
RESEARCH ARTICLE

Shared Responsibility and Human Rights Abuse: The 2022 World Cup in Qatar

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Since 2010, recurrent human rights violations of migrants working on building new or refurbishing existing infrastructure for the 2022 FIFA World Cup in Qatar have been denounced. This paper focuses on three of the main actors involved in those violations—Qatar, FIFA and Switzerland—in order to determine how shared responsibility could be a useful framework to ensure protection of and reparation to the victims. The article also raises serious questions about the application of shared responsibility and the effective enforcement of human rights when non-state actors are involved.

Keywords: Shared responsibility; human rights; non-state actors; due diligence

1 Introduction

Since Qatar won hosting rights for the 2022 FIFA World Cup in 2010, recurrent human rights violations of migrants working on building or refurbishing infrastructure for the tournament have been denounced. For those laborers, who are generally in a fragile position, to engage the legal responsibility of the different actors involved in the organization of the event is a major challenge.

The host state, Qatar, the football's governing body, FIFA, and the home state of FIFA, Switzerland, should have been aware of the risk of human rights violations when organizing the 2022 World Cup. Indeed, despite progress made in the last few years, infringements on human rights such as limitations to the freedom of movement, the lack of just and favorable conditions of work, discrimination on the basis of nationality and restrictions to the right to access justice, still occur. The lack of regulation of the responsibility of private entities, the non-existence of regional human rights courts in Asia and the difficulties encountered in seeking protection and reparation at the national level are some of the obstacles to the respect and protection of the workers' rights. Nevertheless, an effective human rights protection system can only be guaranteed by the availability of effective judicial remedies.

The purpose of this study is to investigate how shared responsibility could be a useful framework to ensure proper reparations to the victims as well as ensuring accountability of the different actors that have contributed to the violations of migrant workers' rights in Qatar in the context of the build-up of the 2022 FIFA World Cup. Since the concept of shared international responsibility is closely related to the rules of international state responsibility, the research will focus on the determination of the existence of international wrongful acts according to Article 2 of the Draft Articles on State Responsibility for Internationally Wrongful Acts (ARSIWA). Based on literature review and relevant international conventions and guidelines, it is found to be essential to identify the breaches of international law, specifically human rights regulations, committed by the different actors (Qatar, Switzerland and FIFA by association) against migrant laborers and the means for attribution to discuss the possibility of a shared responsibility.

The article is divided into three sections. First, it briefly introduces the concept of shared responsibility. The second section explores the different responsibilities of Qatar, FIFA and Switzerland in the human rights abuses occurring in Qatar. It also looks at the obligation of due diligence for Qatar, Switzerland and FIFA. In the final section, the article analyzes a shared international responsibility between the three actors, looking at the actual normative development of the law of international responsibility. It considers the significance of this development for the concept of shared responsibility for the improvement of the international framework of human rights protection.

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2 Shared International Responsibility

Temporary migrant workers in Qatar find themselves in situations of exploitation and disempowerment due to the non-existence or the lack of effectiveness of conventional labor law remedies. As defined by Joyce, labor law traditionally addresses ‘the imbalance in bargaining power between employers and workers’ and seeks to reduce the worker’s dependency on the employer’.¹ However, in situations involving temporary migrant workers in Qatar the lack of protective labor legislation normalizes not only abusive situations in the recruitment process of those laborers, but also a state of total dependency within employment relationships that ‘do not respect work-related rights, are excluded from social protection regimes, and do not offer opportunities for social dialogue’.² For instance, the lack of collectivization of workers, the difficulties for migrants to change jobs and a labor law system that hampers migrants’ access to justice leave those persons vulnerable to mistreatment and exploitation. In that context, enforcement of labor law is essential to ensure the full operability of human rights. Kanbur and Ronconi identify the three core components of the enforcement of labor law: government inspection, penalties in case of labor law violations and an accessible, well-functioning, judiciary system.³ When traditional labor law remedies fail, shared responsibility might be a useful framework for the protection of the workers and to hold the wrongdoers accountable.

Shared international responsibility refers to situations where multiple actors ‘contribute to a single harmful outcome, and legal responsibility for this harmful outcome is distributed among more than one of the contributing actors’.⁴ The sum of the actions of the wrongdoers leads to the undesirable result. However, ‘the proportion of harm attributable to each contributing actor cannot be determined’ even if their responsibility is distributed between them equally.⁵ Moreover, contributions to the harmful outcome must trigger the legal responsibility of the wrongdoers.

The concept of shared responsibility is closely linked to the law of state responsibility formulated by the International Law Commission in the Draft ARSIWA. It entails the breach of an international obligation (Article 2 ARSIWA) by different actors. It is not essential for the obligation to be shared as long as all the obligations violated have an overlapping content. The wrongful behavior must also be attributed to each of the actors (Arts. 4 and seq. ARSIWA). Although dual attribution of conduct is the exception rather than the norm in international law,⁶ and international law is mostly based on the notion of independent international responsibility,⁷ the application of shared international responsibility to situations of transboundary harm, marine pollution and joint military operations is common. In cases of international crimes, some authors uphold that shared responsibility is essential to ensure proper reparation to the victims and accountability of the offenders.⁸

The section below analyzes the possible application of shared responsibility to the human rights violations suffered by thousands of migrant workers in the construction sites of the 2022 World Cup in Qatar.⁹

¹ Arwen Joyce, ‘Working Across Borders: The Limits of Labour Law for Low-Wage Temporary Migrant Workers’ (2019) 5(2) *Revista Estudos Institucionais* 699.

² Deirdre McCann and Judy Fudge, ‘Unacceptable Forms of Work: A Multidimensional Model’ (2017) 156(2) *International Labour Review* 147.

³ Ravi Kanbur and Lucas Ronconi, ‘Enforcement Matters: The Effective Regulation of Labour’ (2018) 157(3) *International Labour Review* 331.

⁴ André Nollkaemper and Ilias Plakokefalos, *Principles of Shared Responsibility in International Law. An appraisal of the State of the Art* (Cambridge University Press 2014).

⁵ *ibid.*

⁶ Pierre d’Argent, ‘State Organs Placed at the Disposition of the UN, Effective Control, Wrongful Abstention and Dual Attribution of Conduct’ (2014) 1 *QUIL, Zoom-In* 17.

⁷ André Nollkaemper and Dov Jacobs, ‘Shared responsibility in International Law. A Conceptual Framework’ (2013) 34 *Michigan Journal of International Law* 359; Nollkaemper and Plakokefalos (n 5).

