

COMMENT

FIFA WORLD CUP 2022: WHY THE UNITED STATES CANNOT SUCCESSFULLY CHALLENGE FIFA AWARDING THE CUP TO QATAR AND HOW THE QATAR CONTROVERSY SHOWS FIFA NEEDS LARGE-SCALE CHANGES

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INTRODUCTION

“BOOOOOOOOOOOOOOOOOOOOOOOOOOOOO” says Jozy Altidore, United States National Soccer Team member, via Twitter.¹ Sports Illustrated’s Grant Wahl tweeted, “Choosing Qatar and Russia is the biggest indictment possible that FIFA is not a clean organization. Petrodollars talk.”² “I can’t believe this, man. I’ve been to Qatar. Good ally and all, but NOT a place to party and celebrate the World Cup,” said TV star and Seattle Sounders co-owner Drew Carey.³ These were only three tweets amidst a sea of criticism surrounding the Fédération Internationale de Football Association’s (FIFA) decision to award the 2022 World Cup to Qatar.⁴ This decision was perplexing in large part because FIFA’s own technical report said that Qatar’s high summer temperatures could pose a health risk to players, officials and spectators.⁵ The selected bid was especially agonizing for Americans because the United States was considered a frontrunner for the bid. So with rumors of misconduct floating in the air, many Americans were left feeling as though they had been cheated out of hosting a World Cup.

Soccer has been increasing in popularity in the United States, with more people watching the 2010 FIFA World Cup championship match

1. *US Players, Pundits React to Losing 2022 World Cup Bid to Qatar*, AOLNEWS.COM (Dec. 2, 2010, 12:50 PM), <http://www.aolnews.com/2010/12/02/us-reactions-to-losing-2022-world-cup-bid-to-qatar/> [hereinafter *US Players React*].

2. *Id.*

3. *Id.*

4. *Id.*

5. *See Timeline of Events Surrounding FIFA Corruption Claims*, BBC SPORT, <http://news.bbc.co.uk/sport2/hi/football/13601803.stm> (last updated June 1, 2011, 19:06 UK) [hereinafter *Timeline*].

than the average number of viewers watching the 2009 World Series between the New York Yankees and Philadelphia Phillies.⁶ It seemed that many who supported the U.S. bid for the 2022 World Cup and the sport of soccer in general hoped a successful bid would continue soccer's growth in popularity in the United States. In fact, the U.S. bid team used the growth of soccer as a sales pitch to FIFA prior to the vote for the 2022 World Cup.⁷ When FIFA awarded the cup to Qatar, the United States lost out on a potentially large profit, as the United States made fifty million dollars when the World Cup was last here in 1994.⁸

This Comment will show that under the current rules and regulations of FIFA, the United States and other members of FIFA remain essentially powerless to challenge the 2022 award decision despite the potential influence of bribery and other misconduct in the bid process.

Section I discusses the structure of FIFA as well as the history and development of the FIFA World Cup bidding process. This section argues that FIFA's current bidding and voting processes need revising because of the possibility of European bias and opportunities for voting misconduct. Section II explains the current controversy surrounding the 2022 Qatar bid. Section III explores what remedies within FIFA might currently exist that would allow the Qatar bid to be rescinded. Section IV explains why FIFA is unlikely to rescind the bid.

Section V argues that FIFA's recently created reform plans result in little change because of FIFA's refusal to look into past controversies. Section VI analyzes the proposals made by author Ryan Gauthier and the non-governmental organization, Transparency International (TI), to improve FIFA's bidding and voting processes. This section concludes that Gauthier's proposal does not provide enough change to FIFA, and that TI's plan is so extreme that FIFA

6. Ken Belson, *Soccer's Growth in the U.S. Seems Steady*, N.Y. TIMES (July 24, 2010), <http://www.nytimes.com/2010/07/24/sports/soccer/24soccer.html>.

7. *U.S. Stresses Diversity in Bid*, ESPN (Dec. 1, 2010, 7:03 PM ET), http://espn.go.com/sports/soccer/news/_id/5869756/us-stresses-diversity-2022-world-cup-bid.

8. *Soccer Exceeds Gooooal: World Cup: Event Had \$50-Million Profit. Rothenberg is Awarded a \$3-Million Bonus*, L.A. TIMES (Oct. 19, 1994), http://articles.latimes.com/1994-10-19/sports/sp-52028_1_world-cup.

would not likely implement it. Finally, Section VII offers a solution which combines principles of the previous proposals while adding additional safeguards to prevent misconduct. This approach utilizes technical evaluations of bids, implements a multi-level voting system, seeks to promote transparency within FIFA, and otherwise instills confidence in World Cup fans that the proper World Cup bid is chosen.

I. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION (FIFA)

A. *Structure of FIFA*

FIFA is the world-governing agency for international football, or soccer, as it is known in the United States. Based in Zurich, Switzerland, FIFA is established under Swiss Law.⁹ It was created in 1904 in Paris through an agreement between the football associations of France, Belgium, Denmark, Netherlands, Spain, Sweden, and Switzerland.¹⁰ FIFA is divided into legislative, executive, and administrative bodies, which carry out the various functions of the organization.¹¹

FIFA's legislative body, the Congress, is comprised of all FIFA's member associations. Each member association is given one vote.¹² In the past, the Congress met every two years, but it has met annually since 1998, allowing the Congress to help decide the ever-increasing number of issues arising in soccer.¹³

FIFA's executive body is comprised of the Executive Committee, which "consists of a President, elected by the Congress in the year following a FIFA World Cup, eight vice-presidents and fifteen members that are appointed by the various confederations and associations."¹⁴ Each member's appointment term lasts four years.¹⁵

9. Ryan Gauthier, *Improving the Bidding Process for International Sporting Events*, 1-2 INT'L SPORTS L.J. 3, 11-12 (2011).

10. *Id.* (citing *History of FIFA—Foundation*, FIFA.COM, <http://www.fifa.com/classicfootball/history/fifa/historyfifa1.html> (last visited Mar. 20, 2010)).

11. *Bodies*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/bodies/index.html> (last visited Oct. 1, 2011).

12. *Id.*

13. *Id.*

14. *Id.* (citing FIFA Statutes: Regulations Governing the Application of the

The Executive Committee meets at least twice a year.¹⁶ Its responsibilities include setting tournament times, places, and formats.¹⁷

The General Secretariat is the administrative body.¹⁸ Twenty-five standing committees and two judicial bodies, the FIFA Disciplinary Committee and the FIFA Appeal Committee, assist the General Secretary of FIFA.¹⁹ Their functions are to make decisions regarding the organization of competitions and the general development of soccer.²⁰ The Executive Committee is responsible for ratification of these committees' decisions.²¹

The responsibilities of all of the branches of FIFA are important to understanding how FIFA's laws are interpreted, as well as how procedures such as the World Cup bidding process are divided within FIFA.

B. Laws of FIFA

FIFA has established its own laws, called the FIFA Statutes, which lay out how FIFA operates and the FIFA membership rules.²² Included within these statutes are rules for discipline, the FIFA World Cup bidding process, and the jurisdiction of the Court of Arbitration for Sport.²³

Although FIFA's statutes discuss the World Cup's bidding process in Articles 37 and 76, the process is not entirely clear.²⁴ Article 37 states, "[t]he Organising Committee for the FIFA World Cup shall organise the FIFA World Cup in compliance with the

Statutes, arts. 30-31 (Aug. 2011), available at <http://www.fifa.com/mm/document/affederation/generic/01/48/60/05/fifastatuten2011%5fe.pdf> [hereinafter FIFA Statutes]).

15. *Bodies*, *supra* note 11 (citing FIFA Statutes, *supra* note 14, arts. 30-31).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. FIFA Statutes, *supra* note 14, arts. 35, 54.

22. *Id.*

23. *See infra* Part III.B.

24. *See* Gauthier, *supra* note 9, at 16-17.

provisions of the regulations applicable to this competition, the List of Requirements and the Organising Association Agreement.”²⁵ Article 76 specifies that the Executive Committee shall “decide the venue for the final competitions organized by FIFA. As a rule, tournaments may not be held on the same continent on two successive occasions. The Executive Committee shall issue guidelines in this connection.”²⁶

The statutes do not provide much insight into how the bidding process truly operates. A look into the history of the bidding process provides a better picture of the how this process works in practice.

