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The UN Guiding Principles: Examining the struggle for corporate human rights due diligence

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The UN Guiding Principles: Examining the struggle for corporate human rights due diligence

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Introduction

The efficacy of international soft law as an instrument to generate human rights compliance from corporations has been the subject of ongoing debate (Muchlinski, 2003). The significant rise in the number of transnational corporations (TNCs) following the end of the Cold War has facilitated the integration of the global economy through trade and foreign direct investments (Hamm, 2021, p. 3). Following this upsurge, researchers have illustrated the strengthened role of non-state actors in policymaking through the creation of public-private partnerships in order to combat transnational challenges (Alston, 2005, p. 20; O'Brien, Ferguson & McVey, 2021, p. 74). Within this context of intricate cross-sectoral governance networks, the expansion of human rights responsibilities to business enterprises has garnered both scholarly and societal attention (Gregg, 2020; Bernaz, 2020; Reguiero, 2020). Despite the recognition of foundational texts, such as the Universal Declaration of Human Rights (UDHR), as binding international standards, their implementation is largely left to purview of sovereign states (Donnelly, 1986, p. 608). However, through the vast operations undertaken by corporations impacting communities across countries, the extent to which they should respect and actively protect them is an issue meriting further investigating.

In 2011, the Office of the High Commissioner for Human Rights (OHCHR) published the UN Guiding Principles on Business and Human Rights (UNGPs). The objective of this framework was to enhance existing practices in the field of business and human rights in order to generate global standards for corporations to abide by (OHCHR, 2011, p. 1). The principles were modelled around three key pillars: states' responsibility to protect human rights, the role of businesses to safeguard human rights, and finally, the necessity of remedy mechanisms for those whose rights have been infringed (OHCHR, 2011, p. 1). Previous scholars have extensively scrutinized the impact the UNGPs had in mitigating business-related human rights abuses (Bernaz, 2020, pp. 50-52). While some have addressed the framework's soft law

approach to highlight its weak binding power, others have taken a constructivist approach to emphasize the principles' potential to diffuse across governance systems (Hamm, 2021; Wolfsteller & Li, 2022). However, an application of the UN framework to examine the substantive changes in the conduct of businesses with respect to human rights is missing thus far. Therefore, the following research question has been created, "To what extent has the implementation of the UN Guiding Principles on Business and Human Rights impacted the international protection of human rights?"

Academically, this study illustrates how the UNGPs' framing of human rights responsibilities attributes responsibility to corporations. Moreover, the work analyzes the progress corporations have made in instilling these principles into their organizational ethos in order to ensure socially-sound operations. Additionally, this study sheds light on the persisting lacunas in the human rights regime when it comes to safeguarding the human rights of marginalized groups.

The essay continues with an in-depth review of previous literature to illustrate the academic debate on the impact of the UNGPs, as well as the contrasting ideological perspectives scholars have drawn from. Secondly, a theoretical framework is established in order to define relevant concepts and develop a research design to answer the research question. The analysis is carried out by outlining and applying the criteria from the Corporate Human Rights Benchmark, drawing from the UNGPs, to football's governing body, FIFA (Fédération Internationale de Football Association). With a focus on the criticism aimed at the organization in the build-up to the 2022 World Cup in Qatar, the analysis highlights the human rights adjustments the UNGPs have inspired, as well as its inherent shortcomings. The conclusion provides an answer to the research question, draws implications from the results and proposes avenues for future research.

Literature Review

The academic debate on the role of corporations in fortifying human rights has centered around three key themes. The first entails the expansion of human rights responsibilities to businesses due to their growing importance in governing global issues through polycentric networks. Secondly, researchers have illustrated the significance of soft law instruments in generating global norms with the potential to diffuse across state and non-state structures. Finally, and of most importance to this study, legal scholars have examined the strengths and limitations of soft and hard law instruments in order to propose adequate models to enhance corporate human rights responsibility.

Polycentric governance

In order to emphasize the need for the reform of corporate human rights behavior, some authors have illustrated the dynamic relationship between TNCs and sovereign states. Ruggie (2014, p. 5) conceptualizes governance as the management of common affairs, at any collective scale, through a shared framework of norms, institutions and practices. Moreover, he builds upon this definition to track the emergence of private actors as valuable players in the governance of global problems. The author employs a liberalist lens by arguing the extension of human rights to corporations can only occur through consultations around a multi-stakeholder arrangement. Hence, Ruggie (2014, p. 5) advocates for the value of this approach in filling governance gaps of increasingly fragmented, or polycentric, regimes.

Additionally, in their investigation corporations' ability to safeguard human rights in developing countries, Van der Putten, Crijns and Hummels (2003, p. 82) highlight the spectrum of relations between TNCs and states. To do so, they refer to a scenario in which an enterprise is either directly involved in the infringement of human rights, or if a corporation acts as a passive bystander to the violations of the state it does business with (Van der Putten et al.,

2003, pp. 82-83). In a similar vein, Heerdt (2018, p. 90) addresses the possibility of corporations to be indirectly involved through financial contributions, for instance, during the organization of mega-sporting events. The author examines this issue by underlining the necessity for a framework of human rights accountability to be rooted in international efforts (Heerdt, 2018, p. 91). This is crucial, she argues, in order to encompass the full range of actors involved in human rights violations through today's polycentric governance apparatus (Heerdt, 2018, p. 91).

