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PERFECT PITCH: HOW U.S. SPORTS FINANCING AND RECRUITING MODELS CAN RESTORE HARMONY BETWEEN FIFA AND THE EU

*Christine Snyder**

When the Fédération Internationale de Football Association (FIFA), the world governing body for football, announced its plan to implement a new rule restricting the number of foreign players eligible to play for club teams the world over, the European Union took notice. Prior court rulings on a similar rule found that such a rule conflicts with the protection for the free movement of workers under the EC Treaty. Despite this conflict, the President of FIFA pressed forward, citing three main justifications for implementation of the new rule. This Note examines each of those justifications and proposes alternative solutions based on U.S. financing and recruiting models which will not conflict with the essential protections of the EC Treaty.

I. INTRODUCTION

“Sports is like war without the killing.”¹ These words ring true today as a battle brews over the state of European football.² The epicenter of this battle is the top league pitches in Europe.³ There is a good reason why the European football leagues are the focus of so much attention; that is where the money is. Clubs in the English Premier League (EPL), the top level football league in England, are among the biggest earning clubs in the world,⁴ and English football accounts for one-fourth of the total revenue for

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¹ This quote is from American Entrepreneur Ted Turner. ThinkExist.com, Ted Turner Quotes, http://thinkexist.com/quotation/sports_is_like_a_war_without_the_killing/225391.html (last visited Sept. 28, 2009).

² In this Note, “football” refers to the sport known as “soccer” in the U.S.

³ “Pitch” is the name given to the field on which football is played.

⁴ DELOITTE & TOUCHE LLP, LOST IN TRANSLATION: FOOTBALL MONEY LEAGUE (Feb. 2009), available at http://www.deloitte.com/dtt/cda/doc/content/UK_SBG_Deloitte_FML2009.pdf (listing the 2007-2008 revenue for the EPL “big four” clubs as: Manchester United £257.1, Chelsea £212.9, Arsenal £209.3, Liverpool £167.0).

football in Europe.⁵ Italian League Serie A is not far behind England, and France's Ligue 1, Spain's La Liga, and Germany's Bundesliga round out the "big five" leagues that dominate the football world.⁶

This financial dominance is the reason Europe recently became a battleground between the Fédération Internationale de Football Association (FIFA) and the European Commission (EC).⁷ The battle began when FIFA proposed measures that would limit the number of foreign players who can be on a pitch to five.⁸ Currently, there is no limit to the number of foreign players permitted to start for a club. The other six spots on the pitch must go to players who are eligible for the national team of the country in which the team is located.⁹

FIFA's new "6+5 Rule" is reminiscent of a similar rule that the European Court of Justice (ECJ) held violated the Treaty Establishing the European Community (EC Treaty).¹⁰ Despite this conflict, FIFA President Sepp Blatter plans to forge ahead with the plan to implement the 6+5 Rule, believing that the problems facing football today justify the Rule and that it is only a matter of time and effort to convince the EC of the error of its ways.¹¹ In the face of Blatter's determination, the EC has pushed back stressing its strict adherence to the principles of the EC Treaty and threatening action against any club that tests its resolve.¹² Caught in the middle is

⁵ Press Release, Deloitte & Touche LLP, Premier League Clubs' Profits are Set to Double (May 31, 2007), available at http://www.deloitte.com/dtt/press_release/0,1014,sid%253D2834%2526cid%253D159168,00.html (listing the total revenue of the European market at £8.7 billion in 2006 with £1.4 billion generated from the EPL).

⁶ *Id.* (listing the top leagues in Italy at £1.0 billion, Germany at £0.8 billion, Spain at £0.8 billion, and France at £0.6 billion).

⁷ FIFA is the world governing and regulatory body for all professional football leagues and clubs. See Europa.eu, Institutions and Bodies of the European Union, European Commission, http://europa.eu/about-eu/institutions-bodies/index_en.htm (stating "The Commission proposes EU legislation and checks it is properly applied across the EU. Works in the interests of the EU as a whole.").

⁸ FIFA.com, About FIFA, Blatter: '6+5' Rule Is Crucial, <http://www.fifa.com/aboutfifa/federation/president/news/newsid=762500.html> (last visited Sept. 28, 2009).

⁹ *Id.*

¹⁰ Case 415/93, Union Royale Belge des Sociétés de Football Ass'n (ASBL) v. Bosman, 1995 E.C.R. I-4921, 1 C.M.L.R. 645 (1995) (holding that football quotas based on nationality violate the freedom of movement and anti-discrimination requirements of Article 39 (ex 48) of the EC Treaty). CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Dec. 24, 2002, 2002 O.J. (C325) 33 (incorporating changes made under the Maastricht Treaty (1992), the Treaty of Amsterdam (1997), and the Treaty of Nice) [hereinafter EC Treaty]. The EC Treaty's incorporations altered the numbers of several article numbers, so older Article numbers will be included in parentheses in the text.

¹¹ FIFA.com, *supra* note 8.

¹² *EU Threatens FIFA with Legal Action*, IRISH TIMES, May 28, 2008 (pagination unavailable), <http://www.irishtimes.com/sports/soccer/2008/0528/1211830532337.html> (last visited Sept. 28, 2009).

the Union of European Football Associations (UEFA) which, as a member of FIFA, must implement FIFA mandates, but as an organization operating in Europe, must also adhere to European Union (EU) law.¹³ The battle is coming to a head as the first phase of FIFA's plan is scheduled for the 2010–2011 season.¹⁴

This Note will evaluate Blatter's justifications for the 6+5 Rule, demonstrate how the 6+5 Rule will do little to solve the problems Blatter argues are facing football today, and propose solutions based on successful practices in the U.S. Part II discusses the background leading up to the current conflict by examining the applicable provisions of the EC Treaty, the relevant cases applying those provisions to sports, and the significant details of the current stand-off between the EU and FIFA. Part III scrutinizes the three concerns FIFA uses as justification for the proposed 6+5 Rule and argues that one of these concerns is invalid, and the other two, while valid, do not find relief under the 6+5 Rule. Part III also explains how FIFA's argument that sports should be exempt from the EU's principles of free movement of workers and anti-discrimination is unsupported. Part IV outlines solutions proposed by others that fail to adequately solve the problems facing European football today. Finally, Part V proposes a framework of regulations based on American sports that will address FIFA's concerns while staying within the scope of the EC Treaty.

II. BACKGROUND AND THE CURRENT CONFLICT

A. *Freedom of Movement of Workers and Non-Discrimination Principles In the EU*

In order to understand the current conflict between the EU and FIFA, it is necessary to grasp the goals of the EC Treaty and the freedoms it protects. In the Preamble to the EC Treaty, the framers of the EC Treaty "[r]esolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe."¹⁵ Article 2 of the EC Treaty establishes the principle that in order to accomplish its goals, the European Community must "promote throughout the Community a harmonious, balanced, and sustainable development of economic activities"¹⁶ In order to do so, the EC Treaty recognizes the necessity to establish

¹³ Bruce A. Caldwell, *Six + Five=?*, J. L. Soc'Y SCOT. 58 (2006), available at <http://www.journalonline.co.uk/Magazine/53-6/1005383.aspx>.

¹⁴ EurActiv.com, Euro Cup Kicks Off Amid EU-FIFA Dispute (June 6, 2008), <http://www.euractiv.com/en/sports/euro-cup-kicks-amid-eu-fifa-dispute/article-173131?Ref=RSS> (last visited Sept. 28, 2009) [hereinafter Euro Cup].

¹⁵ EC Treaty, *supra* note 10, pmbl.

¹⁶ *Id.* art. 2.

the free movement of goods, persons, services, and capital.¹⁷ Under the free movement of persons element, Article 39 (ex 48) deals with the free movement of workers.¹⁸ Specifically, Article 39 (ex 48) states that “[the] freedom of movement shall entail the abolition of any discrimination based on nationality between workers”¹⁹

In order to enforce the provisions of the EC Treaty, the EU established the ECJ. The ECJ’s function is to interpret the EC Treaty and ensure that its provisions are followed within the EU Member States.²⁰ Since its establishment, the EC Treaty has governed activities in Member States, but for a time it was unclear just how the principles inherent in the EC Treaty applied to sports. Several ECJ cases clarify the appropriate application of the EC Treaty in sports and establish the EU’s regulatory control over the sporting world.²¹

B. Application of EC Treaty Principles to Sports

Before cases emerged to establish EU regulatory control over sports, football leagues in Europe operated under UEFA’s 3+2 Rule which dictated that clubs could field no more than three foreign players from other Member States plus an additional two foreign players who have “assimilated” as a result of their length of play in the club team’s State.²² Under this system, teams distinguished players and limited their play based on nationality. A series of three cases established the appropriate application of the EC Treaty in sports and invalidated player restrictions based on nationality. The first two, *Walrave v. Association Union Cycliste Internationale* and *Dona v. Mantero*, paved the way for the third case, *Union Royale Belge des Sociétés de Football Association (ASBL) v. Bosman*, to finally invalidate the 3+2 Rule.

¹⁷ See Andrew L. Lee, *The Bosman Case: Protecting Freedom of Movement in European Football*, 19 *FORDHAM INT’L L.J.* 1255, 1264 (1996). See also EC Treaty, *supra* note 10.

¹⁸ EC Treaty, *supra* note 10, art. 39.

¹⁹ *Id.* art. 39(2).

