embedded hypocrisy of FIFA’s internal processes and inter-organizational practices.

²⁵ United States District Court Eastern District of New York, United States of America against Charles Gordon Blazer Defendant, 13-CR-62 (RJD), 13-MC-1011, U.S. Courthouse, Brooklyn New York, SEALED PROCEEDING November 25 2013 10a.m. Original Document (PDF), contributed by Tom Namako (Buzzfeed) 21 and 22. Document 19 in Case 1:13-cr-00602-RJD, these proceedings were to be filed on 3 June 2015, a few days after the scandals broke at the end of May. Blazer pleaded guilty on all ten counts in the sealed proceedings, the first three of which pertained to his FIFA-based conspiracies over a period of 18 years. Count One: ‘Beginning in or about 1993 and continuing through the early 2000s, I and others agreed to accept bribes and kickbacks in conjunction with the broadcast and the other rights to the 1996, 1998, 2000, 2002, and 2003 Gold Cups. Beginning in or around 2004 and continuing through 2011, 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’. On Count Two Blazer described how, between 2004 and 2011, while still acting in his official capacity, he and other FIFA officials ‘agreed to participate in a scheme to defraud FIFA and CONCACAF of the right to honest services by taking undisclosed bribes. I and others agreed to use e-mail, telephone, and a wire transfer into and out of the United states in furtherance of this scheme. Funds procured through these improper payments passed through JFK airport in the form of a check’. Count number three focused upon the receipt of bribes and kickbacks from 2008-2011 involving the ‘proceeds of an unlawful bribe’ in which monies were moved between the United States and the Caribbean. Counts 4-9 covered income tax evasion; Count 10 referred to illegal financial arrangements in Blazer’s name in the Bahamas, so ‘violating the Federal Tax Law’. These direct quotes are at 31, 32 and 33

<<https://www.documentcloud.org/documents/2093153-blazer.html>> accessed 19 September 2024.

For an account of Blazer’s ‘covert operations’ at the London Olympics see Bensinger (n 15) ch 15 147-153.

²⁶ Tomlinson (n 17) 145-146. Eckert emphasised that ‘the acceptance of bribe money by Havelange, Teixeira and Leoz was not punishable under Swiss criminal law at that time’, but emphasised that, as football officials, Havelange and Teixeira ‘should not have accepted any bribe money’, in essence damning ‘the morally and ethically reproachable conduct of both persons ... President Blatter’s conduct could not be classified in any way as misconduct with regard to any ethics rules ... [but] may have been clumsy because there could be an internal need for clarification, but this does not lead to any criminal or ethical misconduct’, ‘Statement of the Chairman’ (n 15) 3 and 5. Havelange’s reputation had also been shredded the previous year when the Swiss Federal Court revealed that Havelange ‘received at least 1.5 million Swiss francs (\$1.53 million) while Teixeira, who was at one time his son-in-law, was paid at least CHF 12.4 million (\$12.64 million)’, CNN,

Blatter was even re-elected after the Zurich arrests by using FIFA's resources to buy NFA votes once again, and turning a blind eye to corruption in local associations unless it threatened his own position. He also claimed that these corrupt practices were not FIFA's responsibility but organised by the four indicted CONCACAF presidents who had already been banned by the audit and ethics committee he had set up in 2003/4.

Blatter and his cronies were therefore initially able to avoid the worst consequences of the 2015 crisis, but it did expose the embedded malpractices of a corrupt generation of FIFA personnel, subject the organization to intense criticism from its stakeholders, and force the FIFA leadership to initiate further internal reforms with significant long-term consequences.

D. Reforming FIFA – Processes, Changes and Outcomes

(i) Pre-2015

FIFA had appointed an Independent Governance Committee (IGC) in 2011 to continue and legitimize its reform programme, in response to the allegations of scandal and corruption generated by the Qatar decision. It was convened by Mark Peith (Basel University) and included legal and compliance experts, and 'stakeholders' representing associations, clubs, players, and commercial partners. Its first report in 2012 claimed that the 'structure and processes' of the existing Ethics and Audit Committees needed to be upgraded through 'the establishment of independent and professionally competent judicial bodies led by internationally renowned experts in their field';²⁷ which led to its replacement by an Ethics Committee with broader powers.

Its final report in 2014²⁸ attributed FIFA's failures to its dual role as a financial and regulatory institution that generated conflicts of interest between it and its member associations that produced 'serious independence issues ... [and] principal-agent problems'; as well as a lack of adequate ethical guidelines within FIFA alongside personal dishonesty and 'woefully insufficient

'Swiss court: Former FIFA president Havelange took \$1.5M in bribes', 12 July 2012
<<https://www.cnn.com/2012/07/11/sport/football/football-havelange-teixeira-fifa-bribes/index.html>>
accessed 19 September 2024.

²⁷ Independent Governance Committee (IGC), *FIFA Governance Reform Project: First Report by the Independent Governance Committee to the Executive Committee of FIFA* (2012), at 7
<https://baselgovernance.org/sites/default/files/2019-01/first_report_by_igc_to_fifa_exco.pdf> accessed 10 December 2023. The IGC was identified as the first of three 'false dawns' that from 2011-2015 undermined any attempts at genuine internal reform; see Dan Hough and William R Heaston, 'The Art of Missing the Point: FIFA and the Control of Corruption' in Ina Kubbe and Annika Engelbert eds, *Corruption and Norms: Political Corruption and Governance* (Palgrave Macmillan Cham 2018) 339-340
<https://link.springer.com/chapter/10.1007/978-3-319-66254-1_15> accessed 20 June 2024.

²⁸ Independent Governance Committee (IGC), *FIFA Governance Reform Project: Final Report by the Independent Governance Committee to the Executive Committee of FIFA (the "Peith" Report)* (2014)
<https://baselgovernance.org/sites/default/files/2019-01/final_report_by_igc_to_fifa_exco_en.pdf> accessed 10 December 2023.

systems and controls'. Peith added that these weaknesses were compounded by the lax rules and regulations and 'lack of legal jurisdiction' applied to sporting organizations under Swiss law, and the fact that [FIFA's] Congress left decisions 'to the discretion' of the leadership.²⁹ It also reaffirmed the need for resources to enforce a new Code of Ethics based on best practice models of 'corporate and regulatory governance principles'.³⁰

(ii) Post-2015

The pre-2015 recommendations for reform were then used to guide the post-2015 reforms. The 24-man ExCo was replaced by the Council of 37 members in 2016, including 10 additional NFA representatives, and was supplemented by a 'Bureau of the Council' made up of the President and seven Confederation delegates to take day-to-day decisions. The Ethics and Audit Committees were given additional responsibilities, supported by supervisory and investigative bodies and were appointed by and answered to Congress rather than the Council, the ExCo's successor. Selecting World Cup host nations was transferred from the ExCo to Congress, and a Development Committee was set up to supervise the use of grants by the NFAs. The number of Standing Committees had increased to 26 by 2014 but was reduced to seven to cut administrative costs.

Comparison of the statutes finalised in 2021 with those of 2001 demonstrates numerous significant changes. They tightened the institutional grip of the organization's inner circle(s). The FIFA Council, not its Standing Committees, was now able to manage the allocation of commercial rights; the General Secretary's position was weakened as the president became more powerful; Congress now met annually not biannually, but with no increased influence; the disciplinary committee was replaced by the Ethics Committee; and the NFAs were allocated responsibility for the legal and company structure of clubs, though with very vague criteria as to the latter's conduct.³¹

FIFA's financial and auditing systems do now meet international standards. Its external Auditors now report to Congress, not the Council, it publishes its accounts and staff salaries and bonuses, and has set up Governance, Audit and Compliance, Review, and Compensation Committees, elected by and reporting to Congress, that review FIFA's activities, conduct investigations and set salaries at all levels.

²⁹ *ibid* 3 and 4.

³⁰ IGC (n 28) 6.

³¹ The comparison is based upon FIFA's 2001 and 2021 Statutes: FIFA, *Regulations Governing the Application of the Statutes – Standing Orders of the Congress*, 7 October 2001, 'FIFA 2001 Statutes ziirpjsxghztmql28x9xo.pdf' downloaded 19 September 2024, from FIFA website (inside.fifa.com, Regulations Archive – FIFA Statutes); FIFA, *FIFA Statutes May 2021 Edition* <<https://digitalhub.fifa.com/m/7e791c0890282277/original/FIFA-Statutes-2021.pdf>> accessed 12 October 2023.

Further, Infantino's ability to tighten his grip on FIFA's structure was reinforced at FIFA's 74th Congress in Bangkok in 2024. Here Congress passed revised Statutes that re-introduced 35 committees and 'expert' panels (Article 39); downgraded the status of the Secretary General – no longer a CEO, but directly answerable to the President (Article 37); and confirmed the everyday influence of the Bureau of the Council - comprising the President and the six Confederation presidents - within the FIFA decision-making process (Article 38).³² Thus Infantino, who had sat on FIFA's 13-man 2016 Reform Committee which reduced the number of Standing Committees from 26 to 9, and championed transparency as 'the first line of defence against corruption',³³ has now undermined the reforms that he had purported to support as he manoeuvred his way towards the FIFA presidency.