On top of that, scholars have addressed the difficulties in widening human rights responsibilities to businesses. Due to corporations' primary accountability to shareholders, Muchlinski (2003, p. 35) contends TNCs should not face direct human rights obligations, arguing they must only abide by the laws of the hosting country. By shifting the locus of human rights responsibility to the state, the author conforms to realist theory of the primacy of sovereign states in generating legitimate governance arrangements. Furthermore, Wolfsteller and Li (2022, pp. 2-3) highlight the human rights regime's only indirect application of legal obligations to corporations and the lack of centralized regulatory systems to enforce widespread accountability. Echoing their remarks, Gregg (2020, p. 4) addresses the weak binding power of previous international initiatives and the limited capacity of states to regulate the economic sector. This links to Hamm's (2021, p. 4) evaluation of the state-centered nature of the human rights regime due to the assumed political authority of nations. The author also illustrates the intransigence of states to regulate businesses due to their own economic-driven interests, making it difficult to achieve human rights reform within economic activities (Hamm, 2021, p. 4). Hence, holding businesses accountable to human rights faces a range of conceptual complications on both the state and corporate level.

Norm diffusion

Some authors have pointed to the capacity of the UNGPs to effectively diffuse across states and institutions in order to generate long-term behavioral changes. For instance, Wolfsteller and Li (2022, p. 5) criticize the debate in legal scholarship regarding the strengths and weaknesses of soft and hard law instruments, arguing such debates fail to recognize the intricate dynamic between these two spheres. Drawing from the work of Finnemore and Sikkink (1998, p. 902) on the concept of norm cascade, the authors claim that the narrow interpretation of corporate human rights responsibility in the UNGPs is a deliberate approach to catalyze future regulatory innovations (Wolfsteller & Li, 2022, p. 6). Moreover, employing this constructivist lens, the authors reinforce Ruggie's (2014) argument regarding the importance of multi-stakeholder consultation processes to the alignment of corporate-level global conduct (Wolfsteller & Li, 2022, p. 8). In a similar vein, previous researchers have emphasized the UNGPs' potential for "second order effects" (Augenstein, 2018, p. 258) in which pre-regulatory networks are created to pave the way for future substantive policies (O'Brien et al., 2021, p. 94). Hence, this analysis presents a departure from previous arguments in traditional legal scholarship and, instead, advocates for the crafting of strategies sensitive to the individual circumstances of states.

Additionally, the translation of the UNGPs into National Action Programs (NAPs) has sparked considerable academic debate into the extent to which they are able to hold corporations accountable. NAPs, according to Augenstein (2018, p. 255), arrived as direct outcomes of the UNGPs and consist of strategies devised by states to instil sensible human rights conduct into businesses operations. Nevertheless, while business and human rights NAPs have grown significantly in the last decade, concern over their ability to generate compliance still lingers (O'Brien et al., 2021, p. 72). In order to illuminate this ambiguity, some researchers applied an experimentalist governance theory (EGT) to examine existing NAPs (O'Brien et al.,

2021, p. 77). Building upon the work of Wolfsteller and Li (2022) and O'Brien (2020), EGT suggests human rights implementation entails a bottom-up approach in which cooperation from both public and private actors is necessary (O'Brien et al., 2021, p. 72). Moreover, EGT envisions the alignment of programs to international norms through internal data and contextualization to national circumstances (O'Brien et al., 2021, p. 72). Therefore, the creation process of the UNGPs significantly resembles the core architecture of the EGT. However, despite the multi-stakeholder consultation process by which they were created, the authors find a range of existing NAPs lack measures to monitor and communicate effective implementation (O'Brien et al., 2021, p. 87). Parallel to Augenstein's (2018) identification of the shortcomings of NAPs, the authors also point to the enduring exclusion of marginalized groups, the need for robust measurement indicators and routinized progress reviews (O'Brien et al., 2021, p. 94). Hence, while the scarcity of effective measurement indicators is a barrier to successful implementation, recent developments have attempted to fill this lacuna.

Stemming from the inherent complexities in solving transnational issues, EGT undermines the possibility of one-size-fits-all approaches to human rights accountability and argues in favor of a collaborative implementation system (O'Brien et al., 2021, p. 72). Utilizing this liberalist perspective, scholars frame human rights violations as collective action problems that can only be solved through cooperation from multi-level stakeholders (O'Brien et al., 2021, p. 72). This process, they argue, will lead to programs sensitive to the norms prescribed in international frameworks and geared towards national circumstances (O'Brien et al., 2021, p. 72). Moreover, they outline the importance of continuous evaluations of these plans to generate transparency and ensure they are achieving their intended goals (O'Brien et al., 2021, p. 76). This theory is significant for the purposes of this study as it links to the polycentric governance apparatus envisioned by Ruggie (2014) in the creation of the UNGPs and thus, acts a valid approach by which to judge their impact on the wider human rights regime.

Soft and hard law

In order to examine the efficacy of human rights agreements, several authors have also discussed the dichotomy between soft and hard law. Pariotti (2008, p. 149) examines the over-inclusiveness of soft-law instruments in trying to regulate the behavior of business enterprises. She argues positive obligations, cases in which an entity should actively fortify a right, can be pursued by soft law instruments since they could provide motivation for private actors to abide (Pariotti, 2008, p. 150). Nevertheless, she criticizes, for instance, the inclusion of labor standards into soft law sources since they arguably encompass fundamental human rights that should be enforceable through hard law agreements (Pariotti, 2008, pp. 150, 153). Therefore, her analysis undermines the UNGPs' narrow conception of corporate responsibility to respect human rights as simply ensuring such rights are not infringed (Bernaz, 2020, p. 50). This also reinforces Hamm's (2022, p. 7) claim that legitimate regulation of corporate human rights behavior can only be achieved through agreements negotiated by democratically-elected governments. This theory aligns with the argument made in this study that while the UN framework has made corporations more aware of the human rights risks within their supply chains, legitimate compliance mechanisms to enforce them are still missing.

