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# AN INCENTIVE-COMPATIBLE ENFORCEMENT MODEL FOR INTERNATIONAL LABOR LAW? LESSONS FROM QATAR'S FORCED LABOR CASE

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## I. INTRODUCTION

How has the International Labour Organization (ILO) been adapting its regulatory apparatus for transnational labor law enforcement—and how might this regime further evolve to address its pressing contemporary challenges? Inquiries into institutional change in international organizations are not new in legal scholarship, including in the field of international labor law.<sup>1</sup> Yet the question on the right evolutionary path for the ILO remains highly contested. Philip Alston, for example, identified a shift in the ILO's traditional enforcement mechanisms towards a “decentralized and voluntarist system” over a decade ago. These changes have been criticized in light of their “emphasis on soft promotional techniques” where the ILO “remains only nominally at centre stage.”<sup>2</sup> Other scholars, on the other hand, have criticized the efficacy of the “traditional” enforcement activities of the ILO, viewed as a mere form of “public shaming.”<sup>3</sup> While views have been divided on how exactly the ILO should perform its mission, they all stress that its current enforcement model is in need of reform. Today, as this century-old organization cultivates its future role in an ever-changing global labor regulatory sphere,<sup>4</sup> a reassessment of this enduring debate is as timely as ever. Indeed, while the ILO “has a rich history of reinventing itself in response to shifts in global labor

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1. Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VAND. L. REV. 649 (2006); Tonia Novitz, *Past and Future Work at the International Labour Organization: Labour as a Fictitious Commodity, Countermovement and Sustainability*, 17 INT'L ORGS. L. REV. 10, 16–28 (2020).

2. Philip Alston, *'Core Labour Standards' and the Transformation of the International Labour Rights Regime*, 15 EUR. J. INT'L L. 457, 458, 517 (2004).

3. See, e.g., Brian A Langille, *Core Labour Rights – The True Story (Reply to Alston)*, 16 EUR. J. INT'L L. 409, 413, 420 (2005).

4. See, e.g., Adelle Blackett & Laurence R. Helfer, *Introduction to the Symposium on Transnational Futures of International Labor Law*, 113 AJIL UNBOUND 385 (2019); Franz Christian Ebert & Tonia Novitz, *Introduction: International Institutions, Public Governance and Future Regulation of Work: Taking Stock at the International Labour Organization's Centenary*, 17 INT'L ORGS. L. REV. 1 (2020).

conditions,” it is now grappling with profound challenges to its effective action.<sup>5</sup> In particular, research nowadays increasingly acknowledges that in light of the limitations of the ILO’s enforcement capacities, it should “make a more imaginative and efficient use of the persuasive tools at its disposal,”<sup>6</sup> and adopt incentive-compatible enforcement measures.<sup>7</sup>

Tackling these issues, this article points to a new transformation in the international labor rights’ supervisory and enforcement regime. It employs institutional and economic theory combined with insights from the French “economics of convention” school to analyze the work of the ILO’s supervisory system and its technical cooperation projects in recent years. Through this unique law and economics lens, the article explores the emergence of a powerful new enforcement model for international labor law.

More specifically, the article applies the economic concept of linkage along with signaling theory, to show how the ILO can use its technical cooperation activities as a linkage facilitator, in a way that induces real change in countries’ behavior. These activities have the potential to establish a linkage between countries’ compliance with international labor standards and the reputational benefits they acquire from being considered as countries who are complying with international labor standards. The participation in technical cooperation programs can be seen as a credible signal that improves countries’ reputation on this matter. By linking this reputational benefit to a set of labor rights commitments, the ILO can create powerful incentives for countries to comply with international labor standards.

The article then demonstrates and refines this broader framework through an in-depth analysis of the recent efforts of the ILO to eradicate forced labor in Qatar. Qatar’s laws and practices have facilitated some severe forced labor violations, especially due to its exploitative sponsorship system, the “Kafala.” The sponsorship system regulated (at least up to September 2020) the visa and legal residency status of migrant workers in Qatar and is widely considered as a major contributing factor to the conditions of forced labor affecting migrant workers in the country. For a period of a decade, the ILO’s supervisory system was engaged in unsuccessful proceedings to bring the country into compliance with the Forced Labour Convention of 1930.

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5. Laurence R. Helfer, *The ILO at 100: Institutional Innovation in an Era of Populism*, 113 AJIL UNBOUND 396, 396 (2019).

6. FRANCIS MAUPAIN, *THE FUTURE OF THE INTERNATIONAL LABOUR ORGANIZATION IN THE GLOBAL ECONOMY* 243 (2013).

7. Alan Hyde, *The ILO in the Stag Hunt for Global Labor Rights*, 3 LAW & ETHICS HUM. RIGHTS 154, 175 (2009); Brian Langille, ‘Hard Law Makes Bad Cases’: *The International Labour Organization (Nervously) Confronts New Governance Institutions*, 32 INT’L J. COMP. LAB. L. & INDUS. REL. 407, 411 (2016).

However, facing international backlash after being chosen as host of the 2022 World Cup event, Qatar agreed to take part in a much-publicized technical cooperation project with the ILO. As part of this cooperation, Qatar will work with the ILO to align its laws and practices with international labor standards. The project commenced in November 2017 and was later extended to its ‘second phase’ until the end of 2023.<sup>8</sup>

The article’s analysis finds that while Qatar had been initially uninfluenced by the supervisory system’s efforts, the ILO’s technical cooperation project in the country was able to facilitate some important achievements in the labor rights issues included in its scope. As such, important progress was made in the area of forced labor and towards the effective dismantling of the country’s sponsorship system. Yet when it came to international labor rights that were not included in the project, namely freedom of association and non-discrimination, the country’s violations remained in place during this time. These results shed light on the potential merits of facilitating the suggested kind of linkage through technical cooperation. At the same time, the fact that Qatar is still engaged in serious labor rights violations points to the inevitable limits of such a regulatory approach. The article explores the possible consequences of the omission of these labor rights violations from the scope of the technical cooperation project. The application of signaling theory to this case suggests that if technical cooperation projects do not require a certain minimum level of labor rights’ commitments from participating countries, over time, this will lead to the diminishing effects of their reputational signaling. The implications are rather counter-intuitive: by not requiring enough commitments from participating countries, in the long-term, these projects can lose part of their appeal for countries to participate in them in the first place.

Ultimately, through the empirical investigation of the ILO’s proceedings in Qatar, the analysis contributes to the ongoing academic debate on the role of the ILO’s supervisory system. While this system has been heavily criticized as not having “real enforcement power”<sup>9</sup> and in “crisis,”<sup>10</sup> the study advances our understanding on how it promotes labor rights compliance

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8. Recently, the ILO and the Government of Qatar signed an agreement to extend their technical cooperation program for another four years. See *ILO and Qatar Sign New 4-Year Programme to Advance Labour Reforms*, INT’L LAB. ORG. (Mar. 4, 2024), <https://www.ilo.org/resource/news/ilo-and-qatar-sign-new-4-year-programme-advance-labour-reforms>.

9. Langille, *supra* note 3, at 423.

10. Philip Alston, *Facing Up to the Complexities of the ILO’s Core Labour Standards Agenda*, 16 EUR. J. INT’L L. 467, 472 (2005); Francis Maupain, *The ILO Regular Supervisory System: A Model in Crisis*, 10 INT’L ORG. L. REV. 117 (2013); Lee Swepston, *Crisis in the ILO Supervisory System: Dispute over the Right to Strike*, 29 INT’L J. COMP. LAB. L. & INDUS. REL. 199 (2013); Claire La Hovary, *A Challenging Ménage À Trois? Tripartism in the International Labour Organization*, 12 INT’L ORG. L. REV. 204, 226–33 (2015).

through means which are beyond formal or “hard” enforcement. The informational role of the supervisory system is an issue that has been previously touched upon by scholars.<sup>11</sup> Recognizing that information is important, this case study refines existing literature by drawing on the French “economics of convention” approach to show how evaluation and learning are also at the heart of the role of the supervisory system. Building on these three themes (information, evaluation, and learning), the analysis sheds light on how the supervisory system serves as what can be termed a “normative authority” in issues of labor rights’ compliance; coordinating expectations and behavior of actors through the articulation of shared values. In addition, this case shows how the supervisory system supported ILO efforts in Qatar by enabling it to send effective “signals” on its labor rights compliance. The supervisory system provided the normative “framing” through which to assess Qatar’s reforms, operating as a powerful tool to make its signaling more credible. These reputational signals served as an incentive to undergo the labor law reforms as part of the technical cooperation project. In that sense, by providing reliable evaluation of countries’ behavior, the supervisory system can efficiently support various ‘external’ regulatory efforts where certain benefits are linked to countries’ compliance. The high standards associated with the work of this system, not only holds countries to an adequate standard of behavior, but it also enhances the reputational signals countries can benefit from, making it more appealing for them to comply with its guidance. These insights hold implications wider than the current example of technical cooperation projects, as these virtues of the supervisory system can be beneficial for essentially any type of labor rights’ compliance initiative.

In addition, this analysis demonstrates how the ILO can harness “external” pressures deriving from numerous regulatory initiatives and dispersed actors towards meaningful labor law reforms in violating countries. It has been acknowledged that one of the ILO’s major challenges and causes of inefficiency is its inability to “resonate in the wider world” and mobilize “efforts of a broader range of civil society actors.”<sup>12</sup> Indeed, the contemporary arena in which the ILO is operating and in which it has to find its place is comprised with influential public and private transnational actors. The ILO must find ways to “create space for an unlikely but necessary assemblage” of these actors.<sup>13</sup> The article shows how the ILO can work along with and

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11. See, e.g., Laurence R. Helfer, *Monitoring Compliance with Unratified Treaties: The ILO Experience*, 71 LAW & CONTEMP. PROBS. 193, 216 (2008); Anne Trebilcock, *Setting the Record Straight about International Labor Standard Setting*, 31 COMP. LABOR L. & POL. J. 101, 111 (2010).

12. Helfer, *supra* note 5, at 400.

13. Blackett & Helfer, *supra* note 4, at 389.

effectively utilize these powerful forces as part of its strategic mission. Moreover, a well-known problem when thinking of these “external” forces as instigators for regulatory change is that they are often sporadic and can even be arbitrary. In response, the article draws a path through which the ILO can potentially channel the diverse pressures exerted by external transnational actors towards a higher-level and more holistic strategy for the promotion of international labor rights. Through these processes, it is argued, the ILO can regain influence in the design and management of an increasingly polycentric global labor regulatory sphere.

The article is structured as follows: Section II presents the study’s argument on the possible emergence of a new, incentive-compatible, enforcement model for the ILO. Section III tests out how the suggested enforcement model applies in practice to the Qatari technical cooperation with the ILO. Then, section IV broadens the discussion and considers the possible implications of this analysis for the ILO’s enforcement and supervision activities. Through the lens of the Qatari case, it proposes a particular understanding of how the supervisory system works most efficiently, and accordingly of how its function should be understood. It also sketches a renewed role for the ILO in the contemporary arena of global labor governance. Finally, this section assesses the limitations of the envisioned model and, more generally, the limits of the normative capacity of the ILO’s enforcement model in transforming existing social practices and perceptions. Section V concludes.