Infantino's 'landmark reforms' and 'transformational restructuring',³⁴ may indeed have created the formal rules and procedures needed for real change, but FIFA's post-crisis behaviour, as the IGC had earlier warned, suggests that they still left '... unanswered questions ... [as to] whether 'public confidence in the integrity of FIFA be assured without continuing external and independent oversight'.³⁵

We will address these questions in the sections that follow.

3. *Explaining the Crisis: a Theoretical Framework*

We have just seen how FIFA's early leaders enriched themselves with impunity until the FBI/DoJ intervention in 2015, and how their subsequent reforms still enable them to extract massive rewards by asserting their right to freedom from external political controls, and retaining the sole authority to appropriate and use the income derived from international football tournaments. We will now provide an interdisciplinary theoretical framework that explains these events by identifying the strengths and weaknesses of the accountability mechanisms and regulatory regimes that govern its internal relationships.

³² For the proposed reforms see FIFA, 9. *Proposed Amendments to the FIFA Statutes pdf* <https://cargo.fifa.org/7c46bc393c9dcf54e3ebdf7483753604d8ff91b81798d79441/download?download_token=BAhJIiljN2YwNGI2My1iZTA4LTRmMWQtYjkwYy05ZDk1MmJkYmZiZTcGOgZFRg%3D%3D--d24243f1d099fa8a46c1aff81a4efa35ac0ddf5e&file=9.+Proposed+amendments+to+the+FIFA+Statutes_Enclosure.pdf> accessed 17 May 2024.

³³ 2016 FIFA Reform Committee Report (December 2, 2015), 6 <<https://digitalhub.fifa.com/m/333cf8a055b70cf7/original/mzzxqw0dabgx8ljmhxwr-pdf.pdf>> accessed 18 May 2024.

³⁴ FIFA 2.0. (n 10) 6-7.

³⁵ IGC (n 28) 7.

We will first identify the principles that should govern the legal and regulatory frameworks that would enable ISOs to protect their sport's integrity, though not allowed the 'absolute autonomy' that would enable them to abuse their authority with impunity.³⁶ We will then identify the limits of the legal systems that govern its operations, then use organization theory to show how its dual role as a financial and regulatory institution produced the 'serious independence issues ... [and] principal-agent problems' identified by Pleith in the final IGC report; and conclude with a review of the limitations of the regulations that govern its inter-agency relationships that should be based on enforceable collective rules that enable stakeholders to impose 'credible commitments on each other',³⁷ but clearly fail to do so.

A. Regulating Rule-Governed Organizational Systems: Agency Relationships in Liberal Democratic Systems

Everyone depends on large-scale political, economic, and civic organizations (or 'agencies') governed by a legal system that gives them the authority and resources they need to control and finance their activities, and make binding contracts with their suppliers and customers, but also enable their stakeholders to sanction them if they fail. Institutional theorists identify the different types of processes and legal systems that govern these relationships in modern political, economic, and civic organizations, as well as the conflicts of interest that threaten their stability, and the dynamic processes that continuously transform them.³⁸

The stability of the global system therefore depends on the enforceability of the rules that obliges all liberal institutions to respect national sovereignty, individual freedom and equality, open competition, and transparent and arms-length contracting. Legal scholars focus on the rules and regulatory mechanisms that sustain these processes: political scientists and economists on the democratic processes and market mechanisms that govern state agencies and for-profit firms; while organizational sociologists focus on the more diverse processes that govern 'civic' or 'not-for profit' organizations like ISOs, as well as their 'inter-organizational relationships' with states and firms.³⁹

³⁶ Weatherill (n 4).

³⁷ Oliver E Williamson, 'Transaction Cost Economics: The Comparative Contracting Perspective' (1987) 8 *Journal of Economic Behavior & Organization* 617-625.

³⁸ Knight (n 6).

³⁹ These issues are summarized in EA Brett, *Reconstructing Development Theory: International Inequality, Institutional Reform and Social Emancipation* (Palgrave Macmillan 2009); and E A Brett, 'Understanding Organizations and Institutions' in Dorcas Robinson, Tom Hewitt and J. Harriss (eds), *Managing Development: Understanding Inter-Organizational Relationships* (Sage 2000) 17 and 20.

All ISOs are formally committed to these principals, but Hirschman and Paul's seminal works on 'exit' and 'voice'⁴⁰ help us to identify the weaknesses of the agency relationships that have enabled FIFA's elites to evade these obligations. They recognise that stakeholders and agencies depend on each other but also have conflicting interests, because the former wish to pay as little as possible for what they receive, while the latter would prefer them to pay more. Thus, agencies cannot be expected to produce cost-effective services unless their stakeholders can 'exit' to another supplier or influence their behaviour by using 'voice' in formal representative institutions and/or 'through some form of participation or articulation of protest [or] feedback'.⁴¹

Their ability to do this then depends on the type of service that they are receiving and the institutional arrangements that prevail in different types of society. Agents dominate stakeholders in authoritarian societies and command economies; liberal societies try to balance their interests by using competitive markets to force agencies to adopt least-cost solutions, and representative institutions to negotiate mutually beneficial agreements. We now take these rules and practices for granted, but they only exist because subordinated classes conducted the revolutionary campaigns that eventually forced the authoritarian elites to recognise their right to maintain the representative organizations they need to assert their rights.

Further, while liberal systems do give stakeholders the *formal right* to monitor and sanction the agencies that they depend on, their *substantive ability* to do so can never be guaranteed. Thus, while the 'agency relationships' between stakeholders and agents 'may be reciprocal,' they are likely to be threatened when 'the [stakeholder] cannot perfectly and costlessly monitor the agent's action and information',⁴² and the agent is incompetent or 'given to opportunism', or malfeasance.⁴³ Corrupt or incompetent organizations attempt to maximise their interests at the expense of their stakeholders in even the best-managed democracies so stakeholders can only safeguard their own interests by maintaining political parties and interest groups with the ability to monitor their behaviour, oblige their governments to enforce the law, and 'exit' them if they fail,⁴⁴ and subject their organizations to market competition.⁴⁵

⁴⁰ Albert O Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press 1970); and Samuel Paul, 'Accountability in Public Services: Exit, Voice and Control' (1992) 20 *World Development* 1047-1060.

⁴¹ Paul (n 40) 1049; also see Hirschman (n 40) 30-31.

⁴² John W Pratt and Richard J Zeckhauser (eds), *Principals and Agents: The Structure of Business* (Harvard Business School Press 1985) 2-3.

⁴³ Oliver E Williamson, 'The Economics of Organization: The Transaction Cost Approach' (1981) 87 *American Journal of Sociology* 548, 553.

⁴⁴ EA Brett, 'Representation and Exclusion in Partial Democracies: The Role of Civil Society Organizations' (2017) 53(10) *Journal of Development Studies* 1539-1544.

⁴⁵ Brett, *Reconstructing Development Theory* (n 39) 11 and 38.

B. Agency Relationships in Civic Organizations

We have seen that effective organizational performance depends on the ability of stakeholders to use exit or voice to hold all agencies to account, and that these relationships operate very differently in states, markets and civic organizations. Hirschman claims that using exit as opposed to voice reflects a ‘fundamental schism ... between economics and politics. Exit belongs to the former realm, voice to the latter’;⁴⁶ but in reality, they all use both exit and voice, though in different ways. For-profit firms are dominated by self-interested competition for products, customers, or jobs that forces them to deliver cost-effective services and discipline their labour force,⁴⁷ but they also need to listen to their shareholders, staff and consumers. Rulers can be ‘exited’ in regular elections, but then depend on open debate or ‘voice’ to negotiate settlements between conflicting interests. Most civic organizations have to compete with each other for donations or volunteers, but also need to consult their beneficiaries who can leave them if they fail.⁴⁸

The stability of each sector and the international system then depends on the existence of a pluralistic global order that enables agencies to supply each other with essential services, respect each other’s autonomy, and respond to their shareholders, staff, and consumers. These processes must operate at local, national, and global levels and depend on:

... an over-arching ethical order in which each agency ‘has rights in so far as ... [it] has duties, and duties in so far as ... [it] has rights’;⁴⁹ and a division of labour based on incentive and accountability systems that provide each agency with resources while obliging it to supply the rest with its own products in exchange.⁵⁰

However, many ISOs have been able to evade these constraints because of their monopolistic control over the immense incomes derived from international tournaments. They do claim to be not-for-profit organizations motivated by mutual interest that are accountable to their members who can use voice to influence their decisions but cannot exit to another organisation. They do have the right to elect leaders, but their organizations do not have to compete for funds, unlike firms and NGOs, and have been able to use these resources to control and sanction their stakeholders and ‘capture’ their democratic processes.

⁴⁶ Hirschman (n 40) 15.

⁴⁷ Armen A Alchian and Harold Demsetz, ‘Production, Information Costs and Economic Organization’ (1972) 62 *The American Economic Review* 777-795.

⁴⁸ E A Brett, ‘Voluntary Organisations as Development Agencies: Theorizing the Problem of Efficiency and Accountability’ (1993) 24(2) *Development and Change* 269-303; see also the seminal work of Robert Chambers, notably *Rural Development: Putting the Last First* (Longman 1983).

⁴⁹ GW Hegel, *The Philosophy of Right* (1821/1967) 109.

