

## GOING FOR THE "GOLD": AN APPLICATION OF THE OECD BRIBERY CONVENTION TO THE OLYMPIC GAMES SCANDAL

### INTRODUCTION

The Olympic movement is the epitome of the international ideal. The Olympic games symbolize the unity of nations through fair competition and promote world peace through an extraordinary channel founded on mutual understanding, friendship, solidarity and sportsmanship.<sup>1</sup> The distinctiveness attached to the Olympic games makes it one of the most noticeable and noble events in the world.<sup>2</sup> The Olympic games are an inspiration for the young, the old, the rich and the poor. With pride, anticipation, inspiration and hope, every two years, millions of people around the world watched Olympic athletes compete for the gold. Then, in December of 1998, the unexpected storm hit the "Holy" arena of the Olympic games. The world was stunned, as the Salt Lake City Bribery Scandal was unmasked.<sup>3</sup> Within days, the Olympic image was tarnished by impropriety and scarred by corruption.<sup>4</sup>

In 1998, the Salt Lake City Bid Committee bribed International Olympic Committee members ("IOC members") in an effort to win the bid for the 2002 Olympic games.<sup>5</sup> The Salt Lake City Bid Committee spent over 1.2 million dollars in gifts, entertainment and services on IOC members in an effort to obtain their votes for Salt Lake City during the 2002 site selection process.<sup>6</sup> Eventually, Salt Lake's multimillion-dollar vote-buying scheme secured its quest for the 2002 winter games.<sup>7</sup> Nevertheless, the discovery of this unethical conduct has placed the purity of the Olympic movement, as the international ideal, in jeopardy.

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1. OLYMPIC CHARTER, princ. 6, available at [http://www.olympic.org/ioc/e/facts/charter/charter\\_into\\_e.html](http://www.olympic.org/ioc/e/facts/charter/charter_into_e.html) (last visited Sept 5, 2000).

2. Ronald T. Rowan, *AALS Sports Law Conference: Legal Issues and the Olympic Movement*, 3 VILL. SPORTS & ENT. L.J. 395, 395 (1996).

3. CNN, *Bribery Scandal Dulls Olympics' Century-Old Shine*, at <http://europe.cnn.com/specials/1999/olympics.probe/overview> (last visited Sept. 9, 2000).

4. Joseph White, *Congressmen Question Olympics Chief—Skeptical Panel Hears Samaranch Maintain New Reform Measures Will Curb Corruption*, STAR-LEDGER, Dec. 16, 1999, available at 1999 WL 30918352.

5. CNN, *Arraignments Set Stage for Olympic Bribery Trial*, at <http://www.cnn.com/2000/law/08/07/olympics.advance> (last visited Aug. 7, 2000).

6. Larry Siddons, *Clinton Urged to Help Cleanse Tarnished IOC*, LAS VEGAS REVIEW-JOURNAL, Mar. 4, 1999, at 1C.

7. *500 Days and Counting Until Summer Olympics the Bribery Scandal from the Salt Lake City Winter Games is Still Overshadowing Sydney's Efforts to Get Ready*, ORLANDO SENTINEL, May 4, 1999, at C2.

Unfortunately, corruption has become commonplace in today's international arena.<sup>8</sup> When it comes to international dealings, it is not the competitor with the best quality and price that will win the bid, but rather he who offers the biggest bribe.<sup>9</sup> Such an understanding in the sphere of international transactions results in dire consequences that give rise to a need for change.

In an effort to curb dishonest practices in the international arena, the United States sought the implementation of an international agreement that criminally punishes corrupt acts.<sup>10</sup> In 1999, the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("OECD Bribery Convention") went into effect.<sup>11</sup>

This Comment examines the scope of the OECD Bribery Convention through an application of the treaty's terms to the Olympic Games Bribery Scandal. Part I provides an overview of the Olympic Bribery Scandal. This section briefly discusses the economic advantages of being a host city. It also provides an overview of the Olympic Games site selection process and describes why this process gives rise to corrupt acts such as the Olympic Games Bribery Scandal. Part II introduces the OECD Bribery Convention, its history and its current status. Part III examines the Olympic Bribery Scandal in light of the OECD Convention. This part explains that, although the OECD Bribery Convention is applicable to the Olympics, there are unresolved issues that call into question the scope of this Convention. Part IV examines the implementation process of the Convention and further discusses how broadening the scope of the Convention will effect its implementation. Part V concludes with a summary of the application of the OECD Bribery Convention to the Olympic Bribery Scandal.

## I. OVERVIEW OF THE OLYMPIC GAMES SCANDAL

### A. *Advantages of Being a Host City*

Winning the bid to host the most popular sports event in the world makes the Olympic Games a serious matter for many cities around the

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8. Eleanor Roberts Lewis, *Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 1075 PLI/Corp 179, 181 (1998).

9. Department of State United States of America, *Fighting Global Corruption: Business Risk Management: Information for Global Businesses and Organizations on Navigating the International Anticorruption Environment*, at [http://www.state.gov/www/global/narcoticslaw/global\\_corruption.html](http://www.state.gov/www/global/narcoticslaw/global_corruption.html) (last visited Sept. 9, 2000).

10. Peter Eigen, *The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 45 FED. LAW. 22, 22 (Aug. 1998).

11. Barbara Crutchfield George et al., *The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions*, 37 AM. BUS. L.J. 485, 485 (2000). See *infra* note 45.

world. An opportunity to host the Olympic Games provide a city with significant economic benefits. Hundreds of thousands of people from around the world attend the Olympic games.<sup>12</sup> Typically, these are financially secure people who can afford to purchase tickets that range from \$70 to \$900 a seat, stay in luxury hotels, dine at expensive restaurants, and return home with numerous souvenirs.<sup>13</sup> In other words, the Olympic Games regularly attract a significant number of people who have the ability to spend an excessive amount of money.<sup>14</sup> Currently, with less than two years until the 2002 winter Olympics, restaurants in Salt Lake are already making significant profits from visitors who are preparing the city for the Olympics.<sup>15</sup> In fact, with all the construction in preparation for the February 2002 games, personal income in Utah is expected to rise significantly.<sup>16</sup> The economic benefits that come with hosting the Olympic games creates stiff international competition among cities around the world every time the International Olympic Committee seeks a host for an upcoming Olympic Game.