²⁰ See Lee, *supra* note 17, at 1275; see also EC Treaty, *supra* note 10, art. 234. See also Europa.com, *The EU at a Glance, European Countries*, http://europa.eu/abc/european_countries/index_en.htm (listing the twenty-seven member states as: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom) (last visited Sept. 28, 2009).

²¹ See Case 36/74, *Walrave v. Ass’n Union Cycliste Int’l*, 1974 E.C.R. 1405, 1 C.M.L.R. 320 (1974); Case 13/76, *Dona v. Mantero*, 1976 E.C.R. 1333, 2 C.M.L.R. 578 (1976); Case 415/93, *Union Royale Belge des Sociétés de Football Ass’n (ASBL) v. Bosman*, 1995 E.C.R. I-4921, 1 C.M.L.R. 645 (1995).

²² See, e.g., Lee, *supra* note 17, at 1287.

The first case to link the freedom of movement of workers and anti-discrimination provisions of Article 39 (ex 48) of the EC Treaty to sports in Europe was *Walrave*.²³ *Walrave* concerned two Dutch citizens who wished to work as pacemakers for motorcycle racing teams from other Member States but were prohibited from doing so by cyclist union rules.²⁴ The ECJ in *Walrave* ruled that sport falls within the realm of Article 2 of the EC Treaty in that it “constitutes an economic activity within the meaning of Article 2”²⁵ Therefore, Article 39’s rules against discrimination based on nationality apply in the context of sports.²⁶

Similarly, the ECJ applied the EC Treaty provisions to European football in *Dona v. Mantero*.²⁷ In *Dona*, the ECJ scrutinized Italian Football Federation rules that restricted play to only Italian nationals.²⁸ The court held that these rules, which discriminated based on nationality, were inconsistent with Article 39 (ex 48) of the EC Treaty.²⁹

In both of these cases, it is important to note that the ECJ carved out an exception for sporting activities that are of a “purely [] sporting interest” and not economic in nature.³⁰ This exception was meant to protect national teams organized to compete in international competitions like the World Cup or the Olympics.³¹

While *Walrave* and *Dona* provided the groundwork for the ECJ to extend the provisions of the EC Treaty into the sporting world, the *Bosman* case changed the face of European football. In *Bosman*, Belgian national football player Jean-Marc Bosman challenged the validity of the football transfer system after his Belgian club and the French national association blocked his transfer to a French club.³² As a result, Bosman was left without a club in either country and forced to sit out for a year of play.³³ *Bosman* single-handedly upset the way European leagues operated.³⁴ First, it invali-

²³ *Walrave*, 1 C.M.L.R. at 320.

²⁴ Lee, *supra* note 17, at 1287; *Walrave*, 1 C.M.L.R. at 321.

²⁵ *Walrave*, 1 C.M.L.R. at 334. See also EC Treaty, *supra* note 10, art. 2.

²⁶ *Walrave*, 1 C.M.L.R. at 334.

²⁷ Case 13/76, *Dona v. Mantero*, 1976 E.C.R. 1333, 2 C.M.L.R. 578 (1976) [hereinafter *Dona*].

²⁸ Lee, *supra* note 17, at 1287.

²⁹ *Dona*, 2 C.M.L.R. at 588.

³⁰ Lee, *supra* note 17, at 1288–89.

³¹ See *Commission White Paper on Sport*, at 4.2, COM (2007) 391 final (July 11, 2007) [hereinafter *White Paper*] (listing an exception for “[t]he right to select national athletes for national team competitions.”).

³² See *id.* at 1291–92. See also Case 415/93, *Union Royale Belge des Sociétés de Football Ass’n (ASBL) v. Bosman*, 1995 E.C.R. I-4921, 1 C.M.L.R. 645 (1995).

³³ See Lee, *supra* note 17, at 1290. See also *Bosman*, 1 C.M.L.R. at 648.

³⁴ See Lee, *supra* note 17, at 1290.

dated the system that European clubs were using to transfer players by ruling that the transfer system violated the freedom of movement of players.³⁵ Secondly, the ECJ ruled that the rules regarding the permissible number of foreign players constituted discrimination based on nationality and was also a violation of Article 39 (ex 48) of the EC Treaty.³⁶ In his opinion, Advocate General Lenz stated that the rules in the *Bosman* case “represent[ed] an absolutely classic case of discrimination” and Article 39 (ex 48) prohibited these rules “in so far as they relate[ed] to nationals of other Member States.”³⁷

The *Bosman* decision sent shockwaves through the football world, but the ECJ was not finished.³⁸ While *Walrave*, *Dona*, and *Bosman* only applied to individuals who were nationals of other Member States under the EC Treaty, another series of rulings took the principles established in *Bosman* and applied them to nationals of non-Member countries.³⁹ The EU found a way to extend the *Bosman* principles to non-EU nationals through the numerous Association and Cooperation Agreements between the EU and non-Member States.⁴⁰ These agreements often contain provisions requiring non-discrimination in employment.⁴¹ Recognizing that application of the EC Treaty’s non-discrimination principles under these agreements was an unresolved issue, the Commission announced that these Agreements extend the non-discrimination protections of the EC Treaty to non-EU nationals.⁴² Not all sports organizations embraced this announcement.⁴³ As a result of their reluctance, a few non-EU nationals turned to the courts to enforce this extension.⁴⁴

³⁵ See *id.* See also *Bosman*, 1 C.M.L.R. at 648.

³⁶ Lee, *supra* note 17, at 1290–91. See also *Bosman*, 1 C.M.L.R. at 648.

³⁷ William Duffy, Note, *Football May Be Ill, but Don't Blame Bosman*, 10 SPORTS LAW. J. 295, 306 (2003) (citing *Union Royale Belge des Sociétés de Football Ass'n (ASBL) v. Bosman*, 1995 E.C.R. I-4921, 1 C.M.L.R. 645, 693 (1995)).

³⁸ See Jesse Gary, Note, *The Demise of Sport? The Effect of Judicially Mandated Free Agency on European Football and American Baseball*, 38 CORNELL INT'L. L.J. 293, 295 (2005) (discussing the fallout of the *Bosman* decision).

³⁹ See *Malaja v. Fédération Française de Basket-Ball*, La Cour Administrative d'Appel de Nancy (Première Chambre), No. 99NC00282, 2000 R.T.D. Eur. (2000). See also *Case C-438/00, Deutscher Handballbund eV v. Maros Kolpak*, 2003 E.C.R. I-4135.

⁴⁰ David W. Penn, Note, *From Bosman to Simutenkov: The Application of Non-Discrimination Principles to Non-EU Nationals in European Sports*, 30 SUFFOLK TRANSNAT'L L. REV. 203, 217 (2006).

⁴¹ *Id.* at 217–18.

⁴² *Id.* at 218.

⁴³ *Id.*

⁴⁴ Penn, *supra* note 40 at 218. See also *Malaja*, No. 99NC00282, 2000 R.T.D. Eur. (2000). See also *Kolpak*, E.C.R. I-4135.

In *Malaja v. Fédération Française de Basket-Ball*, the Conseil d'État, France's highest court, ruled that *Bosman's* anti-discrimination prohibition extended to a Polish female basketball player because Poland's 1991 Association Agreement with the EU contained an anti-discrimination clause.⁴⁵ In turn, this decision also extended the same protections to other countries who had signed similar agreements.⁴⁶

Taking it one step further, the ECJ later extended the anti-discrimination protections to cover agreements that did not contain express provisions. In *Deutscher Handballbund e.V. v. Maros Kolpak*, a Slovakian goalkeeper for a German handball team challenged a German Handball Association rule that limited the number of permitted non-EU team members to two.⁴⁷ Kolpak pointed to an Association Agreement between the EU and Slovakia and argued that he should have the same privileges as other EU players.⁴⁸ The ECJ ruled that even when Association Agreements did not contain specific provisions guaranteeing protection from discrimination based on nationality, discrimination protection was automatically included because "the Agreement reflected the same aim and spirit of Article 48 of the Treaty of Rome."⁴⁹ This interpretation is certainly in keeping with one of the overarching goals expressed in the Preamble to the EC Treaty. The Preamble expresses that one of the goals of the EC Treaty is to "confirm the solidarity which binds Europe and the overseas countries and desiring . . . to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations."⁵⁰ Through this series of cases, the European courts met their goal and ensured the same rights for non-EU nationals that were established in *Bosman* for citizens of the EU.

C. *The Current Conflict Between FIFA and the EU: A Step Back from Bosman*

Despite the ECJ ruling in *Bosman* and the subsequent extension of EC Treaty discrimination protection to non-EU nationals, FIFA is currently proposing to implement a rule that would again institute a nationality based quota system in football. FIFA is the world governing and regulatory body

⁴⁵ Penn, *supra* note 40 at 218–19. *Malaja v. Fédération Française de Basket-Ball*, La Cour Administrative d'Appel de Nancy (Première Chambre), No. 99NC00282, 2000 R.T.D. Eur., at 4 (2000).

⁴⁶ Penn, *supra* note 40 at 219.

⁴⁷ See Case C-438/00, *Deutscher Handballbund eV v. Maros Kolpak*, 2003 E.C.R. I-4135, ¶ 11.

⁴⁸ Penn, *supra* note 40 at 220. See also *Kolpak*, E.C.R. I-4135, ¶ 11.

⁴⁹ Penn, *supra* note 40 at 221. See also *Kolpak*, E.C.R. I-4135, ¶ 49; EC Treaty, *supra* note 10, art. 39.