⁵⁰ Brett, *Reconstructing Development Theory* (n 39) 84.

We can now review the legal literature that exposes the limitations of the legal rules and practices that govern FIFA's activities as a wealthy global corporation.

C. The Legal Regulatory Framework

We have seen that the effectiveness of the legal framework governing world football depends on two principles. First, that football's agencies should be able to protect themselves from inappropriate political interference from corrupt governments, but good governments should be able to punish them if they engage in corrupt or opportunistic behaviour.⁵¹ Second, the efficacy of the framework depends on two variables: the quality of the formal internal and external rules and procedures themselves; and the effectiveness of the actual organizations that must exist to enable its stakeholders and regulatory authorities to monitor and sanction their behaviour.

However, we have also seen that FIFA's ability to use the principle of autonomy – whether in relation to human rights issues or outright criminality – has allowed it to shield its leaders from external juridical processes, as Hylton points out,⁵² and still facilitates very problematic behaviour at every level of the game, as an important body of legal scholarship has shown.

Duval and Heerdt have used the FIFA case to address the many governance crises within ISOs given 'the mounting recognition' that their 'wide and administrative legislative powers ... must be checked by stricter human rights responsibilities'.⁵³ They also recognise that FIFA, as a 'transnational private organization' remains for the most part beyond the reach of external legal bodies.⁵⁴ Lewandowski suggested that reformers should focus upon the rights of individual sportspeople and athletes, supported by EU law, to establish boundaries curtailing the regulatory reach and autonomy of federations.⁵⁵

In 2023 organisers of the European Super League attempting to set up an exclusive cross-national competition did challenge, at the European Court of Justice (CJEU), FIFA's and UEFA's right to reject the proposal. The CJEU ruled that the ability of FIFA and UEFA to control new

⁵¹ On the consequences of 'bad governance' and the bribe-taking of 'corrupt politicians and officials' see *ibid* 264.

⁵² J Gordon Hylton, 'How FIFA Used the Principle of Autonomy of Sport to Shield Corruption in the Sepp Blatter Era' (2017) 32 *Maryland Journal of International Law* 134, 136.

⁵³ Antoine Duval and Daniela Heerdt, 'FIFA and Human Rights: a Research Agenda' (2020) 25 *Tilburg Law Review* 1, 1. They add: '... it seems that very few external judicial avenues are available for those that would like to challenge FIFA's human rights policies and request compensation for the harm they may have suffered'.

⁵⁴ *ibid* 10.

⁵⁵ Wojciech Lewandowski, 'The Implications of the Recent Jurisprudence of the Court of Justice of the European Union for the Protection of the Fundamental Rights of Athletes and the Regulatory Autonomy of Sporting Federations' (2020) 25 *Tilburg Law Review* 55.

football competitions was evidence that they ‘both hold a dominant position, or even a monopoly, on the relevant market’ (para 139) that ‘constitutes abuse of a dominant position’ (Article 102 TFEU), and did not comply with EU competition law.⁵⁶ However, as Lavery and others point out,⁵⁷ the CJEU acknowledged the legitimacy of FIFA’s claims that football rules were needed to promote equality of opportunity and sporting merit – so ensuring the homogeneity and coordination of football’s competitions and its league structures - provided that ‘sporting associations must at all times strike a balance between preserving the integrity of sport whilst ensuring effective competition within their market’. This would comply with EU competition law, but the CJEU observed that FIFA’s and UEFA’s rules did not meet these criteria.

These rulings would allow other groups or individuals to challenge FIFA’s monopolies, but FIFA could also reassert its authority by changing its own rules to meet the EU criteria, while it is not clear whether they could be used by agencies or individuals beyond the EU.

The criticisms generated by labour and human rights abuses in the Qatar 2022 World Cup have also raised complex questions about FIFA’s willingness and ability to enforce the formal commitment to human rights included in its post-2016 statutes. Bützler and Schöddert recognised that their inclusion ‘exemplifies how transnational sports law (*lex sportiva*) ... can be analyzed as a process of emergent constitutionalization’ that marks a decisive evolutionary step in the way sport-related disputes are settled by the Court of Arbitration for Sport (CAS)’.⁵⁸ They also identify a complex and impressive list of the variables that are likely to limit ‘the enforceability of FIFA’s self-evolving constitution’, and especially the potential tensions generated when FIFA’s internal rules ‘collide with (local) legal interests of sovereign states’ since ‘no uniform global legislator [exists] to

⁵⁶ European Court of Justice, Judgment of the Court (Grand Chamber) 21 December 2023 (Provisional text), paras 139 and 258

<<https://curia.europa.eu/juris/document/document.jsf?text=&docid=280765&pageIndex=0&doclang=en&mode=doc&dir=&occ=first&cid=5579085>> accessed 15 May 2024.

⁵⁷ Niall J Lavery, Jennifer P M Marsh, Michal Cokon, Covadonga Corell Perez de Rada Aurelija Grubytė, ‘Competition Law Leaves its Studs in on UEFA and FIFA’, 1 February 2024

<<https://www.klgates.com/Competition-Law-Leaves-its-Studs-in-on-UEFA-and-FIFA-2-1-2024>> accessed 1 August 2024. Thanks to Mario Theodosu for this reference.

⁵⁸ Bodo P Bützler and Lisa Schöddert, ‘Constitutionalizing FIFA: Promises and Challenges’ (2020) 25 *Tilburg Law Review* 40, 40. In Qatar, the threat from FIFA to discipline players who wore OneLove armbands also exposed the contradictions and hypocrisy of its claimed commitment to human rights. The 2022 edition of its statutes states that ‘FIFA is committed to respecting all internationally recognised human rights and shall strive to promote the protections of these rights’. These 20 words, constituting FIFA’s full Statutes declaration on ‘Human rights’, can be seen in the context of Qatar 2022 as little more than tokenism, a weak and ineffectual declaration squeezed into its own section following an extended list of objectives including the promotion of the game globally ‘in the light of its unifying, educational, cultural and humanitarian values’. See FIFA, *FIFA Statutes May 2022 edition*, 10 and 11

<https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf> accessed 4 January 2024.

enact such rules [while] states are typically in competition with one another to attract powerful private transnational actors'. They therefore emphasise the role of 'societal forces such as the CAS, NGOs and other non-state actors *over and above* state actors [that] are less consumed by the territorial logic that governs public actors'.⁵⁹

The decisive intervention of the US authorities in 2015 has produced significant changes in the legal and juridical processes generated by the relationships between all private transnational organizations and national states. Thus, Struebing identifies the 'important questions of extraterritorial jurisdiction and substantive law' raised by the US prosecutions of FIFA-related individuals.⁶⁰ Also, Nico Krisch notes that the case has become a watermark moment in consideration of the jurisdictional reach of the legal apparatus of a single state and the role of extraterritorial regulation in global governance.⁶¹

The work of these legal scholars therefore exposes the limitations of FIFA's and other ISO's claim that its existing rules and practices conform to global best practice, question why its stakeholders have been unable to oblige it to provide them with cost-effective services for so long, and help us identify what needs to be done to strengthen the ability of stakeholders to hold the likes of FIFA to account.

D. *Agency Relationships in World Football*

Football emerged in Europe in the 19th century, based on concepts of universal access, 'fair play' and sportsmanship. By the mid-20th century it had been globalised and regulated by FIFA, six Continental Federations, and the NFAs that manage international, regional, and national tournaments and local amateur and professional leagues and clubs. This global system with

⁵⁹ *ibid* 53; Bützler and Schöddert also argue that attempts by transnational societal forces, including arbitration courts such as the CAS, to enforce these rules, could 'suffer less severely from this sovereignty limitation *if* [they] become increasingly recognized as part of a genuinely transnational *ordre public*', but will also be threatened by 'regime specific rationalities and interests, above all financial corruption and corruption of power'. Their view is confirmed by Rugueiro who writes: '... trying to hold states and private entities responsible for human rights abuses to which they have contributed jointly is exasperatingly difficult. The non-existence of binding international rules on private entities diverts the discussion towards state responsibility and highlights the limited possibilities to activate human rights enforcement mechanisms'. See Raquel Rugueiro, 'Shared Responsibility and Human Rights Abuse: The 2022 World Cup in Qatar' (2020) 25 *Tilburg Law Review* 27, 38.

⁶⁰ Jake Elijah Struebing, 'Federal Criminal Law and International Corruption: An Appraisal of the FIFA Prosecution' (2018) 21 *New Criminal Law Review: An International and Interdisciplinary Journal* 1, 56.

⁶¹ Nico Krisch, 'Jurisdiction Unbound: (Extra)territorial Regulation as Global Governance' (2022) 33(2) *European Journal of International Law* 481, 490. Krisch observes too that 'where transnational financial crime is concerned ... US anti-corruption law has been a vanguard ... and its broad jurisdictional approach has been vindicated by the Organisation for Economic Co-operation and Development's Anti-Bribery Convention'.

standardised rules enables millions of players to enjoy the game across the world, but its different kinds of leagues and tournaments depend on very varied management systems, resources, and accountability mechanisms.

