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ARTICLE

Special Section: The FIFA World Cup 2022 and the struggle for human rights in Qatar

Spectacular International Labor Law: Ambush Counter-Marketing In the Spotlight of Qatar's 2022 FIFA World Cup

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Abstract

One year ago, the Qatar World Cup was in full swing, and Qatar was omnipresent in our public and private spheres. For many, the Qatar 2022 World Cup will forever be intimately connected with the plight of migrant workers. This Article dives into the confluence of spectacle, counter-marketing, international—labor and human rights—law, and local reforms, which came together in the long decade which followed FIFA's fateful decision in December 2010 to give the 2022 World Cup to Qatar. It starts by situating the FIFA World Cup 2022 within Qatar's drive for soft power and nation branding, before turning to re-counting how the 2022 World Cup was "ambushed" in the name of Qatar's migrant workers and their rights, putting the issue on the global agenda and triggering the involvement of the ILO. Thereafter, the Article discusses the effects of this ambush counter-marketing by engaging with the labor reforms introduced by the Qatari government, while highlighting their limits in terms of scope and implementation. The Article concludes with a general discussion on the blind spots and shortcomings of the turn to counter-marketing as a strategy to vindicate international human rights or labor rights.

Keywords: Transnational law; World Cup 2022; FIFA; Qatar; International Labor Law; Labor rights; Human Rights; Migrant Workers; Counter-Marketing; Kafala; Naming and shaming; ILO

A. Introduction

In late 2022, the Qatar World Cup was in full swing and Qatar was omnipresent in our public and private spheres. Cities were debating whether they should broadcast the games[1] and international journalists were reporting daily the tragic stories of migrant workers.[2] We were in Qatar overdrive.

[1]*See, e.g.*, Kim Willsher, *Paris Joins Other French Cities in World Cup TV Boycott*, THE GUARDIAN (Oct. 4, 2022), https://www.theguardian.com/world/2022/oct/04/paris-joins-other-french-cities-in-world-cup-tv-boycott-qatar.

[2]*See, e.g.*, Pete Pattisson & Pramod Acharya, *"Dark Days in Qatar": Nepali Workers Face Bitter Legacy of World Cup Debts*, THE GUARDIAN (Dec. 20, 2022), https://www.theguardian.com/global-development/2022/dec/20/dark-days-in-qatar-nepali-workers-face-bitter-legacy-of-world-cup-debts; Tariq Panja & Bhadra Sharma, *The World Cup's Forgotten Team*, N.Y. TIMES (Nov. 16, 2022), https://www.nytimes.com/2022/11/16/sports/soccer/world-cup-migrant-workers.html (same). For further reading, the Business and Human Rights Research Centre has compiled a fairly comprehensive online portal with articles from and leading up to the Qatar World Cup. *See generally Qatar World Cup Parallel Portal*, BUS. & HUM. RTS. RSCH. CTR., https://www.business-humanrights.org/en/from-us/fifa-world-cup-qatar-2022-parallel-portal/ (last visited Nov. 6, 2023) [hereinafter *Qatar World Cup Parallel Portal*].

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Over the twelve years between the Fédération Internationale de Football Association's (FIFA) decision to grant the organization of the tournament to Qatar[3] and the staging of the competition, the country occupied a disproportionate share—compared to its size in terms of population—of the global attention span. While Qatar was actively craving for attention when it bid for the World Cup, its rulers probably did not have *this* attention in mind.[4] Indeed, for many, the Qatar 2022 World Cup will forever be intimately connected with the plight of migrant workers in Qatar. In this piece I propose to dive into the confluence of spectacle, counter-marketing, international—labor and human rights—law, and local reforms, which came together in the long decade which followed FIFA's fateful decision in December 2010 to give the 2022 World Cup to Qatar. This confluence is not an isolated development; rather, it is part of a deliberate strategy pursued by some civil society organizations (CSOs) to leverage mega-sporting events (MSEs) in order to protest the human rights record of the host country and demand reforms.[5] Furthermore, beyond the sporting context, this strategy is part of a wider embrace of naming and shaming by CSOs in the promotion and enforcement of human rights and international law.[6] Recently, legal scholars have started to critically engage with the role of—counter—marketing in international law,[7] my ambition is to build on and nurture this engagement through a case study on the Qatar 2022 World Cup. However, instead of international criminal law, the substantial focus of this contribution will be mostly on the vindication of international labor rights and human rights. The piece starts by situating the FIFA World Cup 2022 within Qatar's drive for soft power and nation branding—Part B. It then turns to re-counting how the World Cup was "ambushed" in the name of Qatar's migrant workers and their rights, putting the issue on the global agenda—Part C. While this part will highlight that the campaign was undoubtedly successful in leveraging the prospect of the 2022 World Cup to attract public attention to the issue and in activating international legal processes subjecting Qatar to institutionalized scrutiny, the next section will focus on the transformative effects of this ambush counter-marketing in Qatar—Part D. In this section I will engage with the many legislative and policy changes introduced by the Qatari authorities and their presentation as a success story. Yet, I will also argue that the reforms introduced have considerable blind spots—on collective bargaining or political participation, weaknesses in terms of their deficient implementation, and a fragile future now that the World Cup has moved on to the next host. Finally, I conclude with reflections on the blind spots and shortcomings of the turn to counter-marketing as a strategy to vindicate international human rights or labor rights in the context of MSEs—Part E.

B. A Dream Target: Qatar's Global Brand and the FIFA World Cup 2022

In recent years, international relations scholars have increasingly recognized that states' power on the international stage is not only military or economic, but also cultural or symbolic—"soft

[3]*See* Matthew Futterman & Jonathan Clegg, *Qatar Bests U.S. Bid to Host World Cup, Kicking Up Storm*, WALL ST. J. (Dec. 2, 2010), https://www.wsj.com/articles/SB10001424052748703377504575651103941330246.

[4]*See* Andrew Mills, *Qatar Faced Unprecedented Criticism Over Hosting World Cup, Emir Says*, REUTERS (Oct. 25, 2022), https://www.reuters.com/world/middle-east/qatar-faced-unprecedented-criticism-host-country-world-cup-emir-says-2022-10-25/.

[5]*See* Barbara J. Keys, *Reframing Human Rights: Amnesty International, Human Rights Watch, and International Sport*, *in* THE IDEAS OF GLOBAL SPORT: FROM PEACE TO HUMAN RIGHTS 109, 111 (Barbara J. Keys ed., 2019) (explaining that this strategy goes back to the 1980s); Umberto Tulli, *Bringing Human Rights In: The Campaign Against the 1980 Moscow Olympic Games and the Origins of the Nexus Between Human Rights and the Olympic Games*, 33 INT'L. J. HIST. SPORT 2026, 2027 (2016) (detailing how Western non-governmental organizations and human rights activists used the 1980 Moscow Olympics to protest Soviet violations of human rights).

[6]*See* MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 1, 39, 79, 121, 165 (1998). *See generally* THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, Stephen C. Ropp, & Kathrynn Sikkink eds., 1999) [hereinafter THE POWER OF HUMAN RIGHTS].

[7]*See* CHRISTINE SCHWÖBEL-PATEL, MARKETING GLOBAL JUSTICE: THE POLITICAL ECONOMY OF INTERNATIONAL CRIMINAL LAW (2021).

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power"[8] as famously coined by Nye. States now engage in "postmodern power"[9] strategies involving marketing or branding, in order to attract attention and gain economic, cultural, or political influence on the world stage. As emphasized by Peter van Ham, "the art of politics pursued through old-style diplomacy has been shifting to encompass the new art of brand building and reputation management."[10] Specifically, the hosting of MSEs has been linked with attempts by emerging powers to augment their status on the international scene.[11] Sport is increasingly perceived by government as "a relatively cheap means of improving a nation's image, credibility, stature, economic competitiveness, and (they hope) ability to exercise agency on the international stage."[12] Indeed, MSEs have the capacity "to fix the gaze of a global television audience" and to constitute "a perfect platform to showcase the hosting nation, their culture and image."[13] In other words, "hosting a sporting mega-event can offer local leaders an opportunity to showcase their cities and their countries to the world—an exercise wherein nation-building, place-branding, and urban boosterism all intersect."[14]

For small states with relatively limited military or economic might, like Qatar, finding alternative ways to increase their power and influence in international relations is a strategic priority.[15] While Qatar was almost invisible on the international scene before the twenty-first century, the country purposefully leveraged its important economic resources to pursue a "soft power strategy"[16] aimed at buttressing "the Qatar brand."[17] In short, "Qatar has emerged as a 'brand state' par excellence."[18] As J.E. Peterson put it, "[f]ew countries seem to have taken the lessons and importance of branding to heart more thoroughly than Qatar has in recent years."[19] This turn to branding is intimately connected with the sudden growth of Qatar's gross domestic product (GDP) per capita in the early 2000s, which was fueled by the rapid growth in the production of liquid natural gas. Qatar's strategy of state branding was partly translated into a proactive, even to some extent hyperactive, sports diplomacy.[20]

[8]*See* Joseph S. Nye, Jr., *Soft Power*, 80 FOREIGN POL'Y 153, 153, 166 (1990) (laying out the shift in global power dynamics after the Cold War, Nye tracks the fall of the traditional global political scheme, "command power," due to the rise of soft power, "which occurs when one country gets other countries to *want* what it wants"); *see also* Joseph S. Nye, Jr., SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS 1, 256 (2004) ("[Soft power is] the ability to get what you want through attraction rather than coercion or payments. . . . Soft power arises from the attractiveness of a country's culture, political ideals, and policies.").