⁵⁰ EC Treaty, *supra* note 10, pmb1.

for professional football.⁵¹ It governs through a hierarchy of associations, leagues, and teams.⁵² First, FIFA is comprised of confederations that govern national associations.⁵³ These national associations govern the leagues in their respective countries, and those leagues govern the activities of the individual club teams within those leagues.⁵⁴ Finally, the players are the responsibility of the club teams.⁵⁵ Under this hierarchy, the teams follow the rules handed down by their leagues, and these rules often flow through the national associations and the confederations from the top at FIFA. As a result, a rule passed by FIFA must be implemented by all of its confederations including UEFA whose national associations, leagues, and clubs operate in the EU.

One such rule is FIFA's proposed 6+5 Rule which requires that when a match begins, each league team must have six players on the pitch who are eligible for the national team of the country in which the league team is located.⁵⁶ For example, Manchester United, the English Premier League's (EPL) top performing team for the 2007–2008 season, would need to begin each match with six English players on the pitch. FIFA's proposed 6+5 Rule will be implemented in stages requiring four national players for the 2010–2011 season, five national players for the 2011–2012 season, and, finally, six national players for the start of the 2012–2013 season.⁵⁷

The EU responded by warning FIFA that its proposed rule would conflict with *Bosman*.⁵⁸ On May 28, 2008, the EC announced that it would take legal action if necessary to enforce the ECJ's prior ruling.⁵⁹ Vladimir Špidla, EC Commissioner for Employment, Social Affairs & Equal Opportunities, stated that the announcement was equivalent to the Commission showing “the red card to the FIFA 6+5 rule.”⁶⁰ The Commission made this

⁵¹ See Thomas M. Schiera, Note, *Balancing Act: Will the European Commission Allow European Football to Reestablish the Competitive Balance That It Helped Destroy?*, 32 BROOK. J. INT'L L. 709, 712 (2007). See also FIFA.com, About FIFA, <http://www.fifa.com/aboutfifa/index.html> (last visited Sept. 28, 2009).

⁵² Schiera, *supra* note 51, at 712.

⁵³ See *id.*

⁵⁴ See *id.* at 712–13.

⁵⁵ See *id.*

⁵⁶ FIFA.com, *supra* note 8.

⁵⁷ Euro Cup, *supra* note 14.

⁵⁸ IRISH TIMES, *supra* note 12 (discussing how the proposed rule violates *Bosman*'s ruling against discrimination of workers based on nationality).

⁵⁹ *Id.*

⁶⁰ EurActiv.com, FIFA Shown EU 'Red Card' Over Player Quotas, (May 29, 2008), <http://www.euractiv.com/en/sports/fifa-shown-eu-red-card-player-quotas/article-172786> (last visited Sept. 28, 2009) (comparing the issuance of a red card in football—which is the highest penalty that a player can receive on the field and requires the player to immediately exit the game—to the Commission's holding on the 6+5 Rule).

announcement, its strongest warning yet, the day before FIFA Congress's annual meeting in Australia.⁶¹

Despite the Commission's strong opposition to the proposed 6+5 Rule, Mr. Špidla said that he could support UEFA's alternate plan, the Home-Grown Rule, in an apparent attempt to reach an acceptable compromise with FIFA.⁶² Under the Home-Grown Rule, league teams would have to maintain a specific number of players on their rosters who have been locally trained.⁶³ Players can be from any nation, and, as long as the league teams have enrolled these players in local training programs for a set period of time, then the players are eligible for roster spots on European teams;⁶⁴ therefore, this rule seems to not violate the principles of free movement contained in the EC Treaty because it does not use nationality as a factor in determining player eligibility.⁶⁵ Since the Home-Grown Rule does not discriminate based on nationality, as specifically prohibited in *Bosman*, the Commission said it would back the Home-Grown Rule, but the Commission expressly warned that implementation of the 6+5 Rule would not be consistent with the EC Treaty.⁶⁶

Despite the Commission's strong warning, FIFA President Sepp Blatter said he would proceed as planned with the proposed 6+5 Rule.⁶⁷ Following Blatter's lead, FIFA's Congress met the following day on May 30, 2008 and voted to support the 6+5 Rule by a vote of one hundred and fifty-five to five with forty members abstaining.⁶⁸ Blatter also expressed his belief that FIFA would ultimately prevail in convincing the EU to back his 6+5 Rule, saying that "[w]e have good arguments to convince those in Europe" and "I'm sure it will be done."⁶⁹ As for the Home-Grown Rule, Blatter dismissed it as having "one major shortcoming" in that it does not protect players based on nationality, the very issue that makes his 6+5 Rule violate the EC Treaty.⁷⁰

In order to try and bridge the divide between FIFA and the EU, European Parliament President Hans-Gert Pöttering met with both Blatter and

⁶¹ *Id.*

⁶² *See id.*

⁶³ *Id.*

⁶⁴ *See id.*

⁶⁵ *See id.*

⁶⁶ IRISH TIMES, *supra* note 12.

⁶⁷ *Id.*

⁶⁸ Dan Baynes, *Blatter's Quota Plan, Facing EU Wall, Backed by FIFA*, BLOOMBERG.COM, May 30, 2008, <http://www.bloomberg.com/apps/news?pid=20601086&sid=agFtAePM06RY> (last visited Sept. 28, 2009).

⁶⁹ *Id.*

⁷⁰ FIFA.com, *supra* note 8.

Michel Platini, UEFA's President, on June 5, 2008.⁷¹ Prior to the meeting, Blatter expressed hope that the meeting would yield positive results.⁷² Blatter's position relied heavily on FIFA's argument that there should be a legal exception for sport, but French EU official Guy Bono stated that "[e]ven if the treaty recognised the uniqueness of football, it doesn't mean that football is above the law or treaties"⁷³ The meeting failed to produce any agreement, and UEFA found itself stuck squarely in the middle. The day after the meeting, UEFA spokesman William Gaillard said, "[w]e are in favour of protecting locally trained players, but six plus five, or any other form of quotas, simply cannot be implemented in Europe because it isn't legal."⁷⁴ With both the EU expressing strong determination to safeguard its position and FIFA determined to press ahead, the conflict has reached a standoff.

III. BLATTER'S JUSTIFICATIONS FOR THE 6+5 RULE

Part of the reason for the current conflict between FIFA and the EU is Blatter's implacable belief that there are strong utilitarian justifications for the 6+5 Rule and that these justifications outweigh the negative legal implications for the rule. Blatter advances three reasons supporting that the 6+5 Rule is necessary to save football as the dominant world sport: (1) the breakdown of fan identity; (2) the need to avoid uneven competition and economic monopolization; and (3) the lack of development of local players. In addition, Blatter makes a broader argument that there should be a general exception to EC Treaty provisions for sports.

A. *Blatter's First Justification: The Breakdown of Fan Identity*

Blatter argues that the proposed 6+5 Rule would address a breakdown in fan identity.⁷⁵ In his view, fans must be able to identify with the players on the pitch or they will not attend games.⁷⁶ He fears that without the implementation of the 6+5 rule, fans' ability to identify with the players on their local teams will completely disappear.⁷⁷ As a result, he argues that

⁷¹ Euro Cup, *supra* note 14.

⁷² Baynes, *supra* note 68 (quoting Mr. Blatter as stating "We have good arguments to convince those in Europe that they shall also perhaps look at solidarity I'm sure it will be done.").

⁷³ Euro Cup, *supra* note 14.

⁷⁴ Caldow, *supra* note 13.

⁷⁵ FIFA.com, *supra* note 8.

⁷⁶ *See id.*

⁷⁷ *See id.*

fans will no longer attend games or support teams if they do not see players on the pitch that hail from their nations and communities.⁷⁸

While it is true that since *Bosman* there has been a substantial increase in the “migration of athletes within and into the European Union,” this does not necessarily affect fans’ ability to identify with their local teams.⁷⁹ Team identity is based on “the community’s sense of belonging and pride.”⁸⁰ For example, a fan from Liverpool loves Liverpool Football Club because Liverpool is where he grew up, and Liverpool is the team he loved since he was a child. The nationalities of the players on the team are irrelevant because “[f]ans tend to adopt good players as their own, regardless of origin.”⁸¹ In addition, evidence indicates that fan interest has not declined despite the arrival of foreign players.⁸²

Blatter’s fear that fans’ ability to identify with their teams will be destroyed unless FIFA implements the 6+5 Rule also discounts another strong phenomenon. The influx of foreign players into European leagues may help clubs draw new fans from around the world. For example, when a young, talented player like Didier Drogba from Ivory Coast makes it onto the first team for Chelsea, one of the most successful teams in the world, every set of eyes in the Ivory Coast is glued to the television screen when he takes the field. Chelsea has expanded its fan base to the tune of a small nation’s population. This world following is a large part of the reason why leagues like the EPL are the most successful leagues in the world.⁸³ The addition of top foreign players has added strength of talent and excitement to these leagues and has drawn fans interested in seeing the best play in the world.⁸⁴

The influx of foreign talent in European leagues also helps players from non-EU nations that do not have well-developed football systems reach their full potential. A player like Drogba would have little hope of garnering attention from international fans if there were fewer opportunities for foreign players to move to the top clubs of the world. Fewer spots for

⁷⁸ *See id.*

⁷⁹ *See* Blair Downey, *The Bosman Ruling: European Soccer—Above the Law?*, 1 *ASPER REV. INT’L BUS. & TRADE L.* 187, 193 (2001) (Eng.).

