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International Unionism's Competitive Edge FIFPro and the European Treaty L'avantage concurrentiel du syndicalisme international FIFPro et le Traité européen Límites de la competencia en el sindicalismo internacional FIFPro y el Tratado Europeo

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Article abstract

Globalization and neo-liberalism have been associated with a decline in unions. In seeking to respond to these problems, unions could cooperate internationally. The orthodoxy among industrial relations scholars is that the European Treaty is antithetical to international unionism because of various provisions which promote competition. The experience of the International Federation of Professional Footballers' Associations (FIFPro) contradicts this orthodoxy. In August 2001, FIFPro entered into a framework collective bargaining agreement with Fédération Internationale de Football Association (FIFA) on a new set of rules to govern the worldwide employment of professional footballers. Football's transfer and compensation system violated competitive provisions, in particular the freedom of movement of workers, contained in the European Treaty. Following the 1995 decision of the European Court of Justice in Bosman, and strategic interventions by the European Commission, FIFA sought an accommodation with FIFPro, to protect its new employment rules from further legal attack.

International Unionism's Competitive Edge

FIFPro and the European Treaty

BRAHAM DABSCHECK

Globalization and neo-liberalism have been associated with a decline in unions. In seeking to respond to these problems, unions could cooperate internationally. The orthodoxy among industrial relations scholars is that the European Treaty is antithetical to international unionism because of various provisions which promote competition. The experience of the International Federation of Professional Footballers' Associations (FIFPro) contradicts this orthodoxy. In August 2001, FIFPro entered into a framework collective bargaining agreement with Fédération Internationale de Football Association (FIFA) on a new set of rules to govern the worldwide employment of professional footballers. Football's transfer and compensation system violated competitive provisions, in particular the freedom of movement of workers, contained in the European Treaty. Following the 1995 decision of the European Court of Justice in Bosman, and strategic interventions by the European Commission, FIFA sought an accommodation with FIFPro, to protect its new employment rules from further legal attack.

Globalization and the onward march of neo-liberalism have been associated with a decline in unionism (Crouch and Traxler 1995; Gordon

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 - The author was part of a team, which prepared a submission, on behalf of the International Federation of Professional Footballers' Associations, to the European Commission in February 2001. Thanks are expressed to helpful comments provided by reviewers on an earlier version of this article. The author is solely responsible for the views expressed, and for any errors or omissions this article may contain.

and Turner 2000a; Hyman 1999, 2001; Jensen, Madsen and Due 1995; Martin and Ross 1999, 2000; Mahnkopf and Altvater 1995; Ramsay 1995, 1997, 1999; Streeck 1998; Turner 1996; Waddington 2000; Waterman 1998). As barriers to international trade have come tumbling down, the relevance of national industrial relations systems has been increasingly challenged. Workers and, where they exist, the unions that represent them, have been forced to compete against each other, as footloose capitalism and fancy free multi-national companies play the old game of divide and rule in deciding on the “best” locations to base production. A possible countervailing strategy, which could be utilized by unions, is to cooperate, and “act,” on an international basis. Focusing on the sectoral or industry level,¹ unions based in different nations could form an international confederation which, among other things, would seek to negotiate an international collective bargaining, or framework, agreement with a mirror employer organization.

International union cooperation has a particular resonance within Europe, following the development of the European Common Market, and more recently, Economic Monetary Union, under various incantations of the European Economic Treaty.² During the 1980s and 1990s the European parliament and, more particularly, the European Commission, via funding and other means sought to encourage pan-European social dialogue between unions and employer representatives, and the development of transnational collective bargaining (Martin and Ross 2000; Jensen, Madsen and Due 1995; Ramsay 1995). With respect to the latter, and focusing on industry level transnational collective bargaining, such attempts have borne little fruit. Mahnkopf and Altvater have said “European trade union unity [was] both necessary and impossible” (1995: 102). Windmuller found that “[O]nly the most tentative steps have been taken to develop industry level transnational collective bargaining and, moreover, such bargaining is not a likely prospect ... in the near future” (2000: 119). Some international unions, such as the European Metalworkers’ Federation, have experienced a degree of success with networking through various affiliates

1. Cooperation can also occur at the national or (multi-national) firm level.

2. The Treaty establishing the European Economic Community—the Treaty of Rome—was signed on 25 March 1957, entered into force on 1 January 1958. Its major revisions have been the Treaty of Maastricht, signed on 7 February 1992, entered into force on 1 November 1993; the Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999; and the Treaty of Nice, signed on 26 February 2001, still to come into force at the time of writing. The Treaty of Amsterdam amended and renumbered articles contained in the “original” Treaty. References to various articles of the European Treaty in this article will provide both their “original” and amended, per the Treaty of Amsterdam, numbers.

in negotiating with employers *individually* in different countries (Gollbach and Schulten 2000. Also see Wilson 2000; Le Queux and Fajertag 2001).

More generally, however, international unions at the industry or sectoral level have found it difficult to develop a collective bargaining relationship with mirror employer bodies. Under neo-liberalism, employers do not need to operate as collectives, thereby providing unions with a bargaining "target." Or to paraphrase Turner, unions are unable to find any suitors (1996: 332). Gordon and Turner, in their conclusion to their edited volume on *Transnational Cooperation among Labor Unions* found that, of "the current union strategies for revitalization (including organizing, political action, partnership, mergers and internal restructuring) international collaboration, although growing, remains the smallest" (2000b: 261).

Limitations on the ability of European unions to act internationally (across Europe) have been linked to the European Treaty. Martin and Ross, for example, maintain that "European political institutions limit the possibilities and discourage the development of Europe-wide structures and strategies" (2000: 120). In a similar vein, Streeck has said, "as to unionization, the inhibiting effects of wide differences in national economic conditions and interests are reinforced by the absence of facilitating state capacity at the European level, which in turn reinforces the primacy of national forms of organization" (1998: 434).