[9]*See* Peter van Ham, *The Rise of the Brand State: The Postmodern Politics of Image and Reputation*, 80 FOREIGN AFFS. 2 (2001) ("In today's world of information overload, strong brands are important in attracting foreign direct investment, recruiting the best and brightest, and wielding political influence.").

[10]Peter van Ham, *Place Branding: The State of the Art*, 616 ANNALS AM. ACAD. POL. & SOC. SCI. 126, 129 (2008).

[11]*See* Jonathan Grix & Donna Lee, *Soft Power, Sports Mega-Events and Emerging States: The Lure of the Politics of Attraction*, 27 GLOB. SOC'Y 521, 521 (2013) (analyzing the "three most active sports mega-event hosting states in recent times: Brazil, China, and South Africa" and exploring "the practice of public diplomacy by [those] states to both demonstrate existing soft power capability as well as pursue its further enhancement").

[12]*Id.* at 522.

[13]*Id.* at 529.

[14]Natalie Koch, *The Geopolitics of Sport Beyond Soft Power: Event Ethnography and the 2016 Cycling World Championships in Qatar*, 21 SPORT SOC'Y 2010, 2012 (2018).

[15]*See* Abdulaziz Al Horr, Ghalia Al Thani, M. Evren Tok, Hany Besada, Ben O'Bright, & Jason McSparren, *Qatar's Global-Local Nexus: From Soft to Nested Power?*, *in* POLICY-MAKING IN A TRANSFORMATIVE STATE: THE CASE OF QATAR (M. Evren Tok, Lolwah R. M. Alkhater, & Leslie A. Pal eds., 2016) (detailing Qatar's approach to international relations); *see also* MEHRAN KAMRAVA, QATAR: SMALL STATE, BIG POLITICS xxi (2d ed., 2015) (providing a similar analysis).

[16]James M. Dorsey, *How Qatar Is Its Own Worst Enemy*, 32 INT'L J. HIST. SPORT 422, 435 (2015).

[17]*See* KAMRAVA, *supra* note 15; *see also* J.E. Peterson, *Qatar and the World: Branding for a Micro-State*, 60 MIDDLE E.J. 732, 732–48 (2006).

[18]*See* KAMRAVA, *supra* note 15, at 91.

[19]*See* Peterson, *supra* note 17, at 746.

[20]*See, e.g.*, Peterson, *supra* note 17, at 747; MICHAEL BRANNAGAN & DANYEL REICHE, QATAR AND THE 2022 FIFA WORLD CUP: POLITICS, CONTROVERSY, CHANGE 55 (2022) (arguing that hosting sports events is a central part of this turn to sports diplomacy as a soft power strategy). *See generally* Jérôme Champagne, *La diplomatie sportive du Qatar, instrument d'une nouvelle notoriété international* [*Qatar's Sports Diplomacy, An Instrument of New International Notoriety*], 62 GÉOÉCONOMIE 67 (2012); Dorsey, *supra* note 16.

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Sport became Qatar's "medium of choice."[21] The country started to turn its attention to sport as a vehicle to increase its visibility on the international scene in the late nineties.[22] Since then, Qatari officials progressively grew in influence inside sports governing bodies and started to draw significant international sporting events to Doha in the early 2000s.[23] At the same time, Qatar invested heavily in sports infrastructure to attract famous athletes to train in its facilities.[24] The hosting of the 2006 Qatar Asian Games was the high point of this early phase of Qatar's turn to sport for global visibility.[25] Sport also became one of the pillars of Qatar's National Vision 2030, adopted in 2008, and was prominently featured in the follow-up documents released by the Qatari government.[26] The organization of international sporting competitions is a central plank of Qatar's push to become one of the world's "sporting capital[s]"[27] and "establish itself as a modern sport oasis for years to come."[28]

Qatar's bid to host the FIFA World Cup 2022 fits in this strategic approach to sport as a springboard for global influence and visibility.[29] The tournament was to serve as "a platform to announce itself [Qatar] as a legitimate actor on the world stage."[30] In other words, the bid was an "innovative attempt to overcome one of the greatest hurdles faced by small sates [sic]: their invisibility on the world stage."[31] Accordingly, it seems anachronistic to frame Qatar's hosting of the FIFA World Cup as sports-washing,[32] as at the time of its bid the country had hardly any reputation—bad or otherwise—to wash; instead Qatar's primary objective was to gain a global reputation through the "unprecedented global recognition"[33] offered by the FIFA World Cup. Ironically, this branding strategy also exposed Qatar's cultural or social vulnerability,[34] which explains that it became an ideal target for a counter-marketing campaign aimed at its "soft disempowerment."[35]

[21]Thomas Ross Griffin, *National Identity, Social Legacy and Qatar 2022: The Cultural Ramifications of FIFA's First Arab World Cup*, 20 Soccer & Soc'y 1000, 1003 (2019).

[22]*See* Nadine Scharfenort, *Urban Development and Social Change in Qatar: The Qatar National Vision 2030 and the 2022 FIFA World Cup*, 2 J. Arabian Studs. 209, 217 (2012).

[23]*See* Brannagan & Reiche, *supra* note 20, at 57.

[24]*See* Mahfoud Amara, *2006 Qatar Asian Games: A "Modernization" Project from Above?*, 8 Sport Soc'y 493, 503 (2005) (explaining how Qatar aimed to attract global athletes to train in its facilities). *See generally* Scharfenort, *supra* note 22.

[25]*See* Amara, *supra* note 24, at 504 (detailing that Qatar spent $2.8 billion to host the 2006 Asian Games).

[26]*See generally* Qatar Gen. Secretariat Dev. Plan., Qatar National Vision 2030 (2008), https://www.gco.gov.qa/wp-content/uploads/2016/09/GCO-QNV-English.pdf; Qatar Olympic Comm., Qatar Sports Sector Strategy: 2011–2016 (2011), https://blogs.napier.ac.uk/qatar2022/wp-content/uploads/sites/29/2015/06/sports_sector_strategy_final-English.pdf.

[27]*See* Pascal Boniface & Nasser Al-Khelaïfi, *La stratégie du Qatar dans le domaine du sport* [*Qatar's Strategy in the Field of Sport*], 94 Revue Internationale et Stratégique 103, 106 (2014) (providing a transcript of an interview between Al-Khelaïfi, who is both Chairman of Qatar Sports Investments, a sovereign wealth fund dedicated to Qatar's growth in international sport, and President of Paris Saint-German football club, and Boniface, the founder and director of the l'Institut de Relations Internationales et Stratégiques).

[28]*See* Al Horr et al., *supra* note 15, at 362.

[29]*See generally* Brannagan & Reiche, *supra* note 20.

[30]*See* Griffin, *supra* note 21, at 1002.

[31]*See* Brannagan & Reiche, *supra* note 20, at 58.

[32]*See generally* Jules Boykoff, *Toward a Theory of Sportswashing: Mega-Events, Soft Power, and Political Conflict*, 39 Socio. Sport J. 342 (2022); Kyle Fruh, Alfred Archer & Jake Wojtowicz, *Sportswashing: Complicity and Corruption*, 17 Sport, Ethics & Phil. 101 (2023).

[33]*See* Brannagan & Reiche, *supra* note 20, at 58.

[34]*See generally* Tim Bartley & Curtis Child, *Shaming the Corporation: The Social Production of Targets and the Anti-Sweatshop Movement*, 79 Am. Socio. Rev. 653 (2014) (identifying the "cultural vulnerability," identified with positive corporate reputations or major branding activities, of a company as a key variable to explain their targeting in shaming campaigns). Beyond Bartley and Child, other scholars have referred to the "social vulnerability" of countries. *See* The Power of Human Rights, *supra* note 9, at 20–21 (Introduction and Overview).

[35]Paul Michael Brannagan & Richard Giulianotti, *The Soft Power—Soft Disempowerment Nexus: The Case of Qatar*, 94 Int'l Affs. 1139, 1139 (2018).

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C. Ambush Counter-Marketing in the Spotlight of the 2022 World Cup: How Migrant Workers Became Qatar's Problem

After the awarding of the 2022 World Cup, came intense public scrutiny and controversy. The country became almost immediately subject to "relentless,"[36] even "enormous,"[37] pressure from human-rights advocates and the media. Put bluntly, Qatar came "under attack for allegedly being a slave state that treats migrant workers as serfs."[38] As will be documented in this section, the media and CSOs leveraged the 2022 World Cup to put the fate of Qatar's migrant workers onto the world's agenda and to shame Qatar for failing to comply with its international obligations in this regard.