⁸⁰ *Id.*

⁸¹ Lindsey V. Briggs, Note, *UEFA v. The European Community: Attempts of the Governing Body of European Soccer to Circumvent EU Freedom of Movement and Antidiscrimination Labor Law*, 6 *CHI. J. INT’L L.* 439, 444 (2005).

⁸² *English Football Clubs Rake in \$3.4 Billion*, CNN.COM, June 4, 2009, <http://edition.cnn.com/2009/SPORT/football/06/04/football.deloitte/index.html>.

⁸³ *See* Ian Blackshaw, *Opinion Foreign Players Quotas in Football Teams*, T.M.C. ASSER INSTITUUT, Oct. 15, 2007, <http://www.asser.nl/default.aspx?textid=36171> (last visited Sept. 28, 2009).

⁸⁴ *See id.*

foreign players would mean that teams would take fewer chances on players like Drogba, and the world may have lost its opportunity to discover and showcase the 2006 African Player of the Year.⁸⁵ In essence, the current structure of football helps develop the skills and opportunities for players from foreign countries with weaker football institutions. This potential to develop such players would be lost or severely crippled under the proposed 6+5 Rule.

Finally, Blatter's first justification for his proposed rule—the breakdown of fan identity—overlooks one major reality of football. Team identity based on the nationality of the players on the pitch exists in another important realm: national competitions. The largest and most watched football competition in the world is the World Cup, held every four years. In the World Cup, teams compete based on nationality, like the Olympics. The EU has carved out narrow exceptions to its freedom of movement of workers and anti-discrimination principles for these competitions because these competitions are not economic in nature.⁸⁶ Blatter's rule is unnecessary for this reason. Fans do not need Blatter's rule to ensure that they can identify with the nationality of the players for their local club teams since they already have a successful and popular venue to watch teams comprised exclusively of national players compete.

In addition, Blatter's fear of the breakdown of fan identity may inadvertently injure the popularity of the World Cup. If Blatter's 6+5 Rule succeeds in "nationalizing" club teams to a large extent, fans may not be as interested in watching national teams compete in the World Cup since it would be essentially the same competitions they watch on a regular basis. This would be particularly ironic considering the World Cup is a FIFA sponsored competition.⁸⁷

B. Blatter's Second Justification: Uneven Competition / Economic Monopoly

Blatter's second reason for believing that the 6+5 Rule is necessary to save football is that since *Bosman*, the game has suffered as a result of the economic impact on the business of European football. Wages have drastically increased since *Bosman*, which has increased operating costs for

⁸⁵ *Didier Drogba, 2006 African Player of the Year*, WORLD CUP CORNER, Mar. 2, 2007, <http://www.worldcupcorner.com/2007/03/didier-drogba-2006-african-player-of-the-year> (last visited Sept. 28, 2009).

⁸⁶ See *White Paper*, *supra* note 31 (listing the restrictions as "[t]he right to select national athletes for national team competitions; [t]he need to limit the number of participants in a competition; [t]he setting of deadlines for transfers of players in team sports.").

⁸⁷ See FIFA.com, FIFA World Cup, 2010 Fifa World Cup South Africa, <http://www.fifa.com/worldcup/index.html>.

club teams.⁸⁸ This has broadened the divide between teams, creating a few dominant clubs and leaving the rest with little or no hope of effectively competing, economically or athletically, with those dominant clubs.⁸⁹ Blatter argues that this has created a situation where a “minority of clubs control everything—money, players, and means.”⁹⁰ He argues that his proposed rule is necessary to restore competitive balance, a goal of the EC Treaty.⁹¹

Blatter is correct that there is an imbalance of power between teams in the top leagues in Europe. *Bosman’s* ruling “liberalized player movement” and caused players’ salaries to dramatically increase.⁹² This, in turn, forced clubs to pay higher salaries to acquire and retain the top players, enabling a few rich clubs to monopolize the top players.⁹³ In the EPL, the top four spots are consistently held by four dominant clubs, Manchester United, Chelsea, Arsenal, and Liverpool.⁹⁴ The dominance of these clubs is best illustrated by Arsenal’s 2003–2004 season, when the team did not lose a single game in its thirty-eight game season.⁹⁵ The other sixteen teams have little hope of ever breaking into this elite group because they simply cannot buy the talent they need to compete athletically. The frustration for these lower clubs was best expressed by former Newcastle Manager Kevin Keegan in an interview with the press when he said, “[w]hat I can say to the Newcastle fans is that we will be trying to get fifth and we will be trying to win the other league that’s going on within the Premier League. I haven’t got enough money and I wouldn’t be able to get the players anyway (to do

⁸⁸ Downey, *supra* note 79, at 192 (citing D. Anderson, *Premiership Clubs Facing Doubtful Financial Future*, YORKSHIRE POST, Nov. 18, 1999 (pagination unavailable)).

⁸⁹ See Schiera, *supra* note 51, at 710.

⁹⁰ FIFA.com, *supra* note 8.

⁹¹ *Id.* (quoting Mr. Blatter as stating “the ‘6+5’ rule supports another European Law, namely regarding having the broadest and fairest possible competition and restricting the concentration of finances and economic monopolies”).

⁹² Schiera, *supra* note 51, at 718 (citing Stratis Camatsos, *European Sports, the Transfer System and Competition Law: Will They Ever Find a Competitive Balance?*, 12 SPORTS LAW. J. 155, 178 (2005) (citing Case 415/93, Union Royale Belge des Sociétés de Football Ass’n (ASBL) v. Bosman, 1995 E.C.R. I-4921, 1 C.M.L.R. 645, 648 (1995))).

⁹³ Schiera, *supra* note 51, at 718.

⁹⁴ *Id.* at 719.

⁹⁵ *Id.* at 720 (citing Premiership Standings—2003/04, <http://soccornet.espn.go.com/tables?league=ENG.1&season=2003&column=none&order=false&cc=5901> (last visited Sept. 28, 2009)).

any better than that)”⁹⁶ Blatter is correct that football in Europe is a “society of haves and have nots.”⁹⁷

Blatter points to the economic disparity between teams to justify the application of his 6+5 Rule, and argues that another provision of the EC Treaty requires the implementation of the rule to protect the “broadest and fairest possible competition” and restrict “the concentration of finances and economic monopolies.”⁹⁸ The other law that he refers to is Article 82 (ex 86) of the EC Treaty which prohibits “any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it”⁹⁹ However, Blatter’s clinging to unfair competition as justification for his 6+5 Rule is flawed for two reasons.

First, while Blatter points to one provision of the EC Treaty that is designed to protect fair competition, he ignores the fact that his plan violates Article 81 (ex 85) of the EC treaty. Article 81 (ex 85) is divided into three sections. Article 81(1) outlines prohibited actions, Article 81(2) makes those actions “automatically void,” and Article 81(3) provides a few narrow exceptions that would allow prohibited actions to continue.¹⁰⁰ Article 81(1) prohibits agreements or decisions by undertakings or associations that “have as their object or effect the prevention, restriction or distortion of competition within the common market”¹⁰¹ The 6+5 Rule, supported and implemented by FIFA, an association, would fall under the scope of Article 81(1) since it is an agreement by the association to restrict competition; therefore, Article 81(2) would make FIFA’s 6+5 Rule automatically void. The only way the rule could still survive is if it fits the exception under Article 81(3), which makes Article 81(1) inapplicable to any agreement that promotes “technical or economic progress, while allowing consumers a fair share of the resulting benefit”¹⁰²

Under the Article 81(3) exception, Blatter could argue that even though his 6+5 Rule restricts competition, it benefits the sport economically by restoring balance in competition, which benefits fans. While this seems to be a persuasive argument, agreements that violate Article 81(1) but have economic benefits satisfying Article 81(3) are still invalid unless they are “indispensable to the attainment of these objectives [under Article

⁹⁶ *Power of Top Four Concerns Keegan*, BBC SPORT, May 6, 2008, http://news.bbc.co.uk/sport2/hi/football/teams/n/newcastle_united/7384247.stm (last visited Sept. 28, 2009).

⁹⁷ See Schiera, *supra* note 51, at 721 (citing Joseph Blatter, *Greed Threatens the Beautiful Game*, FIN. TIMES, Oct. 12, 2005, at 19 (discussing how Blatter suggests the setting of limits on player salaries)).

⁹⁸ FIFA.com, *supra* note 8.

⁹⁹ EC Treaty, *supra* note 10, art. 82.

¹⁰⁰ *Id.* art. 81.

¹⁰¹ *Id.* art. 81(1).

¹⁰² *Id.* art. 81(3).

81(3)(a)].”¹⁰³ This is where Blatter’s argument breaks down. European courts have applied a balancing test to determine if an action meets the Article 81(3) exception, and “restrictions are allowed to stand if the benefits created outweigh the restrictions in competition.”¹⁰⁴ In applying this test, a court examines not only the benefits for consumers—in this case fans—but also if “the restrictions in question are the *least restrictive means of creating such benefits*.”¹⁰⁵ As long as there is any other feasible way to achieve the same results without restricting competition, the restrictive means are invalid under Article 81(2) because they are not the least restrictive means possible. A court is unlikely to find that the small economic benefit resulting from the implementation of the 6+5 Rule outweighs the disregard of one of the four basic freedoms of the EC Treaty. Likewise, a court is unlikely to see the 6+5 Rule as the least restrictive way to restore some economic balance in football since, as Part V discusses, there are other feasible ways to move toward this goal.