⁸ Samantha Besson, ‘La Responsabilité Solidaire des Etats et/ou des Organisations Internationales: Une Institution Negligée’ in Alain Supiot (ed), *Face à l’Irresponsabilité: La Dynamique de la Solidarité*, (Collège de France 2018); Laurence Boisson de Chazournes and André Nollkaemper, ‘Partnerships between International Institutions and Issues of (Shared) Responsibility’ (2016) 13(1) *International Organizations Law Review* 1; Luigi Condorelli, ‘De la Responsabilité Internationale de l’ONU et/ou de l’Etat d’Envoi lors d’Actions de Forces de Maintien de la Paix: l’Écheveau de l’Attribution (Double?) devant le Juge Néerlandais’ (2014) 1 *QUIL, Zoom-in* 3; Tom Dannenbaum, ‘Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers’ (2010) 51(1) *Harvard International Law Journal* 113; André Nollkaemper, ‘Dual Attribution: Liability of the Netherlands for Conduct of Dutchbat in Srebrenica’ [2011] *ACIL Research Paper*.

⁹ Qatar 2018 Human Rights Report, United States Department of State, Bureau of Democracy, Human Rights and Labor.

3 The Different Responsibilities of Qatar, FIFA and Switzerland

3.1 Qatar

Qatar won hosting rights for the 2022 World Cup in 2010. The World Cup is one of the biggest sporting events with a worldwide audience of billions. 32 national soccer teams will compete in eight stadiums around Doha to try and win the Cup. The 2022 World Cup introduces major novelties: for the first time, an Arab and Middle East state organizes such a global event. Qatar is also the smallest country per area and population to ever host the World Cup. The organization represents a logistical challenge and requires a large workforce. The construction of the stadiums is overseen by the Qatari Supreme Council for Delivery and Legacy, established in 2011 by the Qatari government, which selected national and international contractors for the building of each stadium.

Qatar has a population of 2,772,947 inhabitants as of February 2019 with 74% male and 26% female.¹⁰ The workforce is composed of 85% non-Qatari males, 10% non-Qatari females and 6% of Qatari nationals.¹¹ Out of 1,984,460 employed non-Qatari nationals as of 2018, 1,729,354 were male (87%) and 255,106 female (13%).¹² While 78% of the Qatari labor force are holders of a secondary school diploma or above, 76% of the non-Qatari, who work in the activity of construction or household, have an educational level less than secondary school diploma.¹³ Foreign residents in Qatar come mainly from India (almost 25% of the total population), Nepal (14%), Bangladesh (11%), Philippines (10%) and Egypt (8.5%).¹⁴

Since the beginning of the construction works for the 2022 World Cup, claims of serious violations of the migrant workers' rights have emerged. These low-cost workers, who were brought into the Qatari labor market for a finite period of time, found themselves in exploitative employment relationships.¹⁵ Under the Kafala system (Law No. 4 of 2009), the employer (*Kafil*) is responsible for the safety and protection of migrant workers. The employee can only get their visa to enter the country and be eligible to work if sponsored by Kafil. As a consequence, the legal status of those workers in Qatar—entry, residence, transfer and exit—is completely dependent on the employer. For instance, a migrant worker cannot change jobs without the permission of their sponsor. The Kafala system is so abusive that exiting Qatar is impossible for a worker without their employer's authorization or the Qatari authorities' permission. It is also common for sponsors to confiscate workers' passports and any other travel documents. The practices resulting from this system are considered modern-day slavery: forced labor as defined by the International Labor Organization (ILO)¹⁶ and human trafficking, as migrant workers suffered abusive conditions before, during and after their entry in Qatar, as well as in the construction field with long working hours under extreme temperatures, low wages (or no wages if the employer decided to withhold large portions of salary for extra charges), delays in the payment of salaries, physical and psychological harm and deplorable housing conditions, frequently living in 'workers camps' without necessary amenities.¹⁷

Human trafficking for forced labor was the object of the complaint presented against Qatar on 12 June 2014 by Belgium, Libya, Jordan, Morocco, Sweden, United Kingdom, Denmark, France, Canada, Pakistan, Kenya and Tunisia relating to the violation of ILO Conventions nos. 29 and 81. The ILO delegates of the aforementioned countries expressed their concerns regarding the situation of migrant workers in Qatar who were drawn 'into a high exploitative system that facilitates the exaction of forced labor by their employers'.¹⁸ The lack of effective complaint mechanisms, the incapability of the labor inspectors to enforce findings and fines, the valid fear of retaliation and the arrest, detention and deportation of potential trafficking victims for immigration violations and running away from their employers and sponsors were highlighted by the delegates.

¹⁰ State of Qatar (2019).

¹¹ Ibid (2016).

¹² Ibid (2018).

¹³ Ibid (2017).

¹⁴ De Bel-Air (2017).

¹⁵ Joyce (n 2).

¹⁶ Article 2(1) of the Forced Labor Convention (1930) defines forced labor as 'all work or service which is exacted from any person under menace of any penalty and for which the said person has not offered himself voluntarily'.

¹⁷ Joyce (n 2); Ian Marshall Sander, 'Qatar, Migrant Laborers and the ILO' (2018) 39 Michigan Journal of International Law; Mohamed Y. Mattar, 'Human Rights Legislation in the Arab World: The Case of Human Trafficking' (2011) 33 Michigan Journal of International Law 101; Paula Renkiewicz, 'Sweat Makes Green Grass Grow: The Precarious Future of Qatar's Migrant Workers in the Run Up to the 2022 FIFA World Cup under the Kafala System and Recommendations to Effective Reform' (2016) 65 American University Law Review 721.

¹⁸ Doc. GB.326/INS/8(Rev.).