I. Putting Qatar's Migrant Workers on the World's Agenda: Ambush Counter-Marketing in the Spotlight of the FIFA World Cup

Back in the 2000s, Qatar was mostly absent of transnational public debates and would have been largely unknown to many people. The question of the treatment of migrant workers in Qatar—and more widely the in the Gulf countries—while already relevant in practice for many years, was then largely ignored by the media and leading CSOs and absent from the world's attention span. The news that the FIFA World Cup would come to town put an end to this invisibility. This is reflected quantitatively in the intensity of the coverage of the issue by two global newspapers, *The Guardian* and *The New York Times*, and in the reporting of Amnesty International ("Amnesty") and Human Rights Watch ("HRW"), as illustrated in Figure 1 below.[39] I have selected these sources due to their impact on public debates in my own public sphere—centered on Europe and the United States—they are not representative of the overall media attention or CSO involvement. These statistics inform us mainly about the evolution of the attention to Qatar's migrant workers amongst organizations which have prioritized this matter in the past years.

Qatar's migrant workers were literally put on the world's agenda overnight. The number of publications mentioning Qatar and "migrant workers" issued by the four organizations shows, first, that Qatar's migrant workers were of very marginal interest to them before 2010 and, second, that their reporting or advocacy on the issue picked up quickly after the attribution of the FIFA World Cup 2022. These numbers seem to support the idea of "NGOs as newsmakers," which "play an increasingly crucial role in shaping and in some cases directly producing news coverage about some of the most pressing humanitarian and human rights issues of our time."[40] In this regard, the tacit alliance between media and CSOs in the making of this issue is reminiscent of Margaret E. Keck and Kathryn Sikkink's transnational advocacy networks and their capacity to "mobilize information strategically to help create new issues and categories, and to persuade, pressurize, and gain leverage over much more powerful organizations and governments."[41]

The "avalanche of criticism"[42] linked to the abuses suffered by migrant workers is intimately connected to the attribution of the FIFA World Cup in its temporality, narrative, and visual dimension. Indeed, much of the reporting was expressly linking the plight of migrant workers with

[36]*See* Boykoff, *supra* note 32, at 346.

[37]Amanda Garrett, *The End of* Kafala*? Evaluating Recent Migrant Labor Reforms in Qatar*, 21 GEO. J. INT'L AFFS. 201, 202 (2020) ("Qatar faced enormous pressure to respond to systemic problems attributed to the *kafala* system.").

[38]*See* Dorsey, *supra* note 16, at 435.

[39]I have done a simple search of the websites of Amnesty International and HRW, of a database containing the articles of The Guardian (since 1990), as well as of the web-archives of The New York Times and counted the number of documents per year containing the words Qatar and "migrant workers."

[40]MATTHEW POWERS, NGOS AS NEWSMAKERS: THE CHANGING LANDSCAPE OF INTERNATIONAL NEWS 4 (2018).

[41]Margaret E. Keck & Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, 51 INT'L SOC. SCI. J. 89 (2002).

[42]James M. Dorsey, *The 2022 World Cup: A Potential Monkey Wrench for Change*, 31 INT'L J. HIST. SPORT 1739, 1741 (2014).

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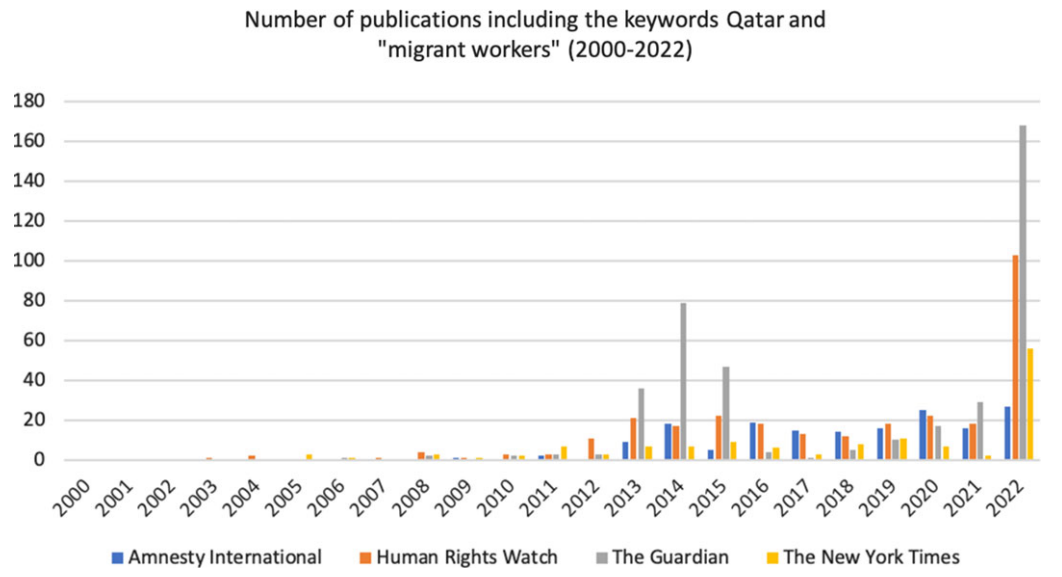

Figure 1. Major publications with key terms "Qatar" and "migrant workers".

Qatar's hosting of the FIFA World Cup. This connection was further reflected in the headlines used in the publications on this subject, as many stressed the fact that abuses against migrant workers were taking place "ahead of the World Cup."[43] Others were more directly built around football references, such as Amnesty's reference to the "Ugly Side of the Beautiful Game"[44] or HRW's call for "Building a Better World Cup."[45] Moreover, as I have highlighted elsewhere, news outlets and advocacy groups also systematically targeted FIFA in numerous reports, claiming that it shared significant responsibility with Qatar for these human rights abuses.[46] These reports were also accompanied by football-themed campaigns, such as Building and Wood Workers International's (BWI) call for a "Red Card for FIFA"—which led to demonstrations before the FIFA headquarters[47]—and Amnesty's 2016 "Qatar World Cup of Shame" petition.[48]

[43]*See generally* Amnesty Int'l, The Dark Side of Migration: Spotlight on Qatar's Construction Sector ahead of the World Cup (Nov. 18, 2013), https://amnesty.org/en/documents/mde22/010/2013/en/ [hereinafter The Dark Side of Migration]; Amnesty Int'l, Promising Little, Delivering Less: Qatar and Migrant Labour Abuse ahead of the 2022 Football World Cup (May 20, 2015), https://www.amnesty.org/en/documents/mde22/1570/2015/en/; Hum. Rts. Watch, Building a Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022 (June 12, 2012), https://www.hrw.org/sites/default/files/reports/qatar0612webwcover_0.pdf [hereinafter Building a Better World Cup]; Hum. Rts. Watch, "How Can We Work Without Wages?" Salary Abuses Facing Migrant Workers Ahead of Qatar's FIFA World Cup 2022 (Aug. 24, 2020), https://www.hrw.org/sites/default/files/media_2020/08/qatar0820_web_3.pdf.

[44]Amnesty Int'l, The Ugly Side of the Beautiful Game: Exploitation of Migrant Workers on a Qatar 2022 World Cup Site (Mar. 30, 2016), https://www.amnesty.org/en/documents/mde22/3548/2016/en/.

[45]*See* Building a Better World Cup, *supra* note 43.

[46]*See* Antoine Duval, *How Qatar's Migrant Workers Became FIFA's Problem: A Transnational Struggle for Responsibility*, 12 Transnat'l Legal Theory 473, 473–500 (2021) (compiling examples).

[47]*See* Brian Homewood, *Trade Unionists Protest Outside FIFA over Qatar Workers*, Reuters (Oct. 3, 2013), https://www.reuters.com/article/uk-soccer-fifa-protest-idUKBRE9920LK20131003 (detailing the protest and its context—the terrible treatment and high death toll of migrant workers in Qatar).

[48]*See generally Qatar World Cup of Shame*, Amnesty Int'l, https://www.amnesty.org/en/latest/campaigns/2016/03/qatar-world-cup-of-shame/ (last visited Nov. 6, 2023) (detailing facts regarding migrant worker treatment in Qatar, including living conditions and salary delays, and the profits FIFA generated from the World Cup).

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This act of tying together Qatar's position as host of the FIFA World Cup 2022 with the abuses suffered by migrant workers is what I call "ambush counter-marketing."[49] Instead of using the attention stemming from the competition in order to promote a commercial brand, CSOs relied on it to damage Qatar's reputation. This phenomenon has been also captured as the "soft disempowerment"[50] of Qatar. It constitutes the reverse side of Qatar's soft power strategy—indeed, as noted by van Ham, "countries can also be at the *receiving* end of a branding process."[51] Ironically, the 2022 World Cup became a vehicle "to introduce and educate many global audiences to the state [Qatar] in largely negative terms."[52]

II. Internationalizing the Issue: Framing the Plight of Migrant Workers as a Breach of Qatar's International Obligations

In their reports, Amnesty and HRW systematically presented the treatment of migrant workers in Qatar as amounting to a breach of the country's international obligations.[53] HRW's first report in 2012 already stressed that "the exploitation and coercive circumstances in which workers found themselves amounted to conditions of forced labor or human trafficking, *as defined under international law*."[54] It also alleged that Qatar by allowing Qatari workers to unionize but prohibiting migrant workers to do so was discriminating against the latter "in violation of international law."[55] Holding that "the fact that Qatari law prohibits migrant workers from forming trade unions violates these workers' right to freedom of association and collective bargaining, which is a core international labor right identified by the International Labor Organization (ILO)."[56] The text stressed that Qatar as an ILO member "has an obligation 'to respect, to promote, and to realize' core labor rights, including freedom of association and the right to collective bargaining."[57] Finally, HRW emphasized that "Qatar's commitments to human rights fall below even an average standard," as it had not ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which reflect "international best practice in protecting human rights."[58] Overall these failures were qualified by HRW as "Domestic Protection Gaps."[59]

Similarly, Amnesty's initial report in 2013 started by reviewing "Qatar's international legal obligations," underlining that even though it had not ratified the ICESCR and the ICCPR, it was still expected as a member of the UN Human Rights Council to "uphold the highest standards in the promotion and protection of human rights."[60] Furthermore, the report also outlined Qatar's obligations as a member of the ILO, listing the ILO Conventions it had ratified and insisting that, by virtue of this membership, it "has to uphold fundamental principles and rights, including

[49]*See Ambush Marketing*, CAMBRIDGE DICTIONARY (2023) ("[A] situation in which a company tries to advertise its products in connection with a big public event, without paying any money, although they are not the official sponsor.")