Nevertheless, O'Brien (2020, p. 189) seeks to bridge the divide between hard and soft law by proposing a framework approach to advance respect for human rights from corporations. Contrary to Pariotti (2008), the author highlights the significance of soft law instruments as precursors to future elaboration of binding standards by transnational committees (O'Brien, 2020, p. 189). Therefore, O'Brien (2020, p. 189) argues for an intrinsic link between soft and hard law via the bottom-up advocacy afforded by broad initial principles that are ultimately tailored to national circumstances. This supports the soft law approach of the UNGPs due to its objective, as stipulated by the authors, to act as a foundation for generating a "cumulative positive effect" (OHCHR, 2011, p. 12) for future regulation. Hence,

the UNGPs conform to O'Brien's (2020) hypothesis of the developmental growth human rights agreements undergo to achieve legitimacy.

Theoretical framework

Theoretical approach

This section will detail the theoretical expectation and research design of this study. Previous scholars have employed a state-centric perspective to criticize the soft law approach of the UNGPs. This realist lens is arguably most prominent in the analyses of Hamm (2021) and Bernaz (2020) that attribute most legitimacy to international agreements negotiated by sovereign states. Both authors criticize the weak binding power of the Guiding Principles while comparing it to previous UN initiatives to secure corporate human rights responsibility (Hamm, 2021; Bernaz, 2020). The realist doctrine's framing of international organizations as weak actors with a lack of enforceable power is illustrated in this study. Moreover, according to this perspective, international regimes are inherently weak due to their voluntary nature and inability to impose obligations for appropriate behavior upon states or corporations. This limitation is amplified further by the focus of the UNGPs on businesses, an entity even more difficult to regulate under international regimes than states. Certainly, it can be argued these principles had a positive impact on the human rights regime by establishing global norms of good conduct (Wolfsteller & Li, 2022). However, the extent to which the soft law approach of the UNGPs has drawn measurable action from corporations, aside from promises of reform, remains weak.

Therefore, I employ a realist perspective in this study in order to underline the inability of the UNGPs to translate public commitments by corporations into effective human rights due diligence. While the UN framework was influential in drawing pledges from states and

businesses, these promises have not led to significant change on the ground. Hence, the following hypothesis can be generated:

H₁: The UNGPs have not significantly improved the protection of human rights by TNCs. This is primarily due to the framework's reliance on soft law instruments that are unable to regulate the cross-sectoral and multinational operations of such businesses.

Conceptualizations

One component in the analysis requiring further specification is the international protection of human rights. In this regard, Donnelly (1986)'s examination of the international human rights regime is most fitting to define this notion. The author conceptualizes the regime through two crucial legal documents, the 1948 UDHR and the International Human Rights Covenants (IHRCs) ratified in 1976 (Donnelly, 1986, p. 606). He argues the former provides the most encompassing and recognized set of human rights norms, constituting a framework of interdependent global standards (Donnelly, 1986, pp. 606-607). These rights range from personal and legal to economic, cultural and political rights (Donnelly, 1986, p. 607). Despite the inherent logic in grounding a definition of human rights with these foundational legal documents, some researchers have proposed other classifications on the basis, for instance, of labor and environmental rights (Carbo & Hughes, 2010; Cullet, 1995). Nevertheless, for the purposes of this study, Donnelly's (1986, p. 605) focus on the UN-centered regime definition provides the most effective conceptualization of human rights protection due to this work's utilization of the UNGPs.

The 2011 UNGPs also require some further deconstruction. Grounded in the necessity for businesses to embed human rights responsibility into internal governance structures and providing remedies, the UNGPs were constructed under the "Protect, Respect and Remedy" (OHCHR, 2011, p. 1) framework. The principles revolve around a recognition of states' duty

to protection fundamental freedoms, the role of corporations performing unique functions to respect such rights and, crucially, the necessity of remedial processes in case of a failure to do so (OHCHR, 2011, p. 1). Furthermore, these principles are applicable to corporations of any size, sector, location, ownership and structure (OHCHR, 2011, p. 15). This encompasses domestic corporations, as well as TNCs, which constitute the primary focus of the analysis. With the scope of generating international global standards of public-private human rights protection, the UNGPs were established as a direct need to adapt to the increasing influence of corporations in governing transnational challenges (Alston, 2005; Gregg, 2020). Therefore, the UNGPs expands on international law obligations in order to fit shifting global realities and devote attention to the needs of previously marginalized groups (OHCHR, 2011, p. 1). Finally, the framework attempts to clarify the ambiguities of existing policies governing corporate operations by assigning National Human Rights Institutions (NHRI) a key role in guiding businesses on appropriate human rights measures (OHCHR, 2011, pp. 5-6).

Case selection & methodology

To examine the impact of the UNGPs on the international protection of human rights, the study adopts an explanatory approach paired with qualitative data. Moreover, the analysis is split into three sections. Firstly, the UN framework on the UNGPs is analyzed in order to outline the principles the report envisions as most important for businesses to safeguard human rights. This investigation provides a comprehensive understanding of the expectations for corporations set by the document. These include three main elements: an effective policy commitment, the creation of a human rights due diligence process, and the provision of grievance mechanisms to remediate violations. Addressing the main tenets of the framework lays the groundwork for the rest of the analysis in which their efficacy in rendering corporations more compliant to human rights responsibilities is observed.