### *B. The Site Selection Process*

Selection of a host city for the Olympic games is a "complicated process."<sup>17</sup> Generally, all cities interested in hosting a particular Olympic Game submit a bid to the International Olympic Committee ("IOC"). The IOC conducts research on each bidding city to determine which city can provide the best accommodations for the games.<sup>18</sup> Selection of a host city is one of the IOC's most important decisions and therefore their study of each bidding city is very detailed.<sup>19</sup> The IOC uses a number of factors to examine prospective host cities.<sup>20</sup> Once the bids are submitted to the IOC, every bid city is sent a questionnaire, which must be filled out and returned to the

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12. See Bill Sullivan, *What's Up Down Under*, HOUSTON CHRON., Sept. 19, 1999, available at 1999 WL 24254468.

13. See *id.*

14. See *id.*

15. Ron Ruggless, *Salt Lake City in Peak form for Olympics Despite Bribery Scandal*, NATION'S RESTAURANT NEWS, March 29, 1999, available at 1999 WL 10372467. The Utah Restaurant Association say they expect a 6.3% increase in sales for restaurants throughout the state. *Id.* Currently, the average restaurant sales nation wide is only 4.6%. *Id.*

16. *Id.* The Olympics encourage restaurants and other companies to open businesses/branches in Olympic cities. See *id.* For example, the Los Angeles based Grill Concepts, which operates in California and the District of Columbia opened an 8,000 square foot Grill in Downtown Salt Lake City in preparation for the 2002 Winter Olympic games. *Id.* In fact, several new restaurants and business establishments have opened in Salt Lake. *Id.*

17. Rowan, *supra* note 2, at 402.

18. Paul Mastrocola, *The Lords of the Rings: The Role of Olympic Site Selection as a Weapon Against Human Rights Abuses: China's Bid for the 2000 Olympics*, 15 B.C. THIRD WORLD L.J. 141, 145 (1995).

19. *Id.* at 145.

20. *Id.*

IOC.<sup>21</sup> The questionnaire is comprised of fifty-two questions regarding “respect for IOC rules, general and cultural information, organizational matters, and electronic media issues.”<sup>22</sup> Most cities are eliminated by their responses to the questionnaire.<sup>23</sup> The remaining cities are asked more detailed questions and then the IOC conducts “fact-finding missions.”<sup>24</sup>

During this “fact-finding mission” of investigation the IOC evaluates the city’s ability to provide adequate security and tourist accommodations.<sup>25</sup> Furthermore, the IOC considers the city and the state’s political involvement.<sup>26</sup> Following these investigations, the IOC prepares a report on the final candidate cities.<sup>27</sup> The report “evaluates each city on twenty-three themes, ranging from meteorological conditions to sports experiences.”<sup>28</sup> After reviewing the reports, the IOC members cast their vote for the Host City.<sup>29</sup> Unfortunately, this selection process travels through an intense chain of commands, which leads to unfair, unethical and biased decisions.

### C. Olympic Scandals

#### 1. Salt Lake City Scandal

In 1998, Salt Lake City won the bid for the 2002 winter games.<sup>30</sup> The Salt Lake City Bidding committee spent over a million dollars in an effort to buy votes that would make them the Host City for the 2002 Olympic Games.<sup>31</sup> The Bidding Committee bribed the IOC members and their families with a variety of lavish gifts.<sup>32</sup> These gifts included shopping sprees and scholarships for children of IOC members.<sup>33</sup> Furthermore, when certain IOC members arrived in Salt Lake to evaluate the city during their “fact-finding mission,” the Committee spent thousands of dollars worth of hospitality on the IOC representatives and their families.<sup>34</sup> In fact, Australian IOC member Phil Coles was asked to resign after it was revealed that he accepted \$60,000 worth of entertainment from Salt Lake City Officials during the bid

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21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *See id.*

30. Erskine McCullough, *Upbear Gooper Defends Himself Against Corruption Allegations*, AGENCY FRANCE-PRESSE, Mar. 6, 2000, at A2.

31. *USOC Used Bribes to Get 2002 Olympics*, WASH. TIMES, Nov. 14, 1999, at A13.

32. *Id.*

33. *Id.*

34. *See Cole Now Faces Jewel Bribe Claim: Olympics*, GUARDIAN, Mar. 20, 1999, available at 1999 WL 14124702.

for the winter 2002 Olympics.<sup>35</sup> The Bidding Committee the IOC members with everything from cash to shopping sprees to free medical services in an effort to win votes for Salt Lake City.<sup>36</sup>

## 2. 1996 Summer Olympics

Unfortunately, the Salt Lake City Scandal was not an isolated incident. Since the Salt Lake Scandal, evidence of corruption in the bid for the 1996 Summer Games has also been exposed.<sup>37</sup> In fact, many contend that a "culture of corruption" surrounded the bids for the 1996 Olympic Games.<sup>38</sup> In an unsuccessful effort to win the bid for the 1996 games, it has been revealed that representatives from Athens, Greece gave the Australian IOC representative's wife gold and diamonds.<sup>39</sup> Furthermore, in Toronto, Mayor Mel Lastman is questioning Paul Henderson, the former head of Toronto's Bid Committee, regarding expenses used to solicit the 1996 bid.<sup>40</sup> The Toronto Bid Committee apparently gave \$150,000 worth of Swiss watches to IOC members, spent \$12,500 on airfare for IOC member Jean-Claude Ganga of the Republic of Congo, and expended \$2,880 to charter a plane for IOC President, Jean-Antonio Samaranch.<sup>41</sup>

Furthermore, in 1990 when the IOC members accepted bids for the 1996 Summer Games, the Atlanta Bid Committee offered Mr. Samaranch's wife an "all-expenses-paid \$12,000 trip to [Atlanta] Georgia."<sup>42</sup> She accepted the offer and shortly thereafter, "Atlanta was awarded the 1996 Summer Games."<sup>43</sup> Investigative hearings revealed that corruption has been a "long standing practice" in the international search and subsequent selection of Olympic Host Cities.<sup>44</sup> The question now becomes whether the

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35. See Mike Gorrell, *U.S. Legislators Are Making Moves to Force Changes in the IOC Alaskan Senator is Pushing Legislation that Would Coerce International Body to Install a Check-and-Balance System*, SALT LAKE TRIBUNE, Mar. 4, 1999, at A6.