C. FIFA’s World Cup Bidding Process

The FIFA World Cup bidding process has changed multiple times throughout the years.²⁷ Early on, few countries submitted bids to host the World Cup, and often many of the bidders dropped out, leaving one country to host the event.²⁸ Uruguay hosted the first World Cup in 1930, but an actual vote to decide the host country was not required until the third cup in 1938.²⁹ After World War II, the next three World Cups from 1950-1958 were awarded to the host countries uncontested.³⁰ The bids in 1962, 1966, and 1970 were highly contested, but only two submitted bids each time.³¹ The 1974-1982 Cups were again voted on without any competition for the host country.³² These selections were made in 1966, which was the first time FIFA decided to select three hosts simultaneously.³³ Until 1966, the FIFA Congress had selected the host country, with each national association casting one vote.³⁴ After 1966, however, the Executive Committee took over the responsibility of selecting hosts for future

25. FIFA Statutes, *supra* note 14, art. 37.

26. *Id.* art. 76.

27. Gauthier, *supra* note 9, at 12

28. *Id.*

29. *Id.* (France was selected over Argentina and Germany).

30. *Id.* (Brazil, Switzerland and Sweden hosting).

31. *Id.* (Chile, England and Mexico were awarded the 1962, 1966, and 1970 bids, respectively).

32. *Id.* at 13.

33. *Id.*

34. *Id.*

World Cups.³⁵ The process for the 2018 and 2022 World Cups was similar to the 1966 process, as FIFA decided to vote on bids for both of the World Cups simultaneously.³⁶ This change was surprising, as the subject of changing the bidding process was not even on the Congress's agenda.³⁷

In short, the current bidding process consists of three stages: (1) a country submits its bid to FIFA; (2) FIFA visits each potential host country; and (3) the Executive Committee votes to determine the host country.³⁸ Also, for the most recent bidding decisions, technical evaluations of the potential host countries were compiled.³⁹

The first mention of corruption within this process was in 2000, when the Executive Committee voted to have Germany host the 2006 World Cup.⁴⁰ Germany defeated Brazil and Morocco in early rounds and won the final vote over South Africa 12-11.⁴¹ Allegations of corruption and complaints about lack of transparency followed this vote, as the Oceania delegate abstained from the final vote "despite instructions from his region to support South Africa."⁴² Had he followed these instructions, the vote would have ended in a 12-12 tie. FIFA President Sepp Blatter, who supported a South Africa bid, would have broken the tie.⁴³

After this, FIFA instituted a rotation system designed to rotate the World Cup by Continental Confederation.⁴⁴ However, this system was ended in 2007 after the World Cup was awarded to South Africa in 2010 and Brazil in 2014.⁴⁵ Blatter claimed the "rotation policy" was discontinued because it had achieved its purpose of bringing the

35. *Id.*

36. *Id.* at 14.

37. *Id.* at 15.

38. *Id.* at 16.

39. *Id.*

40. Richard Pomfret, John K. Wilson & Bernhard Lobmayr, *Bidding for Sport Mega-Events* 12 (The Univ. of Adelaide, School of Econ., Working Paper No. 0089, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1566283 (follow "One-Click Download" hyperlink).

41. *Id.* at 12 n.16.

42. *Id.*

43. *Id.*

44. Gauthier, *supra* note 9, at 14.

45. *Id.*

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World Cup to Africa for the first time and to South America for the first time in “many years.”⁴⁶

Bias has always been an issue with FIFA in general, as they have been accused in the past of being biased towards Europe.⁴⁷ The vast majority of World Cups have been in Europe, and until Brazil hosts the 2014 World Cup (following the 2010 Cup hosted by South Africa), at least every other World Cup has been hosted by a European country.⁴⁸ The 2018 World Cup bidding process only exacerbated these fears of bias, as President Blatter made it clear that FIFA planned to only consider European candidates, despite no clear policy to support such a decision.⁴⁹

D. 2022 Bid Suspicion and How Policy Changes May Be Required

This European bias casts doubt upon the integrity of the entire bidding process, with 2022 as a prime example. The World Cup has never been held in Qatar, or anywhere in the surrounding region. It appears Blatter’s policy is to place World Cups in new areas or places it has not been in a long time,⁵⁰ so the United States and the other 2022 bidders may wonder if their bids ever truly had a chance. These countries may wonder if—like the 2018 bids—Blatter and FIFA were only going to consider certain countries.⁵¹

The voting itself for the 2022 World Cup also raised questions about possible misconduct. In round one, Qatar received eleven votes, Korea four, the United States three, Japan three, and Australia was eliminated with only one vote.⁵² In round two, however, Qatar only

46. *Rotation Ends in 2018*, FIFA.COM (Oct. 29, 2007), <http://www.fifa.com/worldcup/russia2018/organisation/media/newsid=625122/index.html>.

47. Gauthier, *supra* note 9, at 16.

48. *Id.*

49. Owen Gibson, *England’s 2018 World Cup Hopes Boosted by Europe-Only Bid Process*, THE GUARDIAN (Jan. 26, 2010, 05:07 EST), <http://www.guardian.co.uk/football/2010/jan/26/england-2018-world-cup-european-bid>.

50. As in, for instance, the World Cups held in South Africa and Brazil in 2010 and 2014. See Gauthier, *supra* note 9, at 14.

51. Gibson, *supra* note 49.

52. *Russia and Qatar to Host 2018 and 2022 FIFA World Cups, Respectively*, FIFA.COM (Dec. 2, 2010), <http://www.fifa.com/worldcup/russia2018/organisation/media/newsid=1344971/index.html> [hereinafter *Russia and Qatar to Host*].

received ten votes, while the United States and Korea had five votes each and Japan was eliminated with two votes.⁵³ What caused Qatar to lose a vote and Japan two votes in this round? Because the vote is done by secret ballot,⁵⁴ whoever abruptly changed votes cannot be asked why. This strange development led some to surmise that some type of one-round voting deal had been struck between Japan and Qatar. One writer thought that perhaps Qatar and Japan had made deals during the 2018 voting process held at the same time.⁵⁵ Under this theory, Qatar would exchange votes to attempt to win the required absolute majority in the first voting round,⁵⁶ and Japan would exchange votes in order to get to the “less predictable” later rounds.⁵⁷ That such vote-exchange schemes are possible shows that FIFA’s current bid process is flawed. The secret ballot allows voters to make deals without fear of exposure, allowing countries to trade votes in hopes of reaching the later rounds, where voters scramble to choose a country once their favorites have been eliminated. Deals could even potentially be made by voters between each round depending on which countries were eliminated the previous round. The current bidding and voting processes are very unpredictable and have the potential for misconduct at many different stages. Changes must be made to the voting process to provide confidence a bid is chosen without improper influence.

II. THE QATAR CONTROVERSY

A. Background

The Qatar controversy began in October 2010, long before any vote on the bids. At that time, two reporters for an English newspaper, the Sunday Times, posed as businessmen, and reported that two FIFA executives, Amos Adamu of Nigeria and Reynald

53. *Id.*

54. *World Cup Vote—Decision Day As It Happened*, BBC SPORT, <http://news.bbc.co.uk/sport2/hi/football/9247651.stm> (last updated Dec. 2, 2010, 17:31 GMT).

55. Richard Farley, *Qatar World Cup: How the Voting Broke for World Cup 2022 Hosts*, SB NATION (Dec. 2, 2010), <http://www.sbnation.com/soccer/2010/12/2/1851282/qatar-world-cup-voting-2022-hosts>.

56. *Id.*

57. *Id.*

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Termarii of Tahiti, had offered to sell their votes, leading FIFA to bar both men from the voting process.⁵⁸ FIFA's ethics committee, pending further investigation, provisionally suspended these two men.⁵⁹ In November 2010, the committee banned Temaraii for one year and fined him 5,000 Swiss francs for breaching the ethics code.⁶⁰ The committee then banned Adamu for three years and fined him 10,000 Swiss francs for breaching five articles of the ethics code, one of which was based on a finding of bribery.⁶¹

Despite this scandal, in December 2010, FIFA awarded Russia and Qatar the 2018 and 2022 World Cups, respectively.⁶² The award to Qatar was particularly controversial, as FIFA's own technical report stated the high temperatures in Qatar could pose a health risk to not only players but to officials and spectators as well.⁶³

B. The United Kingdom's Response

Parliament in the United Kingdom began an inquiry in May 2011 as to why England failed to secure the 2018 World Cup awarded to Russia.⁶⁴ Damian Collins, a Parliament member, told Parliament that the Sunday Times also had evidence that Qatar had paid off Issa Hayatou of Cameroon and Jacques Anouma of the Ivory Coast.⁶⁵ The paper claimed these accusations against Hayatou and Anouma were not published in their previous reports because of legal reasons.⁶⁶ The newspaper, in their letter to the parliamentary inquiry, said the accusations were made by a whistleblower who had worked for Qatar's 2018 bid, and wrote that "[t]he whistleblower's allegations raise questions about the validity of Qatar's winning bid."⁶⁷ FIFA

58. Jeré Longman, *Six From FIFA Are Accused in Bribery Case*, N.Y. TIMES (May 10, 2011), <http://www.nytimes.com/2011/05/11/sports/soccer/six-top-fifa-officials-named-in-bribery-investigation.html>.