## II. THE EMERGENCE OF A NEW ENFORCEMENT MODEL? AN INSTITUTIONAL LINKAGE AND SIGNALING THEORY FRAMEWORK

This section will explore the emergence of a new enforcement model for the ILO, one in which its technical cooperation activities are harnessed as linkage facilitators, in a way which incentivizes countries to comply with international labor standards. From an institutional economics point of view, the concept of institutional linkages refers to the interaction of social, political, economic, or organizational factors across different domains in a particular complementary manner. When domains are linked, the gains derived in one can be transferred to another, and thus help to sustain a specific strategy involving both. This way, the overall payoffs gained can be higher than in a situation where strategies are chosen separately in each domain. Such institutional linkages therefore expand equilibrium possibilities, making it

feasible to engage in more beneficial institutional arrangements.<sup>14</sup> Crucially, such linkages can be used as means of enforcement, incentivizing actors to follow socially desirable arrangements by tying their compliance to consequences in different matters.<sup>15</sup>

This ability of linkages to enforce particular arrangements has also been considered in relation to countries' compliance with international law. According to rational choice theories, countries will comply with international agreements when the benefits of compliance outweigh the costs.<sup>16</sup> When making such cost-benefit calculations, governments often follow their "myopic self-interest," that is, they consider the short-term outcomes of a particular decision in isolation from other issues. Such a tendency might lead countries to violate international commitments in particular incidents where they believe that the benefits are justifiable. However, the linking of issues to one another can serve as a possible solution. Namely, international institutions can create such linkage where countries' compliance with a given obligation will bear consequences in a different realm. The additional implication of the violation of the agreement can incentivize countries to resist their narrow self-interests in favor of other positive benefits. Compliance then becomes a rational move.<sup>17</sup>

Previous research has pointed to the benefits of using linkages specifically as a response to circumstances where central enforcement is weak or absent. Oona Hathaway refers to "collateral consequences" of treaty membership as "the anticipated consequences for, among other things, foreign aid and investment, trade, and domestic political support."<sup>18</sup> According to her argument, the linkage of these consequences to states' compliance with international law may incentivize states to comply with their legal commitments, even in situations where they would prefer not to.<sup>19</sup> As Hathaway argues: "[c]ountries' concerns for their reputations and for aid, trade, and other benefits that are sometimes linked to treaty commitment and compliance can be used more effectively than they currently are to strengthen the influence of international law."<sup>20</sup>

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14. Masahiko Aoki, *Endogenizing Institutions and Institutional Changes*, 3 J. INSTITUTIONAL ECON. 1, 14–18 (2007).

15. *Id.* at 15; MASAHIKO AOKI, CORPORATIONS IN EVOLVING DIVERSITY: COGNITION, GOVERNANCE, AND INSTITUTIONAL RULES 97–99 (2010).

16. ERIC A. POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW 59 (2014).

17. ROBERT O. KEOHANE, AFTER HEGEMONY: COOPERATION AND DISCORD IN THE WORLD POLITICAL ECONOMY 121–27 (1st ed. 2005).

18. Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 502 (2005).

19. *Id.* at 504–506.

20. *Id.* at 533.

Insights from the literature on linkages can serve as a useful framework to understand, and to possibly shape, ILO technical cooperation activities. Technical cooperation, or “development cooperation,” refers to the ILO’s country-level practical assistance in the application of international labor standards. It “supports the technical, organizational and institutional capacity of ILO constituents . . . to facilitate meaningful and coherent social policy and sustainable development.”<sup>21</sup> The claim put forward is that technical cooperation activities can establish a linkage between on the one hand, adherence to international labor standards and on the other hand, the contribution to countries’ reputation. This is considering two central features of these activities. First, technical cooperation, by its nature, assists countries in their compliance’ efforts, and promotes their application of ILO conventions<sup>22</sup> and the comments of ILO supervisory bodies.<sup>23</sup> Yet, technical cooperation extends beyond “purely technical aspects”<sup>24</sup> and encompasses innovative approaches to increase their effectiveness.<sup>25</sup> They are designed to be an appealing process; “sensitive and responsive, above all, to . . . national needs”; “capture the changing interests and priorities of the national constituents”; and “serve the[ir] strategic objectives.”<sup>26</sup> In addition, of particular relevance is the growing emphasis on the visibility of the results of technical cooperation.<sup>27</sup> This involves “[e]ffective marketing strategies”<sup>28</sup> and includes measures of data accessibility, reporting, transparency and visualization. The idea is that “[u]sing ILO communication systems and providing such information in the public domain contributes to greater awareness and appreciation of decent work outcomes.”<sup>29</sup> These efforts to publicize countries’ progress, naturally lead to an improved image of their labor rights record.

Accordingly, in addition to their typical role in assisting countries to comply with international labor standards, a second usage of technical cooperation activities can be identified. It is argued that technical cooperation

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21. ILO, DEVELOPMENT COOPERATION INTERNAL GOVERNANCE MANUAL 8 (2015).

22. ILO, THE ROLE OF THE ILO IN TECHNICAL COOPERATION: PROMOTING DECENT WORK THROUGH FIELD AND COUNTRY PROGRAMMES 6, 17, 54 (2006).

23. ILO, IMPROVING THE IMPACT OF INTERNATIONAL LABOUR STANDARDS THROUGH TECHNICAL COOPERATION – A PRACTICE GUIDE 14 (2008).

24. DEVELOPMENT COOPERATION INTERNAL GOVERNANCE MANUAL, *supra* note 21, at 9.

25. THE ROLE OF THE ILO IN TECHNICAL COOPERATION, *supra* note 22, at 5.

26. International Labour Conference, 87th Sess., *Conclusions Concerning the Role of the ILO in Technical Cooperation*, ¶¶ 14–15 (1999). See also THE ROLE OF THE ILO IN TECHNICAL COOPERATION, *supra* note 22, at 3.

27. THE ROLE OF THE ILO IN TECHNICAL COOPERATION, *supra* note 22, at 4; ILO Governing Body, 325th Sess., GB.325/POL/6, 2, 9, (Nov. 12, 2015).

28. *Conclusions Concerning the Role of the ILO in Technical Cooperation*, *supra* note 26, ¶ 6.

29. ILO Governing Body, 325th Sess., GB.325/POL/6, *supra* note 27, at 7.

activities provide countries with a particular benefit: the positive reputation they obtain as countries that are compliant with international labor standards. Through such positive reputation, countries can gain better access to an array of “external” benefits, such as trade, investments, and international acceptance. The ILO holds a central role in the granting of such positive reputation, as it is in a position to “label” countries as complying with labor standards or infringing them. This is in light of the ILO’s expertise and legitimacy, as well as its unique capacity to monitor and evaluate countries’ compliance through the work of its supervisory system. In particular, when the ILO is engaged in technical cooperation, procedures through which countries acquire good reputation in terms of their labor law compliance are facilitated. This is reinforced by the practical involvement of the ILO in assisting countries with their compliance endeavors, and by the efforts the ILO is making in publicizing technical cooperation projects.<sup>30</sup>

Case studies which analyze the ILO’s technical cooperation projects demonstrate the reputational benefit that countries gain from these activities. Adelle Blackett, for example, examines the ILO’s technical cooperation involvement in a labor law reform in West and Central African countries part of the Organization for the Harmonization of Business Law in Africa (“OHADA”). The idea was to engender a regional harmonization of their laws in order to provide stability for investors.<sup>31</sup> As Blackett assesses, these efforts were “intentionally designed to contrast with the perception of the degree of difficulty for those interested in ‘doing business’ on the ground.”<sup>32</sup> It is thus understood that by seeking the technical assistance of the ILO in these reforms, states sought to acquire a positive reputation for investments in these countries.

The reputational benefit countries gain from technical cooperation is also apparent in Colin Fenwick’s study on labor law reforms. Among these, Fenwick describes the ILO’s support to the operation of the Better Factories Cambodia program. According to this program, the United States would increase Cambodia’s export quotas if the relevant factories “substantially” complied with fundamental labor standards, but without determining how this clause should be implemented.<sup>33</sup> This means that the additional quotas

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30. On the importance of information for countries’ reputation, *see, e.g.*, Rachel Brewster, *Unpacking the State’s Reputation*, 50 HARV. INT’L L.J. 231, 235, 244 (2009).

31. Adelle Blackett, *Beyond Standard Setting: A Study of ILO Technical Cooperation on Regional Labor Law Reform in West and Central Africa*, 32 COMP. LAB. L. & POL. J. 443, 455 (2011).

32. *Id.* at 445.

33. Colin Fenwick, *The ILO and National Labour Law Reform: Six Case Studies*, in *LABOUR REGULATION AND DEVELOPMENT: SOCIO-LEGAL PERSPECTIVES* 235, 241 (Shelley Marshall & Colin Fenwick eds., 2016).

were to be granted essentially on a discretionary basis, upon the assessment of the US that this condition has been met. In other words, we can say that Cambodia would enjoy these trade benefits if it had, in the eyes of the US, sufficient reputation on labor law compliance. In these circumstances, the ILO's assistance in establishing a "credible" monitoring system<sup>34</sup> and in appeasing the US' concerns that the country's labor adjudication system was indeed independent,<sup>35</sup> can be seen as measure that provided Cambodia with this required reputation.

Likewise, as Fenwick describes, El Salvador faced a similar reputational need: to reassure the US that the country was 'taking steps' to comply with internationally recognized workers' rights, in order not to lose its preferential access under the Generalized System of Preferences ("GSP") trade regime.<sup>36</sup> As this vague condition was to be assessed by the US, the challenge facing El Salvador to improve its image in the eyes of the US can also be seen as a matter concerning the reputation of the country. As a response, the ILO was asked to assist the country in reforming its labor laws, which eventually resulted in El Salvador maintaining its GSP entitlement.<sup>37</sup> By contributing to the assessment that the country is indeed "taking steps" to comply with labor rights, the technical assistance provided by the ILO can be seen again as contributing to the required reputation.

Considering the positive labor rights reputation that countries are gaining by participating in technical cooperation, these programs can be used to create a linkage between such reputational benefits and their commitment to international labor rights. In that sense, the benefits countries derive from technical cooperation can serve as a "carrot" that can mitigate states' reluctance and persuade them to oblige to international labor standards.<sup>38</sup> At present, it is well acknowledged that there is certain "complementary"<sup>39</sup> or

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34. *Id.* at 241.

35. *Id.* at 242.

36. *Id.* at 249.

37. *Id.* at 251.

38. Referring to the "mainstreaming" of international labor standards in technical cooperation programs, Tsotroudi and Agustí Panareda describe "an increasing recognition of the ILO's normative mandate as one of its main comparative advantages in the framework of partnerships for development." See Katerina Tsotroudi & Jordi Agustí Panareda, *The ILO's Dialogical Standards-Based Approach to International Labour Law*, in *THE ROLES OF INTERNATIONAL LAW IN DEVELOPMENT* 110, 123 (Siobhán McInerney-Lankford & Robert McCorquodale eds., 2023). Indeed, practice demonstrates the ability of technical cooperation to influence towards greater compliance with international labor standards. See, e.g., Isabelle Boivin & Alberto Otero, *The Committee of Experts on the Application of Conventions and Recommendations: Progress Achieved in National Labour Legislation*, 145 *INT'L LAB. REV.* 207, 211, 219 (2006); Kari Tapiola, *What Happened to International Labour Standards and Human Rights at Work?*, in *INTERNATIONAL LABOUR ORGANIZATION AND GLOBAL SOCIAL GOVERNANCE* 51, 58 (Tarja Halonen & Ulla Liukkunen eds., 2021).

39. *THE ROLE OF THE ILO IN TECHNICAL COOPERATION*, *supra* note 22, at 54.