Another essential flaw in Blatter’s proposed solution to the unfair competition problem in the European leagues is that his 6+5 Rule will not solve the economic imbalance between clubs. The court in *Bosman* recognized that rules on foreign players do “nothing to prevent the affluent clubs from acquiring the best national players, which would undermine the competitive balance despite the foreign player rules.”¹⁰⁶ Even if FIFA implements the 6+5 Rule, the top clubs would still be able to secure and hoard the best players at the expense of the other clubs. There would still be an imbalance, as the 6+5 Rule would drive up the salaries of national players, and teams like Newcastle would struggle to purchase national players who could compete with more affluent teams like Chelsea.

Blatter argues that at least the financial gap between teams would narrow with the application of the 6+5 Rule. He says that “[r]ich clubs will stay rich but those less well off will stand a fighting chance, that’s all we ask for.”¹⁰⁷ This may be true, but Blatter understates the negative impacts on other aspects of the game. If leagues like the EPL have to institute the 6+5 Rule, EPL teams will not be free to build teams comprised of the best players they can afford, but instead they will have to comprise teams of the best *English* players they can afford. With twenty teams in the top English league alone and numerous lower leagues in England, there is simply not

¹⁰³ *Id.* art. 81(3)(a).

¹⁰⁴ Schiera, *supra* note 51, at 737.

¹⁰⁵ *Id.* (emphasis added).

¹⁰⁶ Lee, *supra* note 17, at 1300 (citing Case 415/93, *Union Royale Belge des Sociétés de Football Ass’n (ASBL) v. Bosman*, 1995 E.C.R. I-4921, 1 C.M.L.R. 645 (1995)).

¹⁰⁷ FIFA.com, *supra* note 8.

enough English talent to go around.¹⁰⁸ The 6+5 Rule will force teams to play players who, under the current structure, teams would not consider talented enough for league play. The overall level of talent on teams will decrease as a result.

In essence, Blatter seeks to achieve equality through a “dumbing down” of the league as a whole. This would destroy the top leagues that draw fans from all over the world because the teams within those leagues display the best play in the world.¹⁰⁹ The dangers of Blatter’s proposed solution are echoed in a short story by Kurt Vonnegut. In *Harrison Bergeron*, Vonnegut presents a world where the desire for equality had reached absurd ends.¹¹⁰ In this satirical depiction of an equal world, the Handicapper General is tasked with ensuring that all individuals are fitted with devices to guarantee that no one is any smarter or physically superior than anyone else.¹¹¹ Vonnegut shows that true equality comes at a great price. Similarly, Blatter fails to realize that by instituting his plan he will become the Handicapper General of the football world.

C. *Blatter’s Third Justification: Lack of Development of Local Players*

Blatter’s third justification for the need for the proposed 6+5 Rule is that local, young football players will not receive sufficient training to make them marketable as professional football players without the rule. Blatter argues that unless FIFA requires clubs to eventually use local talent through nationality requirements, clubs will not recruit and train local talent.¹¹² Local clubs’ failure to recruit and train local talent will also negatively impact national teams since national teams are comprised exclusively of national players. If local clubs do not train local talent, national teams will not have competitive players.¹¹³

There are several flaws with this justification. First, many argue that a disincentive to train local youths does not actually exist. There is no reason why the ability to also hire foreign players would necessarily cause clubs, which already train young players on youth teams, to suddenly ex-

¹⁰⁸ Premierleague.com, About Us, Our Relationship with the Clubs, <http://www.premierleague.com/page/Contact>.

¹⁰⁹ See, e.g., Caldwell, *supra* note 13, at 58.

¹¹⁰ See KURT VONNEGUT, *Harrison Bergeron*, in WELCOME TO THE MONKEY HOUSE 7–14 (2006), available at <http://instruct.westvalley.edu/lafave/hb.html>.

¹¹¹ *Id.*

¹¹² FIFA.com, *supra* note 8.

¹¹³ See Gary, *supra* note 38, at 321–22 (declaring that European football fans “worry that the influx of foreign players will thwart the development of local talent to stock their national teams for World Cup play.”).

clude domestic youth players in those training squads.¹¹⁴ On the contrary, there is some evidence to support that the ability to hire foreign players does not injure youth development programs. A strong example of such evidence is in France. Compared to other leagues in Europe, the French leagues' salaries are low.¹¹⁵ As a result, the best French players leave and play in other European leagues, and the French league has many foreign players.¹¹⁶ According to Blatter's reasoning, this should mean that the youth development programs in France are suffering, but the opposite is true. The French have one of the most renowned and successful youth development plans, and the French development plan is credited with the success of many French players.¹¹⁷

A second flaw in Blatter's local player development justification is that it is based on the general assumption that "foreign players will be superior to domestic players and will inevitably replace domestic talent."¹¹⁸ It is wrong to automatically assume that domestic players cannot compete and need regulatory help to succeed. Domestic talent can not only compete with foreign talent, but also an influx of foreign talent may actually motivate domestic talent to "work harder and perfect their skills."¹¹⁹

A final flaw with the local player development justification for the implementation of the 6+5 Rule is that solving the youth development problem by instituting nationality based restrictions is not the least restrictive way to attain better balance. Similar to the analysis of Articles 81 and 82 of the EC Treaty, if there is another way to accomplish the same goal without running afoul of employee rights under the EC Treaty, then the restrictive option cannot be the correct option.¹²⁰ As Part V will discuss, there are other ways to address this problem without violating essential rights and guarantees under the EC Treaty.

D. *Blatter's Argument for a General Sports Exception*

Blatter argues that EU law should not apply to sports because sports are different than other economic activities.¹²¹ He repeatedly has expressed

¹¹⁴ See Stephen Weatherill, *Resisting the Pressures of "Americanization": The Influence of European Community Law on the "European Sport Model"*, 8 WILLAMETTE J. INT'L L. & DISP. RESOL. 37, 53 (2000).

¹¹⁵ Duffy, *supra* note 37, at 313.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Penn, *supra* note 40, at 225 (arguing that increased competition from EU and foreign players motivates EU athletes to perfect their skills).

¹¹⁹ *Id.*

¹²⁰ EC Treaty, *supra* note 10, arts. 81–82.

¹²¹ See, e.g., Baynes, *supra* note 68.

his view that the EU must recognize the specificity of sports.¹²² He bases much of his argument on the recognition of the “specific nature of sport” in the Lisbon Treaty, which was scheduled to go into effect on January 1, 2009.¹²³ Blatter said that he wanted to use the “legal basis of the Treaty of Lisbon” to legally support his 6+5 Rule, and FIFA argues that the “specific nature of sport” means that sports are above EU rules that govern economic activity.¹²⁴ This stems from a belief that government regulations serve as unwanted obstacles to the operations of sports, as expressed by Blatter’s alleged year-round struggle against “governmental interference in the affairs of Member Associations”¹²⁵

Blatter’s argument is partially true in that sports are unique in several ways, and, therefore, traditional rules may not be a perfect fit for sports organizations. He is also correct in that the EU should recognize that sports have inherent characteristics that make an inflexible application of EU law inappropriate. In fact, the EU recognized the unique nature of sports in November of 2007 when the EC took steps to clarify its sports policy in the White Paper on Sport (White Paper).¹²⁶ First, the White Paper explicitly recognized the “specificity of sport.”¹²⁷ Pedro Velázquez, Deputy Head of the EU’s Sports Unit, argues that the White Paper noted that “sport’s specific nature means it should be exempt from EU law in a number of key areas such as the acceptance of gender-segregation.”¹²⁸ In addition to rules governing gender, the Commission recognized that rules applying to multiple ownership of teams, transfer policies, and anti-doping policies may not violate EU principles “provided that their anti-competitive effects, if any, are inherent and proportionate to the objective pursued.”¹²⁹ Here the Commission is, as Blatter wishes, recognizing that sports do not always fit easily into traditional legal frameworks.

¹²² *Id.*

¹²³ Euro Cup, *supra* note 14. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) at 95, available at <http://www.official-documents.gov.uk/document/cm72/7294/7294.pdf> (stating “[t]he Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.”).

¹²⁴ Euro Cup, *supra* note 14 (stating “FIFA argues that the mention of the ‘specific nature of sport’ in the new Lisbon Treaty means that football is not concerned by those rules.”).

¹²⁵ FIFA.com, *supra* note 8.

¹²⁶ See *White Paper*, *supra* note 31.

¹²⁷ See *id.* § 4.1.

¹²⁸ Marcus Hay, *EU Interest in Sport Gets Cautious Welcome*, PLAY THE GAME 43 (2008), available at <http://www.playthegame.org/upload/magazine2007/pdf/sections/playthegamemagazine07sportandlaw.pdf> (quoting Pedro Velázquez, Deputy Head of the EU’s Sports Unit).

¹²⁹ *White Paper*, *supra* note 31, § 4.1.