Secondly, the criteria set out in the Corporate Human Rights Benchmark is utilized as a more systematic tool than the original UN framework to observe FIFA's human rights commitments. These criteria are ultimately applied to the case of FIFA in order to evaluate the extent to which the UNGPs have catalyzed a change in its human rights approach. The omission of this sporting association from previous analyses of corporations' human rights responsibilities justifies the application of the framework to it. Since awarding Qatar the hosting rights for its international tournament, the organization has faced criticism from labor federations and human rights groups due to the country's exploitative labor practices (Ruggie, 2016, p. 8). Critics of the so-called 'kafala' system highlighted the strict working restrictions it imposes on migrant workers and argued FIFA's large-scale infrastructure projects would only exacerbate this issue (Ruggie, 2016, p. 8). Furthermore, while FIFA is established as an association, it conducts significant commercial activities on global scale, making an evaluation through the UNGPs an appropriate reference standard.

The selection of this case is also significant for other reasons. While addressing the impact they have had in reforming FIFA's human rights policy, the analysis highlights the shortcomings of the UN framework in imposing hard obligations on corporations. FIFA also has an unconventional governing structure and is granted with a degree of legal authority with the countries organizing its tournaments, making it atypical to other corporations (Reguero, 2020, p. 31). This renders FIFA resistant to some of the principles outlined in the UNGPs and makes an analysis of this case particularly fruitful.

Data

The Corporate Human Rights Benchmark report for the year 2020 will be evaluated in order to more closely examine FIFA's human rights policy. This framework was created due to the perceived need to utilize benchmarking methodologies as tools to operationalize transnational challenges into measurable indicators (World Benchmarking Alliance [WBA],

2020). More specifically, the 2020 benchmark is a publicly-available annual report assessing the implementation of the UNGPs from 119 global corporations while focusing on four high-risk sectors (WBA, 2020). The year 2020 was selected since it is the period for which the latest such report and the most advanced version of the criteria was readily available. The framework consists of 13 indicators measuring the implementation of the UNGPs across the 3 main themes of the framework, namely, policy commitment, human rights due diligence and the presence of remedial processes (WBA, 2020). Drawing from the official UN framework, the organization utilizes these indicators to measure the degree to which corporations have aligned themselves to the UNGPs. However, for the purposes of this study, this report will solely be used as a tool to condense the UN principles into more assessable indicators.

The investigation will primarily revolve around two reports: FIFA's Human Rights Policy (2017) and the Activity Update on Human Rights (2017). The former highlights the organization's commitment to human rights protection in broader terms while establishing a four-pillar system, drawing from the UNGPs, to identify and mitigate human rights risks (FIFA, 2017a, p. 4). The latter acts as a progress report outlining the measures FIFA has taken since its renewed statutory commitment in order to align its behavior more closely to the UN framework (FIFA, 2017b, p. 4). Additionally, external reports from the human rights advisory board and relevant civil society organizations are included in order to supplement the analysis of FIFA's fulfillment of the criteria.

Discussion and analysis of the results

UN Guiding Principles on Business and Human Rights

While the general tenets of the UNGPs were previously illustrated, this section outlines the framework's most important principles relevant to the analysis.

Policy commitment

Under UNGP 13, the document outlines the necessity for corporations to mitigate negative human rights impacts stemming either directly or indirectly from their operations (OHCHR, 2011, p. 14). Therefore, corporations may be liable to human rights responsibility through the negative actions along the supply chain of state or non-state entities they have business relationships with (OHCHR, 2011, p. 15). This principle transcends restrictive conceptualizations of corporations and emphasizes their accountability with respect to their increasingly vast operations. UNGP 15 elaborates upon this by highlighting the importance for businesses to possess due diligence and remediation processes to mitigate and rectify adverse human rights impacts (OHCHR, 2011, pp. 15-16). Furthermore, UNGP 16 and 18 underline the importance of consultations with internal and external stakeholders, as well as experts, in generating policy commitments and assessing an enterprises' potential human rights risks (OHCHR, 2011, pp. 16, 19). By specifying the human rights-related expectations of all actors contributing to the completion of its operations, a policy commitment should be embedded across an organization's entire governance structure (OHCHR, 2011, p. 16). Hence, these four principles effectively extend human rights accountability to business enterprises and outline how coherence between this responsibility and their operations can be achieved.

Human rights due diligence

Additionally, the document highlights detailed parameters for the incorporation of human rights due diligence. UNGP 17, for instance, specifies four key elements an effective due diligence mechanism should include: an assessment of actual and potential human rights impacts, monitoring negative effects, addressing relevant issues, and communicating progress (OHCHR, 2011, p. 17). Furthermore, a due diligence mechanism should continuously address human rights impacts a corporation may both cause or contribute to and its necessity will vary depending on the organization's relationships and size (OHCHR, 2011, pp. 17-18). In addition,

UNGP 19 outlines the importance of internalizing the results from these impact assessments through the creation of specialized bodies to oversee their implementation (OHCHR, 2011, p. 20).