36. CNN, *Olympic Bidders Delaying Bribery Trial*, Dec. 29, 1998, available at <http://www.cnn.com/US/98122/29/olympic.bribery.01/index.html>. Medical services, including plastic surgery, were provided to IOC members. *Id.*

37. David Pace, *Upton Calls for Olympics Cleanup Congressional Probe to Look at Committee's "Culture of Corruption"*, SOUTH BEND TRIBUNE, Sept. 22, 1999, at A1.

38. *Id.*

39. *Cole Now Faces Jewel Bribe Claim*, *supra* note 34.

40. Gorrell, *supra* note 35, at A6.

41. *Id.*

42. White, *supra* note 4.

43. *Id.*

44. *Panel to Look for Corruption at Olympics; Congressional Hearings to Probe Atlanta Bidding*, BALTIMORE SUN, Sept. 22, 1999, at A9, available at 1999 WL 5204554. Furthermore, there is talk of corruption throughout the Olympic process. For example, Japanese directors in-charge of selecting competitors for the Japanese national equestrian team are being investigated for allegedly receiving over 3.65 million yen (\$30,420) dollars) from former Olympic rider Yoshinaga Sakurai. *Japanese Olympics Equestrian Team Hit by Corruption Scandal*, AGENCY FRANCE-PRESSE, July 5, 1999, available at 1999 WL 2632815. Sakurai was allegedly did not qualify for the national team but after Sakurai paid the officials he was se-

OECD Bribery Convention applies to this particular type of international corruption.

## II. THE OECD BRIBERY CONVENTION

The OECD Bribery Convention, formally known as the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business, went into effect on February 15, 1999.<sup>45</sup> The OECD Bribery Convention marks a sea of change in the fight against international corruption.<sup>46</sup> The Convention is an agreement between thirty-four member countries to fight corruption in international business transactions.<sup>47</sup> The convention requires the member countries to enact laws that will impose criminal penalties on domestic corporations who offer bribes to foreign officials in an effort to gain an unfair business advantage.<sup>48</sup> The convention is considered a "landmark achievement" and is expected to curb corrupt international practices.<sup>49</sup>

The OECD Bribery Convention is composed of seventeen articles.<sup>50</sup> Under Article 1, entitled "The Offense of Bribery of Foreign Public Official," states that it is a criminal offense "for any person intentionally to offer, promise or give any undue pecuniary or other advantage . . . in order to obtain or retain business or any other improper advantage in the conduct of

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lected to represent Japan in the 1996 Olympic games. *Id.* It has also been revealed that another rider's parents paid 800,000 yen to a high ranked official who nominated their son for the 1996 Olympic team. *Id.*

45. OECD online, *OECD Anti-Corruption Unit*, (last visited Sept. 8, 2000), at <http://www.oecd.org/daf/nocorruption/>. See also Organization for Economic Cooperation and Development: Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1 [hereinafter *OECD Convention*].

46. George, *supra* note 11, at 485.

47. *OECD Convention*, *supra* note 45. These countries include Iceland, Japan, Germany, Hungary, USA, Finland, the UK, Canada, Norway, Bulgaria, Korea, Greece, Austria, Mexico, Sweden, Belgium, the Slovak Republic Australia, Spain, Czech Republic, Switzerland, Turkey, and France. *Id.*

48. Judd Lawler, *Damned if You Do, Damned if You Don't? The OECD Convention and the Globalization of Anti-Bribery Measures*, 32 VAND. J. TRANSNAT'L L. 1249, 1249 (1999).

49. See Eigen, *supra* note 10, at 22. It must be noted that use of bribery to obtain an advantage is a form of bargaining with roots reaching back to the beginning of time. This type of quid pro quo not only fosters low moral and ethical standards, it has devastating consequences on international transactions. See Conference, *The Experts Round Table: A Hemispheric Approach to Combating Corruption*, 15 AM. U. INT'L L. REV. 759, 763-64 (2000). Corruption through bribery leads to unfairness, dishonesty and the eventual dissolution of international relationships. See *id.* The pervasiveness of bribery has particularly had a negative impact on the international business community. See *id.* Particularly, corruption drives prices up, hinders foreign investment and stifles economic growth. See *id.* Furthermore, those who practice international business in a fair manner and seek to obtain contracts through the quality and price of their product and service they provide are, in a sense, penalized when they must compete with others who utilize corrupt practices. See *id.*

50. *OECD Convention*, *supra* note 45.

international business."<sup>51</sup> Article 1 defines the offense of bribery punished by this act and thus contains the rule for the OECD Convention.<sup>52</sup> This paper will therefore focus primarily be on Article 1. Nonetheless, the remaining sixteen articles should be mentioned briefly so that a clear understanding of the OECD Bribery Convention may be attained.

Article 2, entitled "Responsibility of Legal Persons," states that each party has the freedom to "establish the liability of legal persons" who bribe foreign public officials in violation of the Convention.<sup>53</sup> Article 3, entitled "Sanctions," generally states that "effective, proportionate and dissuasive criminal penalties" shall be imposed on those who bribe foreign public officials.<sup>54</sup> Countries that do not have criminal corporate liability established as part of their legal system must provide equivalent non-criminal punishment, such as monetary sanctions for corporate offenders.<sup>55</sup> Furthermore, Article 3 permits the seizure or confiscation of proceeds of the bribe of a foreign public official.<sup>56</sup>

Article 4 discusses jurisdiction. Under Article 4, a party to the Convention has jurisdiction over an alleged violation of the OECD Convention when the offense of bribery is committed within the territory of the member nation.<sup>57</sup> When more than one party to the Convention has jurisdiction over an alleged violation of the Convention, then the two countries must consult with each other and determine which forum will be most appropriate for prosecution.<sup>58</sup> Prior to declaring jurisdiction over an alleged violation within the scope of the Convention the prosecuting country must be able to show that jurisdiction is "effective in the fight against the bribery of Foreign Public Officials."<sup>59</sup> Articles 5-8 discuss enforcement, statute of limitations, money laundering and accounting respectively.<sup>60</sup> These Articles are extremely broad because the Convention heavily relies on the sovereignty of the individual signatory nations to control these aspects of the Convention.

Article 9, entitled "Mutual Legal Assistance," requires the parties to provide one another with prompt and effective assistance.<sup>61</sup> Under Article 10, the OECD mandates that bribery of a foreign public official is an extraditable offense.<sup>62</sup> Nevertheless, in the spirit of state sovereignty the Conven-

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51. *Id.* art. 1.