“link”<sup>40</sup> between technical cooperation and the ILO’s supervisory efforts to tackle violations,<sup>41</sup> yet this is still “not in the sense of introducing conditionality but of offering better targeted support.”<sup>42</sup> Moreover, technical cooperation is already a highly significant tool at the ILO’s disposal,<sup>43</sup> however, as we shall see, the insights of the current analysis suggest that it might be able to hold even greater potential in the coming future.<sup>44</sup>

This suggested strategy of harnessing reputation to promote compliance is not new to international law scholarship,<sup>45</sup> and it points to the relevance of signaling theory to this case. Signaling is the transmission of information by an actor, through an observable action, taken in order to demonstrate certain qualities it possesses in situations of asymmetrical information.<sup>46</sup> However, a signal will only be effective if it entails a cost that makes this action worthwhile solely for actors that actually possess the inferred qualities.<sup>47</sup> This means that a signal that does not entail a cost renders it difficult for others to distinguish between actors that possess the qualities and those who do not. Signaling theory has been previously applied to relationships between countries. It has been argued, for example, that states can use signaling to convey their reputation for cooperativeness, a reputation they will benefit from in future international relations.<sup>48</sup> For such signaling to be effective, states must show that they are able to resist short-term, non-reputational benefits associated with violations, in favor of future opportunities associated with having

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40. ILO, DECENT WORK: REPORT OF THE DIRECTOR-GENERAL 20 (1999).

41. Tsotroudi and Agustí Panareda describe the “increased synergy” between the ILO’s promotion of international labor standards and its technical cooperation programs. See Tsotroudi and Agustí Panareda, *supra* note 38.

42. DECENT WORK: REPORT OF THE DIRECTOR-GENERAL, *supra* note 40.

43. At the time of writing, the ILO conducts 701 projects across the world with a total budget of \$550.32 million. See *The International Labour Organization in 2024*, INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org/DevelopmentCooperationDashboard/> (last visited March 6, 2024).

44. See in particular the observations of Tsotroudi and Agustí Panareda on the current challenges and opportunities to the effective integration of international labor standards through technical cooperation: Tsotroudi & Agustí Panareda, *supra* note 38, at 128, 130–35. Relatedly, scholars have commented on the current unrealized potential of technical cooperation projects: Blackett, *supra* note 31, at 485; Alston, *supra* note 10, at 473; MAUPAIN, *supra* note 6, at 252.

45. See, e.g., KEOHANE, *supra* note 17, at 131; Scott Barrett, *International Cooperation and the International Commons*, 10 DUKE ENV’T. L. & POL’Y F. 131, 138–39 (1999); Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT’L ORG. 421, 426–28 (2000); Andrew T. Guzman, *Reputation and International Law*, 34 GA. J. INT’L & COMP. L. 379 (2006). On the potential limitations of reputation, see Robert O. Keohane, *International Relations and International Law: Two Optics*, 38 HARV. INT’L L.J. 487, 496–99 (1997); George W. Downs & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 J. LEGAL STUD. 95 (2002); Brewster, *supra* note 30, at 254.

46. Michael Spence, *Job Market Signaling*, 87 Q. J. ECON. 355, 356–58 (1973).

47. *Id.* at 358–59.

48. JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 83, 172–73 (2005).

a good reputation.<sup>49</sup> In particular, it has been argued that international legal commitments<sup>50</sup> and human rights protection<sup>51</sup> serve as a signal to indicate the reputation of the country as protecting property rights, and thus to encourage investments.<sup>52</sup>

Moreover, we see that the notion of a “cost” here is clearly time-sensitive: states incur a cost in the short term in order to signal their intention to move to an equilibrium of long-term benefits. In these circumstances, states are subject to a situation of “time inconsistency.” This idea refers to a situation where “the optimal plan of the present moment is generally one which will not be obeyed.”<sup>53</sup> In the future, states can reassess their original policies in favor of more short-term preferences. As the relevant actors, such as investors, are aware of this “time inconsistency,”<sup>54</sup> they are less likely to be influenced by the states’ policies in the first place. As a response to this problem, states can tie their own hands and “pre-commit” themselves to ensure that their future behavior is consistent with their present policy.<sup>55</sup> That is, states can make credible commitments by employing “institutional arrangements which make it a difficult and time-consuming process to change the policy rules.”<sup>56</sup>

We understand then that for a country to send a credible signal on its reputation in labor law compliance, it is necessary to demonstrate a sufficient cost. Countries’ compliance with labor standards entails certain short-term costs, such as reduced autonomy to firms and the resulting adjustment costs for states, and therefore meets this requirement. By committing to labor rights compliance through technical cooperation, a country is demonstrating that it is willing to pay this cost, in the short-term, and by that signaling its shift towards a long-sighted view of its labor-market development. Moreover, as the associated costs of these commitments are incurred in the present period, the country prevents future inconsistent behavior on its behalf. This means that compliance-commitments as part of technical cooperation activities can send a credible signal that will improve countries’ reputation; these

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49. Guzman, *supra* note 45, at 384–86.

50. Beth A. Simmons, *Money and the Law: Why Comply with the Public International Law of Money*, 25 YALE J. INT’L L. 323, 324–25 (2000).

51. Daniel A. Farber, *Rights as Signals*, 31 J. LEGAL STUD. 83 (2002).

52. *Id.* at 88–94.

53. R. H. Strotz, *Myopia and Inconsistency in Dynamic Utility Maximization*, 23 REV. ECON. STUDS. 165, 165 (1955–1956).

54. Beth A. Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. REV. 819, 821 (2000).

55. Strotz, *supra* note 53, at 165, 173.

56. Finn E. Kydland & Edward C. Prescott, *Rules Rather than Discretion: The Inconsistency of Optimal Plans*, 85 J. POL. ECON. 473, 487 (1997).

reputational benefits can serve as a leverage for countries to agree to such compliance in the first place.

### III. QATAR AND THE 2022 WORLD CUP: A CASE STUDY

#### *A. Qatar's Forced Labor Violations*

Concerns over Qatar's policies and how they facilitate forced labor have centered on the treatment of the large population of migrant workers in the country.<sup>57</sup> Perhaps the most notorious policy was Qatar's sponsorship system, the "Kafala," which required that employers act as visa sponsors to migrant workers.<sup>58</sup> Under this system, employers controlled the ability of migrant workers to reside in the country; and workers were not able to change jobs, leave their jobs or leave the country without the employers' permission. Moreover, because employers arrange their workers' resident permits, this enabled them to confiscate passports or leave workers undocumented.<sup>59</sup> For this type of arrangement to be considered as "forced or compulsory labour" according to the Forced Labour Convention, it should meet its definition of work which is exacted "under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>60</sup> But this is an issue that cannot be determined across-the-board. As Hila Shamir observes, while temporary migrant worker programs "do indeed inherently and necessarily limit migrant workers' market mobility and bargaining power to some extent, the degree of harmfulness of these limits and restrictions is contingent on the wider context of employment and labor market practices."<sup>61</sup> Roger Plant similarly notes in this regard that "it can be difficult to draw hard and fast distinctions between lawful and unlawful practices."<sup>62</sup> In these circumstances,

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57. See generally ILO Governing Body, 320th Sess., GB.320/INS/14/8, ¶¶ 44–58 (Mar. 27, 2014).

58. For critical assessments, more generally, of the kafala (sponsorship) system of the Persian Gulf states, see, e.g., Azfar Khan & Hélène Harroff-Tavel, *Reforming the Kafala: Challenges and Opportunities in Moving Forward*, 20 ASIAN PAC. MIGRATION J. 293 (2011); 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 J. 461 (2012).

59. ILO Governing Body, 320th Sess., *supra* note 57, ¶¶ 49–54.

60. International Labour Organization, Forced Labour Convention art. 2(1), June 28, 1930, No. 29.

61. Hila Shamir, *The Paradox of "Legality": Temporary Migrant Worker Programs and Vulnerability to Trafficking*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY 471, 493 (Prabha Kotiswaran ed., 2017).

62. Roger Plant, *Combating Trafficking for Labour Exploitation in the Global Economy: The Need for a Differentiated Approach*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY, *supra* note 61, at 436.

the ILO supervisory system plays a critical role in identifying whether particular arrangements constitute forced labor.<sup>63</sup>

How then did the supervisory system assess the arrangements of Qatar's sponsorship system? Its Committee of Experts on the Application of Conventions and Recommendations ("CEACR") had expressed concerns over this system as early as 2008. Under the relevant legislation at the time, migrant workers could change their employer without its consent only if they obtain a governmental approval. In addition, the law provides for the deportation of migrant workers in a number of cases and their mandatory stay in certain areas for a period of two weeks, which is renewable; procedures which employers were abusing against workers. After assessing these provisions, the CEACR expressed its concern regarding the "disproportionate power" employers can exert on migrant workers and asked the government to provide information on legislative steps taken on this matter.<sup>64</sup>

Qatar replaced this arrangement in a 2009 legislation, but did not make it easier for migrant workers to change employers. Again, consent was required from the current and future employer or, in certain cases, from the government. In addition, the law prevented migrant workers from leaving the country without the employer's permission. The CEACR expressed its concern for both limitations in a 2012 Observation, and called on the government, among other things, to provide information on measures that would allow for appropriate flexibility in changing sponsors.<sup>65</sup>

In 2013, the sponsorship system became the subject of a representation under Article 24 of the ILO Constitution, made by the International Trade Union Confederation ("ITUC") and the Building and Woodworkers International ("BWI"). This led to the appointment of an ILO tripartite committee to examine the forced labor allegations. In a 2014 report, the Committee noted that Qatar's arrangements "make it difficult for workers who may be facing abusive situations to leave."<sup>66</sup> For example, workers could leave the country without the employers' consent only after publishing a notice in two daily newspapers.<sup>67</sup> And, workers who left their job without permission may be detained, deported, fined or face criminal charges.<sup>68</sup> Given these

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63. Lee Swepston, *Trafficking and Forced Labour: Filling in the Gaps with the Adoption of the Supplementary ILO Standards, 2014*, in REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY, *supra* note 61, at 396.

64. International Labour Conference, 98th Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part 1A)*, at 407–08 (2009).

65. International Labour Conference, 101st Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part 1A)*, at 559 (2012).

66. ILO Governing Body, 320th Sess., *supra* note 57, ¶ 54.

67. *Id.*, ¶ 50.

68. *Id.*, ¶ 61.

disproportionate restrictions, the committee concluded that “certain migrant workers in the country may find themselves in situations prohibited by the [Forced Labour] Convention.”<sup>69</sup> The committee considered that the government must “suppress the use of forced labour” and in particular “review without delay the functioning of the sponsorship system.”<sup>70</sup>

The government seemed responsive to these comments, stating in a 2014 discussion before the ILO’s Conference Committee on the Application of Standards (“CAS”), that it was “considering the review of the sponsorship system.”<sup>71</sup> The government then declared that it has taken these comments into account when preparing a draft for a new bill that would repeal the sponsorship system.<sup>72</sup> However, according to this draft, workers would be permitted to change employers without their consent only after a fixed-term contract expires or, in the case of contracts of unlimited duration, after five years.<sup>73</sup> The possibility of also applying to the government for a release was later added.<sup>74</sup> We see then, that despite the government’s statements, these arrangements still set significant limitations on the ability of migrant workers to leave their employer. Employers could, for instance, replace existing fixed-term contracts with new contracts of an unlimited duration, and by that tie their workers for a period of five years.<sup>75</sup> Moreover, with no limitation to the duration of fixed-term contracts, employees could be tied to their employer for even longer periods of time.<sup>76</sup> And, practice shows that the release of a worker through a petition to the government only happens infrequently.<sup>77</sup> In addition, the bill does not address the restrictions on migrant workers’ ability to leave the country. In light of these limitations, the CEACR expressed the need for the new legislation to both ease the conditions of leaving an employer and amend the exit visa requirement.<sup>78</sup> The provisions of this draft bill were discussed again in 2015, when the CAS urged the government to completely abolish the sponsorship system.<sup>79</sup>

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69. *Id.*, ¶ 62.