Another important aspect of due diligence is a corporations' ability to leverage its position to mitigate the malpractices of an entity it does business with (OHCHR, 2011, p. 21). When human rights issues are linked to an organization through an external entity, the importance of the relationship, the gravity of the abuse itself, and the implications of ending the relationship should be accounted for (OHCHR, 2011, p. 22). Moreover, the text highlights ways for corporations to increase their leverage, as well the consequences organizations may face if they fail to terminate such relationships (OHCHR, 2011, p. 22). Nevertheless, as Ruggie (2016, p. 20) argues, a corporation's lack of leverage to rectify a human rights issue in its value chain does not detract from its responsibility to address it. Rather, the enterprise should seek to augment its leverage by collaborating with relevant actors in order to prevent wrongful practices in the future (OHCHR, 2011, p. 22; Ruggie, 2016, pp. 20-21). Hence, these principles highlight the core areas necessary to translate policy commitments into mechanisms safeguarding human rights responsibility.

On top of that, the framework stresses the importance of effective monitoring and communication processes in order to track effective implementation. Such monitoring processes should primarily comprise feedback from affected stakeholders (OHCHR, 2011, p. 22). Qualitative indicators, such as accounts from local communities, and quantitative indicators, in the form of statistical supply chain analyses, should generate the foundation of such procedures (OHCHR, 2011, p. 22). UNGP 21 prescribes enterprises to communicate the results of their human rights policies to the wider civil society (OHCHR, 2011, p. 23). Potential avenues for doing so include corporate responsibility progress reports, as well as financial and non-financial reports (OHCHR, 2011, p. 24). This is part of the framework's so-called "know

and show” (OHCHR, 2011, pp. 23-24) criteria by which corporations should demonstrate the policies they are implementing in order to remedy human rights infringements. Hence, the framework provides monitoring and communication standards businesses should follow in order to raise their accountability and transparency.

Remediation

Finally, the framework outlines the necessity of remediation processes for unforeseen violations. UNGP 23 points to an instance in which the particular country context presents difficulties for businesses to help safeguard human rights. Despite this potentiality, corporations have the responsibility to demonstrate their efforts in mitigating these effects through respect of internationally recognized human rights (OHCHR, 2011, p. 25). The report stresses the importance of multilateral consultations with independent experts in order to increase transparency and develop best practices (OHCHR, 2011, p. 26). Furthermore, UNGP 31 reinforces operational-level grievance mechanisms by outlining factors relevant to assessing their efficacy (OHCHR, 2011, p. 33). Such procedures should entail a pre-meditated process with clear instruments by which to identify the infringement and evaluate the need for remedy (OHCHR, 2011, p. 33). They should be accessible to all affected parties by addressing the specific needs and obstacles of marginalized groups in order to ensure an equitable grievance process (OHCHR, 2011, p. 33). Finally, procedures should be geared towards the specialized functions of an enterprise and draw from previous experiences in order to set precedents for responsible action in the future (OHCHR, 2011, p. 34). Hence, the document emphasizes the responsibility of corporations to remedy human rights infringements while laying out the key features they should be based from.

Corporate Human Rights Benchmark

This section will explore the Corporate Human Rights Benchmark (CHRB) due to its innovative approach in condensing the UNGPs into more focused indicators. Drawing from

the sections previously outlined, this benchmark classifies corporations' alignment to the UNGPs across these three main criteria.

Governance and policy commitments

To operationalize the efficacy of corporations' policy commitments, the benchmark proposes four main indicators. Firstly, whether an enterprise's statute includes an article highlighting its commitment to respecting human rights (WBA, 2020, p. 17). Secondly, the report probes for a reference specifically to the company's commitment to the right of workers (WBA, 2020, p. 17). Therefore, the criterion separates the company's respect for the rights of its own workforce and those of local communities that could be adversely impacted by their operations. Thirdly, following the stakeholder consultation process envisioned by UNGP 16 and 18, the framework probes for how an enterprise engages with stakeholders in their supply chain (WBA, 2020, p. 17). The final criterion probes for a written commitment to providing remedy to adversely impacted individuals as a result of an issue they contributed or caused (WBA, 2020, p. 19).

Embedding respect and human rights due diligence

In order to assess the horizontal integration of their policy commitment, the framework proposes six indicators. Firstly, how an enterprise allocates human rights functions and responsibility within its organizational structure (WBA, 2020, p. 17). The report divides the due diligence process stipulated in the UN framework into five separate indicators. This includes the extent to which corporations have outlined procedures in place to identify human rights issues and how external expertise and stakeholders are involved (WBA, 2020, pp. 17, 19). Furthermore, the framework probes for an assessment process the company utilizes in order to identify its most salient human rights risks (WBA, 2020, pp. 17, 19). Additionally, how the corporation integrates these findings into active procedures being taken to mitigate infringements (WBA, 2020, p. 17). To fulfill this criterion, corporations should specify specific

measures that have been implemented as a response to such analyses (WBA, 2020, p. 17). The criterion for monitoring stipulates the inclusion of procedures to track the extent to which the corporation's measures are effectively mitigating breaches (WBA, 2020, p. 17). Finally, organizations should demonstrate their involvement to the wider public by transparently reporting their progress (WBA, 2020, p. 17).

Remedies and grievance mechanisms

The framework suggests three main indicators for a company to have effective operational-level grievance mechanisms. Firstly, the existence of channels within the organizational allowing grievances of workers to be voiced (WBA, 2020, p. 17). The second criterion probes for similar avenues, but for external individuals or communities adversely affected by human rights impacts (WBA, 2020, p. 17). Drawing from the criteria for grievance mechanisms in UNGP 31, the report also highlights the role of enterprises or their business partners in rendering them accessible to relevant communities (WBA, 2020, p. 21). Finally, organizations should specify their full approach from identifying violations, providing timely remedies and outlining an evaluation process to improve future mitigation (WBA, 2020, p. 21).