52. *Id.*

53. *Id.* art. 2.

54. *Id.* art. 3.

55. *Id.*

56. *Id.*

57. *Id.* art. 4. This jurisdictional rule does not require the offense to be entirely committed within the nation seeking jurisdiction. *Id.* Even when the offense was partly committed in a member nation's territory then that nation obtains jurisdiction of the matter. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* arts. 5-8.

61. *Id.* art. 9.

62. *Id.* art. 10.

tion states that extradition is “subject to the conditions set out in the domestic law, applicable treaties and arrangements of each Party.”<sup>63</sup> Article 11 merely states when the Secretary-General of the OECD must be notified of an alleged violation of the Convention.<sup>64</sup> It also determines when the secretary-general may need to serve as a liaison between the two parties.<sup>65</sup> Article 12 states that the parties shall monitor and promote full implementation of the Convention.<sup>66</sup> The OECD Working Group on Bribery in International Business Transactions is specifically responsible for monitoring the implementation of the Convention.<sup>67</sup> Article 13 lays out the options for signature and induction to the Convention.<sup>68</sup>

Articles 14 and 15 set forth the ratification and other requirements for becoming a signatory to the OECD Bribery Convention.<sup>69</sup> Acceptance, approval or ratification of the Convention must be in accordance with the respective laws of the Signatory nations.<sup>70</sup> The formal requirement for entry into force is the ratification by five of the ten countries that have the largest export shares among the OECD countries and represent at least sixty percent of the combined total exports of those countries.<sup>71</sup>

Article 16 states that any party may propose an amendment to the Convention.<sup>72</sup> The proposal is communicated to the other parties who have at least sixty days to review the proposal.<sup>73</sup> A meeting is held with all the Signatories to consider the proposed amendment.<sup>74</sup> If the proposed amendment is adopted by a consensus, the amendment is entered “into force sixty days after the deposit of an instrument of ratification, acceptance or approval by all of the Parties.”<sup>75</sup> Finally, Article 17 describes the withdrawal process from the Convention.<sup>76</sup> To withdraw, a party must submit written notification to the depository.<sup>77</sup> One year after the notice of withdrawal is received the party is effectively withdrawn from the Convention.<sup>78</sup>

Although the OECD Bribery Convention is broadly drafted, the basis of the Convention is that signatory countries agree to enact laws to criminally punish bribery of foreign officials in an effort to gain an improper advantage

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63. *Id.*

64. *Id.* art. 11.

65. *Id.*

66. *Id.* art. 12.

67. *Id.*

68. *Id.* art. 13.

69. *Id.* arts. 14 & 15.

70. *Id.* art. 14.

71. *Id.* art. 15.

72. *Id.* art. 16.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* art. 17.

77. *Id.*

78. *Id.*



in international business transactions;<sup>79</sup> therefore, the scope and application of the OECD Convention primarily lies with the interpretation of Article 1.

Article 1 of the OECD Bribery Convention is comprised of three main elements. The first element is that a bribe was offered.<sup>80</sup> The OECD Convention punishes active bribery, which means it applies to any person who offers the bribe as opposed to those who accept the bribe (passive bribery).<sup>81</sup> Second, the bribe must be offered to a foreign public official.<sup>82</sup> Third, the bribe must be made during or in connection with an international business transaction.<sup>83</sup> The question now becomes how far do the terms of this agreement reach? More specifically, is the scope of the OECD Bribery Convention, as it stands, sufficient to combat the type of corruption that tarnished the image of the Olympic Games?

### III. THE OECD CONVENTION AND THE OLYMPIC GAMES SCANDAL

A detailed analysis of all three elements is necessary to determine the definition and scope of this international Convention and its impact on the type of international corruption found in the Olympic Games Scandal.

#### A. Offer

Article 1 specifically states that it is a criminal offense for any person to intentionally bribe a foreign public official.<sup>84</sup> In the instant matter, Salt Lake representatives bribed IOC members when they gave them money, gifts, free medical procedures, and provided them with lavish entertainment.<sup>85</sup> Such evidence satisfies the requirement of the first element and applies to those particular individuals who offered the bribes to IOC members.<sup>86</sup> A subsequent question, however, is whether the bid committee, whose primary function is within the United States, can be penalized under the given Convention?

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79. See generally *OECD Convention*, *supra* note 45.

80. *Id.* art. 1.

81. Lisa Miller, *No More This for That? The Effect of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 8 *CARDOZO J. INT'L & COMP. L.* 139, 141 (2000).

82. *OECD Convention*, *supra* note 45, art. 1.

83. *Id.*

84. *Id.*

85. *Bribery Scandal Dulls Olympics' Century Old Shine*, *supra* note 3.

86. Clearly two individuals who would be prosecuted under the OECD would include Tom Welch, President of the Salt Lake bid Committee, and Dave Johnson, Vice President. See *Olympic Bidders Delaying Bribery Trial* (last visited Sept. 9, 2000), at [http://www.canoe.ca/slam000919/oly\\_delay\\_ap.html](http://www.canoe.ca/slam000919/oly_delay_ap.html). Both men face a 15 count felony indictment and went to trial on Oct. 16 for allegedly masterminding the salt lake Olympic bribery scandal. *Id.* The federal indictments accuse them of conspiring to bribe IOC members who awarded the Salt Lake the 2002 Winter Games. *Id.*

As mentioned in Article 2 of the Convention, responsibility of legal entities is imposed under the OECD Convention if the signatory country, where the bribe was offered, imposes or seeks to impose criminal liability for entities that bribe foreign public officials.<sup>87</sup> First, the Salt Lake Bid Committee is a legal entity according to U.S. law because the committee was formally established, in 1988, as a non-profit organization which, as noted before, falls within the meaning of a legal entity as required for OECD purposes.<sup>88</sup> Additionally, the United States does recognize legal liability for such organizations involved in bribery of a foreign public official.<sup>89</sup>

The United States has a long-standing practice of holding legal entities liable for corrupt acts.<sup>90</sup> In 1977, the United States passed the Foreign Corrupt Practices Act ("FCPA").<sup>91</sup> Under FCPA, it is illegal for any person in the United States to bribe foreign government officials in an effort to obtain business or any other unfair advantage.<sup>92</sup> The Act states, "it's a federal crime for any U.S. person or entity to offer or to pay either directly or through an intermediary, anything of value to a foreign government official in order to gain an improper commercial advantage in obtaining or retaining business."<sup>93</sup>

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87. *OECD Convention*, *supra* note 45, art. 2.