Before the allegations of violations of the ILO Conventions no. 29 and 81 and to the UN Trafficking Protocol, the National Human Rights Committee (NHRC) of Qatar already stated in 2014 that 'the restriction against foreign workers as they may only leave the country temporarily or permanently on submission of an exit permit that can only be granted by their sponsor'.¹⁹ However, the Kafala system was not the only human rights violation the NHRC mentioned. The NHRC specified that 'construction workers suffer poor working conditions, with some not getting their salaries and others suffer from ill treatment and poor living conditions',²⁰ those laborers 'function under harsh working conditions given the high temperature and humidity, in addition to dealing with hazardous material and equipment, which result in many cases of injuries'.²¹ The Office of the United Nations Commissioner identified the following violations specifically related to construction workers: the right to life, liberty and security of the person (construction workers being subjected to conditions amounting to forced labor and human trafficking), the rule of law (Qatari authorities rarely bring criminal prosecution against employers for violating Qatar's labor or trafficking laws), freedom of movement (as a consequence of the Kafala system), freedom of association (Qatari law forbids migrant workers from membership in labor organizations), and right to work and just and favorable conditions of work (difficult working conditions, deplorable accommodation, no social rights, etc.).²²

Qatar is a state party to six of the 189 ILO conventions: the Forced Labor Convention, 1930 (no. 29); the Abolition of Forced Labor Convention, 1957 (no. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labor Convention, 1999 (No. 182); and the Labor Inspection Convention, 1947 (No. 81). Qatar also ratified the International Covenant on Civil and Political Rights, 1976; the International Covenant on Economic, Social and Cultural Rights, 1976; the International Convention on the Elimination of All Forms of Racial Discrimination, 1969; the Convention on All Forms of Discrimination Against Women, 1981; the Convention Against Torture, 1984, the Convention on the Rights of the Child, 1990; and, the Convention on the Rights of Persons with Disabilities, 2008. In spite of the large proportion of foreign population, Qatar took no action to sign nor ratify the 2003 International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families.

Under International Law, Qatar has an obligation of due diligence. As a general principle, it is defined as an obligation of conduct on the part of a state. A state's failure to comply with the required standard of conduct triggers international responsibility. State's due diligence has historically had its most prominent impact on state's international responsibility for internationally wrongful acts committed by private persons (indirect attribution) and has been extensively studied in the field of international environmental protection.²³ Under international human rights law, states have the obligation to respect, protect and fulfil human rights. According to Craven the duty to protect entails for the state to ensure the protection of individuals against human rights abuses.²⁴

In its 2011 statement on the obligations of state parties regarding its corporate sector, the Committee on Economic, Social and Cultural Rights confirmed the obligation to protect and pointed out that this duty requires the state to establish appropriate laws and regulations, including monitoring, investigation and accountability procedures to set and enforce standards for the performance of the corporations.²⁵

Principle 1 of the UN Guiding Principles on Business and Human Rights (UNGPs) reaffirms that 'states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulation and adjudication'.²⁶ The Commentary to this principle specifies that states are not per se responsible for human rights violations by private actors. However, a state's failure to comply with its obligation to prevent, investigate, punish and redress the violation or the

¹⁹ Human Rights Council, Report of the Human Rights Council on its seventeenth session (17th session, Geneva, 24 May 2012).

²⁰ *ibid.*

²¹ *ibid.*

²² Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, United Nations General Assembly, Doc. A/HRC/WG.6/19/QAT/3, 7 February 2014.

²³ Timo Koivurova, 'Due diligence', Max Planck Encyclopedia of Public International Law.

²⁴ Matthew Craven, *The International Covenant on Economic, Social and Cultural Rights. A Perspective on its Development* (Oxford University Press 1995).

²⁵ UN Committee on Economic, Social and Cultural Rights, 'Statement on the Obligations of State Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights' (46th session, Geneva, 12 July 2011).

²⁶ UN Guiding Principles on Business and Human Rights, Office of the High Commissioner, United Nations, 2011.

attribution of the abuse to the state results in international responsibility. The UNGPs follow the general rules established in the 2001 ARSIWA.

The Qatari labor reforms on the freedom of movement of migrant workers (Law No. 1 of 4 January 2017 and Law No. 13 of 4 September 2018) and promotion of labor dispute resolution (Law Establishing Worker's Dispute Resolution Committees of 19 October 2016) led to the closure in 2017 of the complaint procedure under Article 26 of the ILO Constitution.²⁷ However, the improvement of the situation of migrant workers is insufficient and serious human rights violations still occur. The Committee on the Elimination of Racial Discrimination and the FIFA's Human Rights Advisory Board expressed their concerns about the actual situation: the abolition of the requirement of employer's permission to leave the country does not impair the employer capacity to refuse the provision of 'non-objection certificates' which are needed for workers to change jobs before the end of the contract.²⁸ Moreover, most of the new Qatari labor legislation has not been implemented yet: confiscation of passports and harsh labor conditions are still a reality. Furthermore the new labor courts in charge of judging the workers' complaints are overwhelmed and ineffective, the minimum temporary wage is insufficient to ensure a proper standard of living (the temporary minimum wage is of QR 750—around USD 200—per month), and the law still allows employers to give 'permission' to 5% of their employees to leave the country due to the nature of their work.²⁹

Qatar's accession to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2018 seemed to be a significant step regarding migrant workers protection. However, Qatar declared the interpretation of the term 'trade unions' in Article 8 of the ICESCR to be 'in line with the provisions of the Labor Law and national legislation'. According to Qatari national legislation, only Qatari nationals have the right to form associations and trade unions, thereby excluding migrant workers.³⁰ Thus, Qatar's international responsibility for human rights abuses is still dependent on a violation of its international obligation to protect. Direct attribution of the breach under Article 4 ARSIWA is beyond doubt. As Millward notes 'corporate building contractors are employed by the sovereign State of Qatar and then, in most cases, find sub-contractors to deliver their projects'.³¹ All those actors have 'networking power' which leads to the (mal)treatment of migrant workers in Qatar. Thus, the wrongful acts of the contractors and subcontractors related to migrant workers in FIFA's projects shall be attributed to the State of Qatar. Therefore, the question that naturally arises is whether international responsibility of FIFA, the other major international actor involved with the organization of the 2022 World Cup in Qatar, can be established.

3.2 Fédération Internationale de Football Association (FIFA)

As Millward discusses, using Castells' analysis on relational power in the network, if Qatar has the power to exclude contractors that do not respect workers human rights because it holds economic (and regulatory) authority over them, FIFA could also be more proactive in pushing host countries to act in accordance with human rights standards.³² Through its bidding process to determine who hosts the World Cup, FIFA could impose requirements related to the treatment of the workers on the construction sites and, therefore, decide to exclude the candidate countries unable or unwilling to follow those. As pointed out by Kentin, Judge Shi argued that transnational corporations, as non-state actors, control substantial economic resources which may influence state agendas and behavior.³³ Even after winning the bid, the Organizing Association Agreement, signed between the host country and FIFA, grants FIFA 'a pseudo authority inside national boundaries'³⁴ by requiring the host state to pass national legislation as well as conceding FIFA certain privileges, such as legal exemption from civil liability.³⁵

²⁷ ILO, Doc. GB.331/INS/13 (Rev).

²⁸ Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Combined Seventeenth to Twenty-First Periodic Reports of Qatar' (97th session, Geneva, 26 November–14 December 2018); Second Report by the FIFA Human Right Advisory Board, FIFA, September 2018.