59. *Timeline*, *supra* note 5.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Longman, *supra* note 58.

67. *Id.*

later claimed the Sunday Times had no evidence regarding the allegations against Hayatou and Anouma.⁶⁸

Also at the parliamentary hearing, a former Football Association⁶⁹ chairman accused four FIFA Executive Committee members of requesting favors in exchange for their votes.⁷⁰ FIFA later issued a statement indicating these individuals had been cleared of the allegations in an independent report commissioned by the Football Association.⁷¹

C. FIFA's Response

Other allegations unrelated to the Qatar controversy were unearthed when the Qatar story and subsequent Parliamentary investigation increased the amount of attention paid to FIFA by many around the world. FIFA, through its Ethics Committee, began to investigate the steady flow of allegations of misconduct involving some of its high ranking members. First, FIFA opened an ethics investigation regarding confederation Presidents Mohamad Bin Hamman of Asia and Jack Warner of the Confederation of North, Central American and Caribbean Association Football (CONCACAF), concerning a meeting of the Caribbean Football Union.⁷² Bin Hammam appeared to answer allegations that he had arranged for bribes to be made to twenty-five presidential voters on a campaign visit to the Caribbean.⁷³ Bin Hammam, who was FIFA President Sepp Blatter's sole challenger in the FIFA presidential election on June 1, withdrew his candidacy hours before the ethics committee hearing in late May.⁷⁴ He had decided to run for the presidency after playing a key role in Qatar's winning bid for the 2022

68. *No Evidence on Allegations Made Against FIFA Executive Committee Members at the House of Commons*, FIFA.COM (May 30, 2011), <http://www.fifa.com/aboutfifa/organisation/administration/news/newsid=1444125/index.html>.

69. The Football Association is the governing body of soccer in England.

70. *Timeline*, *supra* note 5.

71. *Id.*

72. *Id.*

73. *Mohamed Bin Hammam Quits Election*, ESPN, http://espn.go.com/sports/soccer/news/_id/6602952/mohamed-bin-hammam-quits-fifa-presidential-election-ethics-hearing (last updated May 28, 2011, 10:08 PM ET).

74. *Timeline*, *supra* note 5.

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World Cup.⁷⁵ At Bin Hamman's request, Blatter was also summoned to appear before the ethics committee.⁷⁶ Bin Hamman believed Blatter was aware of cash payments allegedly made on Bin Hamman's visit to the Caribbean.⁷⁷ The committee cleared Blatter, but initially suspended⁷⁸ and later banned Bin Hamman from taking part in football-related activity for the remainder of his life at the national or international level.⁷⁹

In May 2011, an email was leaked in which FIFA general secretary Jerome Valcke claimed Qatar had "bought" the rights to host the 2022 World Cup, although Valcke later claimed his comments were misconstrued.⁸⁰

The following month, Blatter won the presidential election as the only candidate, despite attempts by the English and Scottish Football Associations to delay the voting process.⁸¹ German Football Federation President Theo Zwanziger called for FIFA to reexamine the 2022 World Cup award to Qatar.⁸² Addressing FIFA congress delegates, Blatter announced that in the future the location for World Cups would be decided by a congressional vote.⁸³ The congress would vote from a shortlist of candidates given to them by the Executive Committee, but would not be given any guidance or preference.⁸⁴

Although it is not clear who took part in the Qatar controversy, it is evident that misconduct is not rare within FIFA. Additionally, it seems likely that the decision to award Qatar the 2022 World Cup was influenced by some type of misconduct between the bidders from

75. *Mohamed Bin Hammam Quits Election*, *supra* note 73.

76. *Timeline*, *supra* note 5.

77. *Id.*

78. *Id.*

79. *Ethics Committee Bans Football Officials*, FIFA.COM (July 23, 2011), <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1479068/index.html>.

80. *Timeline*, *supra* note 5.

81. *Sepp Blatter Wins Re-Election as President of FIFA*, BBC SPORT (June 1, 2011, 19:39 GMT), <http://news.bbc.co.uk/sport2/hi/football/13610973.stm>

82. *Timeline*, *supra* note 5.

83. *Sepp Blatter Announces World Cup Host Vote Changes*, BBC SPORT (June 1, 2011, 17:13 GMT), <http://news.bbc.co.uk/sport2/hi/football/13613128.stm>.

84. *Id.*

Qatar and those members of FIFA voting on the bid. The obvious question then is, what can be done?

III. REMEDIES THROUGH THE RULES OF FIFA

A. Judicial Bodies of FIFA

FIFA has both a disciplinary code and a code of ethics through which the United States could attempt to seek relief. These two codes differ, however, as to who they apply to and as to what conduct they cover.

1. Disciplinary Code

The disciplinary code “describes infringements of the rules in FIFA regulations, determines the sanctions incurred, regulates the organisation and function of the bodies responsible for taking decisions and procedures to be followed before these bodies.”⁸⁵ However, due to the limited scope of this code, the remedies available are not helpful to the United States. Those subject to the code are associations, members of associations, officials, players, match officials, licensed match and players’ agents, anyone with the authorization from FIFA, and spectators.⁸⁶ Members of the Executive Committee—including those who allegedly took the bribes in the Qatar controversy—do not appear on this list. Additionally, the code begins by saying that the Executive Committee is the body that enforces this code.⁸⁷ Because the Executive Committee would not likely enforce a code on its members, a remedy through the disciplinary code would not likely be useful.

2. Code of Ethics

The Code of Ethics could be more useful. Article 1 of the code specifies that the code applies to all officials.⁸⁸ Officials are defined

85. FIFA Disciplinary Code, art. 1 (2011), *available at* <http://www.fifa.com/mm/document/affederation/administration/50/02/75/discoinhalte.pdf>.

86. *Id.* art. 3.

87. *Id.*

88. FIFA Code of Ethics, art. 1 (2009), *available at* <http://www.fifa.com>

as “all board members, committee members, referees and assistant referees, coaches, trainers, and any other person responsible for technical, medical and administrative matters in FIFA, a confederation association, league or club.”⁸⁹ Thus, it seems that Executive Committee members would have to answer to the Code of Ethics. Additionally, Article 11 specifically forbids officials from giving and accepting bribes, which they define as “any gifts or other advantages that are offered, promised or sent to them to incite breach of duty or dishonest conduct for the benefit of a third party”⁹⁰ The code allows the ethics committee to give out any of the disciplinary measures defined in the FIFA Statutes and Disciplinary Code.⁹¹ At this point, the Ethics Committee has sanctioned some of the alleged participants in this scandal for their alleged involvement.⁹² The problem is that no disciplinary measure currently exists in the FIFA Statutes, Code of Ethics, or Disciplinary Code that would allow a FIFA World Cup bid to be rescinded. All of the alleged participants in the Qatar scandal could be reprimanded, yet this would do nothing to prevent Qatar 2022.

B. Court of Arbitration for Sport

1. General Information

As recourse through FIFA’s judicial bodies is either unlikely or not useful, the United States would need to look instead for possible remedies outside of FIFA in order to resolve this dispute. Articles 62-64 of the FIFA Statutes describe how FIFA’s legal disputes are handled.⁹³ FIFA recognized the Court of Arbitration for Sport (CAS) as the body to resolve disputes between “FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents.”⁹⁴ Article 62 says the provisions of the CAS Code of Sports-Related Arbitration shall apply and that CAS will

/mm/document/affederation/administration/50/02/82/efsdcodeofethics_web.pdf.

89. *Id.*

90. *Id.* art. 11.