88. *See* Articles of Incorporation, Salt Lake City Bid Committee for the Olympic Winter Games, *available at* <http://www.state.ut.us/serv/bes?id=1670073&action=details> (last visited May 19, 2001). Note that after Utah was awarded the 2002 Winter games the bid committee formally changed the corporation's name to the Salt Lake Organizing Committee for the Olympic Winter Games of 2002. *See id.*

89. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78m, 78dd-1&2, 78ff (1994).

90. *See id.*

91. *Id.*

92. *Addressing the Challenges of International Bribery and Fair Competition: July 2000, SECOND ANNUAL REPORT TO CONGRESS ON THE OECD ANTIBRIBERY CONVENTION*, ch. 9 (2000), *available at* [http://www.mac.doc.gov/tcc/anti\\_b/oecd2000/index.html](http://www.mac.doc.gov/tcc/anti_b/oecd2000/index.html). [hereinafter SECOND ANNUAL REPORT] FCPA was implemented as a result of the 1970's uproar regarding numerous incidents of bribery by U.S. companies. *Id.* In an effort to repair the bad reputation of US businesses, congress enacted the FCPA. *Id.*

93. *Id.* Nonetheless, as a result of the FCPA, U.S. businesses were forced to compete in the world market with only the "strength and quality of their goods and services." *Id.* Although the quality American made products are attractive to consumers, American businesses suffer a tremendous disadvantage in international market competition. *Id.* American businesses often lost out on contracts because they were forced to compete with foreign businesses that suffered no repercussion for bribing foreign officials in order to secure conferments. *Id.* In fact, in some countries bribes were deemed legitimate tax deductions. *Id.* This is particularly beneficial for such nations because bribes were often times valued up to 30% of what the contract was worth. *Id.* In fact the Congressional report estimates that billions of dollars in international contracts around the world have been influenced by bribes. *Id.* It is estimated that from May 1994 to April 2000, 353 contracts worth \$165 billion dollars were possibly affected by bribes from foreign businesses. *Id.* "US firms are believed to have lost 92 of these contracts, worth approximately \$26 billion, to foreign competitors offering bribes." *Id.* In other instances, US firms were forced to withdraw from competition over a contract "because the foreign officials demanded bribes." *Id.* (emphasis added).

As a legal entity, the bid committee satisfies the required element of offer. The fact that the Bid Committee is a non-profit organization should not bar the application of the Convention. Non-profit organizations should not be exempt from punishments imposed by the OECD Bribery Convention because non-profit organizations can violate the OECD Convention through its association with other entities.<sup>94</sup> Bid committees, for example, have extensive relations with other public and private entities and such associations are sufficient to violate the OECD Bribery Convention.<sup>95</sup> The Salt Lake Bidding Committee was not only supported by the city, but also backed by the broader business community.<sup>96</sup> Large entities such as Coca-Cola supported the Salt Lake Bid Committee.<sup>97</sup> Allowing the bid committee to use its non-profit status as a tool for exemption would open the door for other entities to further such corrupt practices under the umbrella of non-profit status.<sup>98</sup>

### B. Foreign Public Official

The second element of Article 1 of the OECD Bribery Convention requires that a corporation make a bribe to a foreign public official.<sup>99</sup> In this section it is necessary to determine whether the IOC members are considered foreign public officials. The Convention defines a foreign public official as "any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and *any official or agent of a public international organization.*"<sup>100</sup> This is a broad definition of foreign public official.<sup>101</sup> The framers of the Convention created such a non-conclusive definition of foreign public official because they intended to allow for a broad interpretation of this Convention.<sup>102</sup>

As the treaty stands now, the IOC members would not fall within the definition of foreign public official as required to satisfy the prerequisite of the second element of the OECD Bribery Convention. First, IOC members do not hold a legislative, administrative or judicial office of a foreign coun-

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94. Rowan, *supra* note 2, at 404.

95. *See id.*

96. *See generally* Rowan, *supra* note 2.

97. *See id.* at 405.

98. *See generally* SECOND ANNUAL REPORT, *supra* note 92, ch. 9.

99. *OECD Convention*, *supra* note 45, art. 1.

100. *Id.* (emphasis added).

101. Bruce Zagaris & Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 LAW & POL'Y INT'L BUS. 53, 69 (1999).

102. Nora M. Rubin, *A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland*, 14 AM. U. INT'L L. REV. 257, 313 (1998).

try as part of their service on the International Olympic Committee.<sup>103</sup> Second, IOC members do not exercise a public function for a foreign country nor are they part of a public agency or public enterprise.<sup>104</sup> The only alternative to satisfy the requirement of this element and apply it to IOC members, therefore, is to pull the IOC members into the limited definition of officials or agents of a public international organization.<sup>105</sup>

Whether or not the IOC members are agents of a public international organization will depend on whether the IOC is itself a public international organization. Determining the classification of the IOC can be achieved through a systematic analysis of the terms: public, international and organization.<sup>106</sup>

Without any dispute the IOC is an international organization and fits the "international" aspect of public international organization.<sup>107</sup> By definition international includes the involvement of two or more nations or nationalities.<sup>108</sup> The IOC is comprised of ninety-three individuals from different nations.<sup>109</sup> Additionally, IOC members make decisions that affect various countries and deal extensively with athletes and other persons around the globe.<sup>110</sup> Furthermore, although the IOC was originally established in Switzerland, its business practices and dealings reach a wide range of host countries throughout the world.<sup>111</sup> The IOC, therefore, plausibly falls within the meaning of the term international as provided by the OECD's section defining the elements of foreign public official.

Based on the foregoing, it is fair to assume that the IOC could be considered an "organization" within the meaning of foreign public official. By definition an organization is comprised of a group of people who have specific responsibilities for a united purpose or work.<sup>112</sup> The IOC satisfies this definition. The IOC is a group of people with the united duty of organizing and running the Olympic Games.<sup>113</sup> The IOC is an "entity which owns the rights to the Olympic Games."<sup>114</sup> They have the sole authority and control over major aspects of the Olympic Games, such as the selection of the host cities.<sup>115</sup> Because the IOC consists of a group of people from various nations

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103. DAVIDA KRISTY, COBERTIN'S OLYMPICS HOW THE GAMES BEGAN 54 (Lerner Publications Co. 1995).