²⁹ State of Qatar, Law No. 13 of 4 September 2018, Section (7).

³⁰ State of Qatar, Labor Law, Article 116 and seq.

³¹ Peter Millward, 'World Cup 2022 and Qatar's Construction Projects: Relational Power in Networks and Relational Responsibilities to Migrant Workers' (2017) 65 *Current Sociology* 756.

³² Manuel Castells, *Communication Power* (Oxford University Press 2013); Millward (n 33).

³³ Esther Kentin, 'Impressions of the Sixth Hague Joint Conference: 'From Government to Governance? The Growing Impact of Non-State Actors in the International and European Legal System'' (2003) 4 *European Business Organization Law Review* 337.

³⁴ Julie Berg, Sophie Nakueira and Clifford Shearing, 'Global Non-State Auspices of Security Governance' in Bruce Arrigo and Heather Bersot (eds), *The Routledge Handbook of International Crime and Justice Studies* (Routledge 2013).

³⁵ Pedro Rubim Borges Fortes, 'We the Fans: Should International Football Have its Own Constitution?' (2014) 21(1) *Southwestern Journal of International Law* 63.

FIFA has been formally created as an association under Article 60 and seq. of the Swiss Civil Code (SCC).³⁶ With a revenue budget of 6,560 million USD for the 2019–2022 cycle, FIFA's international impact in sports is enormous.³⁷ At first sight, such forecast revenue seems incompatible with the scope of application of Article 60 SCC, which regulates associations with a 'political, religious, scientific, cultural, charitable, social or other non-commercial purpose [that] acquire legal personality as soon as their intention to exist as a corporate body is apparent from their articles of association'. FIFA's ideal purposes are stated in Article 2 of the FIFA Statutes and, as mentioned by Tomlinson, FIFA does not pay dividends and defines itself as 'a non-profit making non-commercial organization', a characterization Borges Fortes found surprising considering 'FIFA executives are mainly concerned with the enactment of laws granting them privileges' suggesting that FIFA is 'mainly concerned with profit maximization, a strange priority for a supposedly non-profit organization'.³⁸ For Bean, FIFA is a 'non-listed, economically significant' company or organization under the Swiss Code of Best Practices for Corporate Governance.³⁹ However, Guilianotti and Robertson propose the comparison of FIFA to a transnational corporation.⁴⁰ Since a transnational corporation is 'a profit-centered business that crosses national borders in trade and investment, and has relatively weaker connections to its home location, FIFA is not a "truly transnational corporation"' because the organization is nation-specific (Swiss) even if, due to the diplomatic ties established with many national governments, the United Nations and the European Union, among others, FIFA located football's international governance within the elite networks of world society.⁴¹

The discussion on how to strengthen international soft law to promote accountability of transnational corporations for human rights violations has been addressed in different studies. Some of the international soft law instruments concerning the conduct of these companies are the UNGPs; the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 5th edition, 2017; the ILO Declaration on Fundamental Principles and Rights at Work, 1998; the OECD Guidelines for Multinational Enterprises, 2011; the OECD Due Diligence Guidance for Responsible Business Conduct, 2018; and the UN Global Compact. These instruments are seen as over-inclusive since they refer not only to civil rights but also to social rights.⁴² However, they do not include any binding rules for private actors, only moral requests.⁴³

Nevertheless, Article 3 of the FIFA Statutes declares that the organization 'is committed to respecting all internationally recognized human rights and shall strive to promote the protection of these rights'. Related to this, the organization has embraced the UNGPs as well as 'all internationally recognized human rights, including those contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the International Labor Organization's Declaration on Fundamental Principles and Rights at Work'.⁴⁴ Regarding migrant workers, who belong to a specific group that requires special attention, FIFA is committed to also consider other international instruments. To implement its human rights policy, FIFA uses a four-pillar approach: to commit and embed, to identify and address, to protect and remedy, and to engage and communicate.⁴⁵ Thus, is FIFA internationally responsible for human rights abuses linked to the organization of one of its global events?

As a non-state actor, customary rules on international responsibility for internationally wrongful acts do not apply *prima facie* to FIFA. FIFA's power makes it impossible for the host State (Qatar) or the home State

³⁶ Article 1 FIFA Statutes 2018.

³⁷ FIFA Financial Report 2017, 18 March 2018.

³⁸ Borges Fortes (n 37).

³⁹ Bruce W. Bean, 'FIFA: Where Crime Pays' in Markus Breuer and David Forrest (eds), *The Palgrave Handbook on the Economics of Manipulation in Sports* (Palgrave MacMillan 2018).

⁴⁰ Richard Guilianotti and Roland Robertson, 'Mapping the Global Football Field: A Sociological Model of Transnational Forces within the World Game' (2012) 63 *The British Journal of Sociology* 216.

⁴¹ *ibid.*

⁴² Elena Pariotti, 'International Soft Law, Human Rights and Non-State Actors: Towards the Accountability of Transnational Corporations?' (2009) 10(2) *Human Rights Review* 139.

⁴³ Iman Prihandono, 'Transnational Corporations and Human Rights: Strengthening Current Tools to Promote Accountability' (2011) 3(3) *Transnational Corporations Review* 73; Mariko Shoji, 'Global Accountability of Transnational Corporations: The UN Global Compact as a Global Norm' (2015) 29 *Journal of East Asia and International Law* 29.

⁴⁴ FIFA Human Rights Policy, May 2017.

⁴⁵ Haley Christenson, 'For the Game. For the World. But What About for the Workers? Evaluating FIFA's Human Rights Policy in Relation to International Standards' (2018) 20 *San Diego International Law Journal* 93.

(Switzerland) to maintain it under its effective control.⁴⁶ Neither would be accepted as a ground for attribution based on the need for general control exercised by any of the two countries over FIFA.⁴⁷ Therefore, at first sight the conduct of FIFA cannot be attributed to either country. Nonetheless, some human rights treaties may be interpreted to apply to business.⁴⁸ FIFA's acceptance of the above-mentioned international instruments allows us to explore in detail which norms apply to them.