Is it conceivable, however, that international European employers could commit acts—acts which pertain to employment or industrial relations—which are inconsistent with provisions of the European Treaty? In so doing, would such international employers find themselves on the defensive, under attack from European supranational institutions such as the European Court of Justice and the European Commission? In turn, could such international employer vulnerability afford advantages and provide succour to international unionism, not only in the procedural sense of affording it recognition as an international collective bargaining agent, but also in enhancing the ability of affiliates, or would be affiliates, to pursue benefits on behalf of members?

Such an example is provided in the "world" of professional football. On 31 August 2001 the International Federation of Professional Footballers' Associations (FIFPro), a confederation of national player associations, and Fédération Internationale de Football Association (FIFA), the controlling body of world football, signed a framework agreement to govern the worldwide employment of footballers.³ The completion of this agreement

3. In the summer of 2000, according to FIFA's "Big Count" of its 204 national member organizations, over 242 million people actively played football, approximately one out of every 24 of the world's population; with over 127,000 professional players (Manzenreiter and Horne 2002: 3).

followed intervention by both the European Court of Justice and the European Commission. Such intervention enhanced the “strategic” position of FIFPro, and/or the cause of international unionism.

This football, or sporting example, contradicts the accepted wisdom of the “postulated” relationship between neo-liberalism, or competition, and international unionism. This is due to three factors. First, football employers have organized themselves into global and regional entities, thereby providing a “target” for international unions wishing to engage in collective bargaining. Second, football employers have operated as a cartel in promulgating employment rules—generically known as the transfer and compensation system (see below)—which have restricted the economic freedom and mobility of players. Third, these employment rules were found to be inconsistent with competitive provisions of the European Treaty. FIFPro then has benefited from provisions in the European Treaty which promote competition, the motif force of globalization and neo-liberalism.

FIFPro constitutes a leading edge, or “best practice,” example of international unionism. It has not only completed a framework agreement with a mirror employer organization—it looked in the mirror and saw someone else—but has also entrenched the “strategic” position of its members in the implementation and administration of the framework agreement at the local, or national, level. In addition, FIFPro has been active in networking so as to spread the cause of football unions, not only to other parts of (Eastern) Europe, but also to Africa and South America.

This article is concerned with providing an understanding of how FIFPro was enabled to prosper from competitive provisions in the European Treaty. The article is organized into five sections. It begins with a criticism of the orthodoxy on international unionism and the European Treaty, as exemplified in the work of Martin and Ross (2000). This account fails to take account of “peculiar” circumstances, which operate in professional team sports. Section two will examine various interventions by the European Court of Justice and the European Commission into football; of how international football employer organizations found themselves embracing FIFPro to protect revised employment rules from further attack by such European supranational institutions. The next two sections will focus on FIFPro. Section three will examine its involvement in the making of the 2001 framework agreement. Among other things, it will document a split among affiliates on the best way to proceed. This will be followed by information on FIFPro’s networking post the 2001 agreement in spreading the cause of player associations and player rights. The various threads of the discussion will be pulled together and presented in section five.

THE EUROPEAN TREATY

The European Treaty contains provisions, which promote the free movement of goods (Article 9, revised Article 23), workers (Article 39, revised Article 48), services (Article 59, revised Article 49) and capital (Article 73b, revised Article 56). It also contains provisions which promote competition (Article 85, revised Article 81) and prohibit abuse of dominant market provision (Article 86, revised Article 82). These will be referred to as *competitive* provisions. The Treaty also seeks to promote improvements in the living and working conditions of labour (Article 117, revised Article 136). Member states are encouraged to support initiatives on a variety of employment or industrial relations fronts (Article 118, revised Article 137). One such provision is to ensure that there is equal pay for men and women performing work of equal value (Article 119, revised Article 141). These will be referred to as *industrial relations* provisions of the European Treaty. However, they do not extend or apply to matters pertaining to freedom of association, or the right to strike or lockout (revised Article 137, Clause 6).

Industrial relations scholars, who have examined international unionism in Europe, have concentrated on *industrial relations* provisions of the European Treaty, to the exclusion of *competitive* provisions. The work of Martin and Ross (2000) provides a case in point. They maintain (2000: 122-123):

Transnational governance in Europe is limited in precisely those fields that most directly concern unions. Core industrial relations matters such as pay [other than equal pay] and the right to organize and strike are explicitly excluded from the E[uropean] U[nion]'s jurisdiction by its treaty/constitution ... As long as industrial relations [matters] ... are left in member state hands, unions still have to act in national arenas, relying on familiar national resources and practices. These disincentives reinforce chronic obstacles to transnational action, including cultural and language barriers and the institutional differences that persist despite the similarities. Conflicts of interest among national labor movements, perceived and real, often paralleling those of their governments, remain strong. In general, European unions—like unions elsewhere—have become profoundly integrated into their national societies in the twentieth century ... labor standards, and industrial relations institutions were largely excluded from Europe's scope. To this day, therefore, European integration has been about "negative integration"—the creation of a European market by eliminating barriers to cross-border economic activity—rather than "positive integration"—the replacement of national regulation by regulation at the European level.

Martin and Ross offer a dismissive comment concerning the freedom of movement of workers, one of the *competitive* provisions of the European

Treaty. They state “even though free movement of labor is one of the four kinds of freedom of movement prescribed by the S[ingle] E[uropean] A[ct], durable barriers of language and culture and differences in employment-related institutions such as social security have kept labor mobility much lower in Europe than in America” (2000: 139).

Martin and Ross’s analysis does not apply to football in at least three senses. First, football, if not other professional team sports, is not a profession characterized by low levels of labour mobility. As a quick glance of the current edition of *Rothmans Football Yearbook* (2001), English football’s “bible,” would reveal, clubs have in their playing squads large numbers of players from mainland Europe and other parts of the world. Football is an industry where labour is more mobile than capital. Clubs are unable to exercise “exit options” (Streeck 1998: 438) to locate elsewhere in search of cheap sources of labour supply. Manchester United, Barcelona, AC and Inter Milan and other European clubs are precluded from moving elsewhere, other than to a better stadium across town, for fear of alienating supporters and of reducing the value of their “brand” name.

Second, individual player associations have not been “profoundly integrated into their national societies” industrial relations systems. Player associations, not only in football, but also in other professional team sports, have constituted “islands” off the mainland of their respective national systems. While they may or may not have affiliated to trade union confederations within their respective nations, they have looked to each other for help and advice. The English Professional Footballers’ Association, formed in 1907, has been a source of support for former members and players seeking to establish player associations in other parts of the world. The “islands,” off their respective mainlands, gravitated towards each other to form a “continent” of their own. Moreover to the extent that player associations, across professional team sports, have looked to the state, or “the law” to pursue members’ interests, these associations have looked to the common law principle of restraint of trade and competition or anti-trust legislation, rather than to, in what might be regarded as a narrow interpretation of the term, the formal industrial relations system as such.⁴

Third, football has traditionally operated employment rules known as the transfer and compensation system. First introduced into English football in 1891, the system has operated worldwide, enshrined in rules and regulations promulgated and varied from time to time by FIFA. Under the transfer and compensation system, a player cannot change, or move to

4. For discussions concerning the relationship between individual and collective law in sports’ employment, see Berry and Gould (1981), Opie and Smith (1992), and Dabscheck (2000).

another club, without the permission of his current club. A transfer fee is required for a player who changes clubs during the life of his contract, and a compensation fee for a player whose contract has expired. The payment of such fees, especially compensation fees, for a player out of contract, would seem to be, at first blush, inconsistent with the competitive provisions of the European Treaty.

THE EUROPEAN COURT OF JUSTICE AND THE EUROPEAN COMMISSION

Intervention or initiatives, by both the European Court of Justice and the European Commission were crucial to the development of “fully fledged” or “successful” international unionism in football. FIFA’s employment rules were found to be inconsistent with the competitive provisions of the European Treaty by the European Court of Justice. Attempts by FIFA to overcome this problem were rejected by the European Commission. In responding to this second round of objections, FIFA decided, and was encouraged by the European Commission, to reach an accommodation with FIFPro.

Jean Marc Bosman⁵ signed a professional contract with Belgium first division club Standard Liege in 1986. Two years later, after the expiry of his contract, he transferred to local rival Liege. In 1990, at the end of that contract, Liege offered him a new one- year contract at the league’s minimum wage. He declined this offer and was placed on Liege’s transfer list. Bosman’s transfer fee was determined by a multiple of his previous wage and age—a fee of BFR 11,743,000 being determined. No Belgium club expressed interest in Bosman at that fee.

Per FIFA’s regulations, and the rules of the Union des Associations Européennes de Football (UEFA), the governing body of European football,⁶ clubs were entitled to receive compensation fees for the international movement of players. If the two clubs could not agree on a fee, an UEFA board of experts would so rule, to an upper limit of five million Swiss francs. Subsequent amendments removed this maximum. Both UEFA and FIFA’s regulations necessitated that a player moving from one country to another obtain an international clearance certificate before taking up employment with his new club.

5. The information is derived from the Opinion of Advocate General Lenz in *Bosman*.

6. FIFA organizes the operation, or administration, of football into various confederations. UEFA has responsibility for football in Europe, with 51 nations operating under its umbrella.

Given his inability to attract offers in Belgium, Bosman sought employment in other member states of the European Union. He received an offer from French second division club Dunkerque. The two clubs, however, were unable to agree on a fee, preventing Bosman from taking up employment with Dunkerque. Having not received an offer from a Belgium club, and not having obtained an international clearance certificate, per UEFA and FIFA's requirements, Bosman was denied employment as a professional footballer, even though there was a club prepared to employ him.

The major claim initiated by Bosman was that compensation fees and restrictions on the number of foreign nationals that could play for a club of a member state (the "3 plus 2" rule: three non-nationals on team sheets, plus two who have played in the country for five years uninterrupted, including three years as juniors⁷) violated Article 48 (revised 39) of the European Treaty.

The Belgium League and UEFA advanced two major arguments in support of compensation fees. First, such rules were essential for achieving sporting equality. The Advocate General said the "associations ... produced little convincing, specific material to support their argument" (paragraph 222). Moreover he advocated revenue sharing as an alternative means to promote sporting equality, consistent with workers' freedom of movement, per the European Treaty. He pointed to the occurrence of such arrangements in various leagues, and the UEFA Champions League, advocating such arrangements be further developed and spread across Europe.

The league's second line of defence was that fees compensated clubs for the costs incurred in training and developing players. Advocate General Lenz found such a view "unconvincing." He said:

transfer fees cannot be regarded as compensation for possible costs of training, if only for the simple reason that their amount is linked not to those costs but to the player's earnings. Nor can it seriously be argued that a player, for example, who is transferred for a fee of one million ECU caused his previous club to incur training costs amounting to that vast sum.

He also noted "that such fees ... are demanded even when experienced professional players change clubs. Here there can no longer be any question

7. The rules concerning non-nationals follow earlier interventions by the European Commission, especially after *Dona* in 1976, where the European Court of Justice found rules "which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question are incompatible" with the European Treaty (paragraph 19). On European Commission intervention, see Opinion of Lenz, paragraphs 38 and 39.

of "training" and reimbursement of the expense of such training ... Any reasonable club will certainly provide its players with all the development necessary. But this is expenditure which is in the club's own interest and which the player recompenses with his performance. It is not evident why such a club should be entitled to claim a transfer fee on that basis" (paragraph 237).

The Advocate General envisaged two circumstances which could potentially sustain a system of reasonable compensation (although, he used the term "transfer") fees. First, such fees could be linked to amounts actually expended by clubs training players. Second, a fee could only be "charged" for the first change of club, where the previous club had (actually) trained the player, with the fee being "reduced proportionately for every year the player had spent with his club after being trained, since during that period the training club will have had the opportunity to benefit from its investment in the player." Advocate General Lenz went on to state, however, "it is not certain that even such a system of transfer rules could not also be countered by Mr. Bosman's argument that the objectives pursued by it could also be attained by a system of redistribution of a proportion of income, without the players' right to freedom of movement having to be restricted for that purpose" (paragraph 239).

Following *Bosman*, UEFA abolished the "3 plus 2" rule and abolished compensation fees for the international transfer of players within the European Union/European Economic Area (EU/EEA), irrespective of nationality, at the expiry of a player's contract. It also developed a model contract for young or "training" players. Such contracts would consist of a training term and a first professional contract. In a discussion document dated 4 September 2000 UEFA states, "It was felt that the period of training should be completed by the player's 21st birthday at the latest, and that the period of the first professional contract should be completed by the player's 24th birthday at the latest." Players would be entitled to take up employment with any club at the end of their training. If a new club employed a player, the training club would be entitled to a compensation fee. Such a proposal is consistent with the Opinion of Advocate General Lenz (see above). If a player changes clubs during his first professional contract, his club is entitled to a transfer fee, in the same manner as "older" players (UEFA 2000: 8).

FIFA decided that it, rather than UEFA, should be responsible for administering the international transfer of players. It adopted new transfer regulations on 1 October 1997. The alterations constituted a limited, or narrow response to *Bosman*. FIFA maintained its transfer and compensation system, and international transfer certificates. The October 1997 regulations abolished compensation fees for players whose contracts had "validly expired," who moved from one country to another within the

EU/EEA, and for UEFA to establish its own regulations for training and development compensation between different national associations (FIFA 1997).

Prior to FIFA changing its regulations, the Belgium unions, Syndicat des Employés, Techniciens et Cadres and Fédération Générale des Travailleurs de Belgique, challenged FIFA's employment rules—and by the time the decision was handed down, its revised regulations—before the European Commission's Directorate-General IV Competition.⁸ The unions maintained that FIFA's regulations breached Articles 48 (revised 39) and 85 (revised 81) of the European Treaty.

Commissioner Karel van Miert in his Points of Objection, of 14 December 1998, found FIFA's 1997 regulations fell foul of Article 85 (revised 81). He pointed to aspects of the 1997 regulations which had failed to respond to *Bosman*. They were situations of players from a third country playing in an European Economic Area (EEA) state and vice versa, and international transfer of players in the case of a universal rescission of the contract—such transfers being forbidden, even if the player had complied with national labour law; and international transfer of players within the EEA during the term of a contract, by mutual agreement between the two clubs and the player.

The Commissioner found, with the exception of the 1997 *Bosman* amendment, that FIFA's regulations applied to all international player transfers within the EU/EEA,

and as the compensation sums reach very large amounts, we are facing a case of a cartel agreement that is in violation of article 85 ... and a case of a considerable restraint on competition and/or distortion of competition in the market of the sports professional soccer spectacle in the EU/EEA. In addition, due to the amount of compensation fees charged the small clubs are only able to hire top players in very exceptional circumstance, which causes the rich clubs to maintain their place in the rankings (European Commission 1998: 8).

For players moving from a third country to a club in the EU/EEA, the commissioner was "of the opinion that this constitutes a restriction as referred to by Article 85 ... among other things because the consequences of the payment of the compensation fees at issue are felt within the community and the EEA, as it is the club of the territory that must pay the compensation fees." He also found against FIFA on the impositions it placed on national associations to establish national transfer systems. Such an imposition forced clubs to hire players from abroad, as they do not, per

8. Following *Bosman* the European Commission had pressured FIFA and UEFA to change their employment rules.

Bosman, have to pay any compensation fees for such players. More generally, he found that FIFA's 1997 regulations "can adversely affect the trade between states, in the case of the restriction of the process of freely hiring professional players who are citizens of other Member States of the EU/EEA or of third countries and of the process of hiring players in accordance with the principle of freely matching supply and demand on the labor market" (European Commission 1998: 8-9).

Following Commissioner van Miert's Opinion, FIFA and UEFA entered into negotiations with the European Commission—the latter's major representative being Mario Monti, European Commissioner for Competition Policy, Sport and Competition—in order to develop a new, "acceptable" set of employment rules. Such negotiations lasted more than two years. Among other things, FIFA and UEFA sought help from leading European politicians to "convince" the European Commission that it should soften its stance on the extent of reform.

On 10 September 2000 Chancellor Gerhard Schroder of Germany and Prime Minister Tony Blair of England issued a joint press release which supported the transfer system, gently criticizing the European Commission's stance on "ensuring freedom of movement for [players]." The release said:

The current system is doubtless not perfect. However, we fear that a radical reform could have negative effects on the structure of European soccer. We are concerned that many smaller clubs would have to fear for their survival. As such, we take the view that a solution must be found that will take into account the justified interests of the players as well as of the clubs and associations ... The associations need planning security for the promotion of young soccer talent and the development of their teams. They need a system that will ensure a healthy balance and fair opportunities for everyone concerned. We hope that in the search for an agreement on the transfer system the Commission will take into account the special situation that exists in professional soccer (Press Release 2000).

FIFA attempted to incorporate FIFPro and gain its acquiescence for the proposals it was developing. FIFA invited FIFPro to membership of a task force, together with UEFA, in devising a "consensus" document that would be presented to the European Commission.⁹ For its part, the European Commission made it clear, well, to be more correct, up until the very end, that any revised rules proposed by FIFA and UEFA, should also be acceptable, or endorsed by FIFPro. In October 2000 FIFA presented a

9. FIFPro had participated in similar processes with UEFA following *Bosman*.

“Negotiation Document” (FIFA 2000) to Commissioner Monti. He wrote back to FIFA:

I have taken good note that FIFA does not have the support of FIFPro on the subject of the propositions which I have received and I very much regret this. I give you very strong encouragement to pursue the discussions with the representatives of the players. It is very important to finish up with some propositions which will have the agreement of all the parties represented at the task force which you yourselves have created for this purpose.¹⁰

On 5 March 2001 European Commissioner Mario Monti, and FIFA president Sepp Blatter, exchanged letters¹¹ whereby the European Commission gave its imprimatur to “Principles for the Amendment of FIFA rules regarding International Transfers” (FIFA 2001a). At a meeting in Buenos Aires, on 5 July 2001, FIFA formerly adopted new regulations (FIFA 2001b), which were accompanied by another document concerning how these regulations should be applied (FIFA 2001c). FIFA general secretary, Michael Zen-Ruffinen, on 24 August 2001, issued Circular no. 769 to national associations to aid in the interpretation of the new rules (FIFA 2001d).

Four major features of the new rules will be highlighted: three substantive, and, most significantly for the discussion here, the fourth, which is procedural. The three substantive rules concerned placing restrictions on the international movement of players less than 18 years of age, the resurrection of compensation fees for players between the ages of 18 to less than 23, and measures to enhance contract stability for players aged 23 and more via the introduction of sanctions for players and/or clubs breaching contracts whereby such players take up employment with new clubs.

The procedural rules are measures provided for resolving disputes associated with implementing the 2001 rules. Such dispute resolution mechanisms are “Without prejudice to the right of any player or club to seek redress before a civil court.” Besides providing facilities for conciliation or mediation, the regulations provide two bodies to aid in the resolution of disputes. The first is a disputes resolution chamber of the FIFA players’ status committee. The application regulations state, “The Disputes Resolution Chamber shall be composed of representatives of players and clubs in equal number. The members ... shall be designated by the Executive Committee upon proposal of the President of FIFA based upon the nomi-

10. Letter Mario Monti to Michael Zen-Ruffinen (FIFA general secretary), probably early November 2000. The letter is reproduced on the Professional Footballers’ Association’s (PFA) website, 13 December 2000, <http://www.givemefootball.com>.

11. These letters are available on FIFA’s website, <http://www.fifa.com>.

nation of representative players' associations and clubs and/or leagues respectively" (FIFA 2001c: article 15.2 and 15.3). The application regulations are silent on how the chair of this chamber will be determined. The regulations envisage, however, that alternative arrangements may be put in place to the dispute resolution chamber, "if the parties have expressed a preference in a written agreement, or it is provided for by [a] collective bargain[ing] agreement, by a national sport arbitration tribunal composed of members chosen in equal numbers by players and clubs, as well as an independent chairman." The second is an arbitration tribunal for football, which "shall be composed of members chosen in equal numbers by players and clubs and with an independent chairman" (FIFA 2001b: article 42).

While the regulations (and application regulations), determined in July 2001, afforded a prominent role for FIFPro affiliates, or individual national player associations, in their administration and implementation—in short, granted them recognition as collective bargaining agents—it would take almost another two months before FIFPro agreed to trial their introduction.

FIFPRO AND THE FRAMEWORK AGREEMENT

FIFPro was formed at a meeting in Paris of representatives of French, Scottish, English, Italian and Dutch players' associations on 15 December 1965. It has 40 affiliates. The majority of affiliates are based in Europe (24). It has six affiliates in South America, five in Africa, two in North America, and one each in Australia, Asia (Japan) and the Middle East (Israel). Its website states that "In the period from 1998 to 2001 the FIFPro has grown from a European organization into a global network." Under its statutes "FIFPro's specific intention is to pursue and defend the rights of professional football players or their like."¹² Similar player confederations have been formed in cricket and rugby unions. The Federation of International Cricketers' Associations was formed in 1998. It has seven members: Australia, New Zealand, West Indies, Sri Lanka, England, South Africa and Zimbabwe. In 2001 the International Rugby Players' Association (IRPA) was formed. It has five affiliates: Australia, England, South Africa, New Zealand and France.

FIFPro's affiliates were split on what their position should be in establishing new employment rules, after intervention by the European Commission in the late 1990s, with the unfortunate rider that the split emerged nearer to the end of proceedings, than at the beginning. The split was essentially between larger and smaller affiliates (in terms of the

12. FIFPro website, <http://www.fifpronet.com>.

strength of their respective leagues). Larger affiliates essentially supported the status quo, accepted the proposition that transfer and compensation systems helped smaller, lower division clubs and encouraged the training and development of young players. Having accepted the principle of “controls” they were more concerned with the devil in the detail, tempered, or on occasion, more correctly, angered by FIFA and UEFA’s preparedness to enter into “good faith” negotiations. Small affiliates were opposed to transfer and compensation systems on principle. They were opposed to a training system based on fees on players; fees which restricted their economic freedom. For the smaller affiliates, training of young players should be funded from broadcasting rights, per the solidarity recommendations of Advocate General Lenz in *Bosman*. They also believed the European Commission’s requirement that any new regulations required the “blessing” of FIFPro, provided FIFPro with a unique opportunity to pursue a more forceful and comprehensive collective bargaining agenda.

In the autumn 1995 issue of *Football Management* Gordon Taylor, chief executive of the PFA and president of FIFPro, published an article following Advocate General Lenz handing down his Opinion in *Bosman*. Taylor was critical of Lenz. He said the transfer system had worked well in England. He said “It has the support of the employers and the employees and there is little reason to abandon it. If it ain’t broke, don’t mend it.” Taylor predicted, and was fearful, that clubs would place players on long term contracts, which will “deny players the flexibility and freedom to move and lend to dissatisfaction for both parties.” He also said (1995: 14):

The loss of transfer fees could have a devastating effect on football. It is in every organization’s interests to lessen the impact. The weaker, smaller clubs must be protected, youth training schemes must be preserved and clubs encouraged to develop better youth development programmes. Home grown talent must be allowed to develop and prosper, so protecting the future of our international team. To find a new system that meets these needs as the present one does is a difficult challenge.

In a series of articles on the PFA website, in the second half of 2000, Gordon Taylor criticized *Bosman* and the European Commission for “interfering” with the transfer system. On 28 August 2000, in two separate pieces, he re-ran arguments in his 1995 *Football Management* article, repeating the adage, “if it ain’t broke, don’t fix it.” He stated there was a need for a special protocol for sport to protect football’s product and labour markets from the European Treaty’s competition laws. For example, he said, “Collective selling of television rights could be consolidated in European community legislation providing this was reconciled with a fair distribution of income to all participants in the relevant competition and also to grass roots and community initiatives.”

On 10 September 2000 Taylor again defended the transfer system. He said "It goes without saying that the abolition of the transfer system as we know it, as proposed by the EC, will cause absolute chaos." Under European Commission proposals "all players will be treated no differently to any other employee, in any industry, and should be allowed to leave their employment under a set notice period." He expressed concern that players would be able to walk out on their clubs and young players at "smaller clubs [will be] cherry-picked by the big boys."

On 16 September 2000 Taylor circulated a letter where he again advocated a special protocol for sport under the European Treaty to protect a revised transfer system. He drew attention to the broader, social role of sport, provided an account of major issues which had dominated football in recent years, repeated his concerns about *Bosman* and the importance of the transfer system, and provided information on the new system which is being developed in negotiations with FIFA and UEFA. In so doing he said:

In looking after the interest of sport due recognition should be made of Collective Bargaining Agreements between the Players' Associations and their governing bodies on a national and international basis. Such agreements obviously must respect the Treaty of Rome and its basic Articles and principles but also co-ordinate these with National Labour laws of the constituent member countries.¹³

The player associations of Norway, Denmark, Germany, Austria, Ireland, Scotland and Greece, on 19 September 2000, sent a letter to the Board of FIFPro. It said "We are very concerned that the viewpoints of the players unions not present on the FIFPro board will not be heard and taken into account." They objected to the controls on players that were contained in, what they understood would be, FIFA's new transfer and compensation system. The letter also called for the holding of an extraordinary FIFPro congress "to make an attempt to reach a common opinion within FIFPro on this vital issue."¹⁴

Mads Oland, of Spillerforeningen, the Danish players' association, sent a separate letter to the FIFPro board, critical of Gordon Taylor's proposal for a special protocol on sport, on 25 September 2000. It contained four major objections. Oland maintained there should not be a special protocol for sport which would place it beyond the reach of the European Treaty, which protected freedom of movement; restrictions should not be placed on players' mobility, and to the extent that there were specific problems, solutions other than a revised transfer and compensation system—such as

13. It is reproduced on the PFA's website, 28 September 2000.

14. Letter to board of FIFPro, 19 September 2000.

using broadcasting income to fund solidarity pools—should be developed; FIFPro needed “to start a process of real collective bargaining”; and finally, “Gordon Taylor’s viewpoints are new to us and have certainly not been discussed at the congresses of FIFPro and therefore it cannot be the policy of FIFPro at this moment of time.”¹⁵

Three days later, Taylor responded to Oland. He said that the “Special Protocol” was “a *draft* paper with the objective of covering all the main issues in this dispute for everybody’s information, understanding and comment. As President of FIFPro, I never have and never will agree [to] anything on behalf of FIFPro unless it has the approval of the Board and the majority of the members.” He reiterated various points and information he had provided in the “Special Protocol.” He also pointed out how the present difficulties confronting football had enhanced FIFPro’s recognition. “Only until a few years ago we had received no recognition whatsoever, now we are recognized and at the top table and with that recognition will come achievement and responsibility.” Taylor made two final points. First, national and international federations opposed using broadcasting revenue/solidarity funds, and this was something he had supported (see above) and was prepared to pursue again. Second, he supported sanctions against breaking contracts because of fears concerning the behaviour of clubs “which will be very detrimental to the profession and remove all security from our members in what is a very short and insecure career.”¹⁶

On 5 October 2000, FIFPro held an extraordinary congress in Zurich to determine its stance. The affiliates who wanted FIFPro to adopt a “strong” position on players’ employment rights, coupled with a greater use of revenue sharing/solidarity pools, held the day. Following the meeting, a letter from fifteen European-based player unions was sent to Mario Monti. It said, “We think that the arguments of the Commission on Competition sent to FIFA ... [in] December 1998 are correct.” The letter claimed that aspects of FIFA/UEFA’s proposed new regulations violated European Union law. It also stated “The solution to meeting the cost of funding training and development programs must not under any circumstances be linked to the employment rules that govern the sport ... An acceptable solution is to create large international and national pools for TV, revenues from where payment can be made without restraining young players.”¹⁷

In the next few months the relationship between FIFPro and FIFA/UEFA became increasingly tense and estranged. FIFPro was critical of the

15. Letter, Mads Oland to board of FIFPro, 25 September 2000.

16. Letter, Gordon Taylor to Mads Oland, 28 September 2000.

17. Letter, [Player Unions] to Mario Monti, 5 October 2000.

intransigent stance adopted by FIFA/UEFA in negotiations. In January 2001 FIFPro decided to make a formal submission to Mario Monti. A report was duly presented on 9 February 2001 (FIFPro 2001). Its centrepiece was a set of guidelines for solidarity pools. Mario Monti simply ignored it; embracing FIFA/UEFA's proposals. Gordon Taylor lamented that the new "system [is] more restrictive for players than that which existed prior to this dispute."¹⁸ FIFPro initiated legal action challenging the competence of the European Commission to allow a private body, such as FIFA, to establish rules that deviate from European law. FIFPro subsequently discontinued such action, deciding it would rather work with FIFA than against it, the original stance of the larger, "status quo" affiliates. FIFA agreed, "in exchange," that the new rules would be reviewed after two years, players' associations would be involved in key aspects of the operation of the new system, and FIFPro could withdraw at any time if it believed the new system was detrimental to the interests of players.

In a joint press release by FIFA and FIFPro, released on 31 August 2001, FIFA president Sepp Blatter said, "I am very pleased that it was possible after all for the players to join all other parties in putting the new system in place. FIFA's objective from the very beginning has been to include all the members of the family of football. With FIFPro's participation, the players' interests will be well represented. Throughout these long negotiations, I have come to respect FIFPro's leadership, and I look forward to continue working with them on other football issues." For his part, Gordon Taylor said, "It is important for the game that FIFPro and FIFA work together. The world of football is changing, and we should make sure that commercial interests are given their proper place. Through close cooperation we can achieve a better future for football. The negotiations on international transfers have not been easy, but we appreciate FIFA's determination to keep the players on board."¹⁹

FIFPRO AND NETWORKING²⁰

Following the completion of, or, more correctly, FIFPro's decision to sign off on the framework agreement on 31 August 2001, developments have occurred on three fronts. First, the various area representatives of FIFPro on FIFA's Dispute Resolution Chamber have been determined. They were "officially installed" at a meeting at FIFA headquarters in late

18. PFA website, 12 March 2001.

19. The press release is available on FIFA's website.

20. The information contained in this section is derived from FIFPro's website.

February/early March 2002. In the latter part of March 2002 FIFPro held a meeting of its various representatives to discuss general issues associated with the workings of the new international transfer system.

Second, there are moves afoot to enter into a “social dialogue” to establish a collective bargaining agreement for European football. Such dialogue is being encouraged by the European Commission, an offshoot of its previous involvement in the development of FIFA’s 2001 rules. On 13 February 2002 the FIFPro board attended a football conference of the G 14 (leading European clubs) where issues associated with the introduction of a salary cap (limits placed on the amount clubs can spend on player salaries), financial problems of lower division clubs and player agent issues were discussed.

Third, FIFPro has been active in providing aid to player associations in other parts of the globe. Within Europe, FIFPro has received representations from nascent player associations, either seeking affiliation or help, in Switzerland, Uzbekistan, Ukraine, Moldova, Belarus, Armenia, Georgia, Azerbaijan and Kazakhstan. Various Ukrainian players have not been paid, and/or do not have contracts. The trade union, Footballers of Ukraine, has threatened strike action and requested help from FIFPro, who, in turn, has made representations to the Football League of Ukraine and the Federation of Football of Ukraine. Three South American player associations (Brazil, Paraguay and Peru) affiliated to FIFPro in the early months of 2002. In mid March 2002 the FIFPro website announced that its vice president, Antonio Carraca, who is also president of the Portuguese players’ association, will visit South America to develop contacts with local player representatives to further the cause of defending the rights of professional footballers.

In November 2001, FIFPro general secretary, and Dutch players’ union president, Theo van Seggelen visited South Africa to provide advice and financial support to aid the South African Football Players’ Union. The FIFPro website of 14 December 2001 reports a freedom of association abuse committed against John Moeti, the South African union’s vice president, who has been denied selection in the national team, due to his involvement with the union. A regional union of African player associations—Union des Footballeurs Africains—has been established, being temporarily based in France, to enhance the organizational capability of African player associations. The Algerian Football Federation has warned players to not join any players’ union. If they do, they will be excluded from selection in the national team. The African Football Association has sent a letter to members advising them not to recognize the Union des Footballeurs Africains. The latter has asked FIFPro to take up this matter with FIFA.

In the recognition battles that lie ahead, FIFPro and its affiliates/nascent player associations have the advantage of being able to point to a document, developed by the governing body of their sport, which accords a prominent role to unions/player associations in the local application of FIFA's employment rules. It remains to be seen if FIFPro will be able to utilize this advantage in aiding affiliates, and/or whether or not FIFA will be supportive and pressure recalcitrant national leagues, when push comes to shove. In saying this, however, it is doubtful if workers in any other areas of employment, have been afforded the luxury of a document, developed by a confederation of international employers, which recognizes unions at the local/national level and encourages bargaining between respective local employers (in this case leagues) and said unions, or player associations.

FIFPRO'S COMPETITIVE EDGE

Martin and Ross have written that "Organizations and industrial relations systems are shaped in the interactions between strategic actors at specific historic junctures" (2000: 144). The wisdom of this insight is no better illustrated than by the evolution of FIFPro into a "successful" international union and the development, in 2001, of a framework collective bargaining agreement for world football. The ability of FIFPro to be party to such an agreement was aided and abetted by the competitive provisions of the European Treaty, the European Court of Justice's 1995 decision in *Bosman*, and "strategic" interventions by the European Commission. Although the European Commission ignored FIFPro's substantive reform proposals, the former's intervention, nonetheless, afforded a significant procedural advantage to FIFPro and its affiliates as bargaining partners in implementing and administering the 2001 rules. Moreover, to the extent that the new rules are (still) inconsistent with workers' freedom of movement, as enshrined in the European Treaty, FIFPro may be able to wield the stick of threatened legal challenges to obtain substantive concessions in the future.

FIFPro constitute an example of "best practice" international unionism. It may be the only example of where an international union has negotiated a *global* framework collective bargaining agreement. It is doubtful, however, if this example will be replicated in other areas of employment, other than professional team sports. First, most sports have in place an international organization/employers confederation, such as FIFA, involved in the worldwide governance of their sport/industry. As already noted, this is not a situation which applies in other areas of employment or industries. Employers do not need to organize themselves internationally, thereby

providing “targets” for international unions. What organization there is among employers results from “strategic interactions” coordinated by the “invisible hand” of market forces. Unlike footballers, and the players of professional team sports more generally, workers in other areas of employment are unable to benefit from “abuse” by employers of competitive provisions of the European Treaty.