[50]*See* Brannagan & Giulianotti, *supra* note 35, at 1139; BRANNAGAN & REICHE, *supra* note 20, at 90; Griffin, *supra* note 21, at 1007 ("Qatar's World Cup is perhaps one of the most stunning examples of how 'soft disempowerment,' or public opinion, can work against a country as claims of corruption and unethical work practices mounted.")

[51]*See* van Ham, *supra* note 10, at 131.

[52]*See* BRANNAGAN & REICHE, *supra* note 20, at 90.

[53]It is important to note that while I focus primarily on Amnesty and HRW due to their ambition to tie the issue with international law and their capacity to bring the matter to the public (at least in the Global North), they were not the only CSOs active on these issues.

[54]BUILDING A BETTER WORLD CUP, *supra* note 43, at 95, 121, 123, 128, 130, 135, 142 (emphasis added).

[55]*Id.* at 7, 43.

[56]BUILDING A BETTER WORLD CUP, *supra* note 43, at 98.

[57]*Id.* at 46.

[58]*Id.* at 51.

[59]*Id.* at 98.

[60]THE DARK SIDE OF MIGRATION, *supra* note 43, at 7.

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freedom of association and collective bargaining."[61] In this regard, Amnesty urged the Qatari authorities to "ensure that the right to freedom of association is respected for all people in its country."[62] It also argued that "the penalty for forcing a person to work is not adequate, and therefore inconsistent with Qatar's obligations under the ILO Conventions." [63] As a final recommendation to the Qatari government, Amnesty urged Qatar to ratify a set of international instruments. [64]

Most of the ensuing reports and publications by Amnesty and HRW contain similar claims: They showcase the transformation of the issue into a matter of compliance with international—human rights and labor—law, turning the abuses suffered into a problem for the international community and the CSOs into "enforcers beyond borders"[65] of international commitments. In other words, Qatar's ratification of a number of international treaties and ILO Conventions provided "the central 'hook'"[66] to legitimize the CSOs calls for change. This leveraging of mega-sporting events to turn them into "human rights-promoting enterprises"[67] is not a new development, but it has been pushed to an extreme in the context of Qatar 2022. Furthermore, while HRW and Amnesty were engaging in a public-facing campaign to shame Qatar into respecting international law, the labor unions decided to wake up the ILO.

III. Waking Up a Sleeping Giant: Harnessing the ILO's Shaming Potential

The ILO's supervision of Qatar, which had joined the organization in 1972, was, in the early 2000s, concerned mostly with the child labor issues raised by the recourse to children as jockeys in camel races,[68] the discrimination of women in the labor market,[69] and the question of the forced labor of civil servants.[70] It was only after FIFA granted the 2022 World Cup to Qatar that the plight of migrant workers became the main focus of the ILO's supervision.[71] In January 2013, the International Trade Union Confederation (ITUC) and BWI made a representation under Article 24 of the Constitution of the ILO, alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29) and the Labour Inspection Convention, 1947 (No. 81).[72]

[61] *Id.* at 7.

[62] *Id.* at 108.

[63] *Id.* at 113.

[64] *Id.* at 128.

[65] Mette Eilstrup-Sangiovanni & J.C. Sharman, *Enforcers Beyond Borders: Transnational NGOs and the Enforcement of International Law*, 19 PERSPS. ON POL. 131, 131 (2021).

[66] BETH SIMMONS, MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS 6 (2009) ("The international legal structure, and especially those parts to which governments have explicitly and voluntarily committed via treaty ratification, provides the central 'hook' by which the oppressed and their allies can legitimately call for behavioral change.").

[67] Barbara Keys, *Harnessing Human Rights to the Olympic Games: Human Rights Watch and the 1993 "Stop Beijing" Campaign*, 53 J. CONTEMP. HIST. 415, 416 (2018).

[68] *See* observations of the CEACR on Qatar's compliance with the Worst Forms of Child Labour Convention adopted in 2004 and 2006 and the Forced Labour Convention, 1930 (No. 29) adopted in 2002 and 2004. The issue was also addressed by the Conference Committee on the Application of Standards (CAS) in 2005.

[69] *See* the direct requests of the CEACR on Qatar's compliance with the Discrimination (Employment and Occupation) Convention adopted in 2002, 2004, and 2005, 2006, 2011.

[70] *See* observations and direct requests of the CEACR on Qatar's compliance with the Forced Labour Convention, 1930 (No. 29) adopted in 2002, 2004, 2005, 2008, 2009, 2011, 2013, 2014, 2015, 2016, 2019 and 2020.

[71] For a general overview of the ILO's involvement, see INT'L LAB. ORG., *Labour Reforms in the State of Qatar: Coming Together Around a Shared Vision* (Oct. 31, 2022), https://www.ilo.org/beirut/countries/qatar/WCMS_859843/lang–en/index.htm. The CEACR considered for the first time the sponsorship system in short observations on Qatar's compliance with the Discrimination (Employment and Occupation) Convention adopted in 2008 and in 2011.

[72] The representation followed a first complaint filed by ITUC with the Committee on Freedom of Association, which alleged that Qatar imposed restrictions on the right of workers to establish and join organizations of their own choosing, to strike and bargain collectively, as well as excessive State control of trade union activities. *See* 371st Rep. of the Comm. on Freedom of Ass'n, ILO Doc. GB.320/INS/12 (2014).

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The representation was deemed admissible and an ad hoc tripartite committee was set up to examine it.[73] This representation also triggered the interest of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in charge of supervising the compliance of the signatories with ILO Conventions.[74] On March 24, 2014, the ad hoc committee published its assessment concluding that allegations made by the ITUC and the BWI were credible and issued a set of recommendations, which were later endorsed by the ILO Governing Body.[75] On this basis, a number of delegates at the June 2014 International Labour Conference decided to lodge a formal complaint against Qatar under Article 26 of the ILO Constitution, alleging that the country failed to comply with the Forced Labour Convention, 1930 (No. 29) and the Labour Inspection Convention, 1947 (No. 81).[76] This procedure is the main formal enforcement mechanism available in the context of the ILO.[77] The complaint was discussed in June 2015 by the Committee on the Application of Standards (CAS), which urged the Qatari government to implement a number of reforms.[78] A tripartite visit ensued in March 2016 to assess the reforms introduced by Qatar in response and its mission report substantiated most of the allegations made in the original complaint.[79] Consequently, the ILO Governing Body urged again the Qatari government to implement reforms.[80] This statement was followed in 2016 by the CEACR report, which came to the conclusion that the reforms introduced by Qatar from the start of the procedure did not put an end to the Kafala system and the related abuses, nor did they meaningfully improve the migrant workers' access to remedy.[81] Eventually, a new round of additional proposals were put forward by the Qatari government, which convinced the ILO's Governing Body to close the complaint procedure in October 2017.[82] The decision also provided for the signing between the ILO and Qatar of a comprehensive three-year technical cooperation program aimed at supporting the adoption and implementation of the proposed reforms.[83]

[73] *Id.*

[74] The plight of migrant workers became a mainstay of the observations and direct requests adopted after 2014 by the CEACR on Qatar's compliance with the Forced Labour Convention, 1930 (No. 29) and the Discrimination (Employment and Occupation) Convention. More specifically the CEACR considered at length ITUC and BWI's representation in its Observations on the Forced Labour Convention, 1930 (No. 29) adopted in 2014, 2015 and 2016.

[75] *See* ILO Director-General, *Eighth Supplementary Rep.: Rep. of the Committee Set Up to Examine the Representation Alleging Non-Observance by Qatar of the Forced Labour Convention, 1930 (No. 29), Made Under Article 24 of the ILO Constitution by the International Trade Union Confederation and the Building and Wood Workers International* 8–16, ILO Doc. GB.320/INS/14/8 (Mar. 24, 2014) (listing conclusions and recommendations).

[76] *See* Rep. of the Officers of the Governing Body, First Rep.: Complaint Alleging Nonobservance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), Made by Delegates to the 103rd Session (2014) of the International Labour Conference Under Article 26 of the ILO Constitution 1, ILO Doc. GB.322/INS/14/1 (Oct. 31, 2014) (explaining the nature and lodging of the complaint).

[77] *See generally* Francis Maupain, *The Settlement of Disputes within the International Labour Organization*, 2 J. Int'l Econ. L. 273 (1999) (regarding the place of the Article 26 Complaint in the enforcement system of the ILO); Shinichi Ago, *Complaint Procedure: International Labour Organization (ILO)*, *in* Max Planck Encyclopedia International Procedural Law (2020).