As an 'organ of the [international] society',⁴⁹ FIFA has to promote respect for the rights contained in the Universal Declaration on Human Rights (UDHR). Moreover, Article 10 of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1998, prohibits any member of society to 'participate, by act or by failure to act where required, in violating human rights'. The UDHR also declares that 'everyone has duties to the community' (Article 29), where the term 'everyone' includes both physical and legal persons (such as FIFA) and the UDHR shall not be interpreted as implying for 'any State, group or person' any right to engage in activities that could lead to the destruction of the human rights stated in it'. Thus, the UDHR establishes a collective responsibility, making the different members of the international community (states, international organizations, individuals and other non-State actors) direct actors in ensuring the respect, promotion and protection of human rights.⁵⁰

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) states that migrant workers are entitled to 'effective protection against violence, physical injury, threats or intimidation, whether by public officials or by private individuals, groups or institutions'.⁵¹ Focusing only on workers, Article 7 of the ICESCR entitles everyone to just and favorable conditions of work, including fair remuneration, non-discrimination, safe and healthy working conditions, rest, leisure and reasonable limitations of working hours. Article 8 adds the right to form trade unions and the right to strike. The ICCPR guarantees the right to life (Article 6), the right to be free from torture (Article 7), the prohibition of slavery (including labor slavery, Article 8), the right to liberty and security (Article 9), the freedom of movement within the territory of the State and the right to live in any country (Article 10) and the right to freedom of association (Article 22). These rights were unilaterally accepted by FIFA since they apply to the states (Switzerland among them) that ratified these human rights instruments.⁵²

However, non-state actors such as FIFA are not the direct holders of these international human rights obligations; only states are.⁵³ FIFA's accountability can therefore only be established under domestic law. So, in situations of 'governance gaps' where the State is unable or unwilling to protect human rights, the existing international law seems to be ineffective because it addresses states only. Therefore, the implementation of international soft law and the respect of international (hard) law depends on the non-State actors themselves. The lack of enforcement mechanisms seems to make the failure to internalize those rules in the entity policy and practice and to apply them of no consequence.⁵⁴

Given this background, alternative proposals have been made, such as the establishment of a set of basic rules that impose limits on FIFA's power in order to protect fans in the context of international soccer.⁵⁵ A 'constitution' for international soccer would protect fans as consumers and fans as citizens. Due to the impossibility to create those constitutional rules through an international treaty, the author suggests to use the 'notion of constitutional fragments developed within constitutional sociology', which entails that

⁴⁶ Article 8 ARSIWA; *Case Concerning Military and Paramilitary Activities in and Against Nicaragua* (Nicaragua v. United States of America) (Merits) [1986] ICJ.

⁴⁷ *Prosecutor v. Dusko Tadic* (Judgement) [1994] International Criminal Tribunal for the Former Yugoslavia (ICTY).

⁴⁸ David Weissbrodt, 'UN Human Rights Norms for Business' (2005) 7(4) *International Law – Forum du Droit International* 290.

⁴⁹ Universal Declaration on Human Rights, Preamble.

⁵⁰ Olga Martín-Ortega, *Empresas Multinacionales y Derechos Humanos en Derecho Internacional* (Bosch 2008).

⁵¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (New York, 18 Dec. 1990) entered into force 1 July 2003, Art 16.

⁵² John G. Ruggie, *State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties* [2007] Kennedy School of Government and Harvard Law School, Prepared for the mandate of the Special Representative of the United Nations Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises.

⁵³ Eric de Brabandere and Maryse Hazelzet, 'Corporate Responsibility and Human Rights: Navigating between International, Domestic and Self-Regulation' in Yannick Radi (ed), *Research Handbook on Human Rights and Investment* (Edward Elgar Publishing 2018).

⁵⁴ Weissbrodt & Kruger 2003.

⁵⁵ Borges Fortes (n 37).

'trends of constitutional can [and must] be identified beyond the nation state'.⁵⁶ Related to this, FIFA has made several changes to its governance structure since 2011. Regarding the decisions over the hosting of competitions, Mark Pieth alerted on 'the risks linked to these highly visible and politically sensitive decisions [which] are actually a mix of corruption risk and conflict of interest concerns'. However, the author also recalls that with respect to compliance-reform 'the motivational factor for sports governing bodies is merely the pressure for civil society that is far from constant'. The reform process has been widely criticized, with authors such as Pielke asking why FIFA should be held to a lower standard of good governance 'than any other legitimate, global organization that operates internationally and turns over billions of dollars every year?'⁵⁷ However, a positive outcome of the reform process has been the enshrinement of FIFA's commitment to human rights in the organization's statutes.

Furthermore, as an international sports federation, FIFA is not only a global sports regulator, it is the only global private regulatory body on soccer even if its main aim is not the regulation of labor standards in the World Cup sites. Yet it is not uncommon for states and intergovernmental organizations to 'make recourse to private actors and techniques for the exercise of certain administrative functions'.⁵⁸ Although the importance of the political and diplomatic enforcement mechanisms of FIFA, the denial of the state's coercive power, specifically the courts, leads to flagrant shortcomings in human rights protection. Moreover, when classic accountability mechanisms fail, private law might supplement public regulations to hold private actors which exercise public power at the global level accountable because they create and develop private standards.⁵⁹

There is clearly a momentum building regarding this issue. At the national level, the concept of 'due diligence' takes effect as it is not uncommon for states to adopt laws which ensure the application of international law by the enterprises under their jurisdiction. This entails a change from nonexistent international responsibility for private actors' acts to civil liability in cases of non-compliance with the obligation to respect and ensure the respect of human rights.⁶⁰ Canadian and British courts established that the nature of the due diligence obligation is a duty of care, which entails to take appropriate measures 'to respect the human rights of persons who are closely and directly affected by the acts of' private entities'.⁶¹ Furthermore, those entities also have the obligation to refrain from participating as accomplices in human rights violations.

The action at the national level is the translation of the concept of due diligence stated in Principle 17 of the UNGPs: 'business enterprises should carry out human rights due diligence'. As Bonnitca and McCorquodale noted, the UNGPs invoke two different concepts of due diligence: the process to manage business and the standard of conduct required to discharge an obligation.⁶² According to that conceptualization, FIFA is responsible for its own adverse impact on human rights as well as for the human rights impact of third parties with which it has business relationships. However, Ruggie and Sherman replied that the UNGPs have their 'own constitutive construct of human right due diligence'⁶³ which makes the distinction between the two concepts of due diligence unnecessary.⁶⁴ Therefore, the nature of FIFA's responsibility under the UNGPs will be determined by FIFA's involvement in the human rights infringement.⁶⁵ If FIFA caused the adverse human rights impact, it should take the necessary steps to cease or prevent the impact; if FIFA contributed to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution

⁵⁶ Gunther Teubner, 'The Project of Constitutional Sociology: Irritating the Nation State Constitutionalism' (2013) 4 *Transnational Legal Theory* 44.

