



BOFAXE

A Problem Bigger than Qatar (Part 1)

Towards an International Treaty on Large-Scale Sport Events to Prevent Human Rights Abuses

With the European soccer Championship beginning this Friday, discussions regarding the human rights situations of host states rose once again, specifically concerning Azerbaijan's oppression of the press and alleged war crimes. Similarly, back in March the protests of several European national football teams during the qualifications for the FIFA World Cup 2022 have shone light on the human rights situation in the host country of Qatar. In one remarkable instance, the German team lined up in T-shirts that spelled out "HUMAN RIGHTS" before the match against Iceland. Just weeks before, a report of the British newspaper "The Guardian" had unveiled the deaths of 6.500 migrant workers involved in the construction process in preparation for the upcoming football tournament. Serious human rights concerns surrounding big sports events have become more common in the recent past and also shape public discussion regarding upcoming international competitions, especially the 2022 Olympic Games in China. This post discusses whether there is a way beyond symbol politics to protect human rights in the setting of big sport events.

The distressing human rights record of large-scale sports events

Since 2010, Qatar embarked on a building programme with unprecedented dimensions, utilizing over one million migrant workers. These workers are forced to live in crowded, dirty places, work without adequate safety precautions and regularly do not receive their salaries. If they are brave enough to complain or seek help, they are often intimidated or threatened by their employer. This "kafala" (sponsorship) system – where the legal status of an employee is tied to a specific employer (see here, here and here) – can be found not only in Qatar, but also in other countries in the region. It is designed to strengthen employers' positions, is clearly incompatible with international human rights law and has been criticized as constituting "modern slavery". Another example of events with comparable issues are the Summer Olympic Games of 2016 in Rio de Janeiro, which were heavily criticised for violence against and eviction of thousands of families as a result of infrastructure projects, barring countless children from sufficient healthcare, education and housing. Other events have drawn criticism not because they had been the cause of human rights abuses, but because the right to host them had been awarded regardless of the dire human rights situations. In 2018, the World Cup in Russia gave Vladimir Putin the chance to promote his country on the world stage despite an escalating crackdown on peaceful critics and the LGBTQ+ community. In 2022, China will host the Winter Olympics while allegedly committing crimes against humanity, specifically regarding the Uyghur minority in its Xinjiang province.

In order to grasp the structural human rights problem of large-scale sports events, it is important to have a closer look at how they come to life. Usually, there is an association for a given sport which is incorporated as a non-profit organisation. These associations grant the rights to host the event to a state they choose. For example, the right to host the world cup was given to Qatar by the FIFA Executive Committee in 2010. A similar procedure can be observed in the respective decisions regarding other big sport events, for example the Olympic games and the UEFA European Championship. After a state has been awarded the right to host a specific event, it is its own responsibility to construct the necessary stadiums and infrastructure, which is then handed down to private contractors. While the legal accountability of private actors is one problem, the process of choosing a host state is often non-transparent and accompanied by allegations of corruption. For instance, FIFA has an intricate assessment process regarding the viability of a state to host a world cup. However, this assessment (concerning *inter alia* the overall hosting concept, sustainable social and human development and environmental protection) does not predetermine a host state. Qatar was awarded the hosting rights even after it had received the worst rating out of all applicants.



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A Problem Bigger than Qatar (Part 2)

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Accountability for those responsible?

Why do these problems keep occurring in the setting of large-scale sport events, why are legal actions not taken against them, and what could, perhaps, be done to address issues like these in the future?

Naturally, one must address the host state under international law. While a state may not be directly responsible for actions of non-state actors such as businesses, it does have a positive obligation to protect its citizens from human rights abuses and is thus responsible for the general human rights situation in its territory. By tolerating abuses like the exploitation of migrant workers, host states violate international human rights law. However, there is often no effective way to hold the state accountable. Qatar, for example, has not accepted the authority of relevant bodies like the Human Rights Committee or the Committee on Economic, Social and Cultural Rights. Reluctance to acknowledge such competences of independent monitoring bodies is not limited to 'small' countries but can also be seen in world powers like China. On the other hand, even states that are subject to enforcement systems are not necessarily held accountable easily: Russia, though a member of the ECHR, introduced a new law in 2015 to empower its Constitutional Court to overturn ECtHR judgements, clearly limiting the Court's capacity to uphold human rights in Russia.