Amateur clubs and leagues are managed by volunteers; their players and supporters are motivated by ‘a love of the game’ not money. Owners usually select their managers and can replace them or exit them if they are dissatisfied. Professional leagues and clubs employ permanent staff and players and depend on income from sales, owners, and/or sponsors to cover their costs. They are characterised by large differences in wealth and organizational structure. The leading clubs buy the best players and dominate their leagues and provide a tiny minority of players with million-dollar incomes, although (in 2016) 45% of players in Europe’s lower leagues earned less than US\$ 1,000 per month,⁶² while most players earned far less in poorer countries.

The NFAs regulate, monitor and sanction the behaviour of their leagues, clubs, and players, and manage international tournaments and national leagues and teams. The Blatter-led model of FIFA in the year before his departure sought to unify the whole system. Its 2014 Statutes allowed it to oblige the Confederations (Article 20.3a) and NFAs (10.4a) to comply with its rules and decisions. FIFA’s leadership – the President, the Executive Committee (or ExCo, now the Council) - is elected by delegates from the Confederations and the NFAs but then exercises almost unlimited control over policy, the appointment of its professional staff, and its finances. The Statutes ensure that all international matches and competitions depend on its ‘prior permission’ (Article 82.1); enable it to blacklist FAs and clubs, and adjudicate disputes between clubs and players, who are denied access or ‘recourse to ordinary courts of law’ (Article 68.2). FIFA itself selects countries for global competitions, and controls all of the associated financial rights and income (Article 78.1); and bans third-party interference, such as government involvement or influence, in the affairs of the NFAs (Article 13.1.i). It claimed that its decisions, unchallengeable in any ‘ordinary courts of law’ (Article 68.2), are subject only to appeals to CAS (Article 66.1).⁶³ CAS is supposed to operate as a wholly independent judicial institution, and has its own Code of Sports-related Arbitration to apply to proceedings, reaffirmed in FIFA’s 2022 Statutes (Article 56): ‘FIFA recognises the independent

⁶² FIFPro (World Players’ Union), *2016 FIFPro Global Employment Report: Working Conditions in Professional Football* (2016) 6 <<https://fifpro.org/media/xdjhlwb0/working-conditions-in-professional-football.pdf>> accessed 20 June 2020.

⁶³ FIFA, *FIFA Statutes, August 2014 edition*, 17, 10, 57, 49, 54, 13, and 47 <<https://dirittocalcistico.it/wp-content/uploads/files/fifastatuten2014.pdf>> accessed 15 May 2024.

Court of Arbitration for Sport'. Further, CAS 'shall primarily apply the various regulations of FIFA and, additionally, Swiss law'(Article 56.2).⁶⁴

FIFA's ability to create a system of rules and resources that have enabled it to insulate itself from political interference, has enabled it to turn football into perhaps the most successful sporting enterprise in the world. However, we have seen that its crisis-ridden history also suggests that the institutional arrangements that have enabled it to exploit its dual role as membership organization and business enterprise since the 1980s are not fit for purpose with consequences we now explore in section 4.

4. *Evaluating the Post-2015 Reform Programme*

We have seen that the accountability and agency relationships created by FIFA's post-2015 reforms have probably eliminated much of the most egregious behaviour that characterised the Blatter era, but have not eliminated its own authoritarian leadership, excessive salaries and benefits, sweetheart deals, and misuse of resources, and those of the Confederations and NFAs.⁶⁵ We will now provide a detailed review of its current arrangements, focusing on the internal procedures that still enable the FIFA leadership to 'capture' the democratic processes that should enable its leagues, clubs, players and fans to hold it to account; to exercise its monopolistic right to control the market mechanisms that enable the organization to maximise its income from owners, sponsors and the media; and to sustain the political autonomy that enables it to evade the legal and ethical obligations that should be enforced by nation states.

A. *Democratic Failures and Political Capture*

Democratic rulers are allowed to enforce their policies between elections, but their ability to do so is constrained by the rule of law, standing Parliaments, directly elected representatives, autonomous political parties, interest groups and an independent media. These complex structures and processes

⁶⁴ FIFA, *Court of Arbitration for Sport* (FIFA 2024) <<https://inside.fifa.com/legal/court-of-arbitration-for-sport>> accessed 15 May 2024; and, for the actual Article 56, see FIFA, *FIFA Statutes: Regulations Governing the Application of the Statutes; Standing Orders of the Congress, May 2022 edition*, 58 <https://digitalhub.fifa.com/m/3815fa68bd9f4ad8/original/FIFA_Statutes_2022-EN.pdf> accessed 15 May 2024.

⁶⁵ For a comprehensive review of the limitations of the IGC-led reforms, see Roger Pielke, 'How Can FIFA be Held Accountable?' (2013) 16 *Sport Management Review* 255, 260; and Roger Pielke, *An Evaluation of the FIFA Governance Reform Process of 2011-2013* (2014) 197 <https://sciencepolicy.colorado.edu/admin/publication_files/2015.11.pdf> accessed 15 May 2024. For a critical review of the reforms, we draw too on Alex Phillips, 'A New Deal for European Football', *SportsBusiness*, 25 May 2021; and Alex Phillips, 'System Change: Reform of the International Sports System', presented at Play the Game 2022 conference, 30 June 2022 <<https://www.playthegame.org/media/xkndyjmw/evaluation-of-play-the-game-2022.pdf>> accessed 15 May 2024.

enable citizens to hold them to account by subjecting them to constant surveillance and allowing opposition movements to promote leadership and policy alternatives, and ‘exit’ them if they fail. However, while FIFA’s President is subject to periodic elections, its democratic structures and procedures fail to provide the football community with a comparable ability to hold him and his associates to account.

We saw in section 3D that NFA delegates to Congress do have the formal right to guide, monitor, criticise, and even replace their leaders, while its complex and costly committee structure should enable them to use ‘voice’ and play an active and independent role in decision-making, governance, and dispute resolution. However, we also saw that these formal rights do not impose effective constraints on the leadership because many of the NFA delegates who occupy these roles are not elected by clubs or players, but by weak or corrupt NFAs, and also depend on the leadership for information and resources.

Further, Congress elects the President, authorises major policy decisions, and now also chooses World Cup venues and appoints the Independent and Judicial Committees, but the President still chairs its meetings, sets the agenda, provides its policy briefings, and makes the keynote address. Congress only meets annually for a few days and, by 2023 (in Rwanda) and 2024 (in Thailand) delegates numbered approximately 2,000 and 3,000 respectively, with the 211 member associations/NFAs each having just a single vote on Congress matters/decisions. It is more showcase than democracy, so cumbersome a system that its members cannot monitor FIFA’s staff or executive committees. The reforms may have increased the remit of the elected delegates to its Executive, Standing, Independent and Judicial committees and the FIFA Council, but it normally meets only twice a year, though it met twice face-to-face in Rwanda and Saudi Arabia and three times by videoconference in 2023.⁶⁶ The Council also delegates day-to-day authority to the Bureau of the Council, dominated by leaders of the Confederations.

These reforms have given elected delegates better opportunities to influence policy, while the inclusion of external experts on the Independent and Judicial Committees, elected by Congress, not the Council, could give them the autonomy they need to hold the leadership to account. They have, though, failed to address two critical weaknesses – the ability of opportunistic elites and governments to control the Confederations and NFAs, and the fact that the delegates from the NFAs receive generous retainers and allowances, and that most of their associations depend directly on FIFA’s largesse.

⁶⁶ See FIFA, *Governance: FIFA Council Meetings in 2023* <<https://inside.fifa.com/about-fifa/official-documents/annual-report-2023/governance/fifa-council-meetings>> accessed 24 April 2024.

The IGC reforms had assumed that genuinely independent and expert governance, audit and judicial committees, would be able to expose and punish even its most senior leaders. FIFA nevertheless fell short when compared to the ‘government systems of modern enterprises’ that ‘address such principal-agent problems by including independent directors on the Board’.⁶⁷ Leadership at every level has continued to evade scrutiny and abuse trust, a consequence of the weaknesses of FIFA’s democratic processes that should enable stakeholders to monitor and sanction the organization. Alexandra Wrage, an expert on corruption issues who resigned from the IGC very early, has amplified this core flaw in FIFA governance: ‘At least with corporations, the shareholders can ultimately organize and declare that they’ve had enough. In the world of soccer governance, there are no shareholders. The fans, players and even the clubs have no voice’.⁶⁸ Wrage also points out how Infantino, like Blatter before him, attracted delegates’ votes in 2016 by promising NFAs large grants, ensuring that the NFAs ‘voted him in as President’. And it became clear months before the 2023 Rwanda Congress that Infantino would be re-elected unopposed as President despite the widespread criticisms generated by his handling of the Qatar World Cup. Increasing representation on FIFA’s executive body, the Council, has not enhanced its democratic profile.

FIFA’s Special Congress in February 2016 did introduce rules that were designed to protect the independence of the supervisory committees. However, they then challenged Infantino’s salary and expenses claims, and his interventions in Africa and Russia, so they were ‘defanged’ by its Annual Congress just months later when Infantino returned hiring and firing powers to the 37-member FIFA Council that was heavily under his control.⁶⁹ The Congress also ousted the chairmen of several Committees, so some of their members, including Scala, head of the Audit Committee, Maduro, head of the Governance Committee and two of its members, resigned in 2016 because they ‘concluded that FIFA cannot reform from within’ because, as ‘a political cartel’, Infantino’s ‘...