70. *Id.*, ¶¶ 63–65.

71. International Labour Conference, 103rd Sess., *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, at 13 Part II/47 (2014).

72. International Labour Conference, 104th Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part IA)*, at 168 (2015).

73. *Id.*

74. ILO Governing Body, 323rd Sess., GB.323/INS/8(Rev.1), at 8 (Mar. 27, 2015).

75. ILO Governing Body, 329th Sess., GB.329/PV, ¶ 247 (Mar. 24, 2017).

76. International Labour Conference, 106th Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part IA)*, at 223 (2017).

77. International Labour Conference, 105th Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part IA)*, at 210 (2016).

78. Report of the Committee of Experts, 104th Sess., *supra* note 72, at 168.

79. International Labour Conference, 104th Sess., *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, at 14 Part II/25 (2015).

Amidst these developments, a complaint under Article 26 of the ILO Constitution was initiated in 2014 over the same problematic policies.<sup>80</sup> In response, an ILO high-level tripartite mission to Qatar was undertaken in 2015. The mission concluded that despite recent measures taken by the government, numerous challenges remained.<sup>81</sup> Accordingly, the ILO's Governing Body expressed its "concern regarding the gravity of the issues raised" and the urgency for the Government to address them.<sup>82</sup> And, while Qatar was requested to take further action, the decision on whether to set up a Commission of Inquiry was postponed.<sup>83</sup>

Later that year, Qatar adopted a new legislation, stating again that this replaces the sponsorship system.<sup>84</sup> It positioned that by enacting this law, "[a]ll the requests made of Qatar in connection with the complaint had been met."<sup>85</sup> Later on, the government declared in a discussion before the CAS that "there was no doubt that it had abolished the sponsorship system."<sup>86</sup> Despite these assertions, this law did not make substantial modifications to workers' ability to change employers. And, while the law provided for migrant workers to leave the country without the prior approval of their employer, this was allowed only following a governmental approval, and in this case, employers may still object to this departure. Moreover, under this law, employers remained responsible for dealing with workers' passports and issuing their residency permits.<sup>87</sup> The CEACR accordingly requested the government to modify the law "as a matter of urgency." The required amendments that the CEACR listed on these matters were an exact repetition of the amendments it had listed one year before;<sup>88</sup> emphasizing that no real progress had been made. As the CEACR later noted, "the new law does not abolish the sponsorship system, as indicated in the Government's report."<sup>89</sup> These requested amendments were also ignored the following year.<sup>90</sup> Moreover, although the CAS urged the government to amend this new law before it comes into force,<sup>91</sup> the law entered into force in 2016 in its original form.<sup>92</sup>

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80. ILO Governing Body, 322nd Sess., GB.322/INS/14/1, at 5–7 (Nov. 13, 2014).

81. ILO Governing Body, 323rd Sess., GB.323/INS/8(Rev.1), *supra* note 74, at 29.

82. *Id.*, ¶ 7.

83. ILO Governing Body, 323rd Sess., GB.323/PV, ¶ 149 (Mar. 27, 2015).

84. ILO Governing Body, 325th Sess., GB.325/INS/10(Rev.), ¶ 9 (Nov. 12, 2015).

85. ILO Governing Body, 325th Sess., GB.325/PV, ¶ 171 (Nov. 12, 2015).

86. International Labour Conference, 105th Sess., *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, at 16 Part II/137 (2016).

87. Report of the Committee of Experts, 105th Sess., *supra* note 77, at 210–11.

88. *Id.* at 211.

89. *Id.* at 344.

90. Report of the Committee of Experts, 106th Sess., *supra* note 76, at 224.

91. Conference Committee, 105th Sess., *supra* note 86, at 16 Part II/145.

92. ILO Governing Body, 329th Sess., GB.329/INS/14(Rev.), at 3 (Mar. 24, 2017).

Qatar responded to CEACR's requests by amending its law in early 2017. This amendment relates to the possibility of migrant workers exiting the country, and it removes the previous requirement of notifying the governmental authority prior to each trip. The government declared that by this new amendment it "has repealed the exit permit" and that leaving the country has now become "a worker's intrinsic right."<sup>93</sup> However, according to the amended law, workers must still notify their employer before every departure from the country, and the employer still has a right to object.<sup>94</sup> Hence, no real change was made with regard to the employers' control over workers' ability to leave the country; nor on their ability to change jobs.<sup>95</sup>

Ultimately, throughout the ILO proceedings taking place between 2008–2017 no meaningful progress was made with Qatar's policies facilitating forced labor. During this time, the Governing Body continuously postponed the decision on setting up a Commission of Inquiry,<sup>96</sup> while also repeatedly requesting Qatar to avail itself of ILO technical assistance to address its violations.<sup>97</sup> The ILO's efforts to establish a technical cooperation project in Qatar advanced in February 2017, with a visit to Doha from the Organization's technical delegation.<sup>98</sup> This was followed by three additional rounds of discussions between July and October 2017. Eventually, on October 31, 2017, an agreement on a three-year technical cooperation program was concluded between the ILO and Qatar.<sup>99</sup> The agreement, which was subsequently extended,<sup>100</sup> includes five areas of action: wage protection; labor inspection and occupational safety and health; replacing the kafala system; forced labor; and promoting workers' voice.<sup>101</sup> As part of this agreement, Qatar expressed a commitment to align its laws and practices with

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93. *Id.* at 3, 7.

94. ILO Governing Body, 329th Sess., GB.329/PV, *supra* note 75, ¶ 248.

95. ILO Governing Body, 329th Sess., GB.329/INS/14(Rev.), *supra* note 92, at 3.

96. ILO Governing Body, 325th Sess., GB.325/INS/10(Rev.), *supra* note 84, ¶ 10; ILO Governing Body, 326th Sess., GB.326/INS/8(Rev.), ¶ 11 (Mar. 24, 2016); ILO Governing Body, 329th Sess., GB.329/INS/14(Rev.), *supra* note 92, ¶ 3.

97. ILO Governing Body, 320th Sess., *supra* note 57, ¶¶ 64–65; ILO Governing Body, 325th Sess., GB.325/INS/10(Rev.), *supra* note 84, ¶ 10; ILO Governing Body, 328th Sess., GB.328/INS/11(Rev.), ¶ 13 (Nov. 10, 2016); ILO Governing Body, 329th Sess., GB.329/INS/14(Rev.), *supra* note 92, ¶ 3.

98. ILO Governing Body, 329th Sess., GB.329/INS/14(Rev.), *supra* note 92, at 25.

99. ILO Governing Body, 331st Sess., GB.331/INS/13(Rev.), ¶ 3 (Nov. 9, 2017).

100. The initial three-years period of the project was extended until June 2021, following which the ILO and Qatar agreed to continue the cooperation through a "second phase," which ran until December 2023. See INTERNATIONAL LABOUR ORGANIZATION, BRIEFING NOTE 4 (February 2023), [https://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/-ilo-qatar/documents/briefingnote/wcms\\_868345.pdf](https://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/-ilo-qatar/documents/briefingnote/wcms_868345.pdf). As aforementioned, a further extension was recently agreed on until 2028.

101. ILO Governing Body, 331st Sess., *supra* note 99, at 31–32.

international labor standards and principles.<sup>102</sup> The Governing Body subsequently closed the complaint procedure under article 26.<sup>103</sup>

### *B. Qatar's Technical Cooperation as a Linkage Facilitator*

This section moves on to the period following the commencement of the technical cooperation project in Qatar. It tests how the study's linkage proposal applies to this case by exploring the two "linked" components: the reputational benefits Qatar gained from the project; and the compliance commitments that were achieved as result.

#### 1. Technical Cooperation as a Reputational Signal

In recent years, Qatar has been on a quest to increase its soft power on the global stage. Its dependency on rentier income derived from its natural resources,<sup>104</sup> has compelled the country to diversify its economy and attract investments.<sup>105</sup> Qatar is also a geographically small country, surrounded by large and powerful states in the Persian Gulf and Middle East.<sup>106</sup> These factors, among other things, have led the country to adopt foreign policy measures aimed at enhancing its regional and international influence and attractiveness, including an "aggressive global campaign of branding."<sup>107</sup> Such efforts became all the more critical during Qatar's regional isolation from June 2017 till January 2021. At this time, a United Arab Emirates-Saudi led coalition imposed an economic and diplomatic boycott on Qatar as a response to its alleged support for terrorism and its relations with Iran.<sup>108</sup> It has been argued that Qatar addressed this situation by employing public diplomacy as a strategic communication tool,<sup>109</sup> by projecting "shared ideas, identities, values and interests of Qatar to the international community."<sup>110</sup>

It is in this context that Qatar's hosting of the 2022 World Cup has been described as a "reputation-promoting message,"<sup>111</sup> and a "signal" on the

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102. *Id.*, ¶ 4.

103. *Id.*, ¶ 5.

104. MEHRAN KAMRAVA, QATAR: SMALL STATE, BIG POLITICS 10, 142–43 (2013).

105. Paul Michael Brannagan & Richard Giulianotti, *The Soft Power–Soft Disempowerment Nexus: The Case of Qatar*, 94 INT'L AFF. 1139, 1149 (2018).

106. KAMRAVA, *supra* note 104, at 5, 48.

107. *Id.* at 48, 66.

108. Andreas Krieg, *Introduction*, in DIVIDED GULF: THE ANATOMY OF A CRISIS 1, 4 (Andreas Krieg ed., 2019).

109. Hamad Al-Muftah, *Qatar's Response to the Crisis: Public Diplomacy as a Means of Crisis Management*, in DIVIDED GULF: THE ANATOMY OF A CRISIS, *supra* note 108, at 234.

110. *Id.* at 250.

111. Brannagan & Giulianotti, *supra* note 105, at 1146.

country's qualities.<sup>112</sup> Qatar's administrative body that manages the hosting of the event, states that it "has always understood legacy as the most important outcome."<sup>113</sup> It also noted its aspiration that this will contribute to Qatar's reputation as a "stable investment opportunity"<sup>114</sup> and "a regional and global leader in events hosting."<sup>115</sup> Qatari authorities have also referred to the hosting of the World Cup as a means to improve the negative image of the country in the eye of the West.<sup>116</sup>

Despite these aspirations, Qatar's successful bid to host the 2022 World Cup had an opposite effect on the country's reputation. The spotlight suddenly put on Qatar has led to a great deal of negative press, primarily concerning its human and labor rights violations.<sup>117</sup> The Guardian, for example, reported in September 2013 on its investigation of Qatar's preparations for the World Cup. Under the headline of "Revealed: Qatar's World Cup 'slaves'" it reported largescale abuse and exploitation of migrant workers.<sup>118</sup> The following day, it reported that ITUC estimates that "about 12 labourers will die each week unless action is taken" and that the World Cup's construction in Qatar "will leave 4,000 migrant workers dead."<sup>119</sup> Similarly, Qatar was facing ongoing negative statements, reports and campaigns by

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112. J Jonathan Grix & Paul Michael Brannagan, *Of Mechanisms and Myths: Conceptualising States' "Soft Power" Strategies through Sports Mega-Events*, 27 DIPL. & STATECRAFT 251, 265 (2016).