Case study: FIFA and Qatar 2022 World Cup

In this section, the specific case of FIFA will be examined in order to evaluate the reforms to its human rights policy since the establishment of the UNGPs.

FIFA structure

Before evaluating FIFA's human rights approach, an outline of the organization's administrative structure is necessary. FIFA's members consist of 209 national football associations (Ruggie, 2016, p. 6). The organization includes both a Congress and Council led by representatives of each member association (Ruggie, 2016, p. 15). While the former amends the corporation's statute and decides on the location of the FIFA World Cup (FWC), the latter

acts as the strategic and oversight body (Ruggie, 2016, p. 15). Furthermore, the Governance committee advises the Council on issues such as environmental protection and social responsibility (Ruggie, 2016, p. 16). Therefore, FIFA's operations involve both the daily processes of football-related issues, as well as the organization of international tournaments (Ruggie, 2016, p. 16). For the latter, the organization is involved in both direct and indirect relationships with state and non-state entities in order to deliver the events (Ruggie, 2016, p. 17). In these instances, FIFA enters into partnerships with private contractors and their supply chains in handling operational matters (Ruggie, 2016, p. 18). Through such contractual relationships and regulations, FIFA becomes vulnerable to human rights challenges akin to those faced by TNCs (Ruggie, 2016, p. 18).

This vulnerability, most evident in the build-up to the FWC in Qatar, has led to a rethinking of its human rights risks in order to align itself more closely to the UN framework. Hence, FIFA has molded the three-tier system envisioned by the UNGPs into a four-pillar system in order to encompass its varied human rights responsibilities.

Pillar 1: Commit and embed

In April 2016, FIFA revised its statute through the inclusion of an article stipulating its commitment to respecting and protecting “all internationally recognized human rights” (FIFA, 2019, p. 11). This provision, in contrast to the narrow attribution of human rights responsibility in UNGP 11, highlights FIFA's willingness to play a proactive role in their protection (OHCHR, 2011, p. 13). This commitment is especially important as it presents a shift from FIFA's previous focus on individual cases of human rights infringements to a broader organizational pledge (FIFA, 2017a, pp. 4-5). Accordingly, FIFA fortified its human rights approach through the creation of a document outlining the organization's plans to enhance its corporate social responsibility (FIFA, 2017a, p. 8). Due to its vast operations with both state and non-state actors, the report addresses the organization's duty to protect the fundamental

rights of those impacted by the adverse consequences of its multifaceted activities (FIFA, 2016, p. 62). The elaboration of its policy commitment falls in line with the active communication across all the organization's functions and partnerships envisioned by UNGP 16 (OHCHR, 2011, pp. 16-17).

With contributions from internal and external stakeholders, FIFA also developed a designated human rights policy structured in accordance with the UNGPs (FIFA, 2017a, p. 8). The document outlines FIFA's commitment to a due diligence process to minimize human rights infringements and provide appropriate remedy to victims (FIFA, 2017b, p. 5). Moreover, as specified by UNGP 19, the organization pledged to augment its leverage in order to enact human rights reform (FIFA, 2017b, p. 5). By pledging to protect human rights within football or utilize the sport as a tool to do so, the policy transcends the corporate responsibility envisioned by the UNGPs (FIFA, 2017b, p. 5). However, the lack of specification of how FIFA plans to strengthen its due diligence process highlights how corporations may utilize such declarations of reform merely as a façade to feign alignment with international regimes. This falls within the realist doctrine by underlining the lack of enforceability of soft law instruments in rendering corporations accountable to human rights.

Nevertheless, FIFA has embedded internal cross-departmental capacity by allocating various responsibilities across both its operational and strategic branches. The Governance Committee established a Human Rights Working Group to guide the Council on FIFA's ongoing developments and leads the organization's strategy in this field (FIFA, 2017a, p. 9). Furthermore, the Sustainability & Diversity Department coordinates meetings between departments operating in one of FIFA's risk areas in order to ensure the application of the human rights policy (FIFA, 2017a, p. 9). FIFA also tasked eight international experts, with backgrounds in labor and anti-corruption issues, from different sectors to lead an external Human Rights Advisory Board (HRAB) (FIFA, 2017a, p. 9). The creation of this body falls in

line with the reliance on independent human rights expertise for assessing adverse impacts envisioned by UNGP 18. Between 2017 and 2020, this board analyzed FIFA's progress in the field and provided recommendations for future action on a biannual basis (FIFA, 2019, p. 8). Guided by insight from stakeholders impacted by FIFA's operations, the board produced five reports evaluating the sporting body's advancements on various areas, ranging from the Qatar FWC to strengthening access to remedy for victims (Human Rights Advisory Board, 2021, pp. 2-3, 6). In its final report, the board praised FIFA's efforts to finalize the implementation of a majority of their recommendations and develop internal mechanisms to operationalize their responsibility (Advisory Board, 2021, p. 2). Therefore, both strategically and operationally, FIFA has certainly made significant strides in embedding human rights responsibilities into its internal procedures. Hence, despite the board's mere advisory role, FIFA's implementation of its recommendations challenges realist tenets of hard law and points to the possibility of the diffusion of norms within international regimes.

