

Misunderstood: The FIFA scandal and the extraterritorial reach of US law

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Last month the U.S. Department of Justice indicted 14 FIFA officials as part of an FBI investigation into alleged collusion with football bodies in South and Central America. Many are concerned about the extraterritorial reach of the U.S. in these indictments, but [Stuart H. Deming](#) argues that the manner in which the U.S. applies territorial jurisdiction is not unique.



In some quarters, the recent indictment by the United States of a number of individuals associated with FIFA has led to an outcry as to the extraterritorial reach of US law.

Implicit in the outcry is the suggestion that the United States is unique in the application of its criminal laws. Though defense counsel can be expected to challenge US jurisdiction and to interpose various rationales for fighting extradition for many of the defendants, by no means was this a situation where an isolated event or contact with the United States served as the basis for territorial jurisdiction.

A careful review of the 164-page “FIFA indictment” does not support a claim of overreach on the part of the US Department of Justice. Two of the 14 individuals indicted were US citizens, another was a permanent resident of the United States, and three others owned residences in the United States. The use of the US banking system to facilitate the questionable conduct was extensive. Furthermore, many of the activities involved CONCACAF, which represented organized “soccer” in North America, Central America, the Caribbean, and three South American countries. The administration offices of CONCACAF were initially located in New York and later in Miami, Florida. Based on these and other allegations, the indictment simply does not support a claim that contact with the United States was incidental.

The manner in which the United States applies territorial jurisdiction is not unique to the United States. Indeed, most of the major common law jurisdictions apply their criminal laws extraterritorially in the same manner as the United States. This includes the United Kingdom, Canada, Australia, and New Zealand. Moreover, unlike the United States, for each of these countries, no statute of limitations applies to indictable offenses or what are generally referred to as felonies in the United States.

While most countries now have statutes similar to the anti-bribery provisions of the Foreign Corrupt Practices Act, often overlooked is the existence of parallel statutes addressing private or commercial bribery in various forms, including kickbacks. Most countries have statutes that apply to situations involving private bribery. For example, the United States has the Travel Act and Canada has its Secret Commissions Offence. But in most situations, such as with the Travel Act and the Secret Commissions Offence, the application of the statute is limited to territorial jurisdiction.

Some countries, like the United Kingdom and South Africa, have statutes that are far more aggressive in addressing private bribery. Unlike the United States, they provide for both nationality and territorial jurisdiction. Moreover, for entities under the UK Bribery Act, the mere act of engaging in limited activity within the United Kingdom has the potential of triggering criminal liability of both public and private bribery taking place in other parts of the world. In this context under the UK Bribery Act, it does not matter whether any act in furtherance of the questionable conduct takes place within the territory of the United Kingdom.

In reality, the statutory scheme of the United States and the jurisdictional reach of US law are not terribly unique, especially among common law countries. Nor are policy considerations necessarily the critical factor. Far more mundane factors are involved in situations like those involving the recent FIFA

indictment.

First and foremost, the resources available to US enforcement officials are far more substantial than



FIFA Headquarters, Zurich. Credit: [davidpc_](#) (Flickr, [CC-BY-NC-SA-2.0](#))

most countries. This is in part due to the size of the United States and its relative wealth. But an overriding factor is the vast experience of the US Department of Justice and the various investigative agencies in prosecuting complex white-collar crime. On a comparative basis, the combination of vast experience and extensive resources is what really sets the United States apart from most countries.

An inherent but related factor is the central role that the United States plays in terms of banking and international commerce. Within the Americas, it also serves as the major hub for air travel. As a result, the likelihood of there being substantial activities within the United States that might support territorial jurisdiction is almost a given for a large international organization.

It must also be kept in mind that these gaps between the United States and many countries in terms of experience and relative resources are quickly narrowing. In addition to facilitating much greater cooperation among member countries, one of the many benefits of the OECD Anti-Bribery Convention, the United Nations Convention Against Corruption, and the other anti-corruption conventions adopted in recent years is the buildup of capacity in terms of expertise and resources to address sophisticated white-collar crime. While the focus may be public corruption, those same resources and expertise apply equally as well to other forms of white-collar crime. In this regard, already in conjunction with the FIFA indictment, a number of investigations relating to FIFA in other countries have come to the fore.

In short, reasonable people may differ as to how the United States should employ its resources in addressing various forms criminal activity. But the suggestion that the United States is unique in the extraterritorial reach of its criminal laws is without basis.

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