

INTERNATIONAL CORPORATE LIABILITY: A SOLUTION FOR THE EXPLOITATION OF MIGRANT WORKERS IN QATAR

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I. INTRODUCTION

The global economy flourishes under a capitalist structure where countries and companies compete to reach the pinnacle of success. The methods used to surpass competitors vary among the players in the global economic game. One method of accruing wealth is international sporting events, which draw a great deal of attention because of the intense competition among talented athletes, as well as among nations to host such events.¹ The Fédération Internationale de Football Association (“FIFA”) World Cup falls into the category of a mega sporting event (“MSE”) and is distinguished from others in this category “in terms of prestige, attendance, interest, publicity, cost, and common levels of venue and infrastructure development.”² Like other MSEs, the World Cup greatly benefits its host country by projecting a rejuvenated image of the nation and region.³ But at what cost? While hosting an MSE requires great effort from both public and private actors, it also leads to numerous tragic deaths as migrant workers are exploited in order for nations to meet quick deadlines to build grand structures.

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1. INST. FOR HUM. RTS. & BUS., STRIVING FOR EXCELLENCE: MEGA-SPORTING EVENTS AND HUMAN RIGHTS 1 (2013).

2. *Id.* at 7.

3. *Id.*

The nation of Qatar stepped into the spot light when it won the bid to host the 2022 FIFA World Cup.⁴ It is a grand accomplishment for the nation, as the world will watch it prepare for the World Cup by constructing elaborate buildings to flaunt before its attendees. Many anticipate that during its preparation, Qatar will increase the exploitation of migrant workers, and the death toll will rise.⁵ The International Trade Union Confederation (ITUC) projected that 4000 migrant workers would die before the 2022 World Cup, which is estimated to cost \$100 billion.⁶ *The Guardian* reported that between June and August of 2013, forty-four Nepalese workers died, most of whom suffered from heart failure caused by working in 122 degree Fahrenheit heat with little access to drinking water.⁷ There are also reports that workers were deceived during employment recruitment, had their passports confiscated, and had their salaries reduced.⁸ The Qatar Foundation, a private nonprofit organization created to improve community development, has developed a set of standards that prohibit such activity.⁹ However, the benefits of such standards have yet to be seen. Additionally, Qatar established a labor code in 2004 that has done little to protect migrant workers from such abuse.¹⁰ Since then, the focus on who is responsible for preventing worker exploitation has shifted to CH2M Hill, the American multinational construction company that Qatar hired to manage

4. Marissa Payne, *Amnesty International Says Qatar Is 'Still Failing' When It Comes to Migrant Workers and the 2022 FIFA World Cup*, WASH. POST (Nov. 12, 2014), <http://www.washingtonpost.com/blogs/early-lead/wp/2014/11/12/amnesty-international-says-qatar-is-still-failing-when-it-comes-to-migrant-workers-and-the-2022-fifa-world-cup>.

5. Jeff MacGregor, *Human Rights Issue Raised in Qatar*, ESPN, http://espn.go.com/espn/story/_/id/9753901/human-rights-concerns-raised-qatar-world-cup (last updated Oct. 1, 2013).

6. INSTITUTE FOR HUMAN RIGHTS & BUSINESS, *supra* note 1, at 31. It is estimated that Qatar will employ nearly “1.2 million workers over the next five years, in addition to approximately 1 million already present in the country.” Joe Stork & Nicholas McGeehan, *Qatar's Human Rights Record*, NORWEGIAN PEACEBUILDING RES. CTR. (Aug. 2013), http://www.hrw.org/sites/default/files/related_material/MENA_2013_September_Qatar%27s%20human%20rights%20record.pdf.

7. Pete Pattison, *Revealed: Qatar's World Cup 'Slaves'*, GUARDIAN (Sept. 25, 2013, 12:46 PM), <http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves>.

8. INSTITUTE FOR HUMAN RIGHTS & BUSINESS, *supra* note 1, at 31.

9. QATAR FOUND., *QF MANDATORY STANDARDS OF MIGRANT WORKERS' WELFARE FOR CONTRACTORS & SUBCONTRACTORS* (2013), available at <http://www.qf.org.qa/app/media/2379>.

10. QATAR LABOR LAW NO. 14 (2004).

the construction for the World Cup. CH2M Hill is in a prime position to ensure that the exploitation of workers diminishes.¹¹

Scholars have argued that a business has the sole responsibility “to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.”¹² However, the game has recently changed. Indeed, it is globally recognized that corporations have a responsibility to avoid violating human rights and that labor rights are human rights.¹³ Nonetheless, this international policy supported by conventions, treaties, and other “soft law” has little ability to ensure that companies take human and labor rights into consideration. Thus, there must be a “hard law” solution that penalizes multinational and transnational corporations for neglecting human rights and promotes the notion that “corporate responsibility is tied to sustainability and innovation.”¹⁴

This Comment addresses the gap in international law that allows corporate participation in human rights violations to remain unpunished, and how that gap affects the exploited migrant workers in Qatar. Part II provides an overview of the injustice migrant workers face in Qatar and the ineffectiveness of Qatar’s legal system to address the issue. Part III discusses the lack of international corporate liability, which leaves companies, such as CH2M Hill, with no binding obligation to avoid human rights violations. Part IV reviews the adopted United Nations’ (“UN”) Guiding Principles on Business and Human Rights and their potential to launch a legal framework creating a binding obligation. Part V proposes the key elements needed for said body of law and how that law would apply to corporations such as CH2M Hill. Finally, Part VI applies the proposed legislation to the FIFA organization, which also has a responsibility to prevent further exploitation of migrant workers in the name of competition.