⁶⁷ IGC (n 28) 3.

⁶⁸ Alexandra Wrage, in Emily Primeaux, ‘A passion for fighting corruption: an interview with Alexandra Wrage’, *Fraud Magazine*, July/August 2016 <<https://www.fraud-magazine.com/article.aspx?id=4294993642>> accessed 8 January 2022.

⁶⁹ We should note that members of the FIFA Council, bar the president, have continued to receive an annual ‘compensation’ for their attendance at meetings since 2016: \$US\$ 250,000 for elected members, US\$ 300,000 to the Senior Vice-President, and to the Vice-Presidents who are also confederation presidents. At an absolute minimum, then, annual compensation to the members of the FIFA Council is around \$US 9,300,000, though FIFA’s Annual Report for 2023 reports, including appropriate daily expenses, total outgoings for the year of \$US 12,883,274; adding pension contributions made to some eligible members, that total reaches \$US 13,297,936. See FIFA, ‘Annual Report 2023 - Inside FIFA: Governance: Compensation’ <<https://inside.fifa.com/about-fifa/official-documents/annual-report-2023/governance/compensation>> accessed 15 March 2024. Such levels of compensation have inevitably underpinned the longevity of Council members, and their satisfaction with the leadership.

leadership ... does not answer to the court of public opinion', since its leaders depend 'for their survival on those whom they ought to reform'.⁷⁰

These weaknesses clearly require further reforms that we review in the following sections.

B. *Market Failures and Soft Budgets*

We can now question Infantino's claim that the 2015 reforms have indeed 'put its resources back into the game' rather than into their own salaries and expenses⁷¹ by documenting the relative shares of its total income that goes to its leadership, its staff, host nations, and the football community. We will then show that FIFA's dual role as a not-for-profit and commercial organization with monopoly powers produces a soft budget constraint that allows its leaders and staff to maximise their own incomes rather than their contribution to the game.⁷²

The resources going to support local associations have almost doubled since 2014, in response to the immense increases to FIFA's revenues in recent World Cup cycles. It exceeded expectations and earned \$7.5 billion in the 2019-22 commercial cycle and confidently predicted an increase to \$11 billion in the next.⁷³ 'Personal expenditure', though, has increased even faster. 'Football support' increased from US\$ 855 million in 2018, and 24% of its total budget, to \$2.5 billion and 39.5% of its 2019-22 estimated expenditure, and a decline in spending on Congress and

⁷⁰ Miguel Poiars Maduro, Navi Pillay and Joseph Weiler, 'Our Sin? We Appeared to Take our Task at FIFA too Seriously', *Guardian*, 21 December 2017 <<https://www.theguardian.com/football/2017/dec/21/our-sin-take-task-fifa-seriously>> accessed 16 January 2019. Their critique of FIFA leadership added that 'sport is ... governed by transnational private organisations. They regulate access to sports markets, and define and enforce their rules. Yet this regulation is not open to public participation, nor to any effective form of public scrutiny and accountability'. The FIFA president has consistently taken on a pro-active role in policy development, dealing directly with confederations and NFAs on World Cup scheduling and planning, with little explicit evidence of consultative processes underlying policy decision-making and announcements. In this way Infantino bypasses FIFA's own internal processes and is legitimated by the direct contact between himself and confederation presidents, helped along the way by, for instance, UEFA's own Statutes which recognise that 'the President shall represent UEFA', and that the President himself is also 'responsible for relations between UEFA and FIFA', see UEFA Statutes 2021, at 14 (Article 1 and 1.4.a) <<https://documents.uefa.com/v/u/OsXI2S7PUiUKy7gCop4Q5w>> accessed 1 March 2024.

⁷¹ FIFA (n 10) 7.

⁷² On aspects of soft budget, see Rasmus K. Storm and Klaus Nielsen, 'Soft Budget Constraints in US and European Leagues: Similarities and Differences', in Wladimir Andreff (ed), *Disequilibrium Sports Economics: Competitive Imbalance and Budget Constraints* (Edward Elgar 2015) 151.

⁷³ Graham Dunbar, 'FIFA targets \$11 billion in revenue through 2026 World Cup', AP News, 16 December 2022 <<https://apnews.com/article/world-cup-sports-qatar-3551b3dadc7c35a4f7b50ecbb69abec5>> accessed 9 January 2023. In its 2023-2026 budget cycle and its 2024 detailed budget, FIFA could confidently affirm a \$US11 billion revenue stream for the cycle, see FIFA, *A Look Ahead to 2023-2026*, available at <<https://publications.fifa.com/en/annual-report-2022/finances/2023-2026-cycle-budget-and-2024-detailed-budget/>> accessed 13 May 2024.

Rory Jones, 'FIFA set to exceed US\$6.44bn revenue target for 2019 to 2022 cycle' (28 February 2022), sportspromedia.com <<https://www.sportspromedia.com/news/fifa-finances-2021-revenue/>> accessed 10 July 2022.

Committees from US\$139 million in 2011-14 to US\$90 million in 2019-22. FIFA has celebrated these shifts as a major transformation of its mission, but the increased support for world football has also been accompanied in this period by an even larger increase in ‘Personnel’ expenditure, from US\$156 million to US\$708 million, so FIFA’s salaries, bonuses and expenses have also increased dramatically, while Infantino was paid US\$3.19 million in 2021/2022, increased in early 2024 to US\$4.67 million, a 33% pay-rise. Further, FIFA allocated a third of its income to ‘Event Expenditure’, notably for the World Cup, which it treated as a ‘contribution to the game’. This expenditure is used to fund many other important loss-making tournaments, but much of it goes to the extravagant expenses, allowances, and travel cost of its staff and delegates.⁷⁴

FIFA’s internal reforms, and the threat of public exposure, may therefore have reduced the corruption that characterised the Blatter era, but have failed to stop its insiders from appropriating the lion’s share of its growing income because its not-for-profit status and sole right to tournament revenues protects the organization from the controls imposed on private firms.

Market competition forces firms to minimise their costs and maximise the quality of their products, while the separation of ownership from control enables shareholders to oblige their staff to provide cost-effective services.⁷⁵ However, FIFA and its Associations’ media and advertising rights guarantees them billion-dollar incomes, they pay virtually no taxes, and host countries and its commercial partners carry the major costs of funding and managing actual events. Its internal democratic processes should enable clubs and players to force it to give them a fair share of this largesse, but its ability to use its guaranteed income to buy the unconditional support of its own staff and their delegates – so capturing its internal democratic processes - has subverted the ability of clubs and players to do so, as we have seen.

⁷⁴ Infantino’s package was revealed in a FIFA Financial Report, announced by the three-man compensation subcommittee. See Andrew Warshaw, ‘Infantino earns 33% pay rise to \$4.66 million’, *Inside World Football*, 18 March 2024 <<https://www.insideworldfootball.com/2024/03/18/infantino-earns-33-pay-rise-4-66-million/>> accessed 14 May 2024.

Figures cited in these comparisons are taken from financial reports of FIFA for 2012, 2014, 2018 and 2019-2022:

FIFA, *FIFA Financial Report 2012: 63rd FIFA Congress, Mauritius 30 and 31 May 2013*<<https://digitalhub.fifa.com/m/3f26ef44b339adce/original/kjichsqlvvjr43yyblau-pdf.pdf>>

FIFA, *FIFA Financial Report 2014: 65th FIFA Congress, Zurich 28 and 29 May 2015*<<https://static.poder360.com.br/2022/11/relatorio-anual-fifa-2014.pdf>>

FIFA, *FIFA Financial Report 2018* <<https://digitalhub.fifa.com/m/337fab75839abc76/original/xzshsoe2ayttyquuxhq0-pdf.pdf>>

FIFA, *FIFA 2019-2022 Revised Budget – 2021 Budget* <<https://digitalhub.fifa.com/m/582baac31867f75c/original/f8brxvwdb8nnpinqagg8-pdf.pdf>>

All four reports above accessed 15 May 2024.

⁷⁵ Alchian and Demsetz (n 47).

Further, FIFA does need to retain the support of its commercial partners by delivering popular tournaments, and avoiding the reputational damage caused by the 2015 scandals. Sponsors have, in some cases, attempted to use their ability to withdraw support from FIFA and other ISOs in the past.⁷⁶ Indeed, some – Hyundai, Coca Cola, and Visa – did speak out ‘strongly’, after the 2015 scandals, when Visa called for ‘swift and immediate steps to address these issues’ or ‘we will reassess our sponsorship’.⁷⁷ The scandals associated with the Qatar World Cup could have forced them to increase their attempts but this has not happened.

Thus FIFA’s ability to guarantee its sponsors and the media massive financial gains persuaded them to collude with its leadership right up until the 2015 crisis;⁷⁸ and the growing popularity of the major tournaments, now including the Women’s World Cup, has increased the competition between providers for sponsorship and television rights. Most of its former critics also sponsored the Qatar 2022 World Cup, as did new sponsors from China, India, Singapore, and Qatar itself, so FIFA’s income has continued to grow dramatically. Thus FIFA’s partners are very happy to accept Infantino’s claims at face value and compete even more actively for its largesse.