Pillar 2: Identify and address

Following the stipulations under UNGP 18, FIFA's policy identifies five areas posing the greatest human rights risks to their operations (FIFA, 2017b, p. 6). These include land acquisition, discrimination, players' rights, labor rights and security (FIFA, 2017b, pp. 6-7). The risks associated with the first three are predominantly the responsibility of national governments or the member association in which the breach is taking place. While FIFA can take measures, for instance, to monitor cases of discrimination towards players, it is ultimately up to individual members to enact policies in order to mitigate their occurrence (FIFA, 2017b, p. 6). This area highlights the lingering legitimacy of states in governing human rights issues within their borders. However, in terms of security concerns, FIFA recognizes how breaches of basic human rights, such as freedom of movement, expression and assembly could be caused through the organization of their events (FIFA, 2017b, p. 6). The saliency of this issue is

particularly evident with the restriction of migrant workers' rights through Qatar's Kafala system (Reguiero, 2020, p. 29).

Due to its connections to sub-state entities in the large-scale infrastructural development of its tournaments, FIFA has drawn accusations of human rights negligence when it comes to labor rights. In order to adequately address these issues, FIFA has categorized them according to their connection to events, football governance, and FIFA's in-house operations (FIFA, 2017a, p. 10). Within the first category, FIFA implemented measures to address the development of infrastructure, working conditions and discrimination (FIFA, 2017a, p. 11). In preparation for the FWC, FIFA collaborated with the Supreme Committee for Delivery and Legacy (SC), an international body of labor rights experts, in the creation of a set of contractually-binding Workers' Welfare Standards (WWS) (FIFA, 2017a, p. 12). The monitoring of their implementation comprises both self-assessments from sub-contractors as well as audits from Impactt, an independent workers' rights advocacy organization (FIFA, 2017a, p. 12). This also entailed the regular inspection of stadium sites by relevant tournament organizers and the assessment of mechanisms in place for workers to issue complaints (FIFA, 2017a, p. 12). Furthermore, FIFA has also incorporated stringent human rights criteria into the bidding process for future tournaments (FIFA, 2017a, p. 13). Countries must now provide a risk assessment report outlining the potential human rights risks of hosting the tournament and, if selected, are expected to establish a due diligence process, drawing from the UN framework, in order to mitigate such risks (FIFA, 2017a, p. 13). Hence, the implementation of measures to address its perceived risk areas challenges this study's realist lens by illustrating the potential for cooperation between state and non-state actors in strengthening the international human rights regime.

Additionally, FIFA has also sought to combat discrimination in the sport by implementing a multistakeholder monitoring system. Launched in 2015, FIFA gathers reports

of discriminatory behavior, informed by a network of independent observers, in order to sanction relevant member associations (FIFA, 2017a, p. 14). Furthermore, the sporting body prohibited the transfer of minors to a country in which they are neither a resident or citizen through a framework on Regulations on the Status and Transfer of Players (FIFA, 2017a, p. 15). Certainly, such measures are significant in safeguarding the rights of young players and ensuring instances of discriminatory behavior are identified. Nevertheless, these procedures fail to go beyond merely identifying breaches of human rights to a more systematic explanation of how they should be resolved. Therefore, it can be argued that the changes undergone in FIFA's policy do not present a substantial departure from the ad-hoc approach it employed prior to its alignment to the UNGPs. This reiterates the weakness of the framework's soft law method by illustrating the limited steps corporations may take to demonstrate human rights reform.

Pillar 3: Protect and remedy

The organization has appointed two external ombudspersons tasked with helping to settle complaints regarding discrimination raised by internal staff (FIFA, 2017a, p. 16). Nevertheless, in their final report to FIFA, the HRAB advocates for the expansion of this group of external agents into a network of independent regional experts (Advisory Board, 2021, p. 13). This network should have the capacity to investigate reports of unfair treatment made by any entity linked to FIFA and reinforce national-level grievance mechanisms (Advisory Board, 2021, pp. 13-14). The limited role attributed to such ombudspersons reflects this study's realist perspective by demonstrating FIFA's constrained attempts to pacify the UN's norms of appropriate human rights behavior.

Concerning its relationships with external entities, FIFA has advocated for the creation of dispute resolution in chambers across their member associations (FIFA, 2017a, p. 17). The functions these chambers serve, however, are not clearly specified, with mere reference to their

authority over “football-related matters” (FIFA, 2017a, p. 17). Furthermore, building upon the creation of the WWS, the SC established so-called Workers’ Welfare Forums (FIFA, 2017a, p. 17). These forums were designed to provide platforms for workers to raise welfare-related grievances within construction sites containing more than 500 workers (Advisory Board, 2017, p. 31). Assessment reports have shown that elections for the designation of worker representatives produced turnouts of over 85% with 8000 workers being represented across 15 contractors in 2018 (Impactt, 2018, pp. 5-6). Despite significant participation from workers in these forums, evidence about the degree to which grievances have actually been rectified is lacking. Hence, the establishment of these forums is arguably another veiled attempt by the organization to exhibit its alignment to the principles in the UN framework, with minimal substantive improvement.

Additionally, there are enduring obstacles for migrant workers in Qatar to receive remediation for late or non-repayments (Advisory Board, 2021, p. 9). As an example of Qatar’s exploitative labor practices, the HRAB addresses the previous system in the country by which workers required the approval of their employers in order to find a new job (Advisory Board, 2021, p. 9). While this ‘No Objection Certificates’ scheme was ultimately abolished in 2020, effective implementation remains an ongoing issue in the country (Advisory Board, 2021, p. 9). Therefore, the board developed one core recommendation for FIFA’s future efforts. It argued FIFA should strengthen its collaboration with the SC in providing timely remedy for workers by specifying their respective operational responsibilities and increasing engagement with local stakeholders (Advisory Board, 2021, pp. 9-10). The lack of detail in their individual mandates highlights the difficulty in translating public commitments into measurable action. Furthermore, it points to the limitations of soft law in providing a structured path to strengthening human rights protection. Hence, the ongoing nature of the issues outlined in the

UN framework illustrates the gaps remaining in ensuring global sporting organizations act upon their human rights commitments.