91. *Id.* art. 17.

92. *See supra* Part II.C.

93. FIFA Statutes, *supra* note 14, arts. 62-64.

94. *Id.* art. 62.

apply the various regulations of FIFA primarily, and Swiss law additionally.⁹⁵

The International Olympic Committee (IOC) created the CAS in 1984.⁹⁶ The CAS held its first arbitration proceedings in 1986 and rendered its first award in 1987.⁹⁷ The CAS is headquartered in Lausanne, Switzerland, and maintains offices in the United States and Australia to allow potential litigants greater access to the court.⁹⁸ The CAS went through major reforms in 1994, when the IOC gave up direct control of the CAS by creating the International Council for Arbitration of Sport (ICAS).⁹⁹ The ICAS is a body consisting of twenty members who handle the financing and administration of the CAS.¹⁰⁰ CAS has two arbitration divisions: the Ordinary Arbitration Division and the Appeals Arbitration Division.¹⁰¹

In a case involving FIFA, *Kenya Football Federation v. FIFA*,¹⁰² the court noted that the Kenya Football Federation was addressing its claim against FIFA by means of an “ordinary arbitration procedure, and not by means of an appeal procedure directed against a decision by FIFA.”¹⁰³ The United States would also be using the ordinary arbitration procedure to get into CAS, as we discussed above that remedies through FIFA judicial bodies are unlikely or not useful. The U.S. Soccer Federation and FIFA would qualify as two parties the FIFA Statutes list as giving the CAS jurisdiction.¹⁰⁴

95. *Id.*

96. Richard H. McLaren, *Twenty-Five Years of the Court of Arbitration for Sport: A Look in the Rear-View Mirror*, 20 MARQ. SPORTS L. REV. 305, 306 (2010).

97. *Id.* (citing H.E. Judge Kéba Mbaye, Foreword, in DIGEST OF CAS AWARDS 1986-1988, at xi-xii (Matthieu Reeb ed., (1998)) (Judge Mbaye is the President of ICAS and CAS).

98. Abbas Ravjani, *The Court of Arbitration for Sport: A Subtle Form of International Delegation*, 2 J. INT’L MEDIA & ENT. L. 241, 248 (2009).

99. *Id.* at 251-52.

100. *Id.* at 251.

101. Ekpemede Edem, *International Sport Arbitration: a Different Ballgame*, 13-2 INT’L BAR ASS’N ARB. NEWSL. 54, 55 (2008).

102. Kenya Football Federation v. FIFA, CAS 2008/O/1808 (2010), available at <http://www.tas-cas.org/d2wfiles/document/4164/5048/0/20100427131224215>.

103. *Id.* at 11.

104. FIFA Statutes, *supra* note 14, art. 62.

2. CAS Jurisdiction Issues

The fact that the CAS is the sole court to have jurisdiction is somewhat troubling from the outside looking into FIFA. The bar on “ordinary courts of law” without authorization from FIFA regulation¹⁰⁵ is also troubling. Why do all these countries agree to stay out of ordinary courts of law and agree to the jurisdiction of CAS? Examining the FIFA statutes and recognition of arbitration courts in the United States shows that FIFA members, including the United States, may not have much of a choice.

Agreeing to CAS arbitration is often a prerequisite for athletes hoping to compete in international sports competitions such as the World Cup.¹⁰⁶ The FIFA statutes themselves state, “Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS.”¹⁰⁷ Thus, it seems that membership in FIFA requires agreeing to CAS jurisdiction. Some may respond apathetically to this predicament by pointing out that no one is forced to join FIFA. This argument, however, is short sighted because any country that wishes to play in the World Cup is required to join FIFA. Thus, for most, joining FIFA is a no-brainer, so they acquiesce to CAS jurisdiction simply as a matter of course.¹⁰⁸

Additionally, many countries have agreed to jurisdiction of these arbitration courts in a non-explicit manner. Recognizing the need to help enforce arbitration awards, many countries came together in 1958 and adopted the New York Convention.¹⁰⁹ Ravjani contends that all countries that have adopted the convention, 143 to date,¹¹⁰ have implicitly agreed to enforce awards by any arbitral body, subject to meeting standards of fairness and legitimacy, which he argues the CAS falls into.¹¹¹ The United States, one of the nations that adopted

105. *Id.* art. 64.

106. Ravjani, *supra* note 98, at 242.

107. FIFA Statutes, *supra* note 14, art. 64.

108. Ravjani, *supra* note 98, at 249.

109. *Id.* at 261.

110. *Id.*

111. *Id.* at 262.

the Convention, has deferred to the judgment of these arbitral tribunals in sports.¹¹² From this it seems possible that some soccer federations, without even being aware of it, have given jurisdiction to the CAS if they reside in a country that has adopted the New York Convention. This is unfair. No party should be subject to the jurisdiction of a court unless he or she willfully agrees to it. Instead, countries joining FIFA must choose either to agree to resolve all disputes with FIFA in the CAS or to stay on the sidelines in international soccer.

C. Swiss Federal Tribunal

If a CAS ruling went against the United States, there would still be a right to appeal that decision to the Swiss Federal Tribunal (SFT), the Supreme Court of Switzerland.¹¹³ A CAS award is final and binding subject *only* to review by the SFT.¹¹⁴

IV. HOW FIFA WOULD FARE IN CAS AND SFT PROCEEDINGS

A. Treatment of FIFA in the CAS

FIFA is relatively new to CAS, with FIFA only giving the court jurisdiction as the final appeal body in 2002.¹¹⁵ Although FIFA was the last Olympic sport to do this,¹¹⁶ FIFA now accounts for about thirty to forty percent of the CAS caseload.¹¹⁷ It does not appear at this time that any patterns have developed in terms of favoring or not favoring FIFA.¹¹⁸ If the CAS were to be biased, it would seem more

112. *Id.* at 264.

113. *Is It Possible to Appeal Against a CAS Award?*, CAS, <http://www.tascas.org/en/20questions.asp/4-3-231-1010-4-1-1/5-0-1010-13-0-0/> (last visited Mar. 20, 2012).

114. *Id.*; Matthew J. Mitten, *Judicial Review of Olympic and International Sports Arbitration Awards: Trends and Observations*, 10 PEPP. DISP. RESOL. L.J. 51 (2009).

115. McLaren, *supra* note 96, at 315.

116. *Id.*

117. *Id.*

118. *See* Aris FC v. FIFA, CAS 2007/A/1251, at 11 (2007), available at <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1251.pdf> (decision setting aside FIFA's appealed decision); Madrid Sociedad Anonima

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likely to be in favor of the IOC, since it created the CAS.¹¹⁹ This was in fact a concern early on in CAS proceedings as the IOC had a major influence during the first ten years, supplying the majority of the budget for the CAS.¹²⁰ The IOC also had a lot of control over arbitrator appointments and rules of the court.¹²¹ This retained power of the IOC began to end with an appeal to the SFT, in which a horse rider named Elmar Gundel claimed that the CAS was not sufficiently independent from the IOC.¹²² The SFT upheld the CAS ruling, but in dicta noted it found certain parts of the relationship between the CAS and IOC troubling, especially aspects surrounding funding and membership.¹²³ In response to this, the CAS attempted to eliminate these concerns of bias by drastically restructuring the courts, making them more independent of the IOC.¹²⁴ These changes were put to the test in a 2003 case brought to the SFT surrounding the 2002 Winter Olympics.¹²⁵ In this case, in which the IOC was a party, the SFT not only approved these new changes to the CAS but also contended that the CAS had become a “true ‘supreme court of world sport.’”¹²⁶

Deportiva v. FIFA, CAS 2006/A/1008, at 5 (2006), *available at* <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/1008-P.pdf> (decision in favor of party opposing FIFA); Irish Football Ass’n v. Football Ass’n of Ir., CAS 2010/A/2071, at 27 (2010), *available at* <http://jurisprudence.tas-cas.org/sites/CaseLaw/Shared%20Documents/2071.pdf> (decision in favor of FIFA); Kenya Football Federation, *supra* note 102, at 162.

119. McLaren, *supra* note 96, at 306.

120. Ravjani, *supra* note 98, at 273 (citing Matthieu Reeb, *The Role and Functions of the Court of Arbitration for Sport (CAS)*, in *THE COURT OF ARBITRATION FOR SPORT 1984-2004* at 31, 33 (Ian S. Blackshaw et al. eds., 2006)).