104. *See id.*

105. *See OECD Convention, supra* note 45, art. 1.

106. *See id.*

107. *See id.*

108. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1181 (7<sup>th</sup> ed. 1971).

109. *See Mastrocola, supra* note 18, at 143-44.

110. *Id.*

111. *See id.*

112. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, *supra* note 108, at 1591.

113. KRISTY, *supra* note 103, at 54.

114. Mastrocola, *supra* note 18, at 145.

115. *Id.* at 145.

united for a common purpose, without doubt, it can be considered an international organization.<sup>116</sup>

Whether the IOC is a public international organization, however, is a more difficult issue. The OECD Convention itself does not provide for any specific terms indicating what constitutes a public international organization.<sup>117</sup> A commentary regarding the Convention, however, adopted by the negotiating conference in November of 1997, provides that a public international organization "includes any international organization formed by states, governments, or other public international organizations."<sup>118</sup> The IOC holds itself out as a nonprofit organization because when Baron Pierre De Coubertin established the IOC he classified it as a private non-governmental organization.<sup>119</sup> Mr. De Coubertin intentionally designated the IOC as a private non-governmental organization to eliminate any possible governmental intervention of the Olympic Games.<sup>120</sup>

Arguably an organization is public if it represents a community or group of people.<sup>121</sup> Thus, in the present case, the question is whether the ninety-three multinational IOC members, who comprise of the IOC Committee constitute a public international organization. If the IOC members represent their individual nations can they be considered a Public International Organization? In an effort to avoid this classification of an IOC member "[t]he IOC does not consider its individual members representatives of their nation-states . . . [but instead] [t]hey are [considered] 'ambassadors of the Olympic ideal' to their homelands."<sup>122</sup> It is unlikely, therefore, that the IOC can be deemed a public international organization.

In its annual report to Congress, the Department of Commerce discussed the need and desire to broaden the scope of the OECD Convention.<sup>123</sup> The report specifically stated that the Convention should extend the meaning of a foreign public official.<sup>124</sup> The proposal is to include "foreign political parties, party officials, and candidates for public office" within the meaning of foreign public official.<sup>125</sup> The new trend in broadening the aforementioned definition of foreign public official does not, however, shed any light on the vagueness of the current language of the Convention.<sup>126</sup> Ef-

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116. See *id.* at 143.

117. See generally *OECD Convention*, *supra* note 45.

118. Lewis, *supra* note 8, at 184.

119. See KRISTY, *supra* note 103, at 54. The IOC was established by the French educator Pierre De Coubertin on June 23, 1894. See generally *id.*

120. *Id.*

121. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, *supra* note 108, at 1836.

122. Mastrocola, *supra* note 18, at 144.

123. SECOND ANNUAL REPORT, *supra* note 92, ch. 9.

124. *Id.*

125. *Id.*

126. *OECD Convention*, *supra* note 45, art. 1.

forts to broaden the scope of the Convention, therefore, must be seen as a critical tool in the fight against corruption.<sup>127</sup>

A major deficiency of the OECD Bribery Convention is that it only punishes "active bribery."<sup>128</sup> Active bribery includes offenses committed by the person who makes the promise or gives the bribe.<sup>129</sup> The Convention does not punish the "passive briber," which is a person who receives the bribe.<sup>130</sup> The problem with only punishing active bribery and not passive bribery is that when it comes to international corruption it is often those on the receiving end who demand the bribes. For example, during the site selection for the 1996 Olympic Summer Games, IOC members demanded gifts and favors from the Atlanta Bid Committee.<sup>131</sup> Solicitations of bribes and private sector corruption is largely undefined and unexplored but is nonetheless becoming hot issues in the fight against international corruption through the OECD.<sup>132</sup>

A new revolutionary tool against international corruption includes broadening the scope of the OECD Convention to include penalization of those who seek bribes in the course of an international business transactions.<sup>133</sup> An effective international corruption treaty is counterproductive if it punishes one party while relieving the other for the commission of the same corrupt act.<sup>134</sup> Private international organizations are involved in international business transactions and unless they are included in the treaty, the Convention cannot truly fight corruption.<sup>135</sup> The OECD has an important purpose and it is headed in the right direction, however, the Convention needs to be strengthened and its authorities must become more binding upon signatory nations of the Convention.<sup>136</sup>

### C. International Business Transaction

The third element of Article 1 of the OECD Convention prohibits obtaining business or any other improper advantage through the use of bribery in the course of an international business transaction.<sup>137</sup> A business transaction, by definition, is an agreement between two or more entities for the

127. Rubin, *supra* note 102, at 313.

128. Lisa Miller, *No More "This for That"? The Effect of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, 8 CARDOZO J. INT'L & COMP. L. 139, 141 (2000).

129. *Id.*

130. *Id.*

131. Pace, *supra* note 37, at A1.

132. SECOND ANNUAL REPORT, *supra* note 92, ch. 6.

133. George, *supra* note 11, at 486.

134. *See generally id.*

135. *See generally id.*

136. *See* SECOND ANNUAL REPORT, *supra* note 92, ch. 6.

137. *OECD Convention, supra* note 45, art. 1. The Convention states "other improper advantage" which refers to something a company was not clearly entitled to. *See id.*

purchase or exchange of goods, services, rights or other business relations.<sup>138</sup> In the international arena, such agreements are governed and defined by international agreements such as the United Nations Convention on International Sale of Goods ("ICSG").<sup>139</sup> ICSG applies to transactions involving sale of goods between or among contracting entities whose place of businesses are in different states.<sup>140</sup> Business people around the world negotiate international business agreements almost every day. These business transactions include a wide variety of areas such as the purchasing and selling of products in foreign nations, opening franchises and obtaining licensing agreements for particular privileges and rights.<sup>141</sup> The question here, however, is whether the interactions between the IOC and bid committees are within the scope of what constitutes an international business transaction.