Pillar 4: Engage and communicate

FIFA's engagement with stakeholders in the implementation of its statutory commitment centers primarily around cooperation with the HRAB (FIFA, 2017a, p. 17). However, FIFA has also taken additional measures to consult international organizations and civil society in order to address issues surrounding human rights abuse (FIFA 2017a, p. 17). One example is the Memorandum of Understanding signed between FIFA and the UN Office on Drugs and Crime in 2020 highlighting their commitment to root out corruption and crime from sport (Advisory Board, 2021, p. 14). FIFA proposed the establishment of an independent international body with the mandate to address cases of corruption across the entire sporting ecosystem (Advisory Board, 2021, p. 14). While this declaration is a significant first step to addressing the issues at the root of human rights infringements, its lack of binding power raises concerns to its legitimacy. Similar memorandums are signed regularly by FIFA with business partners along its supply chain to display an alignment to international environmental or labor standards (FIFA, 2017a, p. 11). However, lacking any legal responsibility, these sweeping declarations are arguably utilized as tools to appease labor federations and generate a favorable public image. Hence, the sporting body's use of such weak agreements highlights the shortcomings in the substantive binding power of the UNGPs.

In order to communicate its progress, FIFA relies mainly on yearly activity reports, financial assessments and analyses of tournament-specific proceedings (FIFA, 2017a, p. 18). The HRAB argues greater transparency is needed from FIFA's reporting of their human rights progress in order to align itself more closely to the stipulations of UNGP 21 and 31 (Advisory Board, 2021, p. 19). Furthermore, the board emphasizes the necessity of a new body to take its place in order to track the development of human rights issues throughout the 2022 FWC

(Advisory Board, 2021, pp. 11, 20). While acknowledging the progress FIFA contributed to in reforming Qatar's exploitative labor system, discrimination against its migrant workforce is still widespread (Advisory Board, 2021, p. 11). Therefore, it highlights FIFA's potential to develop long-term ethical recruitment models in the country by transferring the knowledge gathered from this experience into connected sectors (Advisory Board, 2021, p. 11). Nevertheless, with the board's mere advisory role, the prospect of an internal mechanism with the mandate to hold FIFA's decision-making bodies accountable to human rights considerations is remains weak. This enduring issue reiterates the difficulty for soft law to engender long-standing human rights reform within transnational corporations operating across state and non-state supply chain networks.

Conclusion

This thesis aimed to investigate the extent to which the establishment of the UNGPs has impacted the protection of human rights, through the case of FIFA. The analysis demonstrates FIFA took significant steps to align itself to the UN framework through strong policy commitments, informed by a multi-stakeholder process, within their human rights policy. Moreover, the organization successfully identified its most salient risk areas and, through the creation of a HRAB, engaged with different sub-state actors in order to mitigate adverse effects. However, the analysis also highlights FIFA's tentativeness with a lack of far-reaching reforms to generate systematic changes in its human rights policy. This is particularly noticeable with the lack of an authoritative body within the organization to instill human rights responsibilities in their decision-making process. Therefore, to answer the research question, while the UNGPs have certainly rendered corporations, such as FIFA, more cognizant of their human rights responsibilities, their lack of binding power renders it difficult to identify extensive changes in the protection of human rights. Hence, the hypothesis asserted previously employing a realist stance can be effectively maintained.

Nevertheless, the study suffers from several limitations that weaken the exploratory significance of the findings. Firstly, this thesis has solely focused on the case of FIFA in order to deduce the impact the UNGPs have had in reforming human rights approaches of corporations. Considering FIFA's reliance on contractual agreements with states in order to conduct business, the ability to draw implications for other corporations, except global sporting associations, is limited. Future research on the UNGPs could assess less globalized corporations in order to provide more direct conclusions that could be extrapolated to a greater range of enterprises. Secondly, due to the plethora of measures implemented across FIFA's extensive supply chain, the analysis does not provide an exhaustive examination of all of FIFA's efforts. As a result of the sporting body's business relationships with states, contractors and international organizations, the thesis was focused on the procedures most relevant to the assessment criteria. Finally, sporting associations have only recently garnered societal and scholarly attention in terms of the human rights responsibilities they possess. This is particularly the case with FIFA, which has only received global scrutiny following the decision to hold the 2022 tournament in Qatar. Therefore, despite the long-standing nature of the UNGPs, FIFA's alignment process to these principles is an ongoing process.

In conclusion, this study largely conforms to realist understandings of the power dynamics of international law by highlighting the gap in the UN framework to achieve far-reaching respect for human rights from corporations. As mentioned at the outset, this investigation raises both academic and societal implications. From an academic perspective, this study perpetuates legal debate on the efficacy of soft and hard law instruments in achieving compliance, particularly in regard to sporting organizations. For the latter, this study highlights the enduring gaps in the efforts of corporations contributing to negative human rights impacts through their cross-sectoral links. Future research could examine other sporting organizations,

such as the International Olympic Committee (IOC), to contextualize FIFA's efforts with those of similarly global sporting bodies.

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