Where Blatter takes his argument too far is when he argues that because of the unique nature of sports, sports should be exempt from all EC Treaty provisions.¹³⁰ The Commission's White Paper flatly dismissed this view when it stated, "the specificity of sport will continue to be recognized, but it cannot be construed so as to justify a general exemption from the application of EU law."¹³¹ Here, the Commission is categorically rejecting the notion of a general sports exemption. Instead, the Commission stressed that any determination of whether a sporting rule and EU law are compatible "can only be made on a case-by-case basis"¹³²

While Blatter can argue that certain sporting rules are necessary because of the unique nature of sports, his argument will fail if the sporting rule conflicts with the basic principles of the EC Treaty. Some principles of EU law are so elementary that creating an exception would undermine the essence of the EC Treaty. One commentator argues that "[f]reedom of movement for workers and the abolition of nationality discrimination are pervasive themes of the EC Treaty" as they directly relate to one of the fundamental freedoms of the EC Treaty—the free movement of persons.¹³³ These principles are cornerstones of EU policy and cannot be brushed aside so easily. In the White Paper, the Commission specifically reaffirmed its stance on the strict enforcement of anti-discrimination policies in sports when it called all "Member States and sport organizations to address discrimination based on nationality in all sports."¹³⁴ Furthermore, the Commission stated it would "combat discrimination in sport through political dialogue with Member States, recommendations, structured dialogue with sport stakeholders, and infringement procedures when appropriate."¹³⁵ The issuance of the White Paper on Sport is a clear expression of the Commission's firm stance that the specificity of sport does not excuse sporting organizations from their obligations regarding free movement of workers and anti-discrimination under the EC Treaty.

While Blatter believes that he has "good arguments to convince those in Europe," the Commission has made its stance clear. Blatter's reliance on the specificity of sports as a way to evade EU law will fail because the difference between sports and other economic activity is not so pronounced as to undermine the essential principles of the EC Treaty. The Commission's report stated that the European Community saw sports as a

¹³⁰ See, e.g., Baynes, *supra* note 68.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Lee, *supra* note 17, at 1303.

¹³⁴ *White Paper*, *supra* note 31, § 4.2 n. 39.

¹³⁵ *Id.*

way to “share our values with other parts of the world.”¹³⁶ This includes the values of free movement and anti-discrimination. Thus, the Commission has made it clear that Blatter and FIFA cannot cling to the specificity of sport to avoid the law.

IV. INADEQUATE ALTERNATIVE SOLUTIONS

Since FIFA’s 6+5 Rule fails to meet its objectives and is a clear violation of the EC Treaty, it is necessary to find alternative solutions to address the problems plaguing European football today. While some have posited solutions like UEFA’s Home-Grown Rule, none have presented a workable solution that would address all of the interrelated problems that exist. This section discusses the inadequate solutions of (1) the UEFA’s Home-Grown Rule; (2) salary caps; and (3) “Farm Teams.”

A. *UEFA’s Home-Grown Rule: Only a Partial Fix*

One solution proposed by UEFA is the institution of the Home-Grown Rule in which teams would be required to have a minimum of two players trained in their own player-development program and two players trained in “the development program of another team within the same national association.”¹³⁷ There is no requirement to play these players in any games; they just need to be members of the teams’ twenty-five man roster.¹³⁸ The Home-Grown Rule does not discriminate based on nationality, and that is what prompted the EC to accept this rule as within the EC Treaty.¹³⁹

While the Home-Grown Rule has passed the Commission’s review, it does little to address all of the problems facing European football. It may address one area, youth development, because clubs would not be able to purchase players who have already developed their skills and ignore youth training.¹⁴⁰ However, the Home-Grown Rule does nothing to address the imbalance between clubs on the economic and competitive level. Blatter argues correctly that “the richest clubs would merely have to buy players at

¹³⁶ See *id.* § 2.7.

¹³⁷ Penn, *supra* note 40, at 226 ((citing uefa.com, Local Training Debate Moves Online, Feb. 6, 2005, <http://www.uefa.com/uefa/keytopics/kind=65536/newsid=261004.html>) (last visited Sept. 28, 2009)).

¹³⁸ See Penn, *supra* note 40, at 226 ((citing uefa.com, Local Training Debate Moves Online, Feb. 6, 2005, <http://www.uefa.com/uefa/keytopics/kind=65536/newsid=261004.html>) (last visited Sept. 28, 2009)).

¹³⁹ IRISH TIMES, *supra* note 12.

¹⁴⁰ Richard Williams & Alex Haffner, *FIFA Quotas Ruled Offside?*, 158 NEW L.J. (2008), available at <http://www.newlawjournal.co.uk/nlj/content/fifa-quotas-ruled-offside> (last visited Sept. 28, 2009).

an even younger age than they are currently doing.”¹⁴¹ These top clubs would still be able to buy and regularly play the most expensive and most skilled players and dominate their leagues. For this reason, UEFA’s Home-Grown Rule is not a complete solution.

B. Salary Cap: Another EC Treaty Violation

Many have argued that the answer to the economic imbalance between clubs in European football is to institute a salary cap. Salary caps limit the total dollar amount that teams can put toward player salaries.¹⁴² Salary caps exist, in one form or another, in many sporting organizations in the U.S.¹⁴³ The National Football League (NFL) best demonstrates the successful use of the salary cap in U.S. sports. In the twenty-one years prior to the institution of the salary cap in the NFL, seven of the twenty-eight teams in the league won the Super Bowl twenty times.¹⁴⁴ This was a time of American Football “dynasties” like the Pittsburgh Steelers and the Dallas Cowboys.¹⁴⁵ In the thirteen years following the institution of the salary cap in the NFL, nine different teams have won the Super Bowl.¹⁴⁶ This suggests that a salary cap can be an effective way to restore competitive balance in sports.

However, a salary cap is an unworkable solution for European football. While it does not violate Article 39 (ex 48) in that it contains no restrictions on players based on nationality, a salary cap would run afoul of other EC Treaty provisions. Most likely, a salary cap would violate Article 81 (ex 85) of the EC Treaty. As previously discussed, Article 81 of the EC Treaty contains three parts. The first part, Article 81(1), prohibits any association from taking actions that “have as their object or effect the prevention, restriction or distortion of competition within the common market”¹⁴⁷ A salary cap restricts teams’ ability to attain the most competitive players and is an act purposely designed to restrict or distort competition within leagues. A salary cap would fall under Article 81(1); therefore, a salary cap would be automatically void under Article 81(2), the second part of Article 81.¹⁴⁸ Finally, a salary cap does not fit the exception under the third part of the Article, Article 81(3), which allows for a distortion of

¹⁴¹ FIFA.com, *supra* note 8.

¹⁴² *See, e.g.*, Schiera, *supra* note 51, at 725.

¹⁴³ *See, e.g., id.* at 722, 724 (citing Chronological History of the Modern National Football League, <http://www.vaughantech.com/nfl.html> (last visited Sept. 28, 2009)).

¹⁴⁴ Schiera, *supra* note 51, at 724.

¹⁴⁵ *Id.* at n.108.

¹⁴⁶ *Id.* at 724.

¹⁴⁷ EC Treaty, *supra* note 10, art. 81(1).

¹⁴⁸ *Id.* art. 81(2).

competition if that distortion benefits the industry and consumers.¹⁴⁹ One could argue that a salary cap fits the exception because it corrects the economic imbalance in football and thus benefits consumers, but there is a second requirement before the Article 81(3) exception applies. Article 81(3)(a) requires not only a benefit to the industry and its consumers, but also that the action is “indispensable to the attainment of these objectives.”¹⁵⁰ If there is a less restrictive way to accomplish the same goals, the exception does not apply. Since a hard cap is such a severe restriction, it would be unlikely that the Commission would accept that there are no less restrictive policies.

C. *Farm Teams: Destroying a Distinctive Characteristic of the European Sports Model*

Some have proposed that European football leagues should incorporate a farm-system similar to that in American baseball. A farm system works in American baseball by the major league teams sponsoring minor league teams.¹⁵¹ The minor league teams recruit, develop, and train players, then the major league teams choose players from those minor league teams.¹⁵² Proponents argue that the farm system would foster youth development and remedy economic imbalance in European football because income from the upper level clubs would channel into a fund for the lower level clubs to pull from, so no one upper level club could dominate the system.¹⁵³ The lower level clubs would then use the funds to develop their players since these players are the primary pool of new talent for the upper level clubs.¹⁵⁴

On the surface, the farm team system seems like an attractive solution which would address all of the challenges facing European football, but this solution comes at a great price. Implementing farm teams would destroy one of the essentially European features of the European Sports Model: the promotion and relegation system. Promotion and relegation is a system by which the lowest club teams in a league are relegated, or demoted, to the league level below while the top teams from that lower league level are promoted to the higher league.¹⁵⁵ For example, at the end of the 2008–2009

¹⁴⁹ *Id.* art 81(3).

¹⁵⁰ *Id.* art. 81(3)(a).

¹⁵¹ Minorleagueneews.com, Farm System Ranking, <http://minorleagueneews.com/baseball/affiliated/farms/NLfarm.html> (ranking major league sponsored farm systems).

¹⁵² See Lee, *supra* note 17, at 1314.

¹⁵³ See *id.*

¹⁵⁴ *Id.*

¹⁵⁵ *World Sport, Explainer: How Relegation Works*, CNN.COM, May, 18, 2009, <http://edition.cnn.com/2009/SPORT/football/05/18/relegation.explainer/index.html>.