113. SUPREME COMMITTEE FOR DELIVERY & LEGACY, LEGACY BOOK 7, <https://www.workerswelfare.qa/sites/default/files/docs/SC-Legacy-Book-EN.pdf> (last visited Aug. 20, 2023).

114. *Id.* at 20.

115. *Id.* at 30.

116. P Paul Michael Brannagan & Richard Giulianotti, *Soft Power and Soft Disempowerment: Qatar, Global Sport and Football's 2022 World Cup Finals*, 34 LEISURE STUD. 703, 711 (2015).

117. *Id.* at 714.

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

119. Robert Booth, *Qatar World Cup Construction 'Will Leave 4,000 Migrant Workers Dead'*, GUARDIAN (Sept. 26, 2013), <https://www.theguardian.com/global-development/2013/sep/26/qatar-world-cup-migrant-workers-dead>.

newspapers,<sup>120</sup> NGO's,<sup>121</sup> global union federation,<sup>122</sup> and human rights bodies.<sup>123</sup> These highlighted the exploitative working conditions of migrant workers, describing in particular issues of freedom of movement and forced labor, delayed or non-payment of wages and safety and health violations. From 2015 till 2017 there was also a dispute against FIFA regarding these issues, held before the National Contact Point (NCP) of Switzerland, under the OECD Guidelines for Multinational Enterprises.<sup>124</sup> Following the mediation process in this dispute,<sup>125</sup> and in light of the general backlash from the Qatari World Cup controversy, FIFA responded, among other things, by adopting a Human Rights Policy<sup>126</sup> and reforming its bidding requirements for hosting countries to include, for the first time, human and labor rights conditions.<sup>127</sup> Ultimately, Qatar was put in a position where it was relatively responsive to calls for change.<sup>128</sup>

These developments contextualize the understanding of the ILO's technical cooperation project as holding significant signaling properties, and that is meant to improve its reputation<sup>129</sup> and appease the global protests on this

120. See, e.g., *Qatar*, GUARDIAN, <https://www.theguardian.com/world/qatar> (last visited Mar. 6, 2024).

121. See, e.g., *Qatar*, AMNESTY INT'L, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/qatar/> (last visited Mar. 6, 2024); *Qatar*, HUM. RTS. WATCH, <https://www.hrw.org/middle-east/n-africa/qatar> (last visited Mar. 6, 2024).

122. The ITUC, for example, launched a campaign to “re-run the vote” on the hosting of the 2022 World Cup. See *Re-Run the Vote: No World Cup without Workers' Rights*, ITUC, <https://www.rerunthevote.org> (last visited Oct. 31, 2019). This website has since been removed, which reflects the shift in the ITUC's approach towards Qatar, as will be further discussed below. Another example is the BWI's submission of a “Specific Instance” complaint to the National Contact Point of Switzerland, under the OECD Guidelines for Multinational Enterprises, regarding human and labor rights violations by FIFA related to the construction of facilities for the World Cup in Qatar. For an overview of the procedure, see *Fédération Internationale de Football Association (FIFA) and Building and Wood Workers International (BWI)*, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES, <https://mneguidelines.oecd.org/database/instances/ch0013.htm> (last visited Mar. 6, 2024).

123. See, e.g., *Qatar*, THE OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/EN/Countries/MENARegion/Pages/QAIndex.aspx> (last visited Mar. 6, 2024).

124. *Fédération Internationale de Football Association (FIFA) and Building and Wood Workers' International (BWI)*, *supra* note 122.

125. SWITZERLAND NCP, FINAL STATEMENT, SPECIFIC INSTANCE REGARDING THE FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION (FIFA) SUBMITTED BY THE BUILDING AND WOOD WORKERS' INTERNATIONAL (BWI) (May 2, 2017), [https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Statements\\_konkrete\\_F...lle/Abschlusskerkl...rungen/Abschlusskerkl...rung\\_FIFA\\_BWI.PDF.download.PDF/Abschlusskerkl...rung\\_FIFA\\_BWI.PDF](https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/NKP/Statements_konkrete_F...lle/Abschlusskerkl...rungen/Abschlusskerkl...rung_FIFA_BWI.PDF.download.PDF/Abschlusskerkl...rung_FIFA_BWI.PDF).

126. FIFA, *FIFA's Human Rights Policy*, <https://img.fifa.com/image/upload/kr05dqyhwr1uhqy2lh6r.pdf> (last visited Mar. 6, 2024).

127. FIFA, *Guide to the Bidding Process for the 2026 FIFA World Cup*, <https://img.fifa.com/image/upload/hgopyppqftviladnm7q90.pdf> (last visited Mar. 6, 2024).

128. J James M. Dorsey, *The 2022 World Cup: A Potential Monkey Wrench for Change*, 31 INT'L J. HIST. SPORT 1739, 1740–41, 1743–44 (2014).

129. The New York Times recently presented a harsh critique on the ILO's work in Qatar ahead of the World Cup, describing Qatar's “lobbying” at the ILO and the technical cooperation project in the

matter.<sup>130</sup> First, the agreement on the technical cooperation led directly to the ILO Governing Body's linked decision to close the complaint procedure under article 26,<sup>131</sup> while also removing the threat of setting up a commission of inquiry, "the strongest measure among the organization's supervisory procedures"<sup>132</sup> and which countries try to avoid.<sup>133</sup> Indeed, Qatar too has reportedly tried to avoid such an outcome.<sup>134</sup>

Moreover, the signing of the agreement has led to a noticeable shift in the attitudes towards Qatar. The ILO, for example, described the developments in Qatar as "a momentous step forward in upholding the rights of migrant workers."<sup>135</sup> Of note is the shift in the position of the ITUC. As mentioned above, the ITUC was a central critic of the labor rights conditions in Qatar, including through its own campaigns and by launching ILO proceedings against the country. Yet, immediately after the conclusion of the technical cooperation agreement, the ITUC's General Secretary referred to "a new era for employment rights in Qatar, with workers' lives and livelihoods being protected."<sup>136</sup> This swift endorsement could be attributed to the ITUC's

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country as "a yearslong campaign of political maneuvering that helped turn the International Labor Organization, the United Nations workers' rights watchdog, from critic to ally." The piece reports, for example, that "on the eve of the World Cup, officials with the Qatari labor ministry asked the U.N. agency to refrain from any commentary that could overshadow the tournament," and that "[s]hortly before the World Cup kickoff, as part of a regular meeting with the I.L.O., the Qatari government had a request, one that one labor official described as casual, almost off handed: Could the agency let Qatar have its soccer spotlight without any distracting commentary?" See Rebecca R. Ruiz and Sarah Hurtes, *In World Cup Run-Up, Qatar Pressed U.N. Agency Not to Investigate Abuses*, NEW YORK TIMES (Mar. 11, 2023), <https://www.nytimes.com/2023/03/11/world/europe/qatar-world-cup-ilo-labor.html>.

130. The ILO itself describes, as part of its annual progress report on the technical cooperation program, activities where it has directly appeased concerns of "the football world" on this matter: "The ILO has engaged with a number of the entities organizing or participating in the World Cup, including FIFA, the UEFA Working Group on Human Rights, national football associations and sponsors. This included providing briefings on the status of the labour reforms, and also providing support to selected football associations and sponsors in their due diligence efforts with regard to the hotels where they will be staying during the tournament." See ILO, PROGRESS REPORT ON THE TECHNICAL COOPERATION PROGRAMME BETWEEN THE GOVERNMENT OF QATAR AND THE ILO ¶ 107 (November 2022), [https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms\\_859839.pdf](https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms_859839.pdf).

131. ILO Governing Body, 331st Sess., *supra* note 99, ¶ 5.

132. Kari Tapiola & Lee Swepston, *The ILO and the Impact of Labor Standards: Working on the Ground after an ILO Commission of Inquiry*, 21 STAN. L. & POL'Y REV. 513, 517 (2010).

133. *Id.* at 524–25.

134. The New York Times investigative story on the matter reports that "Qatar's campaign at the International Labor Organization" included "an intense and divisive lobbying effort to head off an investigation" [that is, a commission of inquiry], and that "[c]urrent and former labor officials recalled Qatari officials crowding the agency's negotiating rooms in Geneva, urging them not to investigate." See *In World Cup Run-Up, Qatar Pressed U.N. Agency Not to Investigate Abuses*, *supra* note 129.

135. *Landmark Labour Reforms Signal End of Kafala System in Qatar*, ILO (Oct. 16, 2019), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_724052/lang—en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_724052/lang—en/index.htm).

136. *ILO Decision Heralds New Era for Workers' Rights in Qatar. Saudi Arabia and the UAE Must Follow Its Lead*, ITUC CSI IGB (Nov. 8, 2017), <https://www.ituc-csi.org/ilo-decision-heralds-new-era-for>.

participation in the discussions leading up to the technical cooperation agreement. The involvement of the ITUC in the finalization of this agreement was facilitated by the ILO, who arranged two meetings between ITUC's General Secretary and the government of Qatar.<sup>137</sup> It can therefore be inferred that when Qatar agreed to this technical cooperation project, it knew that it would gain not only the support of the ILO, but also ITUC's. As it later turned out, besides their involvement in the design of the technical cooperation project,<sup>138</sup> ITUC, along with additional international workers' organizations, were also involved in its implementation, through collaborations with the ILO and the government of Qatar.<sup>139</sup> These actors are conducting semi-annual meetings, "ensuring the involvement and support of Global Union federations in the implementation of the programme."<sup>140</sup> This shows that the technical cooperation has been used to some extent as a "package deal," where Qatar benefits from reputational signals through actions and communications of both the ILO and international workers' organizations.

More so, the specific arrangements of the technical cooperation were also designed to provide a particularly effective signal. As such, the ILO and Qatar hold various high-profile events;<sup>141</sup> the ILO is enhancing the capacities of Qatari officials in effectively communicating its labor reforms to "media and the academic community"; and even hosted a meeting with editors-in-chief and journalists "to discuss ethical and accurate reporting on labour migration, forced labour and fair recruitment."<sup>142</sup>

In addition, a central requirement for a signal to be effective is its "observability."<sup>143</sup> In the current digitalized world this requires online presence. This is achieved by the ILO's Project Office for the State of Qatar having a designated X/Twitter account<sup>144</sup> and webpage.<sup>145</sup> The website provides up-to-date information on Qatar's labor rights efforts and "achievements."<sup>146</sup> It also includes news articles written by the ILO, with complementing titles

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137. ILO Governing Body, 331st Sess., *supra* note 99, ¶ 3.

138. ILO, FINAL INDEPENDENT EVALUATION FOR TECHNICAL COOPERATION PROJECT FOR THE STATE OF QATAR – PHASE 2, ¶ 39, [https://www.ilo.org/wcmsp5/groups/public/—ed\\_mas/—eval/documents/publication/wcms\\_909390.pdf](https://www.ilo.org/wcmsp5/groups/public/—ed_mas/—eval/documents/publication/wcms_909390.pdf) (last visited March 6, 2024).