[78] *See* the CAS discussion of the case published in the report of the 104th ILC session (2015).

[79] *See* ILO Report, *infra* note 80, at 8 (Appendix II).

[80] *See* Decision: Complaint Concerning Non-Observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), Made by Delegates to the 103rd Session (2014) of the International Labour Conference Under Article 26 of the ILO Constitution 3, ILO Doc. GB.326/INS/8(Rev.) (Mar. 17, 2016) [hereinafter ILO Report] (listing the ILO's requests of the Qatari government with respect to labor abuses).

[81] *See generally* Decision: Complaint Concerning Non-Observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), Made by Delegates to the 103rd Session (2014) of the International Labour Conference Under Article 26 of the ILO Constitution, ILO Doc. GB.331/INS/13(Rev.) (Oct. 31, 2017).

[82] *See id.* at 3 (closing the complaint).

[83] *See* Int'l Lab. Org., Briefing Note: The Background to the ILO-Qatar Technical Cooperation Programme (2023), https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/briefingnote/wcms_868345.pdf.

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This ILO–Qatar cooperation program, funded by Qatar, started operating in April 2018 with the establishment of an ILO Project Office in Doha and its mandate was prolonged for two years in 2021.[84]

It is noteworthy that the plight of Qatar's migrant workers came under the scrutiny of the ILO only after it obtained the right to organize the 2022 World Cup, although migrant workers in Qatar were long subjected to abusive living and working conditions. Thus, it seems that not only were the ambush counter-marketing campaigns an opportunistic consequence of the spotlight provided by the FIFA World Cup, so was the ILO's activation. The role of the ILO vis-a-vis Qatar has been captured by Nicola Piper as one of a "nodal player on the pitch of networked governance,"[85] an intermediary between actors and governance levels in the process of change. Hence, in this context, the reputational and institutional enforcement of international labor law are intimately linked with and dependent on the spectacularization of the issue.[86] In fact, there is little to suggest that the ILO would have prosecuted this matter as forcefully without the attribution of the FIFA World Cup to Qatar.

The struggle for the rights of migrant workers in Qatar underscores the fundamental role of spectacle and marketing in the operation of international labor and human rights law. In fact, the ILO is not the only international organization which suddenly became concerned by this issue after the attribution of the 2022 FIFA World Cup.[87] The global attention linked to the World Cup was the trigger to the reformulation of this issue into an urgent international matter.[88] Yet, did the World Cup actually turn into the "agent of social and political change"[89] it was hoped to be?

D. Qatar's Reformist Success Story: Counter Counter-Marketing in Action?

After a few years, the Qatari government proclaimed its willingness to implement a reformist agenda and started introducing sweeping reforms touching on many of the fundamental issues faced by migrant workers. This increasing responsiveness to counter-marketing and the ILO's intervention can be linked to Qatar's care for its international image.[90] Yet, if one looks beyond the law in the books and turns to the law in action, this reformist narrative starts to unravel.

[84] *See id.*

[85] Nicola Piper, *The International Labour Organisation as Nodal Player on the Pitch of Networked Governance: Shifting the Goalposts for Migrant Workers in Qatar*, 22 GLOB. SOC. POL'Y 323–40 (2022).

[86] *See* Faradj Koliev & James H. Lebovic, *Shaming into Compliance? Country Reporting of Convention Adherence to the International Labour Organization*, 48 INT'L INTERACTIONS 258, 258 (2022) (regarding the ILO's intervention, the separation between reputational and institutional enforcement might be overstated, as it engages primarily into institutionalized forms of shaming to secure compliance with its Conventions). *See generally* Brian Langille, *The Curious Incident of the ILO, Myanmar, and Forced Labour*, *in* RESEARCH HANDBOOK ON TRANSNATIONAL LABOUR LAW 509 (Adelle Blackett & Anne Trebilcock eds., 2015).

[87] The European Parliament adopted two resolutions on the issue: European Parliament, Resolution on Qatar: situation of migrant workers (2013/2952(RSP)); European Parliament, Resolution on the Situation of Human Rights in the Context of the FIFA World Cup in Qatar (2022/2948(RSP)). The issue was also picked up by two UN Special Rapporteurs. *See* Rep. of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. A/HRC/44/57/Add.1, https://undocs.org/en/A/HRC/44/57/Add.1.

[88] *See* BRANNAGAN & REICHE, *supra* note 20, at 99 (qualifying this process as an instance of what Ulrich Beck called "global domestic politics").

[89] *See* Dorsey, *supra* note 42, at 1743.

[90] *See* THE POWER OF HUMAN RIGHTS, *supra* note 6, at 37 ("Countries most sensitive to pressure are not those that are economically weakest, but those that care about their international image.")

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I. The FIFA World Cup as "Monkey Wrench for Change": Celebrating Qatar's Reformism

It seems that after a stage of denial,[91] Qatar's rulers came to the conclusion that they had "no choice but to start addressing the issue."[92] Especially after the activation of the ILO's supervisory processes, Qatar started to regularly announce reforms aimed at tackling specific problems faced by migrant workers.[93] For example, with regard to the ability of migrant workers to freely move between Qatari employers and out of the country, we can trace a multiplicity of legislative changes, which have progressively—at least theoretically—reduced the level of dependency of migrant workers on their Qatari employers. While the first reforms proposed in 2015 were decried as cosmetic and superficial in nature,[94] since then the Qatari government has introduced reforms which allow migrant workers to leave the country without the authorization of their employer,[95] and eased their ability to switch between employers.[96] These reforms were celebrated as putting a definitive end to the infamous *kafala* system.[97] Other flagship changes include the introduction of a minimum wage,[98] the creation of Workers' Dispute Resolution Committees and Labor Disputes Settlement Committees,[99] and tighter restrictions applying to outside work during the summer period.[100]

The reforms have received a varying level of praise from the main CSOs involved in the counter-marketing campaign, such as HRW, Amnesty, ITUC and BWI.[101] The head of ILO's mission in Qatar even called them "revolutionary" and a set of "historic achievements."[102] Indeed, if one focuses only on the scope of legislative and regulatory change on paper, it is arguable that

[91]*See* Dorsey, *supra* note 16, at 424–25 (detailing the initial resistance of Qatari authorities to address their human rights reputation).

[92]*See* Dorsey, *supra* note 42, at 1752. *See also* Kamrava, *supra* note 15, at xxii ("Largely in response to these criticisms, the government started taking a series of measures aimed at improving conditions of laborers and the legal framework governing their entry, employment, and exit procedures.").

[93]*See* Int'l Lab. Org., Progress Report on the Technical Cooperation Programme Between the Government of Qatar and the ILO Project Office for the State of Qatar (Oct. 31, 2022), https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms_859839.pdf; Int'l Lab. Org., *supra* note 71.

[94]*See* Amnesty Int'l, New Name, Old System? Qatar's New Employment Law and Abuse of Migrant Workers (Dec. 12, 2016), https://www.amnesty.org/en/documents/mde22/5242/2016/en/#:~:text=Qatar%20has%20been%20under%20intense,at%20risk%20of%20forced%20labour.

[95]*See* Law No. 1 of 4 Jan. 2017 Which Amends Several Provisions of Law No. 21 of 2015, Which Regulates the Entrance, Exit and Residence of Expatriates, https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/105098/128417/F798890908/QAT105098%20Eng.pdf; Law No. 13 of 2018 and Ministerial Decision No. 95 of 2019; *Qatar: Partial Abolition of "Exit Permit" Lifts Travel Restrictions for Most Migrant Workers*, Amnesty Int'l (Sept. 5, 2018).

[96]Law No. 18 of 2020 amending certain provisions of Labour Law No. 14 of 2004 and Law No. 19 of 2020 amending certain provisions of Law No. 21 of 2015 related to organizing the entry and exit of expatriates and their residence.

[97]*See, e.g.*, *Breakthrough to End* Kafala *After New Commitments from Qatar on Workers' Rights*, Int'l Trade Union Confederation (Oct. 25, 2017), https://www.ituc-csi.org/breakthrough-to-end-kafala-after?lang=en (last visited Nov. 6, 2023); *Qatar Dismantles* Kafala *System of Modern Slavery*, Int'l Trade Union Confederation (Oct. 16, 2019), https://www.ituc-csi.org/qatar-dismantles-kafala?lang=en (last visited Nov. 6, 2023); *Landmark Labour Reforms Signal End of* Kafala *System in Qatar*, Int'l Lab. Org. (Oct. 16, 2019), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_724052/lang–en/index.htm (last visited Nov. 6, 2023); *Dismantling the* Kafala *System and Introducing a Minimum Wage Mark New Era for Qatar Labour Market*, Int'l Lab. Org. (Aug. 30, 2020), https://www.ilo.org/beirut/countries/qatar/WCMS_754391/lang–en/index.htm (last visited Nov. 6, 2023); *Qatar: New Laws to Protect Migrant Workers are a Step in the Right Direction*, Amnesty Int'l (Aug. 30, 2020), https://www.amnesty.org/en/latest/press-release/2020/08/qatar-annoucement-kafala-reforms/ (last visited Nov. 6, 2023); *UN Human Rights Experts Welcome Qatar's Improvement of Migrant Rights*, UN (Sept. 3, 2020), https://www.ohchr.org/en/press-releases/2020/09/un-human-rights-experts-welcome-qatars-improvement-migrant-rights (last visited Nov. 6, 2023); *Qatar: Significant Labor and Kafala Reforms*, Hum. Rts. Watch (Sept. 24, 2020), https://www.hrw.org/news/2020/09/24/qatar-significant-labor-and-kafala-reforms (last visited Nov. 6, 2023).