The business relationship between the a IOC and the bid committee is fairly straightforward. Once the bid committee sends their bid to the IOC, the IOC must investigate the candidate cities to determine its final selections.<sup>142</sup> As part of their investigation, the IOC negotiates with the bid committee and visits the potential host cities to inspect the bidding city's facilities.<sup>143</sup> The two foreign entities interact in an effort to reach an agreement on a number of issues surrounding the Olympic games. Eventually, the IOC grants the Host City the permission to host the Olympic Games and the City agrees to provide the facilities for the Olympic events.<sup>144</sup> The IOC and the bid committees are two foreign entities involved in business negotiations that may be seen as an international business transaction, within the meaning of the OECD Bribery Convention.

By using bribery to win the bid as the Host of the Olympic Games, bid committees violate the general spirit of the OECD Convention. The Olympic Games bring in millions of tourism dollars and provide a plethora of other benefits for a Host City. Thus, the stiff competition that exists among host city candidates is quite intense. As noted before, IOC members or their families are showered with cash, gifts, costly entertainment, shopping sprees and more when they visit these potential host cities.<sup>145</sup> Host cities provide

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138. BARRON'S LEGAL GUIDE LEGAL DICTIONARY 496 (3<sup>rd</sup> ed. 1991).

139. See generally United Nations Convention on Contracts for the International Sale of Goods (1980) (text appears in Annex I of the Final Act of the 1980 Vienna Conference, U.N. Doc. A/Conf. 97/19 (1980)).

140. *Id.* art. 1.

141. See *id.*

142. Stephen Wilson, *Olympics Ban Free Trips to Bid Cities the International Olympic Committee Votes for Reforms on the One-Year Anniversary of Bribery Charges*, GREENSBORO NEWS & RECORD, Dec. 13, 1999, at A1.

143. *Id.* (the rules have changed and IOC members are not to visit bidding cities).

144. It is similar to the international licensing agreement seen in the *Wood v. Lucy*, 118 N.E. 214 (1917) (*Lady Duff-Gordon case*) where defendant a clothing designer gave plaintiff, a foreign businessman, the exclusive right to sell her line of clothing in his store. Likewise, the IOC gives a particular city the right to host the Olympic games. Both are deemed international agreements.

145. *USOC Used Bribes to Get 2002 Olympics*, *supra* note 31, at A13.

these luxuries for the sole purpose of gaining an advantage in Olympic Games site selection bargaining process. The bid committees' behavior can be considered a form of bribery in the international business arena, because it is an act that is in full contrast to the rules and regulations set forth for such an entity by the general spirit of the OECD Bribery Convention.<sup>146</sup> This is a form of international corruption which blocks *fair* competition—exactly what the spirit of the OECD Bribery Convention treaty aims to prevent.

#### IV. IMPLEMENTATION

##### A. *The Implementation and Enforcement of International Conventions*

The adoption of an international anti-corruption treaty, such as the OECD Bribery Convention, is merely the first step in combating international corruption. The real challenge in truly fighting international corruption lies in the ratification, effective implementation and enforcement of the international agreement.<sup>147</sup> Libraries around the world shelve numerous international conventions that were adopted but never effectively implemented.<sup>148</sup> In fact, international conventions are often referred to as “nothing more than paper promises.”<sup>149</sup>

International conventions are difficult to enforce because there is no centralized oversight system to specifically enforce such international agreements.<sup>150</sup> Basically, international treaties are agreements between different nations that become signatories to a given Convention.<sup>151</sup> Conventions are primarily agreements carried out in good faith by the respective signatory nations. Nonetheless, often relations between signatory countries breakdown, which hinders or in some instances obstructs enforcement of the Convention. Regardless of the difficulties associated with effective implementation and enforcement of international treaties, history shows that conventions can be effectively implemented. The key is that the signatory countries must be more inclined to adopt and actually enforce the terms of the particular Convention in which they become a member.<sup>152</sup>

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146. See *OECD Convention*, *supra* note 45, art. 1.

147. Conference, *supra* note 49, at 788.

148. See *id.* at 794.

149. See *id.* at 790.

150. See *id.* Often times various agencies and ministries within a signatory nation are given the responsibility of enforcing conventions. See *id.* With so many different agencies involved the success rate for the implementation of conventions has been disappointing. *Id.* Since the OECD Convention, there have been discussions about the creation of international courts of corruption. Lawler, *supra* note 48, at 1322.

151. BLACK'S LAW DICTIONARY 1507 (7<sup>th</sup> ed. 1999).

152. See Conference, *supra* note 49, at 810.



*B. A More Specific Approach Toward Implementation & Enforcement of the  
OECD Bribery Convention*

A number of conventions have been successfully adopted, ratified, implemented and enforced. The key to effective implementation and enforcement is monitoring.<sup>153</sup> The Financial Action Task Force ("FATF") is a prime example of an effectively monitored convention.<sup>154</sup> Fortunately, the OECD Convention's enforcement provisions have been modeled after the FATF's.<sup>155</sup> In order to become a signatory of the OECD Convention, a nation is required to participate in the OECD monitoring process.<sup>156</sup> The monitoring system adopted by the OECD Convention, like the FATF, is referred to as "Mutual Evaluation."<sup>157</sup> Mutual Evaluation is comprised of four main goals that all signatories agree to strive to achieve. These goals are: "(1) to increase knowledge among signatories, (2) to promote progress and consistency, (3) to identify and address problems with compliance, and (4) to build momentum for corrective action."<sup>158</sup>

With mutual respect and compliance between the signatory nations, attainment of the four aforementioned goals would allow for progress in the fight against corruption.<sup>159</sup> Nonetheless, implementation of the OECD among the different signatory countries varies. Each country's legal framework is unique, which makes a perfectly uniform implementation procedure virtually impossible.<sup>160</sup> While some countries have existing legislation to combat corruption, others do not.<sup>161</sup> In accordance with the OECD Convention, those countries that do not impose criminal liability on such corruption must alter their legal system to adapt to the language of the Convention, which requires the imposition of criminal punishment on such proven corruption.<sup>162</sup>

Since its adoption, OECD signatory members have taken implementation of the OECD very seriously. So far, representatives from all the signatory countries have regular meetings to review and discuss the implementation of the Convention.<sup>163</sup> Each country is required to prepare progress reports regarding implementation, which are discussed in the meetings.<sup>164</sup> Furthermore, a team of experts of various backgrounds gathers in each na-

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153. *Id.* at 793.

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *See id.* at 793-800.

160. *See generally* Lawler, *supra* note 48.

161. *Id.* Japan is an example of a country that does not impose criminal sanctions on corrupt business practices. *Id.*

162. *See id.* at 1307.