11. Will Hurst & Iain Withers, *CH2M Hill “Must Act” on Qatar 2022 Worker Exploitation*, BUILDING.CO.UK (Oct. 3, 2013), <http://www.building.co.uk/ch2m-hill?must-act?-on-qatar-2022-worker-exploitation/5061559.article>.

12. Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, at SM17.

13. Marisa Anne Pagnattaro, *Labor Rights Are Human Rights: Direct Action Is Critical in Supply Chains and Trade Policy*, 10 S.C.J. INT’L L. & BUS. 1, 2 (2013).

14. *Id.* at 1.

II. MIGRANT WORKERS IN QATAR

A. *The Kafala System in the GCC*

While Qatar is one of the smallest members of the Gulf Cooperation Council countries (“GCC”), it is one of the richest nations in the world.¹⁵ After experiencing a rapid economic ascent, Qatar is now a leader of the Arab world in education and business, yet its reputation is stained by the ongoing exploitation of migrant workers, which has been a key resource for the growth of its empire.¹⁶

The exploitation of migrant workers is quite common in the GCC and around the world. In the 1950s, around the same time slavery was abolished in the GCC, the *kafala* system was established as another method of procuring cheap labor.¹⁷ The system requires a worker to obtain sponsorship from a Qatari citizen or government agency in order to obtain an entry visa and resident permit.¹⁸ These relationships, where the migrant is bound to his or her sponsor, often lead to sponsors confiscating workers’ passports and identification cards, and prohibiting them from leaving at will.¹⁹ Moreover, there is a lack of employment stability as workers can be deported at the will of their employers.²⁰ Finally, workers are often brought to Qatar under false pretenses as the promised jobs and living conditions turn out to be slave-like labor and slum-like communities.²¹ Indeed, many workers were required to travel to Qatar at their own expense only to have their contract revoked just before being handed a new one with a different job description and lower salary.²² Others shared that they are not

15. See Michael B. Dye, *Qatar: The Pearl of the Middle East and Its Role in the Advancement of Women’s Rights*, 84 U. DET. MERCY L. REV. 747, 747 (2007).

16. David Mednicoff, *National Security and the Legal Status of Migrant Workers: Dispatches from the Arabian Gulf*, 33 W. NEW ENG. L. REV. 121, 124 (2011) (describing Qatar’s treatment of migrant workers as “exploitative and xenophobic”).

17. Heather E. Murray, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 45 CORNELL INT’L L.J. 461, 467 (2012).

18. *Id.*

19. *Id.*; see also *World Report 2013: Qatar*, HUM. RTS. WATCH, <http://www.hrw.org/world-report/2013/country-chapters/qatar> (last visited Feb. 9, 2015).

20. Murray, *supra* note 17, at 468.

21. *World Report 2013: Qatar*, *supra* note 19, at 2.

22. Omer Aziz & Murtaza Hussain, *Qatar’s Showcase of Shame*, N.Y. TIMES (Jan. 5, 2014), <http://www.nytimes.com/2014/01/06/opinion/qatars-showcase-of-shame.html>.

paid regularly, affecting not only their ability to eat, but also their ability to financially support their families in their home countries—often the sole purpose of their travel.²³ Many of these workers come from developing nations or impoverished communities in countries such as Pakistan, Sri Lanka, the Philippines, Nepal, and Bangladesh.²⁴ Often referred to as a modern version of slavery, this detrimental system meets the definition of the term “trafficking,” which has been defined as “the recruitment, . . . or receipt of persons, by means of threat or use of force or other forms of coercion, . . . of fraud, of deception, of the abuse of power or of a position of vulnerability . . . for the purpose of exploitation.”²⁵

B. Qatar’s Approach

The 2004 Qatar Labor Code, which is still in effect today, is composed of labor provisions that govern the relationship between all private sector employers and employees.²⁶ The Code’s provisions are enforced by the civil courts of Qatar, apart from issues regarding payments of debts to the family members of deceased workers, which are enforced by Sharia law.²⁷ The 2004 Qatar Labor Code “limits working hours, requires paid annual leave, sets requirements on health and safety, and requires on-time payment of wages each month.”²⁸ However, this code is rarely enforced, and although one trade union exists, non-Qatari employees are prohibited from joining trade unions, which leaves them at a great disadvantage.²⁹

Former Emir of the State of Qatar, His Highness Sheikh Hamad Bin Khalifa Al-Thani, and his wife, Her Highness Sheikha Mozah Bint Nasser Al-Missned, founded the Qatar Foundation in

23. Mohammad A. Auwal, *Ending the Exploitation of Migrant Workers in the Gulf*, 34 FLETCHER F. WORLD AFF. 87, 92, 94 (2010).

24. *World Report 2013: Qatar*, *supra* note 19, at 1.

25. Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors Under International Human Rights Law*, 17 INT’L. J. REFUGEE L. 394, 396 (2005).

26. QATAR LABOR LAW, *supra* note 10, at pt. 1, art. 2.

27. *Id.* at pt. 4, art. 55; *see also id.* at pt. 11, art. 110, 114. Establishing an international legal framework obligating corporations to consider human rights would not conflict with nations’ that recognize Sharia law because human rights are also rooted in Islamic law and national legal systems across the Gulf. Auwal, *supra* note 23, at 88.

28. *World Report 2013: Qatar*, *supra* note 19, at 1.

29. Murray, *supra* note 17, at 472.

1995 to improve community development.³⁰ On April 20, 2013, the Qatar Foundation developed a set of standards, governed by Qatari Law, that promoted the welfare of migrant workers.³¹ The Qatar Foundation Standards aim to establish a “minimum mandatory standard with respect to recruitment, living and working conditions and general treatment of [w]orkers engaged in construction and other projects.”³² Part 11 of the Qatar Foundation Standards refines the recruitment procedure by prohibiting any fees charged to the workers, requiring that terms of employment be communicated in a language that the workers understand, and requiring that workers obtain a copy of their contract in a language they understand before traveling to Qatar.³³ Additionally, the Qatar Foundation Standards require that contractors conducting business in the country only collaborate with recruitment agencies that are licensed by Qatar.³⁴ The Qatar Foundation Standards specifically address the issue of false promises by stating that an employer and an employee can agree to improved contract terms upon the worker’s arrival, but only as an addendum to their previous contract, and any changes may not insult the worker or lower his or her wages.³⁵ The effectiveness of this body of guidelines has yet to be realized as exploitation of migrant workers continues.³⁶ Although some parties in Qatar believe the issue is for the government to solve,³⁷ construction

30. *The Dream*, QATAR FOUND., <http://www.qf.org.qa/about> (last visited Feb. 9, 2015).

31. QATAR FOUNDATION, *supra* note 9, at 6 (stating that all contractors “shall be contractually required to comply with the requirements set out in [Qatari laws] and these Standards”).

32. *Id.*

33. *Id.* at 12–13.

34. *Id.* at 13.

35. *Id.* at 16.

36. See generally Prakash Adhikari, *Nepali Migrant Worker Dies in Qatar*, EKANTIPUR.COM (Feb. 24, 2014, 9:30 AM), <http://www.ekantipur.com/2014/02/24/national/nepali-migrant-worker-dies-in-qatar/385794.html>; Krishnadev Calamur, *Foreign Workers Abused in Qatar, Report Says*, NPR (Nov. 18, 2013, 3:05 PM), <http://www.npr.org/blogs/parallels/2013/11/18/245990852/foreign-workers-abused-in-qatar-report-says>; Sugam Pokharel, *A Migrant Worker’s Journey Ends with a Coffin and Soul-stirring Mourning*, CNN, (Mar. 9, 2015, 4:06 PM), <http://www.cnn.com/2015/03/09/asia/qatar-nepali-migrant-workers-deaths>.

37. James Riach, *Hadid Defends Qatar World Cup Role Following Migrant Worker Deaths*, GUARDIAN (Feb. 25, 2014, 6:00 PM), <http://www.theguardian.com/world/2014/feb/25/aha-hadid-qatar-world-cup-migrant-worker-deaths>. Zaha Hadid, the architect of Qatar’s most distinguishable stadium for the 2022 World Cup, stated “I’m not taking it lightly but

companies themselves can address the root of the problem by recognizing migrant worker's economic, social, and political rights that have gone unprotected.³⁸

III. CURRENT STATUS OF INTERNATIONAL CORPORATE LIABILITY

Currently there is little to no accountability for multinational corporations doing business in countries that allow improper practices to fester.³⁹ With no legal framework requiring corporations to consider human rights, most international corporations have policies that mention such concerns, but may not have an infrastructure in place to ensure such values are upheld. CH2M Hill has a policy that promotes zero tolerance for human trafficking and claims to have a system in place to monitor the actions of the entities with whom it collaborates.⁴⁰ CH2M Hill shares its zero tolerance policy with all partners and requires them to acknowledge and accept it.⁴¹ Despite this policy, high numbers of migrant workers continue to perish in preparation for the World Cup.⁴² In a published 2013 letter, George Miller, the senior democratic representative of the House Committee on Education and the Workforce, challenged CH2M Hill to “identify the concrete steps that CH2M [Hill] has taken or will take to protect labor rights up and down the contracting chain.”⁴³ It is yet to be

I think it's for the government to . . . take care of. It's not my duty as an architect to look at it.” *Id.*

38. *See V. Corporate Liability for Violations of International Human Rights Law*, 114 HARV. L. REV. 2025, 2027–28 (2001) [hereinafter *Corporate Liability*] (explaining in detail the rights of migrant workers that need protection).

39. *Id.* at 2027–30.

40. *Human Rights*, CH2M HILL, <http://www.ch2mhill.com/corporate/sr/our-pledge/human-rights.asp#.VOgOcvnF-So> (last visited Feb. 20, 2015).