121. *Id.*

122. Swiss Fed. Trib. G. v. Fed’n Equestre Internationale, CAS 92/63 (1993).

123. Ravjani, *supra* note 98, at 274 (citing *Swiss Fed. Tribunal G.*, *supra* note 122).

124. *Id.*

125. *Id.*

126. *Id.* at 274-75 (citing A. & B. v. Int’l Olympic Comm., in *DIGEST OF CAS AWARDS III* 674, 675 (Matthieu Reeb & Estelle du La Rochefoucauld eds., 2004)).

B. Anticipated Outcome in CAS

Although the CAS may apply Swiss law additionally to FIFA law, it is clear from the FIFA Statutes that FIFA law will be the primary basis for a CAS decision.¹²⁷ This makes it impossible for the CAS to rescind a bid award, because FIFA rules do not discuss rescinding bids. Removing an international sporting event from a country is not without precedent, however. The 2011 Cricket World Cup was supposed to be hosted by India, Sri Lanka, Bangladesh, and Pakistan.¹²⁸ After gunmen attacked the Sri Lankan team in Pakistan in March of 2009, the International Cricket Council (ICC) removed the fourteen games to be played in Pakistan.¹²⁹ Although an international body did this on its own, and not the CAS, it does show that such recourse is not completely unprecedented. Granted, the Cricket World Cup was co-hosted, so removing Pakistan as a host would seem to not be as complicated as removing Qatar, the sole host of the World Cup. Thus, although the ICC has removed games from a co-hosted event, it is not analogous enough to overcome the limitations placed upon CAS by FIFA's grant of jurisdiction to it.¹³⁰ Considering all the relevant statutes available to the CAS to rule on, it seems as though the CAS would likely rule in favor of FIFA. There is no statute within FIFA that calls for a re-vote on a World Cup bid or forcibly moving it from one country to another. Ultimately, if the CAS ruling were not favorable to the United States, there would still be a right to appeal the decision to the SFT.¹³¹

C. How the SFT Would Likely Rule

As discussed above, the SFT is the sole court to which a party of a CAS dispute can appeal.¹³² It appears, however, that the SFT rarely overturns a CAS decision. The SFT will vacate an arbitration award only if the CAS panel was "constituted irregularly, erroneously held that it did or did not have jurisdiction, ruled on matters beyond the

127. FIFA Statutes, *supra* note 14, art. 62.

128. Gauthier, *supra* note 9, at 19.

129. *Id.*

130. FIFA Statutes, *supra* note 14, art. 62.

131. *Is It Possible to Appeal Against a CAS Award?*, *supra* note 113.

132. *Id.*

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submitted claims, or failed to rule on a claim,”¹³³ or if “the parties are not treated equally by the CAS panel, if a party’s right to be heard is not respected, or if the award is incompatible with Swiss public policy.”¹³⁴ The SFT has held that arbitrators will be presumed to act impartially and, as of 2008, no CAS award has been vacated on the ground that a CAS panel was constituted irregularly.¹³⁵

Challenges to the fair hearing requirement have had some success, as the SFT has held the CAS panel must explain their reasons for deciding all the parties’ arguments.¹³⁶ The panel must explain its decision to a level where the petitioner is satisfied that the panel has considered all of his or her arguments, even if only to dismiss them.¹³⁷ The SFT has, as of 2008, rejected challenges to CAS awards on the basis that the merits, or the provision speaking of awards, are incompatible with Swiss public policy.¹³⁸ In one case, the SFT explained that an award conflicted with public-policy concerns only when it is made in “disregard of fundamental principles of law so as to be inconsistent with the legal system and the accepted system of values.”¹³⁹ The court went on to give examples of such principles, mentioning the “sanctity of contracts, the rules of good faith, the prohibition against abuse of contractual or legal rights, the prohibition against discrimination or spoliation and the protection of persons incapable of legal acts.”¹⁴⁰ Awards can also be challenged on the basis that they violate the principles of “good faith and equal treatment,” which is incompatible with Swiss public policy.¹⁴¹ However, different factual situations can justify different CAS awards without violating public policy.¹⁴²

133. Mitten, *supra* note 114, at 54.

134. *Id.*

135. *Id.* at 57.

136. *Id.* at 58 & n.45.

137. *Id.*

138. *Id.* at 58.

139. *Id.* at 59 (citing Marc Biolley [Rep. of A. Sport] v. Ass’n Y. & TAS, 4A_506/2007 (2008) (Switz.), *translated in* 2 SWISS INT’L ARB. L. REP. 191 (2008)).

140. *Id.*

141. *Id.* at 60.

142. *Id.* (citing Raducan v. IOC, P.427/2000 (2000) (Switz.), *translated in* GABRIELLE KAUFMANN-KOHLER, *ARBITRATION AT THE OLYMPICS: ISSUES OF FAST-TRACK DISPUTE RESOLUTION AND SPORTS LAW*, at 80, 90 (2001)) (remarking that

The United States has even recognized that the SFT is the only body one can appeal to from a CAS ruling in *Gatlin v. U.S. Doping Agency, Inc.*,¹⁴³ holding that Gatlin's "remaining avenue for relief lies with the Swiss Supreme Court."¹⁴⁴ The district court, although it had no choice, did find it "troubling" that the U.S. court system had no power to "right a wrong perpetrated upon one of its citizens."¹⁴⁵ This shows that although the U.S. courts cannot rule on these matters, they wish they could, likely because they perceive what the international courts did to Gatlin as a wrong.

Although there are grounds for the SFT to overturn a CAS award, the court's reluctance to use these grounds when reviewing CAS awards shows an appeal against the CAS is unlikely to be successful. If the United States found itself in the SFT appealing a CAS award, FIFA would likely prevail because of this reluctance.

V. FIFA REFORM PLANS

After these numerous scandals surrounding bids and elections within FIFA,¹⁴⁶ FIFA President Sepp Blatter introduced his reform plan, which included creating three new task forces as well as a "Good Governance Committee."¹⁴⁷ Blatter said in a press conference in November 2011 that he hopes to have these reforms implemented by 2013.¹⁴⁸ The three new task forces will be concerned with reforms within the realms of the FIFA Statutes, the Ethics Committee, and Transparency and Compliance within FIFA.¹⁴⁹ The Football 2014 task force, which began its work in May 2011, would be continued

the difference between ways urine was tampered with at a doping lab allowed CAS to rule in favor of one athlete but not the other).

143. *Gatlin v. U.S. Anti-Doping Agency, Inc.*, No. 3:08-cv-241/LAC/EMT, 2008 WL 2567657 (N.D. Fla. 2008).

144. *Id.* at *1.

145. *Id.* at *2.

146. *See supra* Part II.

147. *FIFA Reveals Anti-Corruption Reform Plans*, CNN (Oct. 21, 2011, 06:50 AM), http://edition.cnn.com/2011/10/21/sport/football/football-fifa-blatter-corruption/?hpt=ieu_mid; *Blatter: Committee Can Probe WC Choices*, MSN FOXSPORTS, <http://msn.foxsports.com/foxsoccer/world/story/sepp-blatter-fifa-president-good-governance-committee-reforms-112511> (last updated Nov. 25, 2011, 8:06 PM ET).

148. *FIFA Reveals Anti-Corruption Reform Plans*, *supra* note 147.

149. *Id.*

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under the supervision of German soccer legend Franz Beckenbauer, according to Blatter.¹⁵⁰ This task force is designed to “develop and look at concrete proposals to improve both the attractiveness of football and match control in elite competitions, in areas such as Laws of the Game, refereeing, competition regulations, women’s football, medical matters and fair play.”¹⁵¹

When FIFA ultimately created the Good Governance Committee in mid-December of 2011, it was no longer called the Good Governance Committee but was called the Independent Governance Committee (IGC).¹⁵² FIFA named Mark Pieth as the leader of the IGC.¹⁵³ Pieth came from an organization which deals with economic cooperation and bribery.¹⁵⁴ The mandate of the committee was to advise FIFA on how to implement anti-corruption controls.¹⁵⁵

According to FIFA’s website, FIFA reforms have been on track in terms of the roadmap FIFA set out as of December 2011.¹⁵⁶ As planned, FIFA established the IGC on December 17, 2011.¹⁵⁷ According to the roadmap, the first feedback and proposals by the IGC will be sent to the Executive Committee in March 2012.¹⁵⁸ Additionally, as of January 2012, the Executive Committee was planning to approve reform proposals of the four task forces in March as well.¹⁵⁹ In June 2012, FIFA plans for the FIFA Congress to approve and implement changes to the FIFA Statutes.¹⁶⁰ Additionally, the Ethics Committee will start working in their new two-chamber

150. *Id.*

151. *FIFA Task Force Football 2014 Sets Out Next Proposals*, FIFA.COM (Oct. 25, 2011), <http://www.fifa.com/aboutfifa/organisation/bodies/news/newsid=1532355/index.html>.