[98]Law No. 17 of 2020 Determining the National Minimum Wage for Workers and Domestic Workers.

[99]Law establishing Workers' Dispute Resolution Committees of 16 Aug. 2017 and Cabinet Resolution No. 6 of 2018.

[100]Ministerial Decree No. 17 of 2021 and National Policy on Occupational Safety and Health in 2020.

[101]*See generally* sources cited *supra* note 97.

[102]*See* Brannagan & Reiche, *supra* note 20, at 99.

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the calls for "seizing the moment"[103] and "leveraging the World Cup"[104] as a "catalyst for labor reform"[105] were heeded. Even critical voices acknowledged that Qatar has brought in "relatively strong labour codes that provide minimum standards of working hours, rest periods, entitlements and wages."[106] From this perspective, the World Cup fulfilled its role as a "monkey wrench for change"[107] by generating "positive externalities"[108] in the form of new laws and policies. This is a "legacy"[109] that FIFA is more than happy to celebrate in its public communication,[110] while Qatari officials embrace the "transformational power"[111] of the World Cup as part of the country's modernization journey.

Yet, this Hollywoodian success story of transformative change is not the whole story. Instead, there is some evidence that this flurry of new legislation and policies had limited practical effects on the ground.

II. Plus ça change, moins ça change: Qatar's Potemkin Reforms

"The people who say the World Cup made things better for workers in Qatar are probably tourists."[112]

"Qatar can do the dance with western critics, knowing well that it doesn't have to change anything on the ground."[113]

Undoubtedly, Qatar changed a lot over the past decade, and so did the legislative and administrative rules which govern migrant workers. Yet, this change is not necessarily as broad, effective, or long-lasting as hoped.

First, it is important to acknowledge what didn't change over the past years. Migrant workers have not gained any political rights in Qatar—they remain very far from Fraser's ideal of the "parity of participation"[114] in authorized contests over justice. Unlike other "networks of outrage,"[115] demands for political or industrial democracy were not prominent in the public

[103]B.P. ter Haar, *The FIFA 2022 World Cup and Labour Rights—Seizing the Moment for Labour Law Reforms in Qatar*, 5 KUTAFIN U. L. REV. 139, 139 (2017).

[104]Sarath K. Ganji, *Leveraging the World Cup: Mega Sporting Events, Human Rights Risk, and Worker Welfare Reform in Qatar*, 4 J. MIGRATION & HUM. SEC. 221, 221 (2016).

[105]Nigel G. Crocombe, *Building a New Future: The 2022 FIFA World Cup as a Potential Catalyst for Labor Reform in Qatar*, 37 SUFFOLK TRANSNAT'L L. REV. 33, 33 (2014).

[106]*See* Vani Saraswathi, *The Kafala is Alive and Kicking . . . Migrants Where it Hurts Most*, MIGRANT-RIGHTS.ORG (Oct. 29, 2020), https://www.migrant-rights.org/2020/10/the-kafala-is-alive-and-kicking-migrants-where-it-hurts-most/ (arguing that Qatar has made progress regarding labor rights only "[o]n paper").

[107]Dorsey, *supra* note 42, at 1752.

[108]Boykoff, *supra* note 32, at 349.

[109]*See* ANDREW SPALDING, A NEW MEGASPORT LEGACY: HOST-COUNTRY HUMAN RIGHTS AND ANTI-CORRUPTION REFORMS (2022).

[110]*See, e.g.*, *Gianni Infantino Says World Cup Spotlight Has Led to Better Workers' Rights in Qatar*, INSIDE FIFA (Oct. 6, 2022), https://www.fifa.com/about-fifa/president/news/gianni-infantino-says-world-cup-spotlight-has-led-to-better-workers-rights (explaining, without showing legitimate improvement, that Qatar's workers' rights profile had improved because of the World Cup).

[111]*SC Secretary General: Qatar 2022 Will Leave a Transformational Legacy for Our Region*, QATARI NEWS AGENCY (Aug. 3, 2022), https://www.qna.org.qa/en/News%20Area/News/2022-08/03/0027-sc-secretary-general-qatar-2022-will-leave-transformational-legacy-for-our-region ("We committed to ensuring that this World Cup leaves a truly transformational social, human, economic and environmental legacy, and is remembered as a landmark moment in the history of our region.").

[112]Francis Nanseera, *Wage Theft in Qatar Didn't Stop with the World Cup*, OPEN DEMOCRACY (May 3, 2023), https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/wage-theft-in-qatar-didnt-stop-with-the-world-cup/.

[113]Vani Saraswathi, *Workers in Qatar Remain Voiceless and Invisible, Despite Reforms and International Furore*, MIGRANT-RIGHTS.ORG (Nov. 3, 2022), https://www.migrant-rights.org/2022/11/workers-in-qatar-remain-voiceless-and-invisible-despite-reforms-and-international-furore/.

[114]Nancy Fraser, *Reframing Justice in a Globalizing World*, 36 NEW LEFT REV. 69, 69 (2005).

[115]MANUEL CASTELLS, NETWORKS OF OUTRAGE AND HOPE: SOCIAL MOVEMENT IN THE INTERNET AGE 315–16 (2012).

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debates surrounding the 2022 World Cup, and, thus, were largely ignored in Qatar's response to it. This absence is a key limiting factor that is jeopardizing the implementation of the substantive reforms achieved. Concretely, no real progress has been made on collective bargaining and unionization of migrant workers. Instead, in the lead-up to the World Cup, workers' rights activists and—unofficial—workers representatives were regularly targeted and deported by the authorities.[116] This inability to put workplace democracy at the center of the reforms might be linked to the lesser visibility or dramatic nature of the issue, and, therefore, to its lower value as a source of scandalization and counter-marketing. Consequently, both in the political sphere and in the economic one, migrant workers remain unrepresented and deprived of a say in the way the Qatari state and corporations govern their lives.

Second, there are signs that the reforms achieved are "only on paper,"[117] a "façade,"[118] or "more like suggestions."[119] Indeed, the media and some CSOs have in the past months continued to regularly document abuses,[120] which are in fundamental contradiction with the newly adopted rules. The lifting of the need for a non-objection certificate in order to shift between Qatari employers offers a good example of the concrete social and legal mechanisms at play in watering down the reforms introduced.[121] While this requirement was lifted by Qatar in 2020 through two Decrees,[122] in practice migrant workers still face considerable hurdles to change employers. Recently, only nine out of sixty-one workers surveyed by the Business and Human Rights Resource Centre said they could change jobs during their stay in Qatar.[123] In light of the stiff resistance by Qatari businessmen to the changes on this issue, the Qatari authorities have increased the administrative burden to vindicate one's right to switch between Qatari employers.[124] Moreover, there is evidence that Qatari employers made use of a wide range of deterrence strategies, through material or administrative sanctions, to strongly increase the practical costs of such a switch.[125] For example, it has been reported that new employers continue

[116]*See, e.g.*, Areeb Ullah, *Qatar World Cup: Kenyan Labour Rights Activist "Detained and Deported,"* MIDDLE E. EYE (Oct. 20, 2022), https://www.middleeasteye.net/news/qatar-world-cup-kenya-labour-rights-activist-detained-deported; Malcolm Bidali, *What Happens When No One's Looking?*, MIGRANT-RIGHTS.ORG (Aug. 23, 2021), https://www.migrant-rights.org/2021/08/what-happens-when-no-ones-looking/; Pramod Acharya, *Months Before World Cup, Workers Forced to Return Home Early and With Pending Dues*, MIGRANT-RIGHTS.ORG (Sept. 4, 2022), https://www.migrant-rights.org/2022/09/months-before-world-cup-workers-forced-to-return-home-early-and-with-pending-dues/; *Hundreds of World Cup Workers Stage Protest, Remain Unpaid and Destitute*, MIGRANT-RIGHTS.ORG (Feb. 8, 2023), https://www.migrant-rights.org/2023/02/hundreds-of-world-cup-workers-stage-protest-remain-unpaid-and-destitute/.

[117]Saraswathi, *supra* note 106; *see generally* Pete Pattisson & Nick Ames, *"Legacy, What Legacy?" Fight Goes on for Migrant Workers in Qatar 100 Days After World Cup*, GUARDIAN (Mar. 28, 2023), https://www.theguardian.com/football/2023/mar/28/legacy-fight-goes-on-for-migrant-workers-in-qatar-100-days-after-world-cup.

[118]*See* Nanseera, *supra* note 112.

[119]Greg Bishop, *The World Has Moved On, but They Say Injustices From Qatar World Cup Remain*, SPORTS ILLUSTRATED (Aug. 3, 2023), https://www.si.com/soccer/2023/08/03/qatar-world-cup-stark-security-guards-daily-cover.