41. *Id.*

42. Mark Memmott, *Will Qatar's World Cup Games Be Played Over Workers' Bodies?* NPR (Sept. 27, 2013, 2:02 PM), <http://www.npr.org/blogs/thetwo-way/2013/09/27/226853615/will-qatars-world-cup-games-be-played-over-workers-bodies>.

43. Press Release, Comm. on Ed. & the Workforce Democrats, Miller Seeks to Prevent Abuse of Workers During Qatar World Cup Preparations, (Dec. 2, 2013), available at <http://democrats.edworkforce.house.gov/press-release/miller-seeks-prevent-abuse-workers-during-qatar-world-cup-preparations>. In 2014, Miller lead members of Congress in introducing a resolution demanding more efforts from the Qatari government, the United States government, American businesses, and the FIFA organization to protect migrant workers. Press Release, Comm. on Ed. & the Workforce Democrats, Miller Leads Efforts for Greater Worker Protections in Qatar as World Cup 2022 Construction

determined whether these casualties are the cause of CH2M Hill's actions or whether the company is simply unable to prevent them. This question remains unanswered as our international body of law has no mechanism for holding corporations accountable for such occurrences.

A. *Historical Trends in Case Law and National Legislation*

The trend of case law on this issue once established some form of liability, but more recent decisions left corporations with “neither bodies to be punished, nor souls to be condemned.”⁴⁴ For example, *Filartiga v. Pena-Irala* widened the threshold for foreign nationals to use the Alien Tort Statute (“ATS”) to file claims in the United States against multinational corporations for torts committed against them.⁴⁵ The Torture Victim Protection Act and the Victims of Trafficking and Violence Protection Act can also be indirectly used to initiate civil suits against corporations.⁴⁶ Essentially, the ATS provides original jurisdiction to any United States district court over a civil suit “by an alien for a tort only committed in violation of the law of nations or a treaty of the United States.”⁴⁷ There was no concrete application of the ATS until the *Filartiga* decision in 1980, which allowed the ATS to become the basis for civil suits against corporate defendants.⁴⁸ However, in 1991, *E.E.O.C. v. ARAMCO* established that United States employment law cannot be applied extraterritorially, which took employment related suits out of play.⁴⁹ Following the *Filartiga* trend, in 2002, *Doe v. Unocal Corp.* established that a corporate entity can be held liable for “knowingly aiding and abetting a state

Accelerates, (Jul. 24, 2014), available at <http://democrats.edworkforce.house.gov/press-release/miller-leads-effort-greater-worker-protections-qatar-world-cup-2022-construction>.

44. Nura Skaden, *The Dressmaker's Dilemma: Sexual Abuse, Corporate Accountability, and the Convention for the Elimination of All Forms of Discrimination Against Migrant Women in Jordan's Qualified Industrial Zones*, 38 BROOK. J. INT'L L. 1297, 1326–27 (2013).

45. *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980).

46. Obokata, *supra* note 25, at 407. Similar pieces of legislation are also available in countries such as Belgium, the Netherlands, and the United Kingdom. *Id.*

47. Alien Tort Statute, 28 U.S.C. § 1350 (1948); see also Kenneth C. Randall, *Further Inquiries into the Alien Tort Statute and a Recommendation*, 18 N.Y.U. J. INT'L L. & POL. 473, 479 (1986).

48. Yihe Yang, *Corporate Civil Liability Under the Alien Tort Statute: The Practical Implications from Kiobel*, 40 W. ST. U. L. REV. 195, 197 (2013).

49. *E.E.O.C. v. Arabian American Oil Co.*, 499 U.S. 244, 244 (1991).

actor to commit human rights abuses.”⁵⁰ However, the decision was later vacated in 2005 by the same court. Finally, the door once opened in *Filartiga* was closed with the recent *Kiobel v. Royal Dutch Petroleum Co.* decision in 2013 by the United States Supreme Court, which established that the ATS can only be used for torts committed on the high seas.⁵¹

With United States law unenforceable abroad and the narrowed availability of the ATS as a remedy for the abused, corporations are left with little to no liability for human rights violations that result from their activity. Legislators and courts have failed to expand the jurisdiction of United States laws on this issue to avoid the imperialistic act of imposing on other nations’ forms of governance.⁵² However, encouraging countries to sign treaties vowing to protect against human rights violations has not ended the migrant worker exploitation in Qatar or across the globe. Thus, a body of hard law must be created that will yield legitimate remedies for complaining parties and place the burden onto the multinational corporations to lead by example.

B. Hard Law v. Soft Law

There is an ongoing scholarly debate comparing the application of concrete statutory rules, known as “hard law,” and nonbinding guidelines known as “soft law.”⁵³ Soft law, such as international conventions and treaties, is viewed as beneficial because it does not impose strict costs on parties who are not in compliance and allows nations to remain sovereign on sensitive subjects.⁵⁴ Indeed, scholars have advocated for the soft law

50. Skaden, *supra* note 44, at 1322; see *Doe I v. Unocal Corp.*, 395 F.3d 932, 952–53 (9th Cir. 2002), *rev’g in part and aff’g in part*, 110 F. Supp. 2d 1294 (C.D. Cal. 2000), *vacated*, 403 F.3d 708 (9th Cir. 2005).

51. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1661 (2013). *But see* Tyler G. Banks, *Corporate Liability Under the Alien Tort Statute: The Second Circuit’s Missstep Around General Principles of Law in Kiobel v. Royal Dutch Petroleum Co.*, 26 EMORY INT’L L. REV. 227, 279 (2012) (stating that a future “congressional mandate could bring corporations back within the scope of the ATS”). Another piece of United States legislation, Section 301 of the Trade Act of 1974, was used to bring a suit against the Chinese government in an attempt to stop the abuse of Chinese workers, but was unsuccessful. See Pagnattaro, *supra* note 13, at 53–54.

52. *Corporate Liability*, *supra* note 38, at 2045.

53. Joshua A. Lance, *Equator Principles III: A Hard Look at Soft Law*, 17 N.C. BANKING INST. 175, 175 (2013).

54. Gregory C. Shaffer & Mark A. Pollack, *Hard vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance*, 94 MINN. L. REV. 706, 719 (2010).

approach to consolidate a set of norms for the international community to address related issues for vulnerable migrants.⁵⁵ Soft law is merely voluntary and aspirational, and it is meant to influence rather than regulate or enforce.⁵⁶

In contrast, under hard law, parties are obligated to commit themselves to international agreements as there are greater penalties for defaulting, such as legal sanctions or lost reputation.⁵⁷ Because of these penalties, hard law is “self-executing,” even more so when nations play a role by “increasing the cost of a violation.”⁵⁸ Unlike established customary norms, official legislation also allows for a more accurate measurement of whether parties remain in compliance with their commitments. By invoking the use of dispute settlement venues, such as courts, hard law creates a “mechanism for the interpretation and elaboration of legal commitments over time.”⁵⁹

Early efforts to construct an international policy on human rights led to the creation of the Universal Declaration of Human Rights (“UDHR”), which established a non-binding guide to addressing such concerns.⁶⁰ This document led to two sets of rights that are observed in two separate documents, known as the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic Social and Cultural Rights (“ICESCR”).⁶¹ The soft law approach gained momentum in

55. Alexander Betts, *Towards a ‘Soft Law’ Framework for the Protection of Vulnerable Irregular Migrants*, 22 INT’L J. REFUGEE L. 209, 215 (2010).

56. Lance, *supra* note 53, at 197. *But see* Betts, *supra* note 55 at 215–16 (arguing that the collaborative and consolidating approach of soft law can also be effective).

57. Shaffer & Pollack, *supra* note 54, at 718.

58. *Id.* *But see* John H. Knox, *The Ruggie Rules: Applying Human Rights Law to Corporations*, in THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, 61 (2012) (stating that some sources suggest that “‘soft law’ approaches to corporate social responsibility may change corporate behavior”).

59. Shaffer & Pollack, *supra* note 54, at 718. *But see* Knox, *supra* note 58, at 61 n.40 (2012) (indicating that some soft law initiatives “strengthen [corporate] accountability mechanisms” as well). Scholars also argue that hard law is inflexible in the face of altered circumstances that may require adjustment. *See, e.g.*, Shaffer & Pollack, *supra* note 54, at 719.

60. Larry Catá Backer, *Realizing Socio-Economic Rights Under Emerging Global Regulatory Frameworks: The Potential Impact of Privatization and the Role of Companies in China and India*, 45 GEO. WASH. INT’L L. REV. 615, 617 (2013); *see* Shereen Hertel, *Human Rights and the Global Economy: Bringing Labor Rights Back In*, 24 MD. J. INT’L L. 283 (2009).

61. Backer, *supra* note 60, at 617–18. The ICCPR is known for identifying civil and political rights, while the ICESCR memorialized economic, social, and cultural rights. *Id.* at 17.

the 1970s as corporations were expanding globally and the Organization for Economic Cooperation and Development (“OECD”) and the International Labor Organization (“ILO”) established norms pushing for corporate accountability.⁶² The OECD adopted the Guidelines for Multinational Enterprises encouraging businesses to recognize unions and to provide a safe work environment, among other things.⁶³ The ILO followed with the Tripartite Declaration of Principles Concerning Multinational Enterprises and, in 2000, the UN introduced the Global Compact—both documents proposed business principles aimed at protecting workers.⁶⁴ There are numerous conventions and treaties suggesting that private actors hold some duty to prevent human rights abuse, but they mostly focus on private citizens’ duties to their communities or state government responsibility, instead of corporations.⁶⁵ Additionally, future free trade agreements, such as the Trans-Pacific Partnership (“TPP”), which is currently being negotiated among several nations,⁶⁶ will also likely be insufficient. Although the TPP would require a commitment to engage in dialogue on labor issues,⁶⁷ should it successfully pass, it would only bind the ratifying nations while other nations would remain unaffected.

Given that the soft law approach alone does not yield effective results, it is imperative that law makers continue attempts to find a solution via hard law outlets. However, the solution need not lie solely in one approach or another. Under a legal positivism theory, soft law can be used as a stepping stone to formulate a hard law solution over time, or serve as its complement.⁶⁸ The most influential body of soft law that should be used for this process is the UN Guiding Principles on Business and Human Rights, which specifically address corporate obligations.