English football season, the three lowest-ranked teams in the EPL were Middlesboro, West Bromwich, and Newcastle.¹⁵⁶ As a result, these three teams were relegated to the league below the EPL, the Championship League. To balance the numbers, the top three teams from the Championship League—Wolverhampton, Burnley, and Birmingham City—were promoted to the EPL.¹⁵⁷

The promotion and relegation system is a characteristic of the European Sports Model that makes it distinct from the American model, and it is one with enormous benefits. Fans indentify with their teams by locality, and their hopes and dreams are tied up with the possibility of moving up into the top league. For proof of how enormous a lift communities receive when one of their local teams secures a top spot and earns a promotion to the EPL, one need look no further than the celebration that followed the promotion of the Hull City Tigers at the end of the 2007–2008 season. On May 26, 2008, Hull City braced for thousands of fans to line its streets and cheer the players who secured promotion for the team to the EPL for the following season.¹⁵⁸ Plans for the celebration included a parade through the town in an open-top bus to the city center for a Hull celebration.¹⁵⁹ The joy in that town that day was a direct result of the European Model's promotion and relegation system.

Yet if European football would implement a farm team system like that in American baseball, it would destroy the promotion and relegation system, and, in turn, destroy the hopes and dreams of thousands of football fans. Lower league club teams would have to affiliate with an upper league team that could pull up players from those lower league teams whenever there was a need or a player showed promise. A farm system would effectively destroy any chance lower league teams would have of building a stable and strong team to compete for the top ranking spots in their league and achieve promotion. Lower league teams and their fans would be, in effect, permanently relegated, and this would kill the hope and spirit of many small town clubs.

¹⁵⁶ Andrew Jordan, *Middlesboro, Newcastle Added to EPL Relegation Heap*, BLEACHER REPORT, May 24, 2009, <http://bleacherreport.com/articles/182747-english-premier-league-relegation-2009>.

¹⁵⁷ Jordan, *supra* note 156. See also *Burnley Beat Sheffield Utd in Championship Playoff*, UKREUTERS.COM, May 25, 2009, <http://uk.reuters.com/article/idUKTRE54O3CF20090525>.

¹⁵⁸ ThisIsHullAndEastriding.co.uk, *Hull City Promotion: Homecoming Parade Route Through the City*, <http://www.thisishullandeastriding.co.uk/environment/Hull-City-promotion-Homecoming-parade-route-city/article-180500-detail/article.html> (last visited Sept. 28, 2009).

¹⁵⁹ *Id.*

V. A UNIFIED SOLUTION

While the Home-Grown Rule, salary caps, and farm teams are all imperfect solutions, there is a way to structure a network of programs based on practices in American sports to address all of Blatter's issues and improve football. First, a revenue-sharing system like that currently operating in American Major League Baseball (MLB) would redistribute wealth between the large and small market clubs. Second, a luxury tax, similar to those assessed in MLB and the National Basketball Association (NBA) would also help level the inequalities between clubs without forcing the top clubs to dilute the talent they display on the pitch each week. Finally, league sponsored development leagues like the NBA's D-League could address Blatter's other concern that domestic youth are not given opportunities to learn the skills and develop the talent they will need to compete in the world's top leagues. A combination of these three practices would remedy the ills in European Football today.

A. *Revenue-Sharing Success in American Baseball*

One way that European football can address the disparity between a few dominating clubs and the rest of the league's clubs is to institute a revenue-sharing system. Revenue-sharing systems are designed to "increase the competitive balance within the league."¹⁶⁰ Under the revenue-sharing system, each club in the league contributes a set percentage of its season's income to the league organization.¹⁶¹ The more a club profits, the more it has to give. Those funds are then redistributed among the league clubs.¹⁶² Under the revenue-sharing system, a club that is less profitable would have to contribute less but would receive more of a share of the redistributed funds. Revenue-sharing, therefore, preserves "the competitive and financial balance between clubs."¹⁶³

Revenue-sharing plans are not without their naysayers, especially top officials at the most profitable teams. In 2005, New York Yankees owner George Steinbrenner expressed his exasperation with the MLB's revenue-sharing system when he said, "[w]e keep carrying everybody else and get outvoted (by the other teams) all the time. But that's the way it is; it's like a socialist state."¹⁶⁴ Others argue that rather than making leagues more com-

¹⁶⁰ Shula Neuman, *Major League Baseball: Sharing Revenue, Not Success*, Oct. 12, 2007, <http://news-info.wustl.edu/tips/page/normal/10292.html>.

¹⁶¹ Lee, *supra* note 17, at 1313.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Hal Bodley, *Revenue Sharing Paying Off*, USA TODAY, Apr. 7, 2005, http://www.usatoday.com/sports/baseball/columnist/bodley/2005-04-07-bodley-revenue-sharing_x.htm (last visited Sept. 28, 2009).

petitive, revenue-sharing plans decrease competition by allowing lower level teams to become complacent knowing that they will still receive the funds they need to survive from the system even if they do not perform well.¹⁶⁵ One such critic of revenue-sharing systems is Michael Lewis, Assistant Professor of Marketing at Washington University's Olin Business School.¹⁶⁶ Lewis argues that revenue-sharing creates a "negative effect on the incentives to invest in talent in small-market franchises."¹⁶⁷ Lewis presents the Tampa Bay Rays as an example of a team that under-invests in its team and instead chooses to "grow the bottom line through revenue-sharing."¹⁶⁸

While the critics paint a dire portrait of sports under revenue-sharing, the reality is the system does work. According to MLB Commissioner Bud Selig, the institution of revenue-sharing in MLB has "changed the economic landscape of the sport."¹⁶⁹ Selig counters critics like Lewis and says that teams are not just pocketing the money.¹⁷⁰ For the 2005 season, five teams increased their salaries by thirty-three percent or more.¹⁷¹ The teams are spending the money and increasing payrolls, and this has brought new, young, talented players into the league.¹⁷² Selig stresses that the benefits of revenue-sharing have not only increased player salaries, but also spilled over into other areas of the game. For example, TV ratings and attendance have also improved.¹⁷³

Despite these gains, critics like Lewis still contend that revenue-sharing has not produced the expected results.¹⁷⁴ Focusing solely on crunching the numbers, Lewis builds a strong argument that, mathematically, teams like the Tampa Bay Rays may make more money just taking the revenue-sharing income and not building a more competitive team.¹⁷⁵ However, what critics like Lewis fail to realize is that teams are motivated to succeed by more than money. Players want to win. Owners want to win. Fans want to win. There is no better example of this than the one Lewis himself presents in his argument against revenue-sharing. In 2007, Lewis insisted

¹⁶⁵ See, e.g., Neuman, *supra* note 160 (arguing that the goal of instituting revenue sharing in the Major League Baseball team was to increase the competitive balance within the league).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Bodley, *supra* note 164.

¹⁷⁰ *Id.* (quoting Commissioner Bud Selig).

¹⁷¹ *Id.* (quoting the results of a USA Today annual survey).

¹⁷² *Id.* (quoting Commissioner Bud Selig).

¹⁷³ *Id.*

¹⁷⁴ See Neuman, *supra* note 160.

¹⁷⁵ *Id.*

that the Tampa Bay Rays had no incentive to win under the current revenue-sharing scheme in MLB and would instead prefer to sit back and collect the shared profits.¹⁷⁶ His theory cannot, however, explain how the Rays ended up in the 2008 World Series.

While hindsight is twenty-twenty, what the Tampa Bay Rays example shows is that revenue-sharing is an effective way to bring greater economic equality between teams and greater competition on the playing field. Overall, revenue-sharing helps level the playing field between the richest and poorest clubs because it provides the lower teams with the economic ability to recruit and train more talented players. This gives lower teams a better chance of competing on the same plane as the richest clubs.

B. Luxury Tax: A Better Alternative to the Salary Cap

While revenue-sharing helps raise the competitiveness of the bottom teams in the league, an economic gap may still remain. While the poorer teams can now purchase and train highly skilled players, they cannot afford to fill every seat on the bench with million-dollar players like the Yankees or Chelsea. Revenue-sharing goes a long way to bridge the affluence gap, but adding a luxury tax like that in MLB and the NBA would narrow the expanse even further.

Luxury tax systems are often confused with salary cap systems, but there is a distinction. A luxury tax does not limit or cap the amount that teams can spend on players' salaries.¹⁷⁷ It is more of a salary threshold than a cap. Under a luxury tax system, a salary threshold is set, and, when a team exceeds that threshold, it must pay a penalty tax to the league.¹⁷⁸ Those penalty tax funds are then redistributed among all of the teams in the league whose salaries remain below the threshold.¹⁷⁹ This type of system is designed to account for exclusive top teams who seem to have endless sources of revenue.¹⁸⁰

For example, in the NBA there is a complicated formula of limits and exceptions designed to control team spending, but once the league calculates each team's spending on player salaries, the league applies its luxury tax.¹⁸¹ Under the NBA luxury tax system, teams must pay one dollar to the

¹⁷⁶ *Id.*

¹⁷⁷ SportsCity.com, NBA Salary Cap, <http://www.sportscity.com/NBA/Salary-Cap> (last visited Sept. 28, 2009) (describing the luxury tax instituted by the National Basketball Association in 1999).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

league for every dollar they exceed the salary threshold for that season.¹⁸² For example, in 2007–2008, the league threshold for salaries was \$67,865,000, and the Dallas Mavericks' payroll was \$79,351,704.¹⁸³ Since the team exceeded the threshold for the season, the Mavericks owed the league \$11,486,704.¹⁸⁴ The NBA would collect these funds from the Mavericks and pass them on to teams who did not exceed the threshold.¹⁸⁵

Instituting a luxury tax system in European football would address an economic disparity that revenue-sharing alone cannot correct. There are some teams with seemingly bottomless pockets, and a share of their profits cannot begin to dent their spending potential. A perfect example is Chelsea, a team owned by Russian billionaire Roman Abramovich.¹⁸⁶ Abramovich has not held back in his desire to win at all costs, and he spent £578 million of his own money on the club over the course of four-and-a-half years.¹⁸⁷ Even with revenue-sharing, Chelsea will always be able to massively outspend other teams in the EPL. A luxury tax, while perhaps not curbing Abramovich's spending, would at least pass on some of the wealth to teams which cannot afford to pay an exorbitant amount of money to secure the greatest players in the world.