⁵⁷ Roger Pielke Jr., 'An Evaluation of the FIFA Governance Reform Process of 2011–2013' in Stephen Frawley and Daryl Adair (eds), *Managing the Football World Cup* (Palgrave Macmillan 2014).

⁵⁸ Edoardo Chiti and Bernardo Giorgio Mattarella, *Global Administrative Law and EU Administrative Law* (Springer-Verlag 2011).

⁵⁹ Tim Büthe and Walter Mattli, *The New Global Rulers: The Privatization of Regulation in the World Economy* (Princeton University Press 2011); Paul Craig, *UK, EU and Global Administrative Law: Foundations and Challenges* (Cambridge University Press 2015); Nico Krisch and Benedict Kingsbury, 'Introduction: Global Governance and Global Administrative Law in the International Legal Order' (2006) 17(1) *European Journal of International Law* 1.

⁶⁰ Gilles Lhuillier, 'MNC's Obligations in Their Sphere of Influence' in Yannick Radi (ed), *Research Handbook on Human Rights and Investment* (Edward Elgar Publishing 2018).

⁶¹ Lahra Liberti, 'La Responsabilité des Entreprises en Droit International: Chimère ou Réalité. Introduction' (2005) 7(4) *International Law – Forum du Droit International* 235.

⁶² Jonathan Bonnitca and Robert McCorquodale, 'The Concept of Due Diligence in the UN Guiding Principles on Business and Human Rights' (2017) 28(3) *European Journal of International Law* 899.

⁶³ John G. Ruggie and John F. Sherman, 'The Concept of Due Diligence in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitca and Robert McCorquodale' (2017) 28(3) *European Journal of International Law* 929.

⁶⁴ *ibid.*

⁶⁵ Principle 19 of the UNGPs.

and use its leverage to mitigate any remaining impact; if the adverse human rights impact is linked to FIFA's operations, products or services by its business relationship with another company, the appropriate action should be assessed, considering the following:

- If FIFA has leverage to prevent or mitigate the adverse impact, it should use this leverage;
- If FIFA lacks leverage, FIFA has to assess the possible ways to increase it;
- If FIFA lacks leverage and cannot increase it, it should consider ending the relationship.

The Qatari Supreme Committee for Delivery and Legacy is the body responsible for delivering the infrastructure required for the 2022 World Cup. Among other tasks, it selects the main contractors for the construction of the stadiums, which usually then sign agreements with sub-contractors. The relationship between these sub-contractors and FIFA is therefore not clear-cut. As stated above, the Organizing Association Agreement signed with Qatar grants FIFA pseudo-authority over Qatari territory. FIFA sets forth the list of (technical and other) requirements for the stadiums, plans for the construction or renovations of stadiums must be approved by FIFA, and FIFA has the right to carry out stadium inspections at its sole discretion and issue directives based thereon. FIFA can also reject the selection of a stadium and issue new directives with regard to stadiums. In addition, FIFA and Qatar created a joint venture in February 2019, the FIFA World Cup Qatar 2022 LLC, described by FIFA as 'a limited liability company incorporated by FIFA, which holds 51% of the shares, and the Qatar 2022 Local Organizing Committee, with holds 49% [of the shares]'.⁶⁶ The entity focuses on tournament delivery while the Supreme Committee for Delivery and Legacy will continue to manage the World Cup infrastructure. Therefore, FIFA has leverage to mitigate and prevent any human rights abuse linked to the organization of the World Cup or, at the very least, there are possible ways to FIFA to increase its leverage on the contractors and sub-contractors through these entities. FIFA itself recognized its capacity to use leverage against Qatar with respect to the Kafala system.⁶⁷ However, FIFA's actions have been insufficient, leading to a breach of its due diligence obligation under the UNGPs.

3.3 Switzerland

Principle 1 of the UNGPs states that the home state should 'set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations'. Shall this principle be seen as a soft obligation,⁶⁸ the Committee on Economic, Social and Cultural Rights stated that the obligation for the home state in this regard is to 'take steps to prevent human rights contraventions abroad by corporations which have their main offices under their jurisdiction'.⁶⁹ General Comment No. 31 of the Human Rights Committee on The Nature of the General Legal Obligation Imposed on States Parties to the International Covenant on Civil and Political Rights (ICCPR) states that state parties have the obligation to protect civil and political rights also against acts committed by private persons or entities. The failure of taking proper measures or to exercise due diligence to prevent, punish, investigate or redress the damage caused by such acts is also a breach of the ICCPR.

Switzerland claims to be actively engaged and strongly committed to human rights. The Federal Department for Foreign Affairs human rights strategy for the period 2016–2019 states:

[a]s home to the headquarters of some of the largest multinational corporations and sports federations in the world, Switzerland has a particular duty to encourage respect for human rights by members of the private sector. It expects all entities domiciled on Swiss territory to respect human rights in all of their activities, in particular in their operations abroad in zones affected by conflicts or in complex or fragile contexts.⁷⁰

However, human rights treaties have a limited territorial scope. It is expected for any state party to ensure the application of a convention in its territory but the treaties usually remain silent with respect to

⁶⁶ www.fifa.com/worldcup/organisation/llc/.

⁶⁷ Second Report by the FIFA Human Right Advisory Board, FIFA, September 2018.

⁶⁸ Vandenhole 2012.

⁶⁹ UN Committee on Economic, Social and Cultural Rights, 'Statement on the Obligations of State Parties Regarding the Corporate Sector and Economic, Social and Cultural Rights' (46th session, Geneva, 12 July 2011).

⁷⁰ Human Rights Strategy 2016–2019, Federal Department for Foreign Affairs FDFA, Confédération Suisse, Bern, 2016.

extraterritorial application.⁷¹ The home state also has to respect the principle of non-intervention under Article 2(7) of the UN Charter and cannot intervene in the domestic affairs of another state. Qatar thus has the primary responsibility to protect migrant workers from human rights violations and its failure to do so triggers international responsibility. As discussed above, FIFA does not act in Qatar as an agent or organ of the Swiss state, nor is it under the effective control or following instructions of the Swiss authorities. Nonetheless, Switzerland has an obligation of due diligence over the activities of its private entities overseas.