62. Pagnattaro, *supra* note 13, at 5.

63. *Id.* at 5–6.

64. *Id.* at 6.

65. Obokata, *supra* note 25, at 403–04; see Hertel, *supra* note 60, at 290.

66. Pagnattaro, *supra* note 13, at 55.

67. *Id.* at 55.

68. Jeffrey M. Pollack & Jonathan S. Jemison, *The Emerging of International Law*, N.J. LAW., Feb. 1999, at 28; Shaffer & Pollack, *supra* note 54, at 723 tbl.1.

IV. USING THE UN GUIDING PRINCIPLES AS A TEMPLATE

The UN Guiding Principles on Business and Human Rights are a set of guidelines that serve as a blueprint for corporations to verify and demonstrate that they value human rights and avoid violating them.⁶⁹ The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011 after the UN Secretary-General's Special Representative, Professor John Ruggie of Harvard University, led a six-year process to develop them.⁷⁰

The Guiding Principles contain three pillars: 1) the State's duty to protect against human rights abuse, 2) the corporate responsibility to protect human rights, which is most relevant to this Comment, and 3) the need for access to a remedy for victims.⁷¹ Under the second pillar, businesses are required to "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur," as well as "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relations, even if they have not contributed to those impacts."⁷² As an important point, the commentary in the Guiding Principles draws a line between the legal and lay definition of "complicity," and explains that businesses should avoid both.⁷³ The commentary also explains that corporations' responsibility to prevent human rights abuse is independent of a State's willingness to meet its own duty.⁷⁴ Essentially, in the event that a country does not have laws requiring a corporation to avoid human rights abuse, the

69. INSTITUTE FOR HUMAN RIGHTS & BUSINESS, *supra* note 1, at 22.

70. *Id.* at 22.

71. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Human Rights Council, U.N. Doc. A/HRC/17/31 (Mar. 21, 2011) (by John Ruggie) [hereinafter *Guiding Principles*].

72. *Id.* at pt. II.A. ¶13.

73. *Id.* at pt. II.A. ¶17. The *Guiding Principles* state that the non-legal definition is receiving some "benefit from an abuse committed by" another party, while the legal term "aiding and abetting" is defined as "knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime." While the legal definition is a higher standard, the *Guiding Principles* warn companies against both. *Id.*

74. *Id.* at pt. II.A. ¶11 (stating that the duty exists "over and above compliance with national laws and regulations protecting human rights").

corporation conducting business in that country must still adhere to this responsibility.⁷⁵ It explains that, corporations should still be held responsible as long as “the accused know the criminal intentions of the principle perpetrator,” whether or not they share the same intent as the principle.⁷⁶ Moreover, the second pillar emphasizes that any activity promoting human rights “does not offset a [company’s] failure to respect human rights throughout their operations.”⁷⁷ Finally, the *Guiding Principles* require firms to comply with international treaties and keeping employees abreast of important topics surrounding those treaties to ensure they remain in compliance.⁷⁸

The adoption of the *Guiding Principles* is a sign of further changes in the capitalism game and the future of international law. Although the laws of individual nations do not apply extraterritorially, UN Special Rapporteur on the Right to Food, Olivier de Schutter, stated that “this classical view may be changing, however, especially as far as economic and social rights are concerned.”⁷⁹ Additionally, despite the fact that human rights have been ignored by capitalism in the past, these concepts may very well have a place in the future capitalist structure. A wave of companies have recognized that respecting labor rights leads to sustainability.⁸⁰ What has been dubbed the “shared value concept” preaches that “trust, job satisfaction, and commitment . . . which are integral to long-term stability . . . are all at higher levels in companies with sustainable human resource management policies.”⁸¹ Because the global population is aware of the importance of labor rights and human rights, they are considered a “responsible investment.”⁸² Such rights lead to significant benefits, such as “decreasing turnover and attrition, boosting

75. The *Guiding Principles* framework was tested in ten companies and has been implemented by several. *Id.* at intro. ¶11.

76. Knox, *supra* note 58, at 75 (internal citation omitted).

77. *Guiding Principles*, *supra* note 71, at pt. II.A. ¶11.

78. *Id.* at pt. II.A. ¶12.

79. Knox, *supra* note 58, at 81.

80. See Pagnattaro, *supra* note 13, at 15.

81. *Id.* at 17 (quoting ELAINE COHEN ET. AL., SHRM FOUND., HR’S ROLE IN CORPORATE SOCIAL RESPONSIBILITY AND SUSTAINABILITY, available at <http://www.shrm.org/about/foundation/products/documents/csr%20exec%20briefing-%20final.pdf>).