163. Conference, *supra* note 49, at 797.

164. *Id.*

tion to evaluate the signatory's progress with regard to the Convention.<sup>165</sup> In addition, a formal report on each country's enforcement status is prepared and distributed to the other signatories for comparison.<sup>166</sup>

Although many signatory countries have taken strong enforcement measures, evaluating the effectiveness of enforcement measures at this time is premature. The OECD is still relatively new.<sup>167</sup> Nonetheless, ratification and implementation by the signatory countries is progressing quickly.<sup>168</sup> Furthermore, since the adoption of the Convention, the OECD has tenaciously pursued further anti-corruption measures.<sup>169</sup> Discussions of the creation of a program to specifically monitor the Convention's implementation are under way.<sup>170</sup> Discussions even exist regarding mandatory compliance programs where each entity subject to the OECD Convention will have policies, enforced through training sessions to promote the endorsement and compliance with anti-bribery measures.<sup>171</sup> At this point, anti bribery groups such as Transparency International, will continue to closely monitor enforcement of the OECD Convention around the world.<sup>172</sup>

### C. Broadening the Scope and the Impact on Implementation

The Convention's relatively solid foundation and the apparent sense of cooperation among its members would prevent any possible negative effect that might arise by broadening the scope of the Convention to include private international organizations within the meaning of foreign public officials.<sup>173</sup> For example, offering bribes to agents of a private international organization should be sufficient to trigger the OECD's extradition coverage.<sup>174</sup>

Furthermore, by expanding the scope of the OECD Convention to include passive corruption, bribe seekers will not have a negative impact on the implementation or effectiveness of the OECD Convention.<sup>175</sup> Thus, those entities that demand bribes in the course of an international business trans-

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165. *Id.*

166. *See id.* This also works as a form of peer pressure on those countries who lag behind in implementing the Convention. *See id.* Failure to properly implement the convention will result in an unfavorable report, which will be made public. *Id.*

167. SECOND ANNUAL REPORT, *supra* note 92, ch. 3.

168. *See id.*

169. *See* Lawler, *supra* note 48, at 1309-10.

170. *Id.* at 1309.

171. *See id.* at 1328.

172. *See* Conference, *supra* note 49, at 790.

173. *See generally id.*

174. The OECD "suffices as a legal basis for extradition. If a signatory country refuses to extradite one of its own nationals accused by another signatory of making a bribe, the refusing signatory must submit the case to its own authorities for prosecution." Lawler, *supra* note 48, at 1308.

175. *See* George, *supra* note 11, at 486.

action should be subject to discipline under the Convention.<sup>176</sup> Currently, the Convention has an effective monitoring system and therefore broadening the scope of the Convention to include passive bribery would not pose too much of a burden.<sup>177</sup>

## V. CONCLUSION

International corruption is a multi-dimensional problem. It is a complex issue with serious repercussions on international relations and the international economy in general. For years the United States has struggled to deal with this phenomenon that so negatively impacts American businesses. In an effort to hamper corrupt practices, the United States enacted the Foreign Corrupt Practices Act of 1977.<sup>178</sup> This law however, made it more of a burden on United States business to compete in international business transactions.<sup>179</sup> The FCPA made it a federal crime for anyone in the United States to bribe a foreign public official in an effort to gain an unfair advantage.<sup>180</sup> The FCPA only had jurisdiction over U.S. persons and entities so while those businesses in the U.S. refrained from bribing, foreign businesses did not, and in the end the U.S. businesses suffered. Something new was needed to deal with this dilemma of international corruption.

In February of 1999, the OECD Bribery Convention was adopted.<sup>181</sup> So far, it has been widely accepted and actively implemented throughout many signatory countries around the world despite its short existence.<sup>182</sup> The OECD is much broader than the FCPA and provides a promising foundation to fight international corruption. With a few changes, the OECD Bribery Convention has the potential to serve as the key to combat corruption in the Olympic arena.

In applying the terms of the OECD Bribery Convention to the corruption connected with the Olympic Bribery Scandal, it is evident that the Convention's scope must be clarified and broadened in order to be truly effective. The OECD Bribery Convention should include both private and public entities. By not including private entities such as the bidding committee within the meaning of the OECD Bribery Convention, acts of bribery in the international arena can simply be practiced through a channel run by public, non-profit entities. Many of these public, nonprofit entities, such as bidding committees, are backed by large private corporations.<sup>183</sup>

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176. *See id.*

177. *See* Conference, *supra* note 49, at 795-801.

178. SECOND ANNUAL REPORT, *supra* note 92, ch. 9.

179. Rubin, *supra* note 102, at 273.

180. *Id.* at 272.

181. *See generally* OECD Convention, *supra* note 45.

182. *See generally* Conference, *supra* note 49.

183. *See* Rowan, *supra* note 2, at 405.

The scope of the Convention should also be expanded to include passive bribery. Currently, the Convention punishes active bribery, those who offer bribes to foreign public officials in the course of an international business transactions.<sup>184</sup> The Convention does not penalize those who receive the bribes.<sup>185</sup> Nonetheless, often times corruption is induced by bribe seekers and thus to effectively combat international corruption passive bribery must be deterred as well.

As the OECD Convention stands, it does not have exclusive jurisdiction over the type of international corruption seen in Olympic Bribery Scandal.<sup>186</sup> Regardless, the Salt Lake Bid Committee is a legal entity that offered bribes in the course of an international business transaction to gain an unfair advantage.<sup>187</sup> The OECD Bribery Convention is still new and improvements must be made to extend its jurisdiction over all forms of international corruption—including the type that tarnished the sanctity of the Olympic Games.

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184. Lewis, *supra* note 8, at 181.

185. *Id.*

186. See generally *OECD Convention*, *supra* note 45.

187. See Articles of Incorporation, *supra* note 88. See also Hannah Wolfson, *Olympics Sponsorship Logistics Cited, but Bribery Scandal "in the Background" Company Says*, ATLANTA CONSTITUTION, Apr. 19, 1999, at A1.

\* J.D., April 2001, California Western School of Law; B.A., 1998, University of California at San Diego (UCSD). I would like to thank my husband Zal for the love, patience, understanding and strength that he has provided me throughout our friendship and now our marriage. I would also like to thank Marilyn Gehrke, my best friend, who's faith and loving support has given me the endurance to obtain my goals and to live my dreams.