152. See Samuel Rubinfeld, *FIFA Names Governance Committee Members*, WALL ST. J. (Dec. 19, 2011, 6:19 PM) <http://blogs.wsj.com/corruption-currents/2011/12/19/fifa-names-governance-committee-members/>.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Road Map*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/footballgovernance/process/roadmap.html> (last visited Mar. 20, 2012).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

structure at that time.¹⁶¹ Third, Congress will also address the bidding process for future World Cups in June.¹⁶² In June 2013, Congress is set to elect new members of the Ethics Committee as well as approve any further changes to be made to the FIFA Statutes.¹⁶³

Those in the United States following the Qatar situation might have had held on to the hope that FIFA would right the wrong, as Blatter said in an interview in November 2011 that the IGC¹⁶⁴ would have the power to review the process that led to the World Cups being awarded to both Russia and Qatar.¹⁶⁵ Blatter, however, did not say in the interview that such a review would necessarily occur.¹⁶⁶ When asked about the possibility of review, Blatter said, “[i]f somewhere, something appears . . . this committee has to have a look [at] that and report it.”¹⁶⁷ However, when Blatter was then asked if a process was in place that would allow for a bid to be rescinded, Blatter answered vaguely, saying, “[a]nd then we will see what will happen.”¹⁶⁸

Although it was not clear how suggestions surrounding the bidding process would be received by FIFA, once the task forces and committees began making suggestions for reforms the World Cup bidding process was in the forefront.¹⁶⁹ Pieth, the leader of the IGC, recommended drastic changes to the World Cup bidding process, calling the current process a “mix of corruption risk and conflict of interest concerns.”¹⁷⁰ Pieth thinks that changes to the bidding process would help prevent manipulation.¹⁷¹ He believes the decision to turn

161. *Id.*

162. *Id.*

163. *Id.*

164. Though Blatter was still calling it the Good Governance Committee at the time of the interview. *Blatter: Committee Can Probe WC Choices*, *supra* note 147.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Martyn Ziegler, *World Cup Bid Process Leads FIFA Reform Recommendations*, INDEPENDENT (U.K.) (Nov. 30, 2011), <http://www.independent.co.uk/sport/football/news-and-comment/world-cup-bid-process-leads-ffifa-reform-recommendations-6269990.html>.

170. *Id.*

171. *Id.*

the final vote over to the FIFA Congress as opposed to the Executive Committee was “a step in the right direction.”¹⁷²

Two remarks Pieth made about his role and the role of the IGC, however, essentially destroy any hope that those in the United States had about the Qatar situation. First, when the IGC was established, Pieth told news outlets that his advice was “non-binding;” that he had “no decision power;” and that they would have to “convince” FIFA.¹⁷³ Second, Pieth made it clear that he and the IGC would only be making suggestions for the future, not looking into past violations of FIFA members.¹⁷⁴ This decision by Pieth—and ultimately FIFA—was one of the key reasons that led Transparency International (TI) to cut ties with FIFA.¹⁷⁵ TI is a group that had made a much more drastic reform proposal in August of 2011.¹⁷⁶ Although FIFA ultimately did not implement their proposal, TI came aboard to advise FIFA during the reform process.¹⁷⁷ TI also felt that FIFA paying Pieth would cause problems with his independence from FIFA. TI’s sports advisor said that TI believed someone paid by FIFA could not be a member of the independent commission as “[h]e has a contract with F[IFA] so he is not independent in that sense.”¹⁷⁸

At this point, it is unclear what effect the FIFA reforms will ultimately have on FIFA procedures and laws. It seems though, that FIFA has handicapped their own reform groups through actions such as limiting the IGC to future suggestions and not giving the IGC the authority to rescind bids.¹⁷⁹ These limitations have driven away TI, whose involvement many thought to be very important to Blatter’s

172. *Id.*

173. Carolyn Bandel & Tariq Panja, *FIFA Anti-Corruption Panel May Be Further Expanded, Pieth Says*, BLOOMBERG (Dec. 17, 2011, 6:34 AM PT), <http://www.bloomberg.com/news/2011-12-17/fifa-anti-corruption-panel-may-be-further-expanded-pieth-says.html>.

174. Ziegler, *supra* note 169.

175. *Transparency International Cuts Ties with FIFA*, BBC (Dec. 1, 2011, 20:54 ET), <http://www.bbc.co.uk/news/world-europe-15996806> [hereinafter *TI Cuts Ties*].

176. *See infra* Part VII.B.

177. *TI Cuts Ties*, *supra* note 175.

178. *Id.*

179. *See* Ziegler, *supra* note 169.

reform plans.¹⁸⁰ With groups like TI cutting ties and the reforms being limited by FIFA and the independence of these reforms possibly being compromised by FIFA, one cannot feel confident that anything of consequence will ultimately come out of the IGC or the task forces.

VI. PROPOSED CHANGES TO FIFA

Under the current state of FIFA law, a remedy along the lines of a revote or removal from Qatar seems impossible. With the CAS required to stay within the parameters of the FIFA statutes for the most part,¹⁸¹ and the SFT reluctant to overturn a CAS award,¹⁸² forcing FIFA to revote or rescind the bid is not an option. If this type of misconduct cannot be remedied by the current FIFA system, then perhaps the entire system needs to be changed. Although FIFA has begun its own reform plans,¹⁸³ the refusal to look at past allegations would prevent the United States from righting this wrong with the 2022 World Cup vote. Additionally, the proposed changes to FIFA for the future are not formed completely, and it cannot be properly determined what effect they will have. The following section will examine several proposals for FIFA reform, and will also propose an entirely new route to FIFA reform by combining aspects of existing proposals while adding additional checks on misconduct.

A. Proposed Changes to the Bidding Process

Ryan Gauthier, in his article, *Improving the Bidding Process for International Sporting Events*, discusses problems with many international sporting events, including the FIFA World Cup, and suggests a new method for all such events.¹⁸⁴

Gauthier sees four main problems with international sporting events: lack of competition, economic inefficiency, poor decision making, and reduced economic transparency/corruption.¹⁸⁵ Gauthier then suggests a plan to solve these problems, including writing the

180. *TI Cuts Ties*, *supra* note 175.

181. *See generally* FIFA Statutes, *supra* note 14, art. 62.

182. *See supra* Part IV.C.

183. *See supra* Part V.

184. *See generally* Gauthier, *supra* note 9.

185. *Id.* at 28-33.

bidding process clearly in governing documents, stabilizing the process, creating a regional voting structure, using technical evaluations to benchmark and monitor hosts, and creating an exit strategy.¹⁸⁶

In regards to a regional voting structure, Gauthier views FIFA as a great example of how such a structure can help.¹⁸⁷ More than one-third of the twenty-four members on FIFA's Executive Committee are from Europe, which, as Gauthier points out, is more than two times the number it would be if the regions were weighted evenly.¹⁸⁸ Instead, Gauthier suggests using regional voting blocs, perhaps giving each region one vote or even three votes per region to allow for more nuanced voting.¹⁸⁹ This would not be a stretch for FIFA, which already has regional divisions with its confederations such as the Union of European Football Associations (UEFA) and CONCACAF.¹⁹⁰

Stabilizing the bidding process would also be useful for FIFA. In the past, FIFA has created confusion by switching positions on issues such as allowing co-hosted World Cups.¹⁹¹ A stable process ensures that bidders know what set of rules they are dealing with while also making "the process less susceptible to manipulation, especially by the mere words of a single authority figure."¹⁹²

Implementing Gauthier's ideas would be beneficial to FIFA, as it would provide a more stable bidding process while also making a non-issue of the common complaint of European bias. Although Gauthier discussed options involving either one or three votes per region,¹⁹³ three seems more reasonable for FIFA, as larger confederations, like UEFA, could further subdivide its three votes. Implementing a fairer process to those outside Europe by evening out the votes would result in less accusations of European misconduct. Having a more stable

186. *Id.* at 40-45.