82. *Id.* at 18.

morale to increase productivity and retention, attracting new customers, and enhancing reputation and brand.”⁸³

The *Guiding Principles* provide specific suggestions on how corporations can meet their obligations, and many corporations have already adopted those suggestions.⁸⁴ The *Guiding Principles* also encourage businesses to create a policy statement that is “approved at the most senior level” of the business; created by consulting internal or external experts; specify the responsibility of all employees of the organization; made publicly available internally and externally; and reflected in all business operations.⁸⁵ Regarding due diligence, the framework recommends ongoing studies, varying in size and complexity, that cover several “adverse human rights impacts” that could affect their business.⁸⁶

CH2M Hill claims to have such a policy and projects itself to be among the companies that recognize the value of respecting human rights and labor rights. In a published e-mail correspondence between John Corsi, Public Relations Representative of CH2M Hill, and Jeff MacGregor, Senior Writer for ESPN, Corsi indicated that CH2M Hill seeks to “lead by example” in helping Qatar tighten the enforcement of its labor laws.⁸⁷ After creating its own set of standards regarding recruitment and worker accommodations, it also established an enforcement system involving audits within the organization, and conducts due diligence evaluations of other contractors through Qatar’s Ministry of Labor to investigate their past performance with worker welfare.⁸⁸ With what seems to be a promising regime to solve a complex problem, only time will tell whether such

83. *Id.* at 19 (quoting *A Geographic Perspective: Contrasting Approaches Between US And Europe-Headquartered Private Equity Houses*, PWC, <http://www.pwc.com/gx/en/sustainability/research-insights/us-europe-private-equity-contrasts.jhtml>).

84. *Guiding Principles*, *supra* note 71, at pt. II.B, III.B (listing implementation options); Robert C. Blitt, *Beyond Ruggie’s Guiding Principles on Business and Human Rights: Charting an Embrasive Approach to Corporate Human Rights Compliance*, 48 TEX. INT’L L.J. 33, 52 (2012) (discussing praise corporations gave the Guiding Principles upon their adoption).

85. *Guiding Principles*, *supra* note 71, pt. IIB. ¶16. They also take into account that smaller corporations may have a different way of managing this activity given their size and capacity. *Id.* at pt. IIA ¶14.

86. *Id.* at pt. IIB ¶17.

87. E-mail from John Corsi, Public Relations Representative, CH2M Hill, to Jeff MacGregor, Senior Writer ESPN (Sept. 29, 2013, 1:12 PM), *available at* <http://a.espncdn.com/pdf/2013/1001/email.pdf>.

88. *Id.*

practices will have a diminishing effect on the amount of worker exploitation as the 2022 World Cup draws near. As the *Guiding Principles* reiterate, CH2M Hill's responsibility does not disappear because of its efforts, and it will still be held liable should it be found to have contributed to human rights abuse.⁸⁹

Despite wide support, the *Guiding Principles* have been criticized for failing to provide "an effective remedy and . . . 'squandering an opportunity' to establish a mechanism that would ensure the *Guiding Principles* are actually 'put into practice.'"⁹⁰ The adoption of an international piece of legislation would serve as the missing link in the *Guiding Principles*.

V. PROPOSED BODY OF LAW BASED ON THE GUIDING PRINCIPLES

The *Guiding Principles* created a foundation for scholars and lawmakers to use in creating a legal framework that will bind all multinational corporations. Such a body of law must consider several factors that surround the labor law issue, including "the supply and the demand in the labor market, the accountability of the government, the function of trade unions and [non-government organizations], the consciousness of the employers, the availability of labor dispute resolution and even the culture and life style of people in the workplace."⁹¹ Although it was not John Ruggie's intention,⁹² the comprehensive nature of the *Guiding Principles* allows them, and other forms of soft law, to serve as a compliment to a hard law regime and fill any gaps that surface when unanticipated future situations arise that are not addressed by the body of hard law.

Given the imperialism concerns addressed above,⁹³ the proposed body of law must incorporate the concepts in the *Guiding Principles* that focus on the regulation of corporations

89. *Guiding Principles*, *supra* note 71, pt. IIB. ¶17.

90. Blitt, *supra* note 84, at 53 (quoting U.N. Human Rights Council: *Weak Stance on Business Standards*, HUM. RTS. WATCH (June 16, 2011), <http://www.hrw.org/en/news/2011/06/16/un-human-rights-council-weak-stance-business-standards>).

91. Backer, *supra* note 60, at 633 (quoting Xie Zengyi, *The Major Changes of the New Labor Contract Law in China*, 3 STUDY ON WORLDWIDE CONST. L. 350, 350 (2011)).

92. Hertel, *supra* note 60, at 290–91 (stating that Ruggie preferred soft law over hard law).

93. *Corporate Liability*, *supra* note 38, at 2045.

instead of states. The legislation should apply responsibility to corporations modeled after state responsibility,⁹⁴ yet allow states to maintain their own governing autonomy while complying with any conventions they have adopted. In practice, corporate entities would be required to not only abide by the law of nation states, but also remain in compliance with the international legal standard. Where there is a disagreement between the laws of the state and the international legislation, the state's laws would have superiority to avoid an imperialistic design.⁹⁵ However, where a state's laws are silent on an issue, the international standard would prevail.⁹⁶ Indeed, "some governments and domestic courts" are prepared to apply the *Guiding Principles* in a legally binding context by "incorporat[ing] them into domestic law or policies or accept[ing] them as a valid expression of what human rights conventions ratified by that country mean."⁹⁷

The key benefit of the legislation is the avenue for any party to seek a remedy against a violating corporate entity. As a result, enforcement of the legislation is critical. One enforcement option would allow for a party to select a domestic court under a jurisdictional formula. Another possible option is the International Court of Justice ("ICJ"), which serves as the "judicial organ" for the UN.⁹⁸ As previously proposed, specialized tribunals could be created in addition to the ICJ that would try corporate entities and utilize forms of the dispute resolution mechanism created by the ILO.⁹⁹ Should a party successfully bring a suit in the ICJ against a corporation, the consequences could include compensation for the wronged parties, a fine issued by the

94. See ALICE DE JONGE, *TRANSNATIONAL CORPORATIONS AND INTERNATIONAL LAW: ACCOUNTABILITY IN THE GLOBAL BUSINESS ENVIRONMENT*, 151–52 (2011) (paralleling the agency doctrine of state actors to that of corporate agents).