Another benefit of a luxury tax is that, unlike a salary cap, a luxury tax would most likely pass Article 81 of the EC Treaty. Under the three parts of Article 81, a luxury tax would pass the first part, Article 81(1), since it does not force clubs to limit their spending on players' salaries.¹⁸⁸ Therefore, the EC will not view a luxury tax as a real restriction on competition.¹⁸⁹ This would mean that a luxury tax would not be automatically void under Article 81(2), the second part of Article 81.¹⁹⁰ Even if the Commission would see a luxury tax as restricting competition under Article 81(1), a luxury tax is far more likely to fit within the exception under Article 81(3), the third part of Article 81. Article 81(3) provides an exception for measures that violate Article 81(1) if those measures promote economic progress and allow consumers to share in the benefits.¹⁹¹ Also, Article 81(3) only allows

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ The World's Billionaires, #15 Roman Abramovich, FORBES.COM, Mar. 3, 2008, http://www.forbes.com/lists/2008/10/billionaires08_Roman-Abramovich_DG3G.html.

¹⁸⁷ Charles Sale, *Roman Takes his Chelsea Spending to £578m*, THE DAILY MAIL, Feb. 21, 2008, <http://www.dailymail.co.uk/sport/football/article-517390/Roman-takes-Chelsea-spending-578m.html>.

¹⁸⁸ See Schiera, *supra* note 51, at 736.

¹⁸⁹ *Id.*

¹⁹⁰ See EC Treaty, *supra* note 10, art. 81(2).

¹⁹¹ *Id.* art. 81(3).

measures that are “indispensable to the attainment of” those objectives.¹⁹² It is under Article 81(3) that a luxury tax also has an advantage over a salary cap. The Commission is unlikely to see a salary cap as “indispensable to the attainment” of economic balance within the league. Contrastingly, it would be much easier to argue that a luxury tax is the “least restrictive means of creating such benefits”; a consideration in any Article 81(3) analysis.¹⁹³ For this reason, a luxury tax is a far better solution than a salary cap.

The beauty of both a luxury tax and revenue-sharing is that, unlike a salary cap, a luxury tax and a revenue-sharing system brings greater economic equality to teams in a league but does so without destroying the quality of play for top level clubs. Where a salary cap brings down the competitiveness of top clubs so that lower clubs have a chance to compete, revenue-sharing and luxury tax systems allow top clubs to continue to play at the same level. Additionally, the redistributed profits and taxes raise the level of play for the bottom teams. Tampa made it to the World Series, but the Yankees are still stocked with highly-paid players. Under a combination of these two schemes, European football leagues can improve the economic and athletic competitiveness of their clubs without “dumbing down” powerhouse dream teams like England’s Chelsea, Spain’s Real Madrid, and Italy’s AC Milan. This benefits the clubs, the league, and the fans, and solves the first of Blatter’s two legitimate concerns that serve as his justification for the 6+5 Rule by addressing the economic imbalance in football leagues and the dominance of a select few clubs.

C. *League-Sponsored Development Leagues*

While instituting a revenue-sharing plan and a luxury tax will address Blatter’s first legitimate concern—the economic and competitive imbalance between clubs—another American practice can address his second legitimate concern of the lack of youth development. Blatter feels the 6+5 Rule is also needed to address the lack of development of local players because teams can purchase already developed foreign players, but the American NBA provides an example of a successful program that could address this issue without violating the EC Treaty.

In 2001, Commissioner of the NBA David Stern announced the formation of the NBA Development League (D-League).¹⁹⁴ The D-League recruits young players through “a draft, player assignments, allocations,

¹⁹² *Id.* art. 81(3)(a).

¹⁹³ Schiera, *supra* note 51, at 737.

¹⁹⁴ Maury Brown, D-League Sets Expansion Draft, Complete List of Players, http://www.bizofbasketball.com/index.php?option=com_content&view=article&id=710:d-league-sets-expansion-draft-complete-list-of-players&catid=54:d-league-news&Itemid=74 (last visited Sept. 28, 2009).

tryouts and a returning player pool.”¹⁹⁵ Local tryouts take place all over the country, and players may then be invited to training camps where they have a chance to prove themselves worthy of a spot on a team.¹⁹⁶ This provides young players, who might not otherwise have a chance of discovery or access to training programs, with an opportunity to develop their skills and come to the attention of the league. NBA teams can then select players of promise and talent from the ranks of the D-League.

The D-League has developed team affiliations with NBA teams since 2005.¹⁹⁷ While these affiliations seem to be moving more toward a farm system arrangement like that in the MLB,¹⁹⁸ there are distinct differences. While a farm system would be incompatible with the European Model of promotion and relegation, the differences in the D-League avoid this conflict. First, the players in the D-League do not sign a contract with any particular team in the D-League.¹⁹⁹ Instead, they sign a general contract with the league itself; therefore, the players are not affiliated with any particular NBA team.²⁰⁰ A player in the D-League is also released from his obligations under that contract if any NBA team offers him a contract.²⁰¹ This provides more flexibility for players than the MLB system where players can only be called up to the associated team.

The NBA D-League, though relatively new, has produced dramatic results. As of the start of the 2008–2009 NBA season, fifteen percent of the players in the NBA have played in the D-League.²⁰² This shows that the D-League is working because it is finding and developing talent worthy of competing at the highest level. The D-League has not only discovered talented players, but it has also brought other talent to the NBA. For example, nineteen coaches and seventeen referees have moved from the D-League into the NBA since its formation.²⁰³

A system similar to the NBA’s D-League could address the problem of player development that Blatter feels justifies his 6+5 Rule.²⁰⁴ Leagues like the EPL would contribute funding for the development league that would scout and develop young talent in the geographic location of the

¹⁹⁵ NBA.com, NBA D-League Frequently Asked Questions, http://www.nba.com/dleague/fan_faq.html#fanfaq1 (last visited Sept. 28, 2009).

¹⁹⁶ *Id.*

¹⁹⁷ Brown, *supra* note 194.

¹⁹⁸ See Lee, *supra* note 17, at 1314.

¹⁹⁹ NBA.com, *supra* note 195.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ FIFA.com, *supra* note 8.

league. This would develop the national talent from which professional league clubs could recruit. Local talent will no longer be overlooked as Blatter fears. These leagues would also not disturb the promotion and relegation system like a farm team system because the development league would not be part of the professional league structure. They have no hope of promotion because they are a completely separate league. Players in the development league could move to any professional level club if selected, even those clubs in the lower levels of the promotion and relegation ladder.

VI. CONCLUSION

Every problem has a solution; the real challenge is to find the right one. As 2010 rapidly approaches, finding the right solutions to the problems facing European football becomes increasingly crucial. If circumstances do not change, UEFA will find itself in the middle of a battle it cannot win. On the one hand, in 2010, FIFA will likely insist that UEFA begin implementing the first phase of the 6+5 Rule or risk losing its affiliation with the world governing body.²⁰⁵ On the other hand, the EU has made it clear that it would hold violators of EC Treaty provisions legally responsible.²⁰⁶

FIFA President Sepp Blatter recognizes that problems exist in football that allow the wealthiest teams to dominate the sport and allow some potential talent to go undiscovered. There is no question that Blatter's intentions are noble, but, unfortunately, his vision is clouded. He fails to see that his proposed solutions are the wrong ones, and his blind faith that things will go his way in the end prevents him from seeing the collision course he is on. As a result, he has closed himself and FIFA off from alternative, workable solutions.

As the global governing body for football, FIFA should welcome global integration in the world of football instead of attempting to stifle it. Instead of limiting player mobility and the internationalization of teams in leagues around the world, FIFA should embrace these changes. Just as FIFA should embrace global integration on the football pitches of the world, so should FIFA look to policies and programs around the world to find the right solutions to the problems facing football. Oddly enough, the right solutions exist in a nation that ranks relatively low in the hierarchy of global football. While Americans cheer loudly for the Steelers, buy peanuts and hot dogs at Mets games, and pay outrageous prices for the latest athletic shoe sponsored by their favorite NBA star, "soccer" has struggled to garner

²⁰⁵ IRISH TIMES, *supra* note 12 (stating that FIFA President Sepp Blatter "said he would push ahead with his plans despite the EU executive's strongest warning yet over the implementation of the so-called '6+5 rule'").

²⁰⁶ *Id.*

a following; therefore, the United States seems an unlikely place to find the solutions to solve the problems facing “the world’s game.”

Despite this seeming contradiction, U.S. sports can help football overcome its obstacles but only if FIFA, under the leadership of President Blatter, can broaden its view and look for the right solutions. If not, FIFA will continue down its current path and reach the inevitable conflict at the end. If this happens, the resulting battle could mar the pitches of football for years to come and make FIFA a destructive force in football instead of the unifying force it was designed to be.