139. ILO Governing Body, 334th Sess., GB.334/INS/8, ¶¶ 22–23 (Nov. 8, 2018).

140. ILO Governing Body, 337th Sess., GB.337/INS/5, ¶ 49 (Nov. 7, 2019).

141. *Resources on Qatar*, ILO, <https://www.ilo.org/beirut/countries/qatar/facet/lang—en/index.htm> (last visited March 6, 2024).

142. ILO Governing Body, 337th Sess., *supra* note 140, ¶ 28.

143. Brian L. Connelly et al., *Signaling Theory: A Review and Assessment*, 37 J. MANAG. 39, 45 (2011).

144. ILO Project Office for the State of Qatar, X/TWITTER, <https://twitter.com/iloqatar?lang=he> (last visited March 6, 2024).

145. *ILO Project Office for the State of Qatar*, ILO, <https://www.ilo.org/beirut/projects/qatar-office/lang—en/index.htm> (last visited March 6, 2024).

146. *Id.*

such as “landmark labour reforms signal end of kafala system in Qatar.”<sup>147</sup> The website also contains multimedia items, such as photos of domestic workers “enjoying their day off”<sup>148</sup> or videos on “Qatar Workers Fun Run 2019,”<sup>149</sup> and as such is adapted to the current social media trends for consuming information. The content is constantly updated, enhancing the “signal frequency.”<sup>150</sup>

Moreover, in this particular case, the technical cooperation project has also proven to be a signal that is better suited than traditional ILO instruments in reaching the relevant “receiver.” Indeed, a signal that can be more easily detected by a given receiver is characterized in the literature as a “stronger” signal.<sup>151</sup> Normally, the typical way in which ILO activities signal on countries’ compliance with labor rights is through the reports and discussions of its supervisory system. It is understood then that this type of signal will be effective if it is intended to respond to pressures arriving from the ILO’s tripartite constituents, especially other countries.<sup>152</sup> On the other hand, this form of signaling will be less effective when the pressures on countries to comply with labor rights arise from external processes, from various non-state actors. In the current case, Qatar was indifferent to the pressures it faced from the ILO’s supervisory system and only became responsive to these demands when it faced pressures coming from activists, journalists, NGOs and trade union campaigns taking place outside the internal discussions of the ILO’s supervisory system. In these circumstances, the signal conveyed through the technical cooperation project effectively reached this broader range of transnational actors that Qatar needed to appease,<sup>153</sup> and therefore served as the right signal to the countries’ specific needs.

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147. *Landmark Labour Reforms Signal End of Kafala System in Qatar*, *supra* note 135.

148. ILO Arab States, FLICKR, <https://www.flickr.com/photos/iloarabstates/albums/with/72157710151197901> (last visited March 6, 2024).

149. *Multimedia*, ILO, [https://www.ilo.org/beirut/projects/qatar-office/WCMS\\_724979/lang-en/index.htm](https://www.ilo.org/beirut/projects/qatar-office/WCMS_724979/lang-en/index.htm) (last visited March 6, 2024).

150. Connelly et al., *supra* note 143, at 53–54.

151. *Id.* at 53.

152. As Helfer points out: “[t]he organization’s legal and policy pronouncements are primarily aimed at ‘insiders well-versed in politically acceptable ‘ILO speak,’ but they are much less intelligible to outsiders.” Helfer, *supra* note 5, at 400.

153. According to the ILO’s Independent Evaluation of the project: “[t]o address the widespread interest in labour rights in Qatar in the run up to, and during the FIFA World Cup 2022, the TCP [technical cooperation project] produced several communication products on the status of the labour reforms. These products were widely viewed by the media and other institutions and individuals interested in the situation of workers in the country.” See (including for the specific online metrics): *Final Independent Evaluation for Technical Cooperation Project for the State of Qatar – Phase 2*, *supra* note 138, ¶ 97.

## 2. Technical Cooperation as a Means to Catalyze Labor Rights Compliance

The second component of the study's linkage proposal was that the country on the receiving end of the reputational benefits will also sufficiently comply with international labor rights. In the present case, Qatar's technical cooperation with the ILO began in late 2017 and included Qatar's commitment to tackle forced labor, while explicitly agreeing that its' relevant laws be "implemented, reviewed, and revised in line with the comments of the ILO Committee of Experts."<sup>154</sup>

Qatar soon took on various measures to act upon these commitments. In September 2018, a new law was introduced concerning migrant workers' need for an exit visa. It established that those migrant workers covered by Qatar's labor law would be able to leave the country without having to obtain a permit from their employer. However, this law would not apply to several categories of workers, including domestic workers. In addition, under this law, employers could submit a request to retain the need for employer's approval for up to 5% of their workforce, provided it is justified by the nature of their work.<sup>155</sup> With regard to the provisions restricting the transfer to another employer, these remained unchanged at this point.<sup>156</sup>

When considering the signaling effects involved along with these reforms, it is noteworthy that different bodies of the ILO communicated a slightly different narrative. The CEACR evaluated these legislative developments while noting the abovementioned shortcomings. It accordingly asked the government to remove the obstacles on migrant workers' ability to change jobs (with reasonable notice) and to provide a clear legal framework for such a transfer. It also urged the government to remove the exit visa requirement for migrant domestic workers, as per the arrangement for workers covered by the labor law.<sup>157</sup> The communications team of the technical cooperation's Project Office for the State of Qatar also acknowledged the shortcomings of the current exit permit arrangements. However, with somewhat greater emphasis on the achievements, the overall message in this case was rather positive, with, for example, a headline announcing the "End of exit permits for most migrant workers in Qatar."<sup>158</sup>

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154. ILO Governing Body, 331st Sess., *supra* note 99, ¶ 31.

155. ILO Governing Body, 334th Sess., *supra* note 139, ¶ 13.

156. International Labour Conference, 108th Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part A)*, at 430 (2019).

157. *Id.* at 430–31.

158. *End of Exit Permits for Most Migrant Workers in Qatar Welcomed*, ILO (Sept. 4, 2018), [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_638754/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_638754/lang-en/index.htm).

As the technical cooperation proceeded, a draft of a Ministerial Decision was announced, eliminating the exit permit requirement to additional types of workers previously excluded from this new arrangement, including domestic workers.<sup>159</sup> These changes came into force in January 2020, with the Head of the ILO Project Office for the State of Qatar describing this change as “an important milestone in the government’s labour reform agenda.”<sup>160</sup> In addition, in September 2020 Qatar amended its law to eliminate the “no-objection certificate” required from workers in order to change employers. And so, the new arrangement allows workers to terminate their employment, including in order to transfer to another employer, by giving written notice of one or two months, and after the probation period. A change of employers (rather than just terminating their contract) would also require some bureaucratic requirements vis-à-vis the government. Within the probation period, a transfer is possible with one month written notice, but requires the new employer to provide certain compensation to the current employer.<sup>161</sup> The ILO Project Office in Qatar announced that taken together, “these steps mark the end of kafala in the country.”<sup>162</sup> ITUC, similarly, announced that with these steps the technical cooperation program “today succeeded in dismantling the kafala system.”<sup>163</sup>

However, despite these positive assertions, problems remain with these new arrangements. Among them, the exception allowing employers to request that the exit permit requirement still apply on up to five percent of their workforce (but exceptions cannot be requested for domestic workers).<sup>164</sup> Moreover, Human Rights Watch clarifies that although the exit permit requirement was abolished for domestic workers, according to the new arrangement they are the only workers required to inform employers that they wish to leave at least seventy-two hours in advance. This requirement is especially problematic given the particular vulnerability of domestic migrant workers. This could lead not only to the belief that employers’ consent is required, but it also provides an opening for employers to try and prevent their workers

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159. ILO Governing Body, 337th Sess., *supra* note 140, ¶ 17.

160. *Exit Permits Consigned to History for Almost all Migrant Workers in Qatar*, ILO (Jan. 16, 2020), [https://www.ilo.org/beirut/projects/qatar-office/WCMS\\_734411/lang-en/index.htm](https://www.ilo.org/beirut/projects/qatar-office/WCMS_734411/lang-en/index.htm).

161. ILO Governing Body, 340th Sess., GB.340/INS/11, ¶ 21 (November 2020); International Labour Conference, 109th Sess., *Application of International Labour Standards 2021: Report III/Addendum (Part A)*, at 285 (2021).

162. *Landmark Labour Reforms Signal End of Kafala System in Qatar*, *supra* note 135.

163. *Qatar Dismantles Kafala System of Modern Slavery*, ITUC CSI IGB (Oct. 16, 2019), <https://www.ituc-csi.org/qatar-dismantles-kafala>.

164. ILO Governing Body, 340th Sess., *supra* note 161, ¶ 19.

from leaving.<sup>165</sup> Indeed, research by Amnesty International shows that in practice employers often file false charges of criminal offenses against these workers, without the risk of facing legal consequences for doing so.<sup>166</sup> Domestic workers were once again singled out, with an additional, and possibly substantial, obstacle to leaving the country. However, ITUC's statement nevertheless announced that "Exit visas for workers – including domestic workers [ . . . ] – have been eliminated. These workers have the same rights as all workers in Qatar. The same non-discriminatory law will apply for all workers including domestic workers."<sup>167</sup>

Qatar's engagement with the ILO's technical cooperation agreement has also provided the country with an additional reputational signal, related to its aspiration towards becoming a leader in the Gulf region. ITUC's statement addresses this need, by stressing that:

Workers want to work in the Gulf states... but they also want decent work where they are treated fairly and with dignity and respect. While we witness the changes in Qatar, sadly this is not the case in neighboring countries where migrant workers are still treated as less than human with few rights and freedoms.<sup>168</sup>

Overall, despite remaining shortcomings,<sup>169</sup> the technical cooperation has managed to lead to important reforms towards the effective dismantling of the sponsorship system in Qatar. These efforts have received positive reactions from the ILO and ITUC, among others, providing Qatar with the sought-for reputational signals. These reputational signals, however, did not always correspond with the actual progress made.

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165. *Qatar: End of Abusive Exit Permits for Most Migrant Workers: But Domestic Workers Will Have to Notify Employers Before Leaving*, HUM. RTS. WATCH (Jan. 20, 2020), <https://www.hrw.org/news/2020/01/20/qatar-end-abusive-exit-permits-most-migrant-workers>.

166. *Reality Check 2020: Countdown to the 2022 World Cup. Migrant Workers' Rights in Qatar*, AMNESTY INT'L (2020), <https://www.amnesty.org/download/Documents/MDE2232972020ENGLISH.PDF>.

167. *Qatar Dismantles Kafala System of Modern Slavery*, *supra* note 163.

168. *Id.* ITUC also praised Qatar for setting "a new standard for the Gulf States." See *ILO Decision Heralds New Era for Workers' Rights in Qatar*, *supra* note 136.

169. Besides issues concerning the regulatory design in the country, there are also compliance gaps in terms of the effective implementation of these numerous reforms. See ILO, PROGRESS REPORT ON THE TECHNICAL COOPERATION PROGRAMME BETWEEN THE GOVERNMENT OF QATAR AND THE ILO, ¶ 9 (November 2023), [https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms\\_901686.pdf](https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms_901686.pdf).

## IV. LESSONS FOR ILO ENFORCEMENT AND SUPERVISION

*A. The Role of the Supervisory System*

The supervisory system's initial inability to influence Qatar's compliance during a decade-long proceeding seemingly indicates the weakness of this enforcement model, especially when compared to the achievements of the technical cooperation project. However, an examination of the role played by the supervisory system through the lens of this study's legal-economic analysis reveals functions that were crucial to making these positive changes possible.