[120]*See, e.g.*, Isobel Archer, *After the Final Whistle: Migrant Workers Speak Out on Exploitation During Qatar World Cup 2022*, BUS. & HUM. RTS. RSCH. CTR. (June 2023), https://media.business-humanrights.org/media/documents/2023_World_Cup_report.pdf; *Qatar: Six Months Post-World Cup*, *supra* note 6; Katherina Lucas, *"Terrible" Human Rights Abuses "Commonplace" Six Months After Qatar 2022 Despite FIFA Promises*, I NEWS (June 16, 2023), https://inews.co.uk/sport/football/terrible-human-rights-abuses-commonplace-six-months-qatar-fifa-2416397; *Qatar: Hundreds of Migrant Workers Employed as Security Guards at FIFA World Cup Denied Justice for Abuses*, AMNESTY INT'L (June 15, 2023), https://www.amnesty.org/en/latest/news/2023/06/qatar-hundreds-of-migrant-workers-employed-as-security-guards-at-fifa-world-cup-denied-justice-for-abuses/; Pattisson & Ames, *supra* note 117.

[121]*See generally Three Years Since Sweeping Reforms, Workers in Qatar Face Evermore Innovative Obstacles*, MIGRANT-RIGHTS.ORG (Oct. 30, 2023), https://www.migrant-rights.org/2023/08/three-years-since-sweeping-reforms-workers-in-qatar-face-evermore-innovative-obstacles/ [hereinafter *Three Years*].

[122]Decree Law No. 18 of 2020 amending some provisions of Labour Law No. 14 of 2004 and Decree Law No. 19 of 2020 amending some provisions of 2004 Law No. 21 of 2015 regulating the entry and exit of expatriates and their residence.

[123]*See* Archer, *supra* note 120, at 5.

[124]*See generally Three Years*, *supra* note 121.

[125]*Id.*

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to request an official discharge from the previous employer before hiring a migrant worker.[126] To summarize, on this fundamental issue, which is conditioning the power balance between employees and employers, the gap between the rights on paper and in practice remains purposefully wide.

Qatar's overhaul of its judicial and administrative systems to provide greater access to justice to migrant workers is another example of a similar gap.[127] The Qatari authorities and the ILO have promoted the new processes available to migrant workers in order to claim their rights as seamless and efficient, but these were quickly undermined by discrete administrative decisions. For example, a Ministerial Decision of 2022 considerably reduced the attractiveness of pursuing claims through Qatar's Workers' Support and Insurance Fund by putting a cap on the maximum disbursement of financial entitlements.[128] In general, migrant workers face considerable material hurdles to access justice, as Qatari employers regularly retaliate against those who are claiming their rights,[129] often pushing them into extreme poverty and precarious living conditions.[130] Hence, it is not unusual for them to simply leave the country before they have been able to secure any compensation and abandon their claim.[131] These examples are a reminder that legislation, when it is not coupled with institutional safeguards and social buy-in, can have a different effect in practice than expected. In short, Qatari reforms might have been drafted for an international audience and applied for a local one. This would correspond to the "tactical concession phase"[132] identified by Risse and Ropp in their model focusing on the enforcement of human rights, Qatar "talks the talk" externally while adopting contradictory discourses and policies internally.

Finally, there is the unanswerable question of the future. After the attention brought by the 2022 World Cup recedes, will Qatar just turn back the clocks on the reforms? Formulated differently by a migrant worker: "What will happen when no one is looking?"[133] There seem to be a widespread perception amongst migrant workers and labor unions that this is a very serious possibility or even already happening.[134] It's unclear at this stage whether the World Cup's finish will mark the end of the beginning or the beginning of the end for Qatar's reforms. But if the past is a reliable guide to the present, a further backtracking on the limited labor reforms adopted would not be surprising.[135] While measuring the impact of the ambush counter-marketing strategy is a difficult task, we have identified serious cracks in the rosy reformist narrative embraced by FIFA, Qatar, and the ILO.

[126]*See generally A De Facto NOC in Qatar?*, MIGRANT-RIGHTS.ORG (Jan. 10, 2021), https://www.migrant-rights.org/2021/01/a-de-facto-noc-in-qatar/.

[127]For a detailed analysis, see Law establishing Workers' Dispute Resolution Committees of 16 Aug. 2017 and Cabinet Resolution No. 6 of 2018. See as well Zachary Calo, *Labor Rights and Dispute System Design: Assessing the Legal Legacy of the 2022 Qatar World Cup*, in this issue.

[128]Decision of the Chairman of the Board of Directors of the Workers' Support and Insurance Fund No. (2) of 2022 on the Provisions and Procedures for Disbursing Workers' Entitlements.

[129]*See* Vani Saraswathi, *Huroob, Runaway, Absconding: Trapping Migrants in Extreme Abuse*, MIGRANT-RIGHTS.ORG (Sept. 30, 2020), https://www.migrant-rights.org/2020/09/huroob-runaway-absconding-trapping-migrants-in-extreme-abuse/ (detailing concrete examples of retaliation).

[130]*See, e.g.*, Saraswathi, *supra* note 113; Saraswathi, *supra* note 106.

[131]*See*, *e.g.*, *Hostile Qatar Judicial System Forces Judith to Give Up Her Fight and Return Home*, MIGRANT-RIGHTS.ORG (May 22, 2023), https://www.migrant-rights.org/2023/05/hostile-qatar-judicial-system-forces-judith-to-give-up-her-fight-and-return-home/ (recounting the story of Judith Nyakangi's fight against the Qatari judicial system and the abuse she faced while working in Qatar).

[132]*See* THE POWER OF HUMAN RIGHTS, *supra* note 6, at 254.

[133]*See* Bidali, *supra* note 116.

[134]*See, e.g.*, Molly Blackall, *Qatar Migrant Workers Still Face Exploitation and Harassment Despite World Cup Promises*, I NEWS (July 18, 2023), https://inews.co.uk/news/world/qatar-migrant-workers-exploitation-harassment-world-cup-promises-2483623; Lucas, *supra* note 120.

[135]*See* NATASHA ISKANDER, DOES SKILL MAKE US HUMAN? MIGRANT WORKERS IN 21st-CENTURY QATAR AND BEYOND 64 (2021) (recalling that in the early 2000s, Qatar's government dismantled many of the protections introduced in the 1962 Labor Laws).

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E. The Limits of Ambush Counter-Marketing in Securing the Rights of Qatar's Migrant Workers

As I have documented, the Qatar 2022 World Cup provided the backdrop to a massive public campaign aimed at vindicating the rights of migrant workers. In terms of putting this issue on the world's agenda, the "ambush counter-marketing" pursued by CSOs with the support of global media outlets was an unmitigated success. Furthermore, this attention led to the institutional activation of the ILO and its engagement with a matter that it had until then completely overlooked, which in turn increased the public pressure on the Qatari authorities, ultimately leading to the emirate adopting a number of reforms. Narrated like this, the Qatar 2022 saga turns into a Hollywoodian success story for all parties involved: FIFA kindly provided the spotlight, the CSOs' stamina and the ILO's authority pushed the rights of Qatar's migrant workers under it, and Qatar bowed to the public pressure and reformed the country. In this story, the practical meaning of rights grounded in international law becomes a proxy of public attention and indignation. In other words, without the 2022 World Cup, the abuses suffered by the same migrant workers would most likely have remained invisible and the ILO reticent to intervene. As pointed out by Schwöbel-Patel, "in today's visual society, if you are not seen, you do not exist,"[136] what Kennedy called the "tip of the iceberg problem."[137] Invisibility, ephemerality and inequality are the reverse side of this reliance on spectacle as driver for change.[138]

But does it matter? If counter-marketing delivers change for those that are systematically abused and whose rights are violated, who cares about the strategy used to get there? The problem might be that when law turns into an instrument of communication, then legislative change—such as the reforms introduced by the Qatari government—can also be instrumentalized to diffuse risks to a national brand. Over the past decade, the Qatari authorities mastered the art of claiming credit for reformism, while on the ground the experience of migrant workers seems to have improved only marginally. The reforms were rather reminiscent of what Wolfe called, in the context of the Olympics, Potemkinism: "[A] condition that appears successful and whole, but in actuality disguises something missing, unpleasant, or broken."[139] We are reminded of the old legal realist distinction between law in the books and the law in action. In order to achieve change through legislative reforms, one needs to also address the institutions and processes that channel rules into actions. In our case, the collaborative efforts of the media, CSOs, ILO, and other labor organizations did achieve rule change on paper, but failed in opening a space for political representation inside the Qatari state and corporations for the migrant workers living in the country. Now that the shining lights of the World Cup have been switched off, frustration in the face of the limited changed achieved is increasingly voiced,[140] but the public leverage gained through counter-marketing has vanished with the removable stadiums. Ultimately, it might be that the organizations which publicized the fate of Qatar's migrant workers in the first place were

[136]Christine Schwöbel-Patel, *Spectacle in International Criminal Law: The Fundraising Image of Victimhood*, 4 London Rev. Int'l L. 247, 257; *see also* Schwöbel-Patel, *supra* note 7, at 4 ("What is *seen* in society is part of a political battle, a battle over the distribution of the sensible.").

[137]David Kennedy, *The International Human Rights Regime: Still Part of the Problem?*, *in* Examining Critical Perspective on Human Rights 19–34 (Rob Dickinson, Elena Katselli, Colin Murray, & Ole W. Pedersen eds., 2012).

