



Regulating Human Rights: International Organizations, Flexible Standards, and International Refugee Law

Citation

Goldenziel, Jill I. 2014. Regulating Human Rights: International Organizations, Flexible Standards, and International Refugee Law. *Chicago Journal of International Law* 13, no. 2: 453-492.

Published Version

<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1389&context=cjil>

Permanent link

<http://nrs.harvard.edu/urn-3:HUL.InstRepos:34605057>

Terms of Use

This article was downloaded from Harvard University's DASH repository, and is made available under the terms and conditions applicable to Other Posted Material, as set forth at <http://nrs.harvard.edu/urn-3:HUL.InstRepos:dash.current.terms-of-use#LAA>

Share Your Story

The Harvard community has made this article openly available.
Please share how this access benefits you. [Submit a story](#).

[Accessibility](#)

1-1-2014

Regulating Human Rights: International Organizations, Flexible Standards, and International Refugee Law

Jill I. Goldenziel

Recommended Citation

Goldenziel, Jill I. (2014) "Regulating Human Rights: International Organizations, Flexible Standards, and International Refugee Law," *Chicago Journal of International Law*: Vol. 14: No. 2, Article 4.
Available at: <http://chicagounbound.uchicago.edu/cjil/vol14/iss2/4>

This Article is brought to you for free and open access by Chicago Unbound. It has been accepted for inclusion in Chicago Journal of International Law by an authorized administrator of Chicago Unbound. For more information, please contact unbound@law.uchicago.edu.

Regulating Human Rights: International Organizations, Flexible Standards, and International Refugee Law

Jill I. Goldenziel*

Abstract

The bad actor problem, or the puzzle of how to get known human rights violators to improve their practices, is central to human rights scholarship and policy-making. Scholarship has largely focused on understanding how and if state commitments to multilateral international human rights treaties, such as the International Covenant on Civil and Political Rights, can improve human rights practices. This article reframes the bad actor problem as a regulatory matter, suggesting that international agencies may, under certain conditions, provide a way to get even bad actors to improve their human rights practices. By flexibly interpreting international law, international organizations can use their authority to coordinate state interests, while enhancing the credibility of state commitments and providing valuable legal cover for state actions. I present examples of how international agencies may and have improved human rights practices, focusing on the case of the use of international refugee law during the post-2003 Iraqi refugee crisis in Jordan and Syria. My analysis suggests that traditional scholarly discussion of promoting compliance with international human rights instruments may be misplaced, and that the role of international agencies in regulating human rights deserves further attention.

* Lecturer on Government and Social Studies, Harvard University; Research Fellow, International Security Program, Belfer Center for Science and International Affairs, Harvard Kennedy School; Ph.D., Government, Harvard University; A.M., Government, Harvard University; J.D., New York University School of Law; A.B., Princeton University. The author would like to thank Noah Feldman, Jack Goldsmith, Michael Pine, Beth Simmons, and Mark Tushnet for helpful comments and conversations. Miguel Lopez and Lisa Wang provided valuable research assistance.

Table of Contents

I. Introduction.....	455
II. Literature Review	458
III. The Case of International Refugee Law.....	461
A. The Malleable Definition of “Refugee” in International Law	462
B. The Administrative and Regulatory Roles of the U.N. Refugee Agency..	464
IV. Case Study: The Post–2003 Iraqi Refugee Crisis	467
A. The Beginning of the Iraqi Refugee Crisis.....	467
B. Flexible Interpretation of International Law Succeeds in Improving Rights Outcomes.....	470
C. Silence on the Iraqi Plight: 2003–2006	472
D. Policy Shifts in the U.S.	474
E. Change in UNHCR’s Legal Strategy	475
F. Change in U.S. Policy Enhances Agency Efforts	476
G. UNHCR’s Regulations Enable Alignment of State Interests	477
H. The Effects of International Regulation	480
V. Applications	483
A. Positive Implications of Human Rights Regulation by International Agencies	483
B. How Other International Agencies Can Regulate Human Rights.....	486
VI. Limitations and Potential Drawbacks of Human Rights Regulation By International Agencies	488
VII. Conclusion	491

I. INTRODUCTION

The “bad actor problem,” or the puzzle of how to get known human rights violators to improve their practices, is central to human rights scholarship and policy-making.¹ A great deal of international legal scholarship has focused on understanding why states commit to international human rights law, and the processes by which they may come to comply with it.² Much of this literature implicitly assumes that promoting commitment to the rules expressed in multilateral human rights treaties is a good way to get countries to improve their human rights records. While essentially all empirical studies have concluded that the human rights records of repressive regimes have not improved as a result of their signing human rights treaties,³ human rights supporters continue to devote significant effort to pushing these countries to commit to, and eventually comply with, such multilateral instruments.