Even though the due diligence standard in human rights law also applies to the host State, this section focusses on the acts or omissions of the Swiss authorities that had effects in Qatar. In order to do so, it is essential to establish a specific causal nexus between the home state conduct and the risk of the human rights violations in the host state. The nexus is deemed to exist in three scenarios.⁷²

First, the due diligence obligation is based on specific international provisions on international crimes. In that scenario, the provision has to include an extraterritorial obligation to prevent such human rights abuse to occur abroad. In this case, as noted above, the conditions suffered by migrant workers before, during and after their entry in Qatar could be marked as human trafficking for forced labor. The scope of application of the UN Trafficking Protocol covers 'to the prevention, investigation and prosecution of the offenses [...], where those offenses are transnational in nature'.⁷³ Moreover, even if the direct nexus could not be established between Switzerland's obligation of due diligence and human trafficking in Qatar, complicity in human trafficking breaches the UN Trafficking Protocol as well.⁷⁴

Switzerland's international responsibility may be triggered for their lack of control over its national private entities abroad. As the rules on state responsibility establish, a state that provides aid or assistance to another state for the commission of human rights abuses shall also be held responsible for the wrongful conduct if the obligation is in force for that state and it did so with knowledge of the circumstances of the internationally wrongful act.⁷⁵

Second, the home state decides to act voluntarily, which triggers procedural due diligence duties. Human rights treaties do not suggest that the exercise of extraterritorial jurisdiction is prohibited and Swiss courts already exercised civil and criminal jurisdiction over human rights violations by Swiss companies abroad.⁷⁶ When requested to render a decision on the matter, the Commercial Court of the Canton of Zürich dismissed the case on formal motives.⁷⁷ Therefore, this second scenario may not be applicable to human rights abuses in Qatar.

Third, a due diligence obligation with extraterritorial effects is the consequence of the specific nexus of nationality between the private entity and the home state. Berkes affirms that 'although states might voluntarily establish their domestic jurisdiction over the overseas conduct of corporate nationals [scenario 2], human rights law obliges them to do so with regard to their corporate nationals'.⁷⁸ Therefore, active nationality is the jurisdictional basis for this third scenario.

As mentioned before, when faced with a claim against FIFA for its participation in human rights abuses against migrant workers in Qatar, the Commercial Court of the Canton of Zürich dismissed the case.⁷⁹ The case was brought by four plaintiffs: the Netherlands Trade Union Confederation, the Bangladeshi Free Trade Union Congress, the Bangladesh Building and Wood Workers Federation and Mr. Nadim Shariful Alam, a Bangladeshi citizen whose passport had been confiscated in 2014 by his employer, making it impossible for him to travel and totally dependent of his *Kafil*. During his stay in Qatar, Mr. Alam was living in a workers camp with 2,250 other migrants under miserable conditions. Due to the prohibition for migrant workers to join trade unions, he could not ask for the protection of his rights nor for reparation in Qatar. The claims referred to FIFA's obligation of due diligence and its capacity to promote legislative and significant change in Qatar. The plaintiffs alleged that:

⁷¹ Sara L. Seck, 'Conceptualizing the Home State Duty to Protect Human Rights' in Karin Buhmann et al. (eds), *Corporate Social and Human Rights Responsibilities* (Palgrave Macmillan 2011).

⁷² Antal Berkes, 'Extraterritorial Responsibility of the Home States for MNC's Violations of Human Rights' in Yannick Radi (ed), *Research Handbook on Human Rights and Investment* (Edward Elgar Publishing 2018).

⁷³ Article 4 of the UN Trafficking Protocol.

⁷⁴ Renkiewicz (n 18).

⁷⁵ Article 16 ARSIWA.

⁷⁶ Nicolas Bueno, 'La Responsabilité des Entreprises de Respecter les Droits de l'Homme. Etat de la Pratique Suisse' [2017] *Aktuelle juristische Praxis – Pratique juridique actuelle* 1015; Ruggie (n 54).

⁷⁷ Ruling of the Commercial Court of the Canton of Zurich, HG160261-O, 3 January 2017.

⁷⁸ Berkes (n 74).

⁷⁹ Ruling of the Commercial Court of the Canton of Zurich, HG160261-O, 3 January 2017.

- FIFA committed a wrongful act by selecting Qatar for the 2022 World Cup without ensuring the proper protection of the right of migrant construction workers;
- FIFA failed to fulfil its obligation to request Qatar to protect migrant workers and to demand legal reforms;
- Therefore, FIFA violated Mr. Alam's rights and had to pay for the damage resulting from its unlawful actions.

In its judgement of 3 January 2017, the Court dismissed the claim on the basis that the plaintiffs demands were vague and unspecific, the claim was not enforceable and specific enough and that the case was not a commercial dispute that fell within the jurisdiction of the Court.⁸⁰ Therefore, formal reasons were the cause of the dismissal. However, it would have been impossible for the plaintiffs to bring the case before a Swiss Labor Tribunal because FIFA was not the direct employer of Mr. Alam. The Tribunal would certainly have dismissed his claim based on Article 34 Swiss Civil Procedure Code. Even though it is essential for private persons to have access to competent and effective national courts, Switzerland does not grant access under Article 34 of the Swiss Civil Procedural Code nor under Article 3 of Swiss Private International Law.⁸¹

In an *obiter dictum*, the Commercial Court of Zürich stated that only Qatar, and not FIFA, has the capacity to make changes in the national legislation and procedures. However, the Court stated that FIFA could have had a duty to act as a result of its power to call for the respect of human rights in Qatar. A few months later, as Bueno points out, FIFA recognized its responsibility to implement a due diligence process and to use its leverage on all concerned parties in the organization of the World Cup in Qatar in order to improve the labor conditions of the construction workers.⁸²

Therefore, it seems that Swiss courts do not have jurisdiction to decide on claims of migrant workers against FIFA alleging labor rights violations in Qatar connected to the organization of the 2022 FIFA World Cup. However, labor law is not the only source of rights for migrant workers, international human rights law offers a complement to those rules.⁸³ Should the Responsible Business Initiative which would amend the Swiss Constitution become a reality, private companies will have an obligation, under Swiss Law, to respect, protect and monitor human rights abroad. Then, the new Article 101a of the Constitution would certainly help to clarify the legal situation and to allow Swiss courts to establish jurisdiction in cases of human rights abuse overseas. It remains unclear however if Article 101a could apply to FIFA's actions bearing in mind that the organization has been formally created as an association. Should the Constitution be amended Swiss courts will clarify the scope of Article 101a.⁸⁴ However, the future discussion does not diminish the actual obligation Switzerland has to ensure victims' access to proper legal remedies for human rights violations linked to Swiss corporations or associations, including FIFA.