C. Regulatory Failures, Political Autonomy and Organizational Impunity

We know that modern organizations should be accountable to states that punish corrupt and/or opportunistic behaviour and ensure that they conform to a legal system based on ethical standards and juridical procedures that oblige them to maintain a ‘just’ relationship with their stakeholders. We saw in section 2 that football officials could exploit their stakeholders with something close to impunity until the 2015 crisis because (i) Switzerland’s ‘lax’ legal code and criminal justice system failed to punish their collusive contracting and abuses of authority, despite extensive press and academic evidence of wrongdoing;⁷⁹ (ii) the Confederations,⁸⁰ and NFAs were registered in national jurisdictions with very unequal levels of competence, integrity and incomes,⁸¹ and (iii) many leaders

⁷⁶ Johnson & Johnson also withdrew its sponsorship for the IOC because it believed that the bribery scandals over the Salt Lake City Olympic Games damaged its reputation. Mason, Thibault and Misener (n 4) 57.

⁷⁷ David Owen, ‘Sponsors pile pressure on Blatter’s FIFA in wake of arrests’, *insidethegames.biz* (2015). <[Sponsors pile pressure on Blatter’s FIFA in wake of arrests \(insidethegames.biz\)](https://insidethegames.biz)> accessed 6 March 2019.

⁷⁸ Bensinger (n 15). See too Conn (n 18).

⁷⁹ Lucien W Valloni and Eric P Neuenschwander, ‘The Role of Switzerland as Host: Moves to Hold Sports Organisations More Accountable, and Wider Implications’, in Gareth Sweeney (ed), *Transparency International, Global Corruption Report: Sport* (Routledge 2016) 321 <https://images.transparencycdn.org/images/2016_GCRSport_EN.pdf> accessed 8 September 2023.

⁸⁰ UEFA in Switzerland, Conmebol in Paraguay, AFC in Malaysia, CAF in Cairo, and Concacaf in the Bahamas (with its HQ in Miami, and administrative HQ in New York), and Oceania in New Zealand.

⁸¹ In 2022 UEFA’s annual revenue totalled Euros 4.3billion, Conmebol’s US\$441 million, AFC’s \$US169.9 million, CAF’s US\$125.2 million, Concacaf’s \$US62.2 million, and Oceania’s \$US22.1 million. Just three years earlier CAF was bankrupt and under the direct administration of FIFA. Confederation revenues are drawn from the financial reports of the six bodies, all accessed 14 May 2024:

and officials were colluding with corrupt politicians in weak states that have suppressed both press and academic freedom.⁸²

We can now evaluate the processes and outcomes of the changes in the *external* regulatory regimes before and after the 2015 crisis and their consequences for the agency relationships that now operate at the global, regional and national levels. First, we saw in Section 3B that FIFA's status as an ISO that asserted its right to ignore the demands of national states, placed it beyond the reach of external legal bodies until the changes in the US legal system enabled its juridical authorities to prosecute 'private commercial bribery by foreign nationals in connection with foreign organizations with very significant consequences'.⁸³

Thus the US courts forced FIFA to pay Mastercard more than \$90 million in damages for breach of contract in 2006;⁸⁴ convicted 25 Concacaf and Conmebol officials for racketeering and bribery;⁸⁵ and forced the Swiss Bank Julius Baer, and the Israeli Bank Hapoalim and its subsidiary Hapoalim (Switzerland), to pay more than \$109 million in penalties in 2020 for permitting money

UEFA Financial Report 2022/23 <https://editorial.uefa.com/resources/028a-1a2134203eb5-f59fe74100ae-1000/uefa_financial_report_2022-23_en.pdf> 5.

CONMEBOL Annual Report 2022 <https://cdn.conmebol.com/wp-content/uploads/2023/03/MEMORIA_2022_ING.pdf> 18.

AFC Financial Report 2022 <https://assets.the-afc.com/AFC_Congress/2023/AFC-Extraordinary-Congress-2023/AFC-Extraordinary-Congress-2023---Financial-Report-2022.pdf> 10.

CAF Revenue 2022 (Statista) <<https://www.statista.com/statistics/1418791/revenue-of-the-football-association-caf/#:~:text=The%20total%20revenue%20the%20Conf%C3%A9d%C3%A9ration,of%20soccer%20in%20Africa%20received%20>>.

CONCACAF <<https://projects.propublica.org/nonprofits/organizations/133605859>>.

OCEANIA 2022 Financial Report by OFC Football

<https://issuu.com/ofcfootball/docs/financial_statements_and_audit_report_-_oceania_fo> 5.

⁸² Jean-Loup Chappelet, (2016) 'Autonomy and governance: Necessary Bedfellows in the Fight against Corruption in Sport', in Sweeney (n 73) 16. See too, on the scale of corrupt administration across the world, the following chapters in Sweeney/Transparency International (n 73): Steve Menary, 'For the Good of the Game? Governance On the Outskirts of International Football', 65; James M Dorsey, 'Political Interference, Power Struggles, Corruption and Greed: The Undermining of Football Governance in Asia', 39; Chris Tsuma, 'Corruption in African Sport: A Summary', 44; Juca Kfoury, 'Impunity and Corruption in South American Football Governance', 52.

⁸³ Sofie G Syed, Hyatt M Howard and Harry Sandick, 'Circuit Upholds FIFA Convictions, Denying Extraterritoriality and Vagueness Challenges', 1 July 2020, in *Paterson Belknap: Trials and Evidentiary Rulings* <<https://www.pbwt.com/second-circuit-blog/circuit-upholds-fifa-convictions-denying-extraterritoriality-and-vagueness-challenges>> accessed 12 December 2023.

⁸⁴ Tomlinson (n 17) 144.

⁸⁵ David Conn, 'How the FBI Won 'the World Cup of Fraud' as Fifa Scandal Arrives in Court', *The Observer*, 6 November 2017; Graham Dunbar, 'FIFA Corruption Culture Exposed in Trials', *Chicago Tribune*, 22 December 2017 <<https://www.chicagotribune.com/90minutes/ct-90mins-fifa-corruption-culture-exposed-in-trials-20171222-story.html>> accessed 12 February 2020.

laundering involving FIFA and other regional associations.⁸⁶ However, the courts did accept that FIFA itself was not complicit in the process; indeed, FIFA was legally considered a victim and awarded more than \$200 million in restitution.⁸⁷

These cases have crucial implications for the regulation of all globalised corporations including ISOs, because the US, and, presumably, other court systems can prosecute agencies and individuals, even when their crimes have not ‘violated any laws in the countries where the majority of the conduct took place, but have violated fiduciary duties owed to [foreign] soccer associations’, even where ‘the relevant ties to the U.S. [only] consisted of wire transfers through U.S. bank accounts’.⁸⁸ This change arguably represents the most significant ‘external’ threat to the football authorities’ impunity since its inception, while the US authorities have claimed that their ability to bring FIFA ‘to account’, has also created important precedents for the US criminal justice system itself.⁸⁹

However, we should not over-estimate their reach and significance. The US authorities have the resources and commitment to perform this role, but they do not control offences committed in other less accountable jurisdictions, can only deal with criminal rather than legal but opportunistic behaviour, and often lack the information they need to identify highly sophisticated criminals who can conceal their crimes.

Second, Switzerland has tightened its own regulatory regime, and initiated its own investigations and trials, though they have involved interminable delays and ambiguous outcomes. Jerome Valcke, FIFA’s former Secretary General, and two co-conspirators, were only brought to trial in 2020, accused and acquitted of ‘aggravated mismanagement, and possible bribery, but only found guilty of repeated forgery of documents’. Valcke was only fined CHF 24,000 but asked to pay FIFA more than EUR 1.65 million to compensate it for the damages he caused them. The Swiss prosecutors also filed a case against their own Attorney General ‘on suspicion of breach of official secrecy’ involving informal communications with Infantino in 2022. A Discontinuation Order was issued the following year, clearing Infantino

⁸⁶ LexisNexis (2021) <https://www.lexisnexis.com/community/insights/professional/b/trends/posts/us-federal-prosecutors-show-red-card-to-swiss-bank-julius-baer-over-fifa-money-laundering-scandal>> accessed 14 October 2023.

⁸⁷ *Chicago Tribune*, 22 December 2021. Alex Phillips, former senior official at UEFA and an independent consultant, has the position of Administrator to the \$201million World Football Remission Fund.

⁸⁸ Syed, Howard and Sandick (n 83).

⁸⁹ *ibid.*

of his status as Accused, charged with criminal offences, listed as: ‘Incitement to breach official secrecy, abuse of office and favouritism’.⁹⁰

Third, FIFA’s reformed supervisory committees now claim the legal, and they believe, exclusive right, to act as the primary regulatory authority that resolves conflicts and punishes misdemeanours at all levels of the game, and to delegate similar powers to these agencies in the Confederations and NFAs, subject only to the CAS. These agencies failed before the crisis as we know, but were given significantly greater resources and powers in 2016 and have been able to identify and punish many high-profile individuals, including Blatter himself.