187. *Id.* at 42.

188. *Id.*

189. *Id.* at 43.

190. *See id.*

191. *Id.* at 41.

192. *Id.* at 42. FIFA has had issues with single authority figures changing the process, as in when Sepp Blatter decided on his own that that the 2018 World Cup would be hosted by a European country. *See supra* Part I.C.

193. *Id.* at 43.

process would reduce problems such as the confusion over rules on co-hosting, saving bidding countries time and money wasted in bids that do not conform with FIFA's ever-changing rules.¹⁹⁴

B. FIFA Transparency Proposal

Transparency International (TI) released a report discussing how FIFA could build integrity and transparency.¹⁹⁵ TI describes itself as a global civil society organization “leading the fight against corruption.”¹⁹⁶ The report is significant, as FIFA, rather than ignoring the report, acknowledged and responded to it on FIFA's website.¹⁹⁷ In the report, TI notes FIFA is ultimately answerable only to its national football association members.¹⁹⁸ In turn, those associations are partially dependent upon FIFA for funds FIFA allocates to the associations.¹⁹⁹ TI says this “lack of mandatory accountability to the outside world” makes change from within FIFA or the football organizations very unlikely.²⁰⁰

TI calls for FIFA to create a “multi-stakeholder group” drawn from FIFA's stakeholders, which TI claims to be happy to assist FIFA in creating and establishing.²⁰¹ TI also calls for greater transparency within FIFA, including releasing more reports containing financial data, the sources of funds, and allocation of those funds.²⁰² To help prevent the dangers of corruption and bribery, TI suggests implementing anti-bribery codes, listing six key principles applicable to FIFA: (1) zero tolerance of bribery; (2) “articulate values, policies and procedures for preventing the occurrence of bribery;” (3) “reflect

194. *See id.* at 42.

195. Sylvia Schenk, *Safe Hands: Building Integrity and Transparency at FIFA*, IN FOCUS (Transparency Int'l, Berlin, Germany), Aug. 16, 2011, at 1, available at http://www.playthegame.org/fileadmin/documents/TI_FIFA_Safe_Hands_Embargoed.pdf.

196. *Id.*

197. *FIFA Acknowledges Report by TI*, FIFA.COM (Aug. 16, 2011), <http://www.fifa.com/aboutfifa/organisation/news/newsid=1493338/index.html>.

198. Schenk, *supra* note 195, at 2.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at 3.

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the organisation's particular circumstances and culture;" (4) "be consistent with all laws relevant to countering bribery;" (5) "consultation with employees and other key stakeholders including trade unions or other employee representative bodies;" and (6) "be informed of all internal and external matters material to the effective development and implementation of the program[]." ²⁰³ TI recognizes the awarding of World Cup hosting rights is a high-risk area of bribery and should be recognized by FIFA as such. ²⁰⁴ TI also suggests establishing clearly published guidelines for the initiation and execution of investigations, including ideas such as whistleblower protection, appointment of independent ombudsmen, and suspicions investigated by a body independent of the Executive Committee. ²⁰⁵

TI's approach is more comprehensive, and perhaps more ideal. However, FIFA has already rejected them. ²⁰⁶ Likely, calling for such drastic changes and for FIFA to relinquish so much power ²⁰⁷ grounded TI's proposal from the beginning. TI's ideas, however, were not entirely placed by the wayside, as FIFA brought TI in to be part of an outside panel to advise on reforms. ²⁰⁸ Sepp Blatter said TI was specifically brought in to assist the good governance committee with anti-corruption and anti-bribery. ²⁰⁹ Then, in December 2011, TI cut ties with FIFA after TI claimed FIFA ignored two of its key recommendations. ²¹⁰ One problem in the eyes of TI was that FIFA planned to pay an expert to oversee major reforms as to how FIFA is run. ²¹¹ As discussed above, TI saw this as something that would jeopardize the independence of the expert. ²¹² Additionally, the expert said he would not reexamine old scandals, which was something TI also felt was important. ²¹³ This move by TI has been viewed as a

203. *Id.* at 3-4.

204. *Id.* at 5.

205. *Id.*

206. *See TI Cuts Ties, supra* note 175.

207. *See* Schenk, *supra* note 195.

208. *TI Cuts Ties, supra* note 175.

209. *Blatter: Committee Can Probe WC Choices, supra* note 147.

210. *TI Cuts Ties, supra* note 175.

211. *Id.*

212. *Id.*

213. *Id.*

blow to the credibility of the FIFA reforms, as many thought the involvement of TI was a key element to Blatter's strategy to fix the corruption problems within FIFA.²¹⁴

C. Combination Approach

The Gauthier approach to FIFA reform is less invasive and could be implemented more easily—but may not be enough. Alternatively, the TI approach could fix many of FIFA's current problems, but is unlikely to be implemented. An approach combining aspects of the two approaches by changing the bidding process and increasing transparency may provide the correct balance between solving problems and being conservative enough to avoid strong resistance from FIFA.

1. Reduce the Number of Bids

There are too many bids voted on in the current FIFA process.²¹⁵ With so many bidding countries, it often takes several rounds of voting to decide which country will host.²¹⁶ FIFA should eliminate all but two bidding countries prior to the voting process, as this would reduce options and make the process more efficient. Initially, FIFA should accept five bids to be narrowed down by some type of technical evaluation. This evaluation should be out of the voters' control so bidding countries know there is no foul play. Gauthier advocates for having technical evaluations in these international sporting events.²¹⁷ Gauthier contends, however, that if these technical evaluations are merely preliminary to a vote, they would serve only as voter information rather than deciding anything.²¹⁸ This proposal would not have such pitfalls as it eliminates all but two bidding countries prior to the vote.

Some would criticize this process for lack of considerations beyond technical evaluations. They would say FIFA often considers many things beyond technical aspects of a bidding country, such as a

214. *Id.*

215. *See Russia and Qatar to Host, supra* note 52.

216. *Id.*

217. Gauthier, *supra* note 9, at 44.

218. *Id.*

desire to spread the World Cup to different areas of the world. This has been true especially as of late, with the 2010 World Cup in South Africa and the 2014 World Cup heading back to South America in Brazil.²¹⁹ This system could account for these regional concerns by making it part of the evaluation. For example, the evaluation could consider whether a bidding country's region had previously hosted a World Cup, and, if so, how long it has been since it last hosted. FIFA could give more weight to this variable than other technical elements to ensure this concern is addressed as fully as it desires.

The evaluation as a whole should be simple, as this would leave less room for controversy. To this end, the proposed evaluation should consist of only two scores. The first score should be comprised of the technical scores, such as space for proper fan and player accommodations, anticipated weather, safety, current stadiums able to host games, plans for additional stadiums, and any other evaluations FIFA might find useful. There remains the question of how nuanced this technical score should be. Gauthier found that the simpler a score is, the easier it is to justify.²²⁰ For assigning scores to the different categories, Gauthier proposes a "0/1/2" option as opposed to a typical 1-10 scale.²²¹ This, he says, would add clarity to one's overall score, as it is more difficult to determine what distinguishes a six from a seven on a ten-point scale, than a one from a two on a "0/1/2" scale.²²² Gauthier does point out, however, that with little variation between scores under a "0/1/2" scale, the scores may not be separated enough to be helpful.²²³ Because there is less variation between a zero and a two than there is between a one and a ten, the technical evaluation would not give much more information than voters simply selecting one bid or the other. However, because FIFA is unlikely to yield this process to an independent body, it seems more useful to control possible biases than provide a nuanced scoring system, which would allow FIFA officials to tip the scales in favor of areas they want to host. Therefore, FIFA should give the bidding countries a score of zero, one, or two on various technical elements.

219. See *id.* at 14 (citing *Rotation Ends in 2018*, *supra* note 46).

220. *Id.* at 44.

221. *Id.*

222. *Id.*

223. *Id.*

These scores would then be averaged to create an average technical score.

The second score attributed to each bidding country would be a score reflecting the regional concerns discussed above.²²⁴ This score could be on the same 0/1/2 scale, or FIFA could allot more points to this consideration to fulfill its goal to spread the World Cup around the globe. To this end, a scaled-score of 0-4 is appropriate: a country located in a region which has never before hosted a World Cup would receive a score of four; a country in a region not hosting for three or more World Cups would receive a three; a country in a region not hosting for two World Cups would receive a two; a country in a region not hosting for one World Cup would receive a one; and a country in a region that hosted the directly previous World Cup would receive a zero. This would help FIFA spread the World Cup throughout the world while also providing checks on possible biases to certain areas of the world.