## 1. The Supervisory System as a "Normative Authority"

As part of this article's institutional economic analysis, it also relies on the French "economics of convention" school. The economics of convention approach is useful in the present context in light of its particular focus on the way that institutions, and especially the regulative power of law, coordinate actors' interactions to achieve conventions around common goals.<sup>170</sup> According to this approach, law is seen as an institution through which individuals develop a shared understanding of situations in which they interact, and by that it guides them in coordinating their actions. But because law "has to be interpreted and mobilized by socio-historical actors in situations," it embeds the social practice in which it operates.<sup>171</sup> In other words, the various actors who interpret and operationalize law are themselves engaged in the "production of law."<sup>172</sup> These theories are therefore especially helpful for the analysis of the course of events in this case, which were characterized by numerous "battles" over legal narratives. At the same time, what this perspective adds to other institutional approaches is a greater stress on law's normativity; the idea that law is more than simply a record or "mirror" of social conventions, it also shapes them, projecting "an account of what they should be, or could

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170. Rainer Diaz-Bone & Robert Salais, *Economics of Convention and the History of Economies. Towards a Transdisciplinary Approach in Economic History*, 36 HIST. SOC. RES. 7, 8 (2011); Christian Bessy, *The Dynamics of Law and Conventions*, 40 HIST. SOC. RES. 62, 63 (2015).

171. Rainer Diaz-Bone, Claude Didry & Robert Salais, *Conventionalist's Perspectives on the Political Economy of Law. An Introduction*, 40 HIST. SOC. RES. 7, 8-9 (2015).

172. Rainer Diaz-Bone, *Institutionalist and Methodological Perspectives on Law - Contributions of the Economics of Convention*, 40 HIST. SOC. RES. 23, 34 (2015) (citing CLAUDE DIDRY, NAISSANCE DE LA CONVENTION COLLECTIVE. DEBATS JURIDIQUES ET LUTTES SOCIALES EN FRANCE AU DEBUT DU XXE SIECLE (2002)).

become.” In that sense, law is a normative frame of reference, used to coordinate expectations and behavior through the articulation of shared values.<sup>173</sup>

These ideas shed light on the functions performed by the supervisory system in this case. They highlight that a major characteristic of the supervisory system that surfaces here is that it operates by serving as what can be termed a “normative authority.” By this term I refer to the ability of the supervisory system to provide persuasive normative guidance, in a broader, more subtle, sense than binding rulings on countries’ legal requirements.<sup>174</sup> As discussed, reputational concerns were arguably a major factor in this technical cooperation project. In order for Qatar to improve its reputation, there was a need to verify its planned reforms and provide a confirmation of its compliance. Yet, simply claiming that Qatar meets its legal requirements is insufficient. From a sociological perspective, the meaning of a legal standard is also at play. In this case, different actors including Qatar, ILO bodies, trade unions, civil society and the media – have each had their own interpretations on the matter. Thus, the economics of convention approach stresses that the coordination function of law is dependent upon its ability to change actors’ beliefs and create shared interpretations around legal norms. This entails a certain authoritative mechanism that could evaluate Qatar’s planned reforms according to a convincing and acceptable understanding of international labor standards. The CEACR arguably had what it takes to perform this normative role in light of its “prestige” as a representative and independent body of experts that conducts “an objective and impartial review.”<sup>175</sup>

Moreover, according to the economics of convention approach, social coordination is achieved not only by information dissemination, but also through the evaluation of conventions. The legal system is then seen as a realm where the conventions are constantly challenged, evaluated and transformed. From this point of view, it was not only Qatar’s behavior that was evaluated in this case, but the labor law norms themselves as they were being applied. In particular, when existing conventions for the societal coordination of labor matters become inappropriate to meet new needs of emerging industrial labor relations, these arrangements will be contested by actors, and legal procedures will be initiated in search of new solutions.<sup>176</sup> In our case, the

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173. Simon Deakin, *The Invention of Law*, in *L’ÉCONOMIE EST UNE SCIENCE REFLEXIVE: CHÔMAGE, CONVENTION ET CAPACITÉ DANS L’ŒUVRE DE ROBERT SALAIS* 203 (Christian Bessy & Claude Didry eds., 2022).

174. For the supervisory system’s lack of authoritative force, in a strict-legal sense, see Claire La Hovary, *The ILO’s Supervisory Bodies’ ‘Soft Law Jurisprudence’*, in *RESEARCH HANDBOOK ON TRANSNATIONAL LABOUR LAW* 316, 326–28 (Adelle Blackett & Anne Trebilcock eds., 2015).

175. Maupain, *supra* note 10, at 120.

176. Diaz-Bone, *supra* note 172, at 27.

norms against forced labor did not initially foresee the kind of economic coercion and exploitation demonstrated in the Kafala system, as opposed to older forms of forced labor.<sup>177</sup> This is not to say that legal concepts are not flexible enough to encompass such adaptation,<sup>178</sup> but that some kind of a consensus had to be reached to that effect. In that sense, the legal system's need to be sufficiently grounded in the social context also limits its potential as an instrument of change.<sup>179</sup> In the Qatari case, the Kafala system resulted in recent years in extreme power imbalances, leading numerous actors to start challenging the legitimacy of this arrangement. This accordingly opens a way for the CEACR to scale-up states' practice. Different actors will then argue for different interpretations of legal norms, each pushing towards different arrangements around which to coordinate.<sup>180</sup> Qatar, in our case, has argued all along the way that numerous "weaker" versions of its Kafala system were compliant with the legal requirements against forced labor, while the CEACR continuously disagreed and insisted on the need to completely abolish this system. Therefore, while various actors had their own interpretation as to the appropriate behavior in these circumstances, the supervisory system contributed to eventually reaching a resolution on this matter and to provide a "closer."

Furthermore, it follows from the discussion thus far that conventions emerge through learning processes, a function supported by the capability of the legal system to store and then retrieve information drawn from social practices.<sup>181</sup> In relation to the current case, the supervisory system's longstanding practice is to rely on its previous decisions to support its legal conclusions on countries' compliance, facilitating a learning process from the experience of other countries in similar situations. Accordingly, now that Qatar has accepted the supervisory system's approach, this might serve as the new benchmark for other countries and mark the emergence of a new convention on this matter. This lends weight to the ITUC's aforementioned statement that "Qatar has set a new standard for the Gulf States, and this must be followed by Saudi Arabia and the UAE."<sup>182</sup>

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177. Plant, *supra* note 62, at 425.

178. Simon Deakin, *Juridical Ontology: The Evolution of Legal Form*, 40 HIST. SOC. RES. 170 (2015).

179. *Id.* at 182.

180. Diaz-Bone, Didry & Salais, *supra* note 171, at 9.

181. Deakin, *supra* note 173.

182. *ILO Decision Heralds New Era for Workers' Rights in Qatar*, *supra* note 136.

## 2. The Supervisory System and Effective Signaling

Another lens through which to understand the role of the supervisory system in supporting the ILO's efforts in this case is through signaling theory. We have seen that prior to the technical cooperation project, Qatar repeatedly argued that its previous reforms bring the country to full compliance with international labor standards. These previous signals were contradicted by numerous conflicting signals and were accordingly not convincing.<sup>183</sup> Qatar thus needed a more "credible" signal, which was achieved through the technical cooperation project. Through its labor law reforms, Qatar is conveying a certain cost that it incurs, which serves as a signal.

But signaling does not take place in vacuum. In order for this signal to be effective, there is a need for a third-party to provide a meaningful frame of reference against which to assess these reforms; in other words, to establish whether they entail a "cost." This is the cognitive role provided by the ILO here: it provides the "framing"<sup>184</sup> through which to perceive Qatar's signaling. The ILO generates the content of the signals in this respect; creating standards that countries can benchmark themselves against. This normative framing provided by the law serves as a powerful tool to make the signal more credible.

In practice, this framing function was provided by the supervisory system's "normative authority" as to what should be considered an acceptable behavior with regards to international labor rights. Throughout the project, the CEACR provided crucial information on Qatar's conformity with international labor standards, continuously evaluating its reforms and providing ongoing guidance on regulatory deficiencies. This can be seen from the initial agreement on the project, when Qatar committed to revise its sponsorship system "in line with the comments of the ILO Committee of Experts." The CEACR's later assessments of Qatar's steps similarly ensured that it is indeed delivering these commitments. By upholding Qatar to a sufficient level of compliance, these activities confirm the required "cost" and thus contribute to its reputation. In that sense, the high standards that the supervisory system requires from countries is exactly what can make it appealing for countries to follow its requirements.

This case has also highlighted the relative strength of the CEACR for this purpose, as compared to two other trustworthy bodies: the ILO's Project

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183. Connelly et al., *supra* note 143, at 54.

184. "Framing" can be understood, broadly speaking, as "the process by which people develop a particular conceptualization of an issue or reorient their thinking about an issue." See Dennis Chong & James N. Druckman, *Framing Theory*, 10 ANN. REV. POL. SCI. 103, 104 (2007).

Office in Qatar and the ITUC. As we have seen, the statements of these bodies reflected slightly different interpretations concerning Qatar's reforms, presenting the achievements made in a more positive light. These divergent reactions might be explained by the different nature of each of these bodies. The ILO's Project Office and the ITUC rely, as part of their work, on their collaboration with the Qatari government and need to ensure its continued cooperation, one that is motivated to a large degree by the country's image projection. Indeed, we have seen that the ITUC was given a dominant role by the ILO, in both reaching the technical cooperation agreement with Qatar and in the execution of the agreement. The CEACR, on the other hand, was relatively isolated from the ongoing technical cooperation project. This arguably allowed it to maintain a more critical approach towards the remaining shortcomings in the country's reforms.

### *B. The Limits and Prospects of the Linkage Proposal*

While the technical cooperation project in Qatar has managed to reach some significant achievements in the issues included in its scope,<sup>185</sup> including crucial reforms to the sponsorship system, major labor rights violations were not addressed. That was the case with principles of freedom of association and the Discrimination (Employment and Occupation) Convention,<sup>186</sup> issues the supervisory system has already determined at the time that Qatar was violating.<sup>187</sup> Yet, the project does not include any commitment to freedom of association as such and promotes instead alternative measures for "workers' voice"; and, while the project naturally relates to the discrimination against migrant and domestic workers, it does not address other bases of discrimination that were found to be violated, such as gender-based discrimination.<sup>188</sup>

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185. See generally the project's annual "progress reports": ILO Governing Body, 334th Sess., *supra* note 139; ILO Governing Body, 337th Sess., *supra* note 140; ILO Governing Body, 340th Sess., *supra* note 161; ILO, *Progress Report on the Technical Cooperation Programme between the Government of Qatar and the ILO* (December 2021), [https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms\\_832122.pdf](https://www.ilo.org/wcmsp5/groups/public/—arabstates/—ro-beirut/—ilo-qatar/documents/publication/wcms_832122.pdf) (last visited Mar. 6, 2024); *Progress Report on the Technical Cooperation Programme between the Government of Qatar and the ILO* (November 2022), *supra* note 130; *Progress Report on the Technical Cooperation Programme between the Government of Qatar and the ILO* (November 2023), *supra* note 169.

186. (adopted 25 June 1958, entered into force 15 June 1960) No. 111.

187. For the latest reports on these issues see Qatar (Case No 2988) (Sept. 28, 2012) Report of the Committee on Freedom of Association No 382 (GB.330/INS/4 June 2017); International Labour Conference, 111st Sess., *Report of the Committee of Experts on the Application of Conventions and Recommendations: Report III (Part A)*, at 654–59 (2023).