The support FIFPro received from the European Commission (and the favourable decision of the European Court of Justice in *Bosman*) may serve to highlight the saliency and necessity of political action in furthering the cause of international unionism. Laws and treaties can be changed to enhance the prospects of unions, both internationally and domestically. Political action has been an on-going, never ending activity pursued by unions. It is just at this “specific historical juncture” it has been caught off-side by the forces of neo-liberalism.

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RÉSUMÉ

L'avantage concurrentiel du syndicalisme international : FIFPro et le Traité européen

La mondialisation et la poussée du néo-libéralisme s'accompagnent d'un déclin du syndicalisme. La coopération entre les syndicats, au niveau international, pourrait alors s'avérer une contre-stratégie, ce qui se traduirait par la mise en place de confédérations internationales sur la base du secteur industriel. En retour, ces confédérations tenteraient de négocier des conventions collectives avec des organisations d'employeurs représentatives. Au sein du continent européen, la coopération syndicale internationale prend une résonance particulière, suite au développement du Marché commun européen, et de façon plus récente, à l'avènement de l'Union économique monétaire, sous les attraits variés du Traité économique européen.

Malgré le financement et autre support originant de la Commission et du Parlement européens, des tentatives de développement de la négociation collective transnationale en prenant comme base le secteur industriel ont connu peu de succès. Sous le néo-libéralisme, les employeurs ne sentent pas le besoin d'œuvrer collectivement, en octroyant aux syndicats une cible

de négociation. Les limites des syndicats européens à agir au plan international, c'est-à-dire à travers l'Europe, ont été reliées à la présence du Traité européen. Ce dernier minimise les problèmes de relations du travail en relayant leur solution au niveau de l'État, tout en favorisant la concurrence et l'élimination des barrières nuisibles au commerce. L'industrie du football et les activités de la Fédération internationale des footballeurs professionnels (FIFPro), une confédération de quarante associations nationales de joueurs, présentent un défi majeur à l'orthodoxie mentionnée plus haut. Le 31 août 2001, la FIFPro et la Fédération internationale de football association (FIFA), l'organisme régissant le football à l'échelle mondiale, ont signé un accord-cadre régissant l'emploi de footballeurs à travers le monde.

À ce niveau, le football s'en tenait à un système de règles d'emploi connues sous le nom de système de transfert et de compensation. En vertu de ces règles, un joueur ne peut changer, ou passer à un autre club, sans la permission de son club actuel. Une taxe de transfert est exigée d'un joueur qui change de club au cours de la durée de son contrat et une compensation de la part d'un joueur dont le contrat est expiré.

En 1990, le club de Liège en Belgique ne voulait plus de Jean Marc Bosman. L'imposition d'une pénalité à titre de compensation l'empêchait de rejoindre le club français de Dunkerque. Bosman contesta les règles d'embauche devant la Cour de Justice européenne. En 1995, la Cour conclut que le système de compensation était incompatible avec l'article 39 (article 48 révisé) du Traité européen traitant de la liberté de mouvement des travailleurs. Cette décision permit d'apporter des modifications aux règles d'embauche en Europe. Les joueurs au sein de la Communauté européenne pouvaient aller rejoindre des clubs de d'autres états membres, sans l'embaras de frais à titre de compensation, au moment où leurs contrats venaient à terme. Une incertitude cependant subsistait au sujet du mouvement des joueurs au sein d'un État, entre l'Union européenne et d'autres pays et au sujet des paiements de mutation. En 1997, deux syndicats belges contestèrent les nouvelles règles de la FIFA devant la Commission européenne. En décembre 1998, cette dernière désapprouva les règles révisées en soutenant qu'elles allaient à l'encontre de l'article 85 (article 81 révisé) du Traité européen, article qui favorise la concurrence. La FIFA était avisée de mettre de l'ordre chez elle. Au cours de la période 1999-2001, la FIFA amorça une discussion avec la Commission européenne et la FIFPro dans le but de procéder à une autre version de ses règles d'emploi. La Commission européenne accepta l'inclusion de la FIFPro dans ces négociations.

Une dissension s'installa au sein des affiliés de la FIFPro sur la meilleure manière de procéder. Essentiellement, les différences se présentaient entre ceux qui œuvraient dans les marchés du football plus forts ou

bien dans les marchés les plus faibles. Les premiers voulaient s'en tenir au statu quo, heureux de bénéficier de la reconnaissance obtenue de la FIFPro à ce niveau transnational. Les derniers croyaient obtenir de plus grandes concessions ou plus de liberté d'embauche pour les joueurs. Le litige s'est réglé et un document de prises de position a été présenté à la Commission européenne. On mettait l'accent sur une solution de type marché du produit – le partage des gains tirés des revenus de télédiffusion, plutôt qu'une solution de type marché du travail pour régler les problèmes des joueurs. La Commission européenne l'a ignoré sciemment. Un ensemble nouveau de règles d'embauche rencontra l'assentiment de la FIFA et de la Commission européenne et fut par la suite accepté par la FIFPro. Il ré-introduisait entre autres choses des frais compensateurs pour les joueurs de 18 à 23 ans. Les nouvelles règles attribuaient un rôle procédural à la FIFPro et ses affiliés au moment de leur application et de leur gestion. Suite à cet accord, la FIFPro a été active en fournissant de l'aide aux joueurs et aux associations de joueurs en Europe de l'Est, en Afrique et en Amérique du Sud. Le football demeure probablement le seul exemple de l'existence d'un accord-cadre ou d'une convention collective qui reconnaîtrait aux associations locales ou nationales un rôle ou leur en attribuerait un dans la gestion d'un ensemble de règles. Le cas de la FIFPro et celui du syndicalisme international tire son origine des clauses de concurrence du Traité européen, de la décision de la Cour de Justice européenne dans l'affaire *Bosman* et de l'intervention de la Commission européenne.