Even with these technical evaluations, however, it is possible that corrupt sources within FIFA could still manipulate the process to control the location of the World Cup. For example, if FIFA wanted the World Cup in Qatar, they could sidestep the above proposed process in two ways. First, they could choose Qatar and four countries close to Qatar as the five bids to undergo technical evaluations. This would ensure that the World Cup would either be in Qatar, or somewhere close. Second, FIFA could pair Qatar with four bids that FIFA knows will score significantly less than Qatar, such as small countries that do not have the proper facilities to host a World Cup. To combat these possible loopholes, another evaluation should be added. This would not be a numerical evaluation to average with the score, but rather would require FIFA to identify each bid as either “qualified” or “not qualified” based upon a bid’s first technical score. If the bid received a technical score below a certain number, it would be labeled as “not qualified.” This is similar to the system used by the American Bar Association with judges.²²⁵ This system would disallow “not qualified” bids to move on to the voting round. Under

224. *See supra* Part VI.C.1.

225. *See* Charlie Savage, *Ratings Shrink President's List for Judgeships*, N.Y. TIMES (Nov. 22, 2011), <http://www.nytimes.com/2011/11/23/us/politics/screening-panel-rejects-many-obama-picks-for-federal-judgeships.html?pagewanted=all>.

this system, Qatar may have been deemed “not qualified” because of its potentially unsafe temperatures.

In summary, each bid would have a technical score, a score reflecting regional concerns, and a label as either “qualified” or “not qualified.” The two numerical scores would be combined so each bid would have one score. After this evaluation, the two highest scoring “qualified” bids would move on to a vote.

2. *Revise the Voting Process*

A new voting process should be implemented in order to make the overall World Cup decision fairer. The regional bloc voting structure proposed by Gauthier is logical as there is currently a disproportionate amount of European influence in the Executive Committee.²²⁶ It may, however, be problematic because Europe will not want to have a smaller voice than regions like CONCACAF. Europe will likely argue their vote should carry more weight because they have more members in FIFA. Those in the United States recognize this problem as similar to the one the U.S. founding fathers dealt with when drafting the U.S. Constitution.²²⁷ A compromise similar to the one struck by the founding fathers may be the best option here as well: FIFA should institute a system similar to a bicameral legislature in order to eliminate regional bias, give smaller regions a legitimate voice, and still honor the larger voices of regions like Europe.

First, there would be a Senate-like chamber, with regions having equal voting power. Giving each region only one vote would be troublesome, however, as there are only six confederations in FIFA and some are so large that it would likely lead to disparity and controversy within the voting blocs.²²⁸ Therefore, as Gauthier discussed, each confederation should be given three votes.²²⁹ Each confederation would choose how to cast its votes. For example,

226. Gauthier, *supra* note 9, at 42.

227. Heavily populated states wanted congressional representation determined by population; small states, however, wanted equal representation. *See generally* Matthew J. Festa, *The Origins and Constitutionality of State Unit Voting in the Electoral College*, 54 VAND. L. REV. 2099, 2108 (2001).

228. *See Confederations*, FIFA.COM, <http://www.fifa.com/aboutfifa/organisation/confederations/index.html> (last visited Mar. 7, 2012).

229. *See* Gauthier, *supra* note 9, at 43.

UEFA, which currently holds eight votes in the Executive Committee,²³⁰ could have those eight members cast votes for UEFA's own regional voting purposes. If the vote came back with a score of five votes for one bid and three votes for the other, UEFA could allot two of its overall votes to the first bid, and its third regional vote for the third bid. Alternatively, UEFA could regionalize itself and give each subregion one vote, which could lead to different results depending on how the regions were subdivided. In the end, eighteen votes would be cast, three from each confederation.²³¹ These votes would be counted and a bidding country would be selected to move on to the next level. In case of a tie, the highest scoring bid from the previous round would be sent to the next level. This method of tiebreaking, in contrast to giving the FIFA President the tiebreaking vote, is unlikely to cause much backlash from those on the losing end.

After the Senate vote, the bid would be passed on to the next level—akin to the House of Representatives—for the next phase of voting. There, votes would be allocated to the confederations proportionally to the number of members the confederation had within FIFA. Since votes would be allocated proportionally, it ultimately does not matter how many total votes are distributed in the House of Representatives. However, the total number of votes should remain low to eliminate the possibility for improper influence should the regions decide to divide their votes.

The bid nominated by the lower level must receive a majority vote from the House of Representatives in order to acquire the final bid. If the smaller regions were able to pass a bid through the Senate against the wishes of the larger regions, the larger regions could voice their opinion with authority at the House of Representatives stage.

If the House of Representatives rejects a bid, the process begins again in the Senate, with the Senate voting again on the rejected bid, as well as the bids that scored second and third in the technical evaluation stage. The Senate could override the rejection with a seventy-five percent vote. It is necessary to allow the Senate to consider the third place bid in order to prevent the House of Representatives from having all the power. A rejection of the

230. *Id.* at 42.

231. There are six confederations; giving three votes to each confederation would equal eighteen total votes. *See Confederations, supra* note 228.

Senate's bid would make it extremely difficult, if not impossible, for that bid to be ultimately chosen. The Senate would have to go through the seventy-five percent vote override process, and, if that was not successful, they would have to choose the second place bid. Allowing the third place bid to be voted on maintains the check on the House's power. Once a bid makes it through both levels of voting, that country would be awarded the rights to host the FIFA World Cup.

3. *Promote Transparency*

As shown by TI, FIFA would benefit from added transparency. As discussed above, however, TI's proposal is radical and calls for tremendous changes. As this is unlikely to be adopted by FIFA, ushering in heightened transparency to a high-risk area, such as the bidding process, may be an easier pill for FIFA to swallow. In this proposal, the technical evaluation scores, the regional concern scores, and final votes by both the Senate and the House of Representatives would be available to the public via the FIFA website. Transparency keeps entities like FIFA accountable for their actions and can expose errors or foul play in the evaluation and voting process. This small step can ease the nerves of World Cup fans in regards to the bidding process. Further, when this program produces bids with both technical support and less foul play, the public approval could drive FIFA to institute more transparency policies that groups like TI have suggested.

CONCLUSION

Overall, rescinding the Qatar World Cup bid without consent of FIFA is a difficult task. Although ethics violations can be brought within FIFA for individual members,²³² nothing in FIFA law requires FIFA to rescind the bid or hold a revote. Although the members allegedly committing corruption this time could be suspended or banned, there is nothing to stop subsequent members from committing the same unruly acts. Additionally, although relief through the CAS is available,²³³ a result against FIFA is not likely, as CAS must apply FIFA law primarily,²³⁴ and there is no clear Swiss policy in place that

232. FIFA Code of Ethics, *supra* note 88, art. 1.

233. FIFA Statutes, *supra* note 14, arts. 62-64.

234. *Id.* art. 62.

would be helpful to the United States. Further, due to the limited instances the SFT will vacate a CAS decision,²³⁵ relief through that court is also unlikely. Although FIFA plans to institute their own reforms,²³⁶ these reforms will only be prospective, not retrospective, once again leaving the Qatar scandal untouched. The most likely avenue through which to obtain a remedy for the Qatar situation and prevent future controversies may be for FIFA to implement large-scale changes. If the plans proposed by Gauthier or TI were enacted, perhaps the new FIFA, with more influence from independent sources, would decide to rescind Qatar's bid and hold a revote. The combined approach proposed by this article would allow for the changes TI would like to see on a macro level, while improving the bidding process in a less radical way. Thus, FIFA would be more likely to implement this proposal. The technical evaluations, two level voting system, and transparency throughout the process would give World Cup fans assurance that the accepted bid is a proper venue and was secured without foul play.

One possible silver lining of the Qatar controversy is that the Qatar World Cup is not until 2022.²³⁷ If it was sooner—say, 2014—logistics would all but slam shut the potential of a change in venue. However, with ten years remaining before the Qatar World Cup, FIFA or the court systems have ample time to change their rules and procedures in a way that could vindicate American soccer fans.

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235. *See supra* Part IV.C.

236. *See supra* Part V.

237. *See US Players React, supra* note 1.

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