4 Towards an Effective Shared Responsibility between Qatar, FIFA and Switzerland?

In situations of 'governance gaps' where multiple actors are unable or unwilling to effectively protect human rights, shared responsibility might be a useful framework to better allocate international responsibility among multiple actors.⁸⁵ With regard to the 2022 World Cup, Qatar, FIFA and Switzerland have contributed to a single harmful and undesirable outcome (systematic abuses of the rights of migrant workers) that took a variety of forms (discrimination, unlawful restrictions to freedom of movement, violations of the right to work, the right to health and the right to be free from forced labor, non-access to justice). However, they did not act as a collective entity since the human right abuses did not result from instructions jointly issued nor are they bound by the same obligations since Qatar has the duty to protect human rights in its territory, Switzerland has the duty to provide access to justice, and FIFA has the duty to exercise proper leverage before

⁸⁰ *ibid.*

⁸¹ See *A.E.A v Greece*, Application no. 39034/12, 15 March 2018, European Court on Human Rights.

⁸² Bueno (n 78).

⁸³ Camille Papinot, 'The Assertion of Subjective Rights for Migrant Workers' in Norman Weiss and Jean-Marc Thouvenin (eds), *The Influence of Human Rights on International Law* (Springer 2015).

⁸⁴ Jonathan Steinberg, *Why Switzerland?* (Cambridge University Press 2015). Although the Swiss Constitution is amended regularly, unlike other constitutions, the reform process is quite long and popular initiatives asking for a modification of the Constitution must be accepted by both the regions (*cantons*) and the citizens by simple majority (Articles 139(5) and 140 Swiss Constitution). The Federal Assembly recommended in 2017 to citizens and *cantons* to reject the Responsible Business Initiative.

⁸⁵ Markos Karavias, 'Shared Responsibility and Multinational Enterprises' (2015) 62 *Netherlands International Law Review* 91; André Nollkaemper, 'The Duality of shared responsibility' (2018) 24(5) *Contemporary Politics* 524.

and after the selection of Qatar as the host State of the 2022 World Cup. Nonetheless, each of the actors were fully aware of the consequences of the lack of prevention and punishment of the recurrent wrongful acts.

Since Qatar and Switzerland are responsible for the same damage, both of them have the obligation to provide reparations. Furthermore, the responsibility of one state will not be diminished by the involvement of the other state, since diffusion of responsibility has to be prevented.⁸⁶ However, it is difficult to address shared responsibility between both states and FIFA.⁸⁷ First, no primary rules of international law are binding on FIFA despite the breach of its soft law obligation of due diligence. The absence of any 'hard direct corporate responsibility' entails that FIFA has no direct human rights obligations under international law.⁸⁸ Second, FIFA's actions cannot be attributed to Qatar nor to Switzerland.⁸⁹ Nevertheless, this position is based on positive theory of law which might be mitigated by what Twining defines as 'normative pluralism', that is to say to focus 'from a global perspective, [on] the interactions and relationships between, on the one hand legal rules, and on the other hand, other types of norms'.⁹⁰ From that perspective, FIFA is the only global regulator on soccer which implies that the shift from public regulators to private actors has been achieved in this area leading to a 'coregulatory regime' with states and FIFA having to cooperate with each other.⁹¹ In that sense, the conception of law as a state instrument would change although the risk of confusion is high since the legislator (FIFA) could also be the controller bearing in mind the real power FIFA has over the other actors.⁹² Despite not sharing Geuss' vision that enforceability should be a necessary condition for the existence of human rights and that human rights might be illusory, it remains beyond doubt that the operability of those rights largely depends on the existence and effectiveness of legal enforcement mechanisms.⁹³ However, universal human rights cannot rely upon those mechanisms which are strong in certain regions of the world and weaker or nonexistent in others.

With regard to the exercise of jurisdiction, it seems Qatar faces huge difficulties in properly addressing the migrant workers' claims. Thus, the possibilities for migrant workers to obtain reparation before Qatar's national courts seem non-existent at this time. Despite having announced new measures on work and residence permits in October 2019, to be implemented soon, none of those actions relate to the access to justice. Concerning the jurisdiction of international courts, it is likely that migrant workers could only access the European Court of Human Rights for the breach of the due diligence obligation of Switzerland. The absence of regional human rights courts in Asia leaves only the (highly unlikely) possibility that the home states of migrant workers (Bangladesh, Nepal, Philippines, etc.) exercise diplomatic protection and claim reparation on their behalf before an international court.

Consequently, trying to hold states and private entities responsible for human rights abuses to which they have contributed jointly is exasperatingly difficult. The non-existence of binding international rules on private entities diverts the discussion towards state responsibility and highlights the limited possibilities to activate human rights enforcement mechanisms. There are many obstacles standing in the way of victims. While the impact of public shaming by NGOs on the reputation of the actors involved could be significant, much remains to be done in order to ensure the protection of migrant workers in Qatar.

Competing Interests

The author has no competing interests to declare.

⁸⁶ André Nollkaemper, 'Issues of Shared Responsibility before the International Court of Justice' in Eva Rieter and Henri de Waele (eds), *Evolving Principles of International Law. Studies in Honour of Karel C. Wellens* (Brill/Nijhoff 2012).

⁸⁷ Jean d'Aspremont and André Nollkaemper, 'Sharing Responsibility Between Non-State Actors and States in International Law: Introduction' (2015) 62 *Netherlands International Law Review* 49.

⁸⁸ Cecilia M. Bailliet, 'What is Become to Human Rights International Order in an Age of Neo-Medievalism?' in Cecilia M. Bailliet (ed), *Non-State Actors, Soft Law and Protective Regimes: From the Margins* (Cambridge University Press 2012); Eric de Brabandere, 'Non-State Actors and Human Rights. Corporate Responsibility and the Attempts to Formalize the Role of Corporations as Participants in the International Legal System' in Jean d'Aspremont (ed), *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law* (Routledge 2011).

⁸⁹ Arts. 4–11 ARSIWA.

⁹⁰ Benoît Frydman and William Twining, 'A Symposium on Global Law, Legal Pluralism and Legal Indicators' (2015) 47(1) *The Journal of Legal Pluralism and Unofficial Law* 1.

⁹¹ Benoît Frydman, 'Coregulation: A Possible Legal Model for Global Governance' in Bart de Schutter and Johan Pas (eds), *About Globalization: Views on the Trajectory of Mondialisation* (VUB Brussels University Press 2004).

⁹² Benoît Frydman, 'A Pragmatic Approach to Global Law' in Jean-Yves Chérot and Benoît Frydman (eds), *La Science du Droit dans la Globalization* (Bruylant 2012).

⁹³ William Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press 2009).

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