188. This is not in the project's "areas of action" and not dealt with in a comprehensive manner, although some activities on this issue occasionally take place. See, e.g., *Progress Report on the Technical Cooperation Programme between the Government of Qatar and the ILO* (November 2022), *supra* note

If the technical cooperation project addressed all labor rights violations in Qatar, this would have reflected a more holistic approach in the management of global labor governance efforts. Under this scenario, the ILO leverages the pressures Qatar faces from transnational activism campaigns to address migrant and World-Cup related violations, towards reforms in issues that Qatar faces less pressure to address. This is because, the reforms that Qatar has undergone under the technical cooperation project were, to a large extent, the result of pressure exerted from trade unions, civil society and the media. Moreover, by involving global union federations in the technical cooperation project, the ILO created a situation where Qatar's cooperation in the project was in practice bartered for an end to their campaigns against the country. Indeed, literature has long acknowledged that while transnational activism campaigns can have a major role in leading to positive change in companies and countries,<sup>189</sup> a well-known problem with these efforts is that they can be “fickle” and “selective,”<sup>190</sup> and inevitably focus on issues that grasp the attention of international audiences. Therefore, there is concern that global attention will be attracted only by certain labor or human rights violations, such as those triggering strong emotional empathy, while neglecting more “ordinary” workplace violations.<sup>191</sup> The current case aligns with this concern, as much of the media coverage and reports dealt, quite naturally, with fatal accidents and forced labor of migrant workers. The violations of freedom of association and discrimination, despite their severity, received less international attention. This means that Qatar's incentives to address its violations were higher in the former type of labor issues. In these circumstances, if the technical cooperation was to address all of these labor rights violations, or, at least include issues according to a rationalized key (for example, all violations of fundamental rights), that would have contributed to a more well-designed global labor governance.

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130, ¶ 32. As this is put by the ILO itself: “while the design of the programme did not prioritize gender equality as a key driver, it ensured that reforms (e.g., dismantling the kafala system, establishing a minimum wage, etc.) apply to both men and women . . . .” See ILO, FINAL INDEPENDENT EVALUATION OF THE TECHNICAL COOPERATION PROGRAMME IN QATAR (2018–2021), at 36, <https://www.ilo.org/ievaldiscovery/#asljqw> (last visited Mar. 6, 2024).

189. See, e.g., GAY W. SEIDMAN, BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM (2009); MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (1998).

190. P. Philip Alston & James Heenan, *Shrinking the International Labor Code: An Unintended Consequence of the 1998 ILO Declaration on Fundamental Principles and Rights at Work?*, 36 N.Y.U. J. INT'L L. & POL. 221, 241–42 (2004).

191. Gay Seidman, *Transnational Labour Campaigns: Can the Logic of the Market Be Turned Against Itself?*, 39 DEV. CHANGE 991, 994–96 (2008).

In practice, however, reality is more complicated, and there is only so much that the ILO can realistically achieve in such single country intervention. As Fenwick explains, “the ILO is not in any sense the master of the circumstances in which it is called upon to advise. On the contrary: in an institutional and in a political sense, the ILO is constrained by the national context.”<sup>192</sup> The fact that the technical cooperation did not address all labor rights violations in this case suggests that there are limits to the described enforcement model, one which lacks coercive enforcement and depends on countries’ cooperation. The selection of issues to include in the scope of the technical cooperation project is ultimately determined through negotiations.<sup>193</sup> As described, the ILO has been pressuring Qatar since 2014 to undergo a technical cooperation project and in 2017 was engaged in several rounds of discussions on this. At the end of 2017, with only five more years until the World Cup, the ILO had a limited window of opportunity to act. At this point in time, Qatar was also in perhaps the most susceptible state. If it was to gain any reputational benefits from this event, it had to deal with its publicity crisis fast and effectively. Moreover, from June 2017 Qatar also became regionally isolated. Coincidentally or not, four months after the start of this diplomatic isolation the project agreement was signed. In these circumstances, the agreement the ILO finalized may well be its only realistic option.

What are the possible consequences then of the technical cooperation project not addressing all of Qatar’s labor rights violations? From a signaling theory perspective, the details of this cooperation point to the spreading of positive reputational signals that are potentially wider than Qatar’s actual commitments or actions taken. While the technical cooperation does not attempt to address all of Qatar’s labor rights violations, the nuances of its actual commitments cannot always be properly reflected in these signals. The overall message from the technical cooperation is the appearance of approval of Qatar’s policies by the ILO and major global union federations, previously strong critics of the country. In other words, Qatar is enjoying a reputational benefit as a country that is taking major steps to comply with international labor rights, but without actually complying with all of its labor rights’ obligations.

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192. Fenwick, *supra* note 33, at 237–38.

193. Specifically on the absence of freedom of association from this project, the ILO has noted that Qatar’s Ministry of Labour “has discussed this subject in many meetings with the ILO and the ITUC/GUFS [global union federations]” but that “[s]ecuring freedom of association was met with refusal from the Government of Qatar.” See *Final Independent Evaluation for Technical Cooperation Project for the State of Qatar – Phase 2*, *supra* note 138, ¶ 38.

According to signaling theory, when the signal does not correlate with the quality it is signaling on (the “fitness” of the signal) or when the signaling actor is trying to deceive on such quality (the signal’s “honesty”), the signal’s reliability is affected.<sup>194</sup> In the short-term, such a discrepancy can be misleading. As discussed, technical cooperation can be seen as a way for Qatar to “pre-commit” itself to the policy reforms it has agreed to undertake, and by that enhance the credibility of the signal. Accordingly, drawing on the trustworthiness of the ILO, even if Qatar did not yet fully achieve all of its promised reforms, or if it is still engaged in other violations, the signal can still be credible. This means that in the short term, Qatar may well receive some immediate reputational benefits without the need to actually comply with minimum labor standards.

However, over a longer period of time the signaling effects take a different form, because countries’ actions are constantly monitored by the supervisory system. Countries that have been using technical cooperation projects to gain “expressive benefits” via signaling,<sup>195</sup> without substantially changing their behavior, will eventually be exposed. This augments the problem of “signal inconsistency,” which hinders the effectiveness of the communication.<sup>196</sup> Therefore, in the long term, such practices can lead to a more skeptical view of technical cooperation projects and their potential to ensure a sufficient level of compliance. In terms of signaling theory, a deterioration in the “cost” involved in technical cooperation projects is at play. It can thus be argued that if countries participating in technical cooperation projects do not sufficiently respect labor rights, these projects will lose, with time, their ability to provide reputational benefits to participating countries, and subsequently lose a major part of their appeal.

## V. CONCLUSION

The case of Qatar exemplifies the potential of reputational incentives to lead to meaningful change in countries. For many years, Qatar seemed obstinately resistant to the supervisory system. On the eve of the announcement of its hosting of the World Cup, the country reportedly announced it had no intention of abolishing its sponsorship system.<sup>197</sup> However, with the international pressures that followed this announcement, a stark shift in Qatar’s approach was evidenced. Today, Qatar has taken significant steps to reform this

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194. Connelly et al., *supra* note 143, at 52.

195. Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935, 2011 (2002).

196. Connelly et al., *supra* note 143, at 54.

197. Khan & Harroff-Tavel, *supra* note 58, at 301.

system. At the same time, this case also highlights that for such positive change to occur, the proper institutional arrangements need to be in place to harness these forces in support of desirable objectives. It is in this context that this article has examined the various ILO proceedings in the country. Through the lens of this study's institutional economic analysis, this article has advanced our understanding of contemporary enforcement models of the ILO.

First, this case demonstrates the potential of this study's linkage proposal. It shows that the supervisory system and technical cooperation projects can mutually support each other's work and create highly efficient incentives for countries to comply with labor rights. By doing so, the article sketches a middle ground between the old "hard" versus "soft" law divide; one which works on states' interests while relying on, and strengthening, the ILO's traditional enforcement mechanisms. At the same time, the inevitable limits of such an approach were also observed. As the ILO is unable to coerce a country into compliance, any labor rights achievements are dependent upon countries' willingness to cooperate. The tools at the disposal of the ILO can create incentives for countries to enact labor law reforms, but there will be cases where these types of incentives might not suffice. The fact that Qatar remains a culprit of several serious labor rights violations, it was observed, results in a discrepancy between the reputation gained from taking part in this project and the country's actual commitments. Such an outcome holds implications that span wider than the success of this particular project in Qatar. Namely, if technical cooperation projects do not ensure that participating countries are committed to a basic level of labor standards, they risk deteriorating their signaling effects, arguably leading in the long term to a weakening of their appeal.

Furthermore, the article has provided new insights on the work of the ILO's supervisory system. This case study refines our understanding on how the production and dissemination of information; the evaluation of conventions and norms of acceptable labor practices; and the facilitation of learning processes among countries stand at the heart of the enforcement measures of the supervisory system. By acting as what can be termed a "normative authority" in the realm of international labor rights, it provides persuasive normative guidance on international labor standards, fostering coordination by creating shared beliefs around international legal norms. Moreover, this case has also shown how the supervisory system's competency in evaluating countries' behavior can provide powerful "framing" that supports effective signaling on countries' reputation. This way, the supervisory system serves as a "gatekeeper" to the various benefits associated with such reputation. In

that sense, by linking the work of the supervisory system to other regulatory initiatives, this not only helps the supervisory system's decisions to become more influential – it also contributes to the effectiveness of these other initiatives. It is suggested then that the supervisory system should not be seen as an irrelevant or weak system in need of reform. This system has been doing what it does best: providing trustworthy assessments of countries' levels of compliance. But these virtues of the supervisory system uncovered in this article are not confined to technical cooperation projects and can potentially play a valuable role in a broader set of situations, within the framework of the ILO and beyond. It can afford important support that fuels essentially any kind of regulatory initiative where the reassurance on countries' compliance grants them with certain benefits. This research thus opens the way to further consider how the supervisory system can be better linked with trade and investment arrangements, corporate social responsibility, and social certification initiatives.

Finally, the analysis in this case also has broader implications for the role of the ILO more generally, and for its future development. The contemporary global labor regulatory sphere is characterized by numerous regulatory initiatives, which are run by a wide range of influential private and public actors. These initiatives often utilize various branding and communication techniques as their mode of operation. Indeed, “the ILO needs to be able to work effectively in these new realities by establishing new relationships with the private sector and finding new methods of intervention.”<sup>198</sup> These realities were clearly manifested in the Qatari case study, where the terrain in which the ILO operated was highly influenced by campaigns of media, trade unions and civil society. The analysis showed how the ILO can harness these diverse forces towards meaningful labor law reforms. First, the ILO managed to create a “package deal” where both its own traditional proceedings and different transnational activism campaigns were ceased as a result of Qatar's cooperation. Second, the ILO adapted its traditional signaling activities to communicate to a broad spectrum of receivers. By extending its communications beyond its internal tripartite structure, these signals were better suited to a regulatory arena that is influenced by diverse non-state actors. Moreover, the article also highlights how the ILO can potentially channel these forces towards a more comprehensive regulatory approach. These new insights open a way for future research on the design and management of this increasingly polycentric, communications-driven global governance regime.

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198. Guy Ryder, *Relevance of the ILO in the Twenty-First Century*, WARWICK PAPERS IN INDUSTRIAL RELATIONS, NO. 98, UNIV. OF WARWICK (2014), <https://www.econstor.eu/bitstream/10419/119759/1/791224902.pdf>.