What about private business responsible for the dire working conditions like the ones Qatar? In instances in which human rights abuses are directly caused by the event in question, one could try to hold the acting private businesses responsible accountable as well. The only international basis for that, however, would be the UN Guiding Principles on Business and Human Rights. These Principles merely consist of 'Soft Law' (see here, p. 13), which can create awareness and public pressure but not accountability in the legal sense. Thus, no businesses could be subject to a legal claim under these principles. And the domestic law of the host states is often of little help, too. For example, while there have been significant reforms in Qatari labor law since 2017 which some called 'game changer' and 'historic milestone', the applicable rules have proven rather toothless and have not changed much at all (see here).

Evidently, some of the responsibility lies with the sports associations such as FIFA or the IOC, given that they authorize the individual states to hold the events in the first place. In the example of the World Cup 2022, the only imaginable legal source for a claim against FIFA would be a law regarding supply chain responsibility. While such a law was subject to a referendum in FIFA's home state Switzerland in November 2020, it was rejected by the Swiss people with an extremely close vote.

Potential Ways Forward

The prospects for legal accountability are therefore rather bleak. How could this lack of accountability and the possibility for states to sugarcoat their human rights record with large-scale sports events be addressed in the future? One possible approach to prevent and deal with such scenarios would be by national laws making companies responsible for the adherence to human rights in their supply chain. Such statutes can already be found in France and are currently discussed in Germany and on a European level. The existing national laws, however, often suffer from a narrow scope of application, a lack of enforcement methods and create high requirements to trigger damages. Moreover, those states making headlines with problematic human rights records have shown little interest in addressing the problem. Also, it is at least not unthinkable that sports associations would escape their responsibility by moving to other jurisdictions, given their previous record of caring little for accountability.

How about enhancing the UN Guiding Principles on Business and Human Rights? Since all drafts of the UNGP foresee a wide applicability for all kinds of businesses, they would bind the construction companies in the host states as well as, for example, FIFA itself, even though it is officially a non-profit organization, as according to the OECD it nevertheless engages in commercial activities. If they were legally binding and equipped with a body capable of enforcement (as proposed in this draft), incidents regarding sports events such as the ones in Qatar could perhaps be addressed effectively. While the draft is supported by many nations and is a big step in the right direction, business-driven states such as Qatar might be hesitant to agree to such restrictive international law obligations.

A better fitted solution for the near future might be a specific international treaty which exclusively deals with transnational sport events. After all, it seems to be less burdensome for states to agree to such a specific treaty, since it would not address the contentious legal issue of business and human rights as such but only deal with human rights in a very specific context. Obligations under this treaty would be targeted towards the hosting nation, mainly including a duty to protect human rights and indulge extensive monitoring by an oversight committee to be established. This body would spring into action as soon as the state's bid is successful. Joining the treaty would be in the interest of the overwhelming majority of states that disapprove of hosts like Qatar, China and Russia misusing big sports tournaments as means for world-wide propaganda in order to white-wash their negative image within their own countries and abroad. Perhaps most importantly, participation would provide states with an additional argument for their bid on the right to host an event (and thereby considerably boosting their economy), as the organizing bodies, such as FIFA, themselves officially claim that a states' ability to protect human rights is one of the most decisive factors (see here, p. 5) for a successful bid. Ultimately, economic incentives are often the critical factor for convincing states to join a treaty. By favouring a member of such a treaty, FIFA and the IOC could improve transparency in the bidding-process, demonstrate that their commitment for human rights is more than just a lip service and would face public pressure to justify their decision if they opted for a non-member. Due to the frequency of the human rights dimension of sports events being discussed in public and gaining more attention, there might be momentum for an ambitious solution. The past has shown that public pressure can be an extremely powerful tool. But cries for change tend to fade out quickly, which is why this short window of opportunity must be seized now.