In December 2015 FIFA’s Ethics Committee found Blatter and UEFA (Union of European Football Associations) President Michel Platini guilty of misappropriating CHF 2million paid to Platini for work he did for Blatter between 1998 and 2002, without any formal authorisation from the FIFA authorities. They were banned from football for eight years, and fined CHF 50,000 (Platini) and CHF 80,000 (Blatter) respectively. The Swiss court tried the pair for fraud, in 2022, but the Swiss judge acquitted them, arguing that they may well have had a verbal agreement, and that ‘it was reasonable for the Frenchman to see his market value at CHF 1m a year given his status in the game – far more than his annual salary of CHF300,000 as a consultant at FIFA between 1998 and 2002.’⁹¹ However, the saga continued when the Office of the Attorney General of Switzerland (OAG), following on from the reception of the Federal Criminal Court’s (FCC) full verdict, filed an appeal in October 2022 calling for ‘a full annulment of the first-instance judgement’.⁹²

Embedded forms of corruption have also been exposed in the Confederations and NFAs. In 2015, for example, the Asian Football Confederation General Secretary Alex Soosay was accused of tampering with documents during a PWC audit in 2012, was suspended by the AFC and resigned,

⁹⁰ Pierre Bydzovsky, ‘Update on FIFA-related proceedings in Switzerland’, 15 June 2022, *Lexology*, Charles Russel Speechly <<https://www.lexology.com/library/detail.aspx?g=b0a03bb3-48fa-4ae2-a54f-353a31e44118>> accessed 15 May 2024. The Discontinuation Order was issued on 19 October 2023 and is available in English translation via *The Inquisitor* (paying subscribers only)

<<https://www.the-inquisitor-magazine.com/read-the-dubious-dismissal-order-in-the-case-of-fifa-president-and-ioc-member-infantino/>> accessed 27 August 2024; in para 26.7 it is noted that Infantino’s share of the costs of proceedings would be borne by the federal treasury, and that the ‘... waiver by the accused Gianni INFANTINO of compensation and satisfaction is to be noted’.

⁹¹ Sean Ingle, ‘Sepp Blatter and Michel Platini Acquitted of Fraud by Swiss Court’, *The Guardian*, 8 July 2022 <<https://www.theguardian.com/football/2022/jul/08/sepp-blatter-and-michel-platini-acquitted-of-fraud-swiss-court>> accessed 8 February 2023.

⁹² Andrew Warshaw, ‘Swiss prosecutors, still seeking blood, appeal acquittals of Blatter and Platini’, *Inside World Football*, 20 October 2022 <<https://www.insideworldfootball.com/2022/10/20/swiss-prosecutors-still-seeking-blood-appeal-acquittals-blatter-platini/>> accessed 21 August 2024. Any appeal against the FCC verdict would be heard by Switzerland’s highest judicial authority, the Swiss Federal Supreme Court, see Keith Oliver and Stefan Ansah, ‘Criminal Charges: Why Swiss Court Found Blatter & Platini Not Guilty and What Happens Next’, 19 August 2022 <<https://www.lawinsport.com/topics/item/criminal-charges-why-swiss-court-found-blatter-platini-not-guilty-and-what-happens-next>> accessed 20 August 2024.

but then re-appointed the following year.⁹³ In 2017 the AFC and then FIFA suspended Richard Lai, president of the Guam Football Association and a member of the AFC ExCo and FIFA's audit and compliance committee. Guam, a US territory, was within the reach of the US legal system and the DOJ, and Lai had pled guilty, like many of the other defendants, to large-scale corruption in a case of criminal conduct that has extended beyond the Americas.⁹⁴

In December 2020, the Ethics Committee's Adjudicatory Chamber adjudicated, on a case in which Blatter, Jerome Valcke, the Secretary General, Marcus Kattner, the Deputy SG, and Julio Grondona, the Chair of the Finance Committee, conspired to allocate to each other 'approximately CHF 69 million' (para 106 p 18) in the form of bonuses. They concluded that Blatter should serve a further ban from 'any kind of football-related activity ... for six years and eight months' (para III.2 p 25), pay a fine of CHF 1,000,000 (para III.3), and be made to bear the procedural costs of the investigation and the proceedings.⁹⁵ Thus the 2015 reforms have stimulated investigations and actions across the football world, and exposed and punished an increasing number of offences like the dissolution of the Ghanaian football association, in 2018, 'because of the depth of the corruption'.⁹⁶

Undoubtedly these changes have had real consequences since the punishment of many all-powerful individuals from the Blatter era and many more in Confederations and NFAs in weak or corrupt states may have ended the culture of impunity that existed in the Blatter era. But FIFA still controls the membership of the supervisory committees and can protect its own activities from independent scrutiny, and, more importantly, continues to pay inflated salaries, bonuses and expense accounts, making sweetheart deals with corrupt officials and authoritarian regimes. Thus, Dorsey shows that authoritarian oil-rich Middle Eastern potentates can still use their wealth to control football in the region and further their international reputations, and override FIFA's obligation to adhere to international best practice, as we saw at Qatar.⁹⁷ And FIFA was unable to rescue the

⁹³ James M Dorsey, 'AFC rehires former executive accused of seeking to destroy corruption-related documents' (2016) <https://www.huffpost.com/entry/afc-rehires-former-execut_b_9573166> accessed 4 September 2014. On the Lai case see United States Attorney's Office Eastern District of New York Press Release, 'FIFA Audit and Compliance Committee Member Pleads Guilty to Corruption Charges', 27 April 2017 <<https://www.justice.gov/usao-edny/pr/fifa-audit-and-compliance-committee-member-pleads-guilty-corruption-charges>> accessed 15 May 2024.

⁹⁴ *ibid.*

⁹⁵ FIFA, *Decision of the Adjudicatory Chamber of the Ethics Committee, Taken on 17 December 2020*, Adj.ref.no. 7/2020 <<https://www.sennferrero.com/wp-content/uploads/2021/04/Blatter-1.pdf>> accessed 18 June 2021.

⁹⁶ Ken Bensinger, *The Buzzfeed Interview*, 24 June 2018 <[He said in football there were 2 types of people - those who pay bribes and those who accept them' \(the42.ie\)](https://www.buzzfeednews.com/article/kenbensinger/he-said-in-football-there-were-2-types-of-people-those-who-pay-bribes-and-those-who-accept-them-the42.ie), 2018> accessed 15 May 2024.

⁹⁷ Dorsey (n 125). In the Qatar case the anomalies of internal (lex sportiva) and external sports law were also laid bare in the question of the availability of alcohol in the football stadium. The case exposed the fragility and vulnerability of any 'contractual order', as Ken Foster describes the assumption of ISOs that they wield

African Football Confederation from bankruptcy caused by criminal mismanagement, exposing the difficulties it confronts in ending bribery, illegal payments and sexual abuse in its own affiliated regional organizations.⁹⁸

5. Conclusions

A *The Problem*

The historical details and analytical framework developed in this article have shown why the weakness of the institutional arrangements that govern world football have allowed the leadership to capture the democratic processes that should have enabled their members to hold them to account; failed to limit FIFA's ability to exploit the monopolies that shelter it from the competitive pressures that force private firms to provide least-cost services; and allowed the Swiss authorities to ignore these failures.

We also showed that the ability of the US judicial authorities to punish football-related crimes forced FIFA to introduce some significant reforms, but that it has been able to use its non-political and not-for-profit status to strengthen its internal formal rules, procedures and committees, but blocking changes that would have compromised its political and economic autonomy. It, and/or its associated organizations, still employs officials and delegates who receive excessive rewards and fail to meet the normative standards expected in modern civic organizations; blocks the ability of its stakeholders to oblige it to hold it to account; relies on an internal committee structure that is beholden to the leadership and therefore fails to enforce good practice; and evades domestic court oversight over disputes and criminal behaviour in football, subject only to the controls of the CAS regime.

We are therefore likely to continue to experience decisions like the morally corrupt Qatar World Cup of 2022 and the unopposed Saudi Arabian bid for the (men's) World Cup of 2034, and increases in unnecessary expenses unless these arrangements can be radically reformed.

B *What Should be Done?*

authority, control jurisdictional limits and operate 'explicitly independent of government by national legal systems', see Ken Foster, 'Is There a Global Sports Law?' 2003 2 Entertainment and Sports Law Journal 1, 2. The weaknesses of this 'contractual order' were embodied in the floundering addresses of FIFA president Infantino when the Qatari authorities and its Supreme Committee for Delivery and Legacy imposed its own legal principles on the stadium ban on alcohol. Infantino sought to brush aside such an issue, framing it as mere trivia, but the power of the Qatari legal system effortlessly transcended the FIFA position on the matter.

⁹⁸ Georges Dougueli, (2022) 'Hayatou, Infantino, Motsepe ... Investigating the Scandals of the Confederation of African Football', *The Africa Report* 12 January 2022

<<https://www.theafricareport.com/163988/hayatou-infantino-motsepe-investigating-the-scandals-of-the-confederation-of-african-football/>> accessed 14 August 2022.