[138]Clifford Bob, The Marketing of Rebellion: Insurgents, Media, and International Activism 193 (2005) ("Unfashionable, complex, or intractable conflicts fester in isolation, whereas those that match (or thanks to savvy marketing appear to match) international issues of the moment attract disproportionate interest."). The brutality and arbitrariness of the "global morality market" is at the heart of Clifford Bob's book. *Id.*

[139]Sven Daniel Wolfe, *The Juggernaut Endures: Protest, Potemkinism, and Olympic Reform*, Leisure Stud. 1, 3 (2023).

[140]Bishop, *supra* note 119 (referring to a prominent activist who recently regretted "not calling b.s." on Qatar hosting an international sports tournament). *See also* Sean Ingle, *"Positive Change has Ceased" for Workers in Qatar Since World Cup, Unions Say*, The Guardian (Mar. 15, 2023), https://www.theguardian.com/football/2023/mar/15/positive-change-ceased-migrant-workers-qatar-since-world-cup-unions-say.

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the main beneficiaries of this decade.[141] In some cases, there is evidence that some of the actors involved benefitted financially from their involvement in Qatar's reform process.[142]

What does this tell us about the role of MSEs in achieving social change and defending the rights of the marginalized in the host country?[143] Undoubtedly, MSEs—especially the FIFA World Cup and the Olympics—offer a hook for mobilizing global public attention and for raising the profile of an unjust situation,[144] which can serve as a lever for change when the state concerned cares about its brand or reputation—like Qatar did.[145] Yet, the change achieved risks being "more about pretense than practice,"[146] another discursive move on a global communication battlefield. In this regard, ambush counter-marketing serves as potent driver for reforms, but the latter are primarily "iterations of public relations spiel with kernels of truth."[147] Deeper transformative change in host countries of MSEs is likely to require sustained and locally embedded social mobilization in order to affect the local balance of power, as meaningful change can come only with a strengthened accountability of local institutions—be they political, legal, or economical to those that are affected and abused by them. As pointed out by Gay Seidman,

> [w]hen transnational labor campaigns seek to strengthen workers' voices, creating channels for articulation and collective representation—rather than simply publicizing the worst kinds of abuses—they are in a better position to help construct new visions of citizenship, create new possibilities for voice and participation, and strengthen labor rights for workers across borders.[148]

Ultimately, the time-bound public indignation which surrounded the 2022 World Cup seems to have done little to reinforce the agency of the migrant workers themselves, giving the impression that they "have deliberately been excluded from the negotiations and advocacy around their human right."[149] Like the Beijing 2008 Olympics, the 2022 World Cup had undoubtedly an impact

[141] *See* Keys, *supra* note 67, at 23 ("HRW was instrumental in preventing China from hosting the 2000 Games, and the campaign brought it an increased measure of fame and—most likely—fortune."); Keys, *supra* note 5, at 116–18 ("In a post-Cold War world in which human rights advocacy needed new audiences and new media-friendly messages, HRW's involvement in Olympic affairs was a savvy way to buttress the group's power and prestige."). Schwöbel-Patel offers a similar critique in a different context. *See* SCHWÖBEL-PATEL, *supra* note 7, at 125–28. *See generally* STEPHEN HOOPGOOD, THE ENDTIMES OF HUMAN RIGHTS 103–10 (2013).

[142] *See* Rebecca R. Ruiz & Sarah Hurtes, *In World Cup Run-Up, Qatar Pressed U.N. Agency Not to Investigate Abuses*, N.Y. TIMES, Mar. 11, 2023 (displaying how Qatar may have been acting in corrupt ways before the World Cup).

[143] For a very similar questioning, see Shubham Jain, *Resistance and Reform as Responses to Human Rights Criticism: Relativism at FIFA World Cup Qatar 2022*, in this issue.

[144] *See* Boykoff, *supra* note 32, at 342–51 ("Attempts at sportswashing invite increased scrutiny, as when the Qatar 2022 World Cup raised profile of the country's kafala system, forcing reform, while throwing a spotlight on FIFA corruption."); Dorsey, *supra* note 42, at 1739–54; BRANNAGAN & REICHE, *supra* note 20, at 92 ("In the search for controversial, scandalous stories that can easily be framed, major sports event—such as a World Cup or Olympic Games—provide non-state actors with a prime opportunity."); Zack Bowersox, *Naming, Shaming, and International Sporting Events: Does the Host Nation Play Fair?*, 69 POL. RSCH. Q. 258, 258–69 (2016); John Horne, *Understanding the Denial of Abuses of Human Rights Connected to Sports Mega-Events*, 37 LEISURE STUDS. 11, 18 (2017) ("The critique of, and moral panic about, sporting mega-events has become an important aspect of globalisation because it provides a transnational social and political space for public discussion that exceeds the boundaries of nation states.").

[145] *See* Susan Brownell, *Human Rights and the Beijing Olympics: Imagined Global Community and the Transnational Public Sphere*, 63 BRIT. J. SOCIO. 306 (2012) (showing how China was much less receptive to this public pressure).

[146] Barbara J. Keys & Roland Burke, *The Future of Idealism in Sport*, *in* THE IDEALS OF GLOBAL SPORT: FROM PEACE TO HUMAN RIGHTS 219 (Barbara J. Keys ed., 2019) ("Their turn to human rights has been instrumental, more about pretense than practice.").

[147] *See* Saraswathi, *supra* note 113.

[148] GAY W. SEIDMAN, BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM 144 (2007).

[149] *See* Saraswathi, *supra* note 113. *See also* ISKANDER, *supra* note 135, at 20 ("International campaigns to improve migrant working conditions, with their widespread adoption of the image of the overall-clad migrant as the symbol of modern slavery, slipped, however unintentionally, into discourses that echoed beliefs about unskilled migrant workers' limited capacity for agency.").

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"in the realm of vocabulary, discourse, and the exchange of ideas,"[150] but its transformative effects in Qatari society and politics are not evident.

Finally, this case study underlines the role of spectacle and counter-marketing in the struggle for international labor rights and the contingency of the attention-driven advocacy resulting from it. It offers as well a sobering account of the transformative effects achieved by such strategies,[151] and should encourage scholars to conduct in depth qualitative investigations when assessing the reforms triggered. Ultimately, this points at the need to be modest about the change that can be attained through ambush counter-marketing and to be aware of its dependence on the mobilization of local actors. Instead, the risk is that these "awareness-raising campaigns, through aiming to 'sell' global justice, tend to construct a *consumer* of global injustice rather than a *political actor* of global justice."[152] Moreover, such marketing-driven strategies might submerge "alternative political sites—diplomacy, national legislatures, grass-roots movements—and vocabularies which may be more useful, more likely to emancipate, more likely to encourage habits of engagement, solidarity, and responsibility, more open to surprise and reconfiguration."[153] In sum, without broad-based social and political mobilization leading to political inclusion and equality, migrant workers can hardly gain what Arendt called the "right to have rights"[154] both in Qatar and beyond.[155] For such a task, "playing informational politics"[156] in the spotlight of MSEs might simply not be enough.

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[150]Susan Brownell, *The View from China: Two Olympic Bids, One Olympic Games, and China's Changing Rights Consciousness*, *in* THE IDEALS OF GLOBAL SPORT: FROM PEACE TO HUMAN RIGHTS 178 (Barbara J. Keys ed., 2019). *See also* Dmitry Dubrovskiy, *The Moscow 1980 and Sochi 2014 Olympic Games: Dissent and Repression*, *in* THE IDEALS OF GLOBAL SPORT: FROM PEACE TO HUMAN RIGHTS 136 (Barbara J. Keys ed., 2019); Jules Boykoff, *Hosting the Olympic Games in Developed Countries: Debating the Human Rights Ideals of Sport*, *in* THE IDEALS OF GLOBAL SPORT: FROM PEACE TO HUMAN RIGHTS 157 (Barbara J. Keys ed., 2019) ("As it turned out, however, predictions of Olympics-induced human rights progress in China were greatly exaggerated.").

[151]*See* Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L ORG. 689–716 (2008).

[152]*See* SCHWÖBEL-PATEL, *supra* note 7, at 180.

[153]DAVID KENNEDY, THE DARK SIDES OF VIRTUE: REASSESSING INTERNATIONAL HUMANITARIANISM 23 (2004).

[154]*See* AYTEN GÜNDOGDU, RIGHTLESSNESS IN AN AGE OF RIGHTS: HANNAH ARENDT AND THE CONTEMPORARY STRUGGLES OF MIGRANTS (2014) and STEPHANIE DEGOOYER, ALASTAIR HUNT, LIDA MAXWELL, & SAMUEL MOYN, THE RIGHT TO HAVE RIGHTS (2018).

[155]On the importance of political mobilization in rights-centered strategies of counter-hegemonic actors, see BOAVENTURA DE SOUSA SANTOS & CESAR A. RODRIGUEZ-GARAVITO, *Introduction in* LAW, POLITICS, AND THE SUBALTERN IN COUNTER-HEGEMONIC GLOBALIZATION 15–16 (2009).

[156]*See* SAMUEL MOYN, NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD 218 (2018) ("And when it comes to mobilizing support for economic fairness, the chief tools of the human rights movement—playing informational politics to stigmatize the repressions of states or the disasters of war—are simply not fit for use.").

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