95. See Karen Knop, *Here and There: International Law in Domestic Courts*, 32 N.Y.U. J. INT'L L. & POL. 501, 515 (2000) (describing the binary process by which courts can utilize international law).

96. *Id.*

97. Walter Kälin, Presentation at Roundtable Meeting at Ralph Bunche Institute for International Studies CUNY Graduate Center: How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework 7 (Dec. 19, 2001). Additionally, some governments in countries such as Burundi and Angola, as well as the Supreme Court of Colombia, have "accepted the authoritative character of the Guiding Principles." *Id.*

98. U.N. Charter art. 92, para. 1. (Statute of the International Court of Justice incorporated into U.N. Charter).

99. JONGE, *supra* note 94, at 204.

corporation's home nation or the nation in which it is doing business, and of course, the tarnished reputation that accompanies a public trial. Should international law makers create a global piece of legislation that incorporates the second pillar of the Guiding Principles and provides a method for enforcement, the gap in international law would close and corporate entities would no longer freely violate human rights in the name of athletic or economic competition.

VI. APPLYING THE PROPOSED LAW TO FIFA

FIFA is known as the “world-governing agency for international football, or soccer.”¹⁰⁰ Its governing document, the FIFA Statutes, incorporates human rights related concepts,¹⁰¹ and in November of 2011, FIFA publicly committed to supporting workers' rights and pledged to work with the ITUC to amend the bidding process for future World Cup games to include labor related criteria.¹⁰² In October of 2013, the Institute for Human Rights and Business emphasized that the *Guiding Principles* would have a positive impact on the many businesses that have a contractual relationship with FIFA, but especially the construction companies.¹⁰³ Already, several FIFA corporate sponsors have explicitly incorporated human rights terms into their public policy statements, applied that policy statement to their suppliers and business partners, and referenced the *Guiding Principles*' three pillars.¹⁰⁴ Regarding the FIFA bidding framework, the paper indicated that it is unlikely that labor issues alone will immediately influence sport governing bodies to vote for or against a potential host country, but that the *Guiding Principles* can serve as a “catalyst

100. Samuel Morris, *FIFA World Cup 2022: Why the United States Cannot Successfully Challenge FIFA Awarding the Cup to Qatar and How the Qatar Controversy Shows FIFA Needs Large-Scale Changes*, 42 CAL. W. INT'L L.J. 541, 544 (2012).

101. INSTITUTE FOR HUMAN RIGHTS & BUSINESS, *supra* note 1, at 19 (stating its commitment to “promote [football] globally in the light of its unifying, education, cultural and humanitarian values, particularly through youth and development [programs] . . . and to promote friendly relations . . . in society for humanitarian objectives”).

102. *Id.* at 20.

103. *Id.* at 23 (“[This will] also enable companies to respond to stakeholder concerns in a timely way, potentially halting problems before they escalate.”).

104. *Id.* at 25, fig. 2.

to build a more positive human rights legacy for all MSEs.”¹⁰⁵ In essence, it would be wise for FIFA to take the same steps as any business under the *Guiding Principles* by establishing a public policy commitment and applying that commitment to all participating states, corporate sponsors, and partners.¹⁰⁶ Thus, to ensure a true global change, the proposed binding legislation should apply to international organizations such as FIFA and the Olympic Games. Such legislation should also require that FIFA revise bid requirements to include an evaluation of each bidding country’s relevant human rights issues, require local state organizations to adopt due diligence processes, and establish an office under the FIFA governing body charged with addressing human rights complaints.¹⁰⁷

VII. CONCLUSION

This proposed body of law would indeed require a great deal of drafting and collaboration, yet the end result would be well worth the devoted labor. The global population watches the gap in international law destroy the lives of millions of migrant workers in Qatar all in the name competition. Soon enough, the positive aspects of the World Cup and other MSEs will be over shadowed by the copious deaths that occur in preparation for the events. Non-binding guidelines have done little to motivate state governments to stop worker exploitation, and the lack of strict obligations on corporate actors allows the plight of migrant workers to grow. Praised for comprehensively addressing corporate liability, the *Guiding Principles* advance international law toward finding a legitimate solution to fill the gap. However, as scholars have argued, enforcement and actual implementation have yet to be addressed. While corporations, such as CH2M Hill, promote policies and mission statements as well as issue public relation responses, the proof that such policies are effectively implemented cannot be tested without a binding body of law under which corporations can be sued. The existence of such a body of law would lead to true accountability among private actors and the amount of migrant worker exploitation would decrease.

105. *Id.* at 32.

106. *Id.* at 32–33.

107. *Id.* at 33.