We can now use our analysis to assess the implications of the weaknesses of the institutional arrangements that govern FIFA and other ISOs subject to dysfunctional legal and juridical procedures, democratic processes, market mechanisms and regulatory regimes. It is clear, as the Council of Europe's report/resolution on Good Football Governance concluded in 2018, that football governance 'must be based on the values of democracy, human rights and the rule of law', ensuring that all involved in the governance of the game 'must be above suspicion and their conduct ... beyond reproach'.⁹⁹ However, we know that this is not the case, and that the critical problem that still confronts everyone attempting to reform the world's most popular game, is not the quality of the formal rules and procedures that govern FIFA's actions, but the need for it to strengthen the ability (i) of players, clubs, and fans to exert real controls over its democratic processes, supervisory committees and spending patterns; (ii) of commercial partners and host nations to oblige it to actually meet the 'highest governance standards in sport'; and of external national and international regulatory agencies to monitor, evaluate and sanction the behaviour of its leaders and organizations.

First, little will change while the current voting system enables the leadership to buy the support of delegates from the smallest and poorest countries that can always outvote better informed delegates from developed countries. The former often collude with corrupt politicians to exploit the game which impoverishes their clubs, players and fans that lack the information, democratic rights and organizational capacity they need to challenge their behaviour. Clubs and players in developed countries do have the expertise and organizational capacity needed to hold their leaders to account, but only have a consultative role at present, and lack the capacity to coordinate their activities at the global level.

These dysfunctional arrangements could be reformed by giving larger countries a fairer share of the votes in FIFA, and national and regional organizations representing players and clubs could be included in its democratic structures. These changes would transform the game, but they are only likely to occur when clubs and players in far more countries have acquired the information and organizational ability to control their elected representatives.

Second, FIFA's commercial partners have criticised its actions but lack the ability to coordinate their behaviour or alienate FIFA, since it can always transfer its lucrative contracts to their competitors. Host nations continue to bid for FIFA's tournaments, despite rising costs

⁹⁹ Parliamentary Assembly of the Council of Europe (PACE) report, *Good Football Governance: Resolution 2200*, adopted 24 January 2018 <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24444&lang=en>> accessed 15 May 2024.

and negative publicity associated with corrupt bidding processes and human rights abuses in the past, so they are unlikely to use their leverage to force the leadership to behave better.

We saw in Section 3B that FIFA's exclusive right to control tournaments and leagues is illegal under European competition law, and that its rules are expected to meet best practice standards, but do not do so, but it would be very difficult for any alternative commercial organization to set up new international tournaments or leagues that would threaten its dominant position.¹⁰⁰

Third, the inability of sponsors, clubs and players to make their voices heard transfers the primary responsibility for reform to the state agencies who could exercise the authority and resources needed to oblige the football authorities to reform the system, as the US intervention showed. The regulatory authorities therefore need to strengthen their ability to punish football-related crimes, and, as Weatherill points out, the key question is how to strengthen the capacity of sports law to become 'more proactive'. It could, for instance, impose 'legislative pre-conditions' on 'representation, on equality, on accountability, on governance generally, on compliance with human rights', so moving beyond its 'traditional focus on competition (antitrust law)' and becoming 'more actively regulatory in character'.¹⁰¹

The Council of Europe (CoE) has also intervened, as we have noted, making recommendations and calling for action, establishing in 2017 its International Partnership Against Corruption in Sport (IPACS): a 'multi-stakeholder initiative bringing together sports organisations, governments and intergovernmental organisations to combine efforts for the fight against corruption in sport', a 'unique partnership' providing a platform for dialogue, proposals for pragmatic solutions to acknowledged issues, and potential action.¹⁰² In 2010/11 it had recognised, in its Enlarged Partial Agreement on Sport (EPAS), 'the unique place that sport has in modern society and its potential to support democracy, participation, involvement, motivation, inclusiveness and social cohesion'.¹⁰³

¹⁰⁰ Lavery and others (n 57).

¹⁰¹ Weatherill (n 4) Lecture 3, *Making Sport Better*.

¹⁰² International Partnership Against Corruption in Sport, 'Latest News' (2024) <<https://www.ipacs.sport>> accessed 21 August 2024.

¹⁰³ Council of Europe, 'Resolution CM/Res(2010)11 confirming the establishment of the Enlarged Partial Agreement on Sport (EPAS)... 13/10/2010, English/CM-Public' <[https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%2209000016805ce26c%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%2209000016805ce26c%22],%22sort%22:[%22CoEValidationDate%20Descending%22]})> accessed 22 August 2024. The CoE/EPAS has also established and regularly updated the Revised European Sports Charter, see 'Recommendation CM/Rec (2021)5', strengthening and reaffirming its commitment to values-based sport and 'sport for all' <<https://rm.coe.int/revised-european-sports-charter-web-a6/1680a7534b>> accessed 22 August 2024. See too IPACS, *Governments* <<https://www.ipacs.sport/governments>> accessed 27 August 2024; IPACS, *List of*

Doing what Weatherill proposes, alongside activating the potential of the EPAS for interventionist action, would of course transform the situation; but FIFA's status as a pseudo-autonomous global association means that it would require a cross-border political campaign that persuaded enough governments—many of which are tied to the FIFA project—to take the necessary, essentially political, action; and we have seen that football officials, politicians and governments in many weak states depend on FIFA's largesse, enabling it to perpetuate its limited model of accountability. Further, as Weatherill and his colleagues also point out, FIFA has the right to exclude any country that threatened to take action on its own. However, they do then suggest that these reforms could be imposed on European NFAs and UEFA by the EU, and would have to be accepted by FIFA since it could not afford to exclude all the EU teams from its competitions.¹⁰⁴

The European authorities have, then, devoted a lot of attention to the problem, from the EU itself to the CoE;¹⁰⁵ but the prioritisation of sport and the improvement of sport governance are, in the view of Weatherill, unlikely at a time when the invasion of Ukraine by the Russian Federation, concern with climate change, and refugee issues, as well as the 'flouting' of the rule of law in Hungary and Poland, can claim greater priority: "sport gets squeezed off the agenda", Weatherill notes.¹⁰⁶ Further, while the CJEU has confirmed that its

Governments in IPACS <<https://www.ipacs.sport/governments-list>> accessed 25 August 2024. Of 72 national governments listed just 14 'Partners' or 'Observers' were from Europe, 13 from a range of countries, and the remainder 45 Attendees (many just occasional) made up the numbers, with a blank column by 'Switzerland'. The IPACS principles are worthy, requiring governments to reduce risks of corruption in sports settings; ensure integrity in selecting major sport events; monitor compliance with 'good governance principles' so seeking to mitigate risks of corruption; and to enhance 'effective cooperation between law enforcement, criminal justice authorities and sports organisations' (quote from *Governments* above). But the low number of governments to seek Partner status looks to work against the ambitious and somewhat idealised goals of the International Partnership.

¹⁰⁴ Joseph Weiler, Miguel Poiars Maduro, Petros C. Mavrodis and Steve Weatherill, 'Only the EU Can Save Football from Itself', *Euronews*, 12 November 2021.

¹⁰⁵ These include the report of the Parliamentary Assembly of the Council of Europe (PACE), *Football Governance: Business and Values*, Report/Doc. 15430, 10 January 2022 <<https://pace.coe.int/en/files/29592/html>>, accessed 15 May 2024; and a report by LTT Sports to the Sports Group Bureau of the European Parliament on *The Club Football Landscape: Key Challenges for the Future of Football*, presented on 28 June 2022 at the Sports Group Bureau Session of the European Parliament. See too Tomlinson (n 41) 176 and, on potential interventions by the EU, Stephen Weatherill: 'The aim is not to deprive governing bodies in sport of their primary role as autonomous regulators of their sport. The aim is, however, to seek to improve the way in which they operate and reach their decisions and in particular to address the tension that has grown over recent years between regulatory and commercial functions. The EU can add value by making politically legitimate legislative choices that improve the quality and the predictability of governance in sport. The EU can usefully promote dialogue, the exchange of best practices, and institutional co-operation in the governance of sport, but also it can move beyond competition law to regulation, and adopt a policy of targeted legislative proactivity', in 'Saving Football from Itself: Why and How to Re-make EU Sports Law', *Cambridge Yearbook of European Legal Studies*, 2022, 20.

¹⁰⁶ Email from Stephen Weatherill to author (27 January 2023).

monopoly powers breach European law, we have seen that this does not challenge its de-facto monopoly powers.¹⁰⁷

Thus the current situation does not provide any platform for political solutions, collective actions or state intervention, so the internal sports law that shelters FIFA and other associations from real accountability simply carries on, rendering FIFA vulnerable to forms of collusion, corruption and criminality. Hence, Steven Berryman, key figure in the US case against FIFA, notes that despite ‘sports governing rules and reforms’, potentially corrupt officials will continue to ‘exploit opportunities presented by their position ... and go against the ethics and integrity mandates’, requiring investigators to uncover such activities,¹⁰⁸ so exposing the malfeasance that continues to undermine many sport-based governing bodies.

In conclusion, we believe that we should not underestimate the benefits of the reforms generated at FIFA by the international criticism and state-led legal and criminal procedures initiated by the US intervention, but continue to emphasise that its stakeholders will need to find ways to force it to introduce reforms such as those outlined in this article; so in effect, if they are to be the recipients of the services they deserve, challenging FIFA’s persistently dominant model of internal sport governance.

¹⁰⁷ Lavery and others (n 57).

¹⁰⁸ Emails from Steven Berryman to author (2 April 2022 & 17 March 2023).