This article suggests that, under certain conditions, an international organization can regulate, monitor, and implement human rights protections in a way that may induce even bad actors to improve their human rights practices. By serving as an intermediary to coordinate state interests and interpreting international human rights law flexibly, international organizations have the potential to improve human rights outcomes. My argument will focus on the case of the U.N. Refugee Agency’s implementation of international refugee law during the post–2003 Iraqi refugee crisis. In this context, I explain how insistence on compliance with the strictures of international human rights law may sometimes have the effect of harming human rights, while flexible interpretation can improve them. I will also discuss how my analysis may apply to other international organizations that have assumed responsibility for protecting human rights, particularly in states known as “bad actors.”

This article contributes to our understanding of the growing role of international administrative agencies, which has been under-studied in

¹ Terminology adopted from Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621 (2004).

² See, for example, *id.*; Harold Hongju Koh, *How Is International Human Rights Law Enforced?*, 74 IND. L.J. 1397 (1998); BETH SIMMONS, *MOBILIZING FOR HUMAN RIGHTS* (2009); Emilie Hafner-Burton & Kiyoteru Tsutsui, *Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most*, 44 J. PEACE RES. 407 (2007).

³ See, for example, SIMMONS, *supra* note 2; Hafner-Burton & Tsutsui, *supra* note 2; Eric Neumayer, *Do International Human Rights Treaties Improve Respect for Human Rights?*, 49 J. CONFLICT RESOL. 925 (2005); Oona Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1870 (2002); Linda Camp Keith, *The United Nations International Covenant on Civil and Political Rights: Does it Make a Difference in Human Rights Behavior?*, 36 J. PEACE RES. 95 (1999).

international legal scholarship.⁴ As Andrew Guzman notes, legal scholars have generally ignored the role of the soft law of international organizations.⁵ Some scholarship has discussed organizations that monitor the major instruments of international human rights law, such as the Committee Against Torture and the U.N. Commission on Human Rights, and has repeatedly dismissed them as ineffective.⁶ Literature on treaty flexibility mechanisms largely does not focus on the workings of multi-lateral international agencies that have far more extensive missions and functions.⁷ The U.N. Refugee Agency (also known as the Office of the United Nations High Commissioner for Refugees, or UNHCR) and other international agencies perform as regulators of human rights, not just as mere monitors. They do so by promulgating interpretive regulations, monitoring international human rights law on the ground through a network of hundreds of country field offices, and providing valuable humanitarian services. Similar to administrative agencies in the U.S., these agencies serve a rulemaking function that affects the rights of millions as they interpret the provisions of international human rights treaties.⁸

Finally, this article increases our understanding of international refugee law, an area of international law of increasing importance. International refugee law is a body of human rights law that has been largely under-studied, even as its application extended to 10.5 million people at the end of 2012, before the Syrian refugee crisis created hundreds of thousands more.⁹

⁴ For a call for more scholarship in this area, see Benedict Kingsbury, Nico Krisch, & Richard A. Stewart, *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15 (2005).

⁵ See generally ANDREW T. GUZMAN, HOW INTERNATIONAL LAW WORKS: A RATIONAL CHOICE THEORY (2008); Andrew T. Guzman, *Doctor Frankenstein's International Organizations* (U.C. Berkeley Pub. L. Research Paper No. 2015010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2015010.

⁶ See, for example, JACK GOLDSMITH & ERIC POSNER, THE LIMITS OF INTERNATIONAL LAW (2005); Robert B. Ahdieh, *From Federalism to Intersystemic Governance: The Changing Nature of Modern Jurisdiction*, 57 EMORY L.J. 1 (2007).

⁷ For a review of this literature, see Laurence Helfer, *Flexibility in International Agreements*, in INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: TAKING STOCK (Jeffrey Dunoff & Mark A. Pollack, eds., Cambridge University Press, 2012). See also Kal Raustiala & Anne-Marie Slaughter, *International Law, International Organizations, and Compliance*, in THE HANDBOOK OF INTERNATIONAL RELATIONS (Thomas Risse & Beth Simmons eds., 2002).

⁸ G.A. Res. 428 (V), U.N. Doc. A/RES/428(V) (December 14, 1950).

⁹ Scholarship on international refugee law tends to consider international refugee law separately from other instruments of international human rights law, although the universal human rights protections in these documents overlap significantly. Three of the most important and comprehensive works on international refugee law include JAMES HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW (2005); GUY GOODWIN-GILL & JANE MCADAM, THE REFUGEE IN INTERNATIONAL LAW (2007); ANDREAS ZIMMERMAN, THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL (2011).

My case study of UNHCR's implementation of international refugee law in the post-2003 Iraqi refugee crisis is based on six months of fieldwork and data collection in Jordan, Syria, and Egypt; and three months at UNHCR headquarters in Geneva, between 2007 and 2010. While in the field, I conducted more than 100 interviews with employees of the Agency; other U.N. agencies; NGOs assisting Iraqi refugees; and government officials from host countries, donor countries, and Iraq. Data from these interviews enabled me to understand the strategic calculations made by the Agency and state actors that influenced the rights and fates of Iraqis. UNHCR officials in the field and at Headquarters also provided me with internal documents and data that provided further insight into the behavior of these actors. Thus, this Article contributes original empirical research to support our understanding of international human rights.

Before proceeding, however, it is important to clarify what this Article does not attempt to do. A comprehensive solution to getting bad actors to improve human rights practices lies far beyond the scope of this project. I do not claim that international organizations can always solve the bad actor problem, nor that international agencies' actions to improve human rights in a particular instance will necessarily improve overall human rights practices in a state. This Article presents one example of how an international agency induced known bad actors to improve their human rights practices by using its regulatory powers to coordinate the interests of states. From this example, we can draw lessons that may be generalizable to other contexts in which international agencies may advance human rights.

This Article proceeds in four parts. In Section I, I will situate my argument in the existing literature on compliance with international human rights law and flexibility in international law. In Section II, I will provide background on the 1951 Convention on the Status of Refugees ("the Convention") and UNHCR's mandate to enforce it. I will explain how the malleability of the term "refugee" and the expansion of the Agency's mission have allowed UNHCR to jettison the letter of international refugee law in favor of a more flexible approach to refugee "protection." In Section III, I will discuss the case study of UNHCR's treatment of the post-2003 Iraqi refugees. I will explain how early attempts to get Jordan and Syria, the countries which hosted the majority of Iraqi refugees, to comply with international human rights law proved ineffective. These countries offered limited rights to refugees only when UNHCR relaxed the legal definition of the term "refugee" and coordinated the activities of wealthy donor countries and refugee host states, including provision of foreign aid. In Section IV, I will discuss the implications of allowing international agencies to regulate human rights.

II. LITERATURE REVIEW

Much theoretical scholarship on international human rights argues that multilateral treaties can improve human rights practices. According to these theories, inclusive rights treaties, and the dialogical or social processes that surround their negotiation and implementation, will eventually have the effect of getting states to internalize, or at least mimic, human rights norms.¹⁰ These theories suggest that, over the long term, these processes will influence even bad actors to change their behavior. Bad actors who sign human rights treaties may also be influenced by the impact that noncompliance may have on their reputations.¹¹ Non-signatories may also suffer reputation costs from not complying with international norms.

However, if multilateral human rights treaties can solve the bad actor problem, clear effects remain to be seen. Empirical scholars have repeatedly found that commitment to international human rights treaties has not yet solved the bad actor problem. Hathaway¹² and Hafner-Burton and Tsutsui¹³ empirically test the idea that these treaties improve rights practices over time. Hathaway has found that commitment to human rights treaties has no effect on human rights practices, and in some cases may even have a negative effect.¹⁴ Hafner-Burton and Tsutsui have found that commitment to human rights treaties has no effect in the most repressive regimes.¹⁵ Neumayer and Keith have found that global and regional human rights treaties had no effect on human rights practices in the year of ratification.¹⁶ Simmons has found that signing of human rights treaties may improve compliance by serving as a focal point to influence domestic actors to lobby for improved rights conditions, but that this effect occurs only in countries transitioning toward democracy, not in the most repressive regimes.¹⁷

Rational choice theorists, such as Jack Goldsmith and Eric Posner, have also been skeptical of the value of persuasion and acculturation in changing the behavior of states.¹⁸ Goldsmith and Posner argue that states will only follow

¹⁰ See, for example, Harold Hongju Koh, *Why Do Nations Obey?*, 106 *YALE L. J.* 2599 (1997); ABRAM CHAYES & ANTONIA HANDLER CHAYES, *THE NEW SOVEREIGNTY* (1995); Goodman & Jinks, *supra* note 1.

¹¹ GUZMAN, *supra* note 5.

¹² See generally HATHAWAY, *supra* note 9.

¹³ See generally Hafner-Burton & Tsutsui, *supra* note 2.

¹⁴ HATHAWAY, *supra* note 9.

¹⁵ Hafner-Burton & Tsutsui, *supra* note 2.

¹⁶ See generally Neumayer, *supra* note 3; Keith, *supra* note 3.

¹⁷ See generally SIMMONS, *supra* note 2.

¹⁸ GOLDSMITH & POSNER, *supra* note 6.

human rights norms when it is in their self-interest to do so, regardless of the letter of international law. The interests of states may change through coercive measures, or when wealthy states give poorer states economic incentives to bring their incentives into line, regardless of states' internalization of any rights norms.¹⁹ Goldsmith and Posner call the latter "asymmetric cooperation," but explain that cooperation and coercion may be two sides of the same coin, depending on the methods that strong or wealthy states use to change the incentives of others.²⁰

Indeed, coercive measures to stop human rights violations, such as military intervention and sanctions, may be effective in changing state incentives to improve their human rights practices. However, these coercive measures have had mixed results and significant externalities. Military action against states, such as NATO's recent intervention in Libya to protect the human rights of the Libyan people, bear the risk of destroying valuable infrastructure or killing innocent civilians. The efficacy of economic sanctions has also been widely debated.²¹ Moreover, sanctions may cause negative externalities, including the perverse effect of hurting the human rights of innocents, or stymieing economic development.²²

Coordinating states to align their economic incentives through an international organization, however, may be a more efficient way to induce states to follow human rights norms. Unlike legal processes or acculturation mechanisms, agency actions may be effective in the short term. International agencies can provide such a coordination function, along with the personnel and monitoring expertise to ensure that coordination will be fruitful. Agencies may also provide valuable cover for states who do not wish to act unilaterally—or appear to act unilaterally—to get other states to do their bidding. As some scholars have noted, acting through multilateral international organizations, rather than unilaterally, can enhance the credibility of a state's commitment.²³ Smaller or weaker states may also benefit from enhanced credibility by acting through international organizations, or choose to work multilaterally through an

¹⁹ *Id.* at 107–34.

²⁰ *Id.*

²¹ See, for example, Ella Shagabudinova & Jeffrey Berejikian, *Deploying Sanctions While Protecting Human Rights: Are Humanitarian "Smart Sanctions" Effective?*, 6 J. HUM. RTS. (2007).

²² For further discussion of the effectiveness and externalities of sanctions, see Daniel Drezner, *Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice*, 13 INT'L STUD. REV. 96 (2011).

²³ On credible commitment, see, for example, Beth A. Simmons, *International Law and State Behavior: Commitment and Compliance in International Monetary Affairs*, 94 AM. POL. SCI. REV. 819 (2000).

international agency to enhance their reputations within the international community.²⁴

One useful framework for understanding the need for flexibility in regulating human rights norms is provided by Laurence Helfer.²⁵ Helfer analyzes how the “overlegalization” of international human rights norms, or the increasing codification of norms into formalized laws and enforcement mechanisms in ways that constrain state sovereignty, has led to backlash by governments, including withdrawal from human rights treaties and enforcement mechanisms and denunciation of human rights norms.²⁶ Helfer measures the extent to which legalization of a norm has occurred using three variables developed in previous literature: obligation, or the strength and scope of a human rights commitment; precision, which captures the specificity of rules; and delegation, the existence of a neutral body to interpret and implement these rules.²⁷ For Helfer, when international human rights law is “overlegalized” on one or more of these three variables, whether because treaty bargains change or enforcement improves, it will create a domestic backlash that may cause states, even liberal democracies, to withdraw entirely from a human rights regime to protect their self-interests. Helfer draws upon the example of Jamaica, Guyana, and Trinidad and Tobago’s withdrawal from a human rights treaty in the 1990s. The relevant treaty provided that human rights claims be brought before the Judicial Committee of the Privy Council. When this tribunal outlawed the death penalty, the sovereignty costs of compliance on these states changed. The countries withdrew from and denounced several relevant human rights treaties. They also created a new Caribbean Court of Justice, which other countries quickly joined. Helfer’s argument suggests that using more flexibility in enforcement of international law rather than tightening treaty bargains by adding additional protocols or rigidly enforcing the letter of international law in a way that increases sovereignty costs may be more effective in promoting

²⁴ The importance of reputation effects in getting nations to respect international law has been widely debated. *See, for example*, Rachel Brewster, *Unpacking the State’s Reputation*, 50 HARV. INT’L L.J. 232 (2009); Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823 (2002). Regardless of how reputation plays into overall compliance with international law, some states may believe that their reputations will be enhanced through cooperation with international organizations.

²⁵ Laurence Helfer, *Overlegalizing Human Rights: International Relations Theory and the Commonwealth Caribbean Backlash Against Human Rights Regimes*, 102 COLUM. L. REV. 1832 (2002) (discussing how several Commonwealth Caribbean liberal democracies withdrew from human rights treaties in the 1990s after a Judicial Committee of the Privy Council decision banned the death penalty, thereby raising sovereignty costs of compliance on these states).

²⁶ *Id.* at 1834.

²⁷ For further discussion of these variables, see Kenneth W. Abbott et al., *The Concept of Legalization*, 54 INT’L ORG. 401 (2000).

international human rights practices overall. If the countries in Helfer's example had not had their sovereignty costs suddenly and radically altered by the Privy Council's demand that they swiftly abolish the death penalty, they might still be signatories to the International Covenant on Civil and Political Rights (ICCPR) and other human rights treaties, and individual claimants might still be able to bring their cases before a court that was known to be sympathetic to many claims.

This Article will build on Helfer's analysis and Goldsmith and Posner's framework by proposing that international agencies can coordinate state incentives while avoiding the potential backlash that comes from demanding international obligations that threaten core state interests. International agencies can align the economic incentives of states, providing both cover and credibility for both aid donors and recipients. International agencies can also use flexibility in interpreting international law to avoid a backlash from "overlegalization."²⁸ Using an international administrative agency to set context-specific standards for interpretation of international human rights treaties, and to regulate the use of economic incentives, may thus be an effective way to get bad actors to improve their human rights practices. As studies have repeatedly shown that bad actors cannot be induced to internalize or acculturate with international human rights norms in the short-term,²⁹ changing the cost-benefit analyses of states to make it in their long-term interests to improve their human rights practices would seem to be more effective than promoting compliance with international human rights treaties.

III. THE CASE OF INTERNATIONAL REFUGEE LAW

Scholarly analyses of major international human rights treaties largely ignore international refugee law. Except for a brief mention by Koh,³⁰ none of the empirical or theoretical studies mentioned above discuss compliance with international refugee law. The International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment (CAT), and Convention on the Rights of the Child (CRC) have been studied extensively by

²⁸ *Id.*

²⁹ See *supra* notes 13–18 and accompanying discussion.

³⁰ Koh describes how domestic political actors in the U.S. forced a change in policy on deporting persecuted Haitian boat people. Most countries where refugees flee, however, are repressive regimes in which such political advocacy for refugee rights may be impossible. See Koh, *supra* note 2.

legal scholars and social scientists, but little attention has been paid to the treatment of the 10.5 million of the world's citizens that qualify as refugees, or the millions of other asylum-seekers who have applied for internationally recognized legal status.³¹ Given the importance of refugees to international relations, and the growing numbers of refugees emanating from conflict since the Arab Spring, this Article fills an important gap in the literature by contributing to our understanding of international refugee law. It also contributes to our understanding of how human rights norms can be enforced, even in states that are notorious bad actors, and even in states that have not signed the 1951 Convention.

A. The Malleable Definition of “Refugee” in International Law

International refugee law is designed to provide a specific basket of rights to a narrowly defined group of people. A refugee, according to the 1951 Convention, is someone who:

owing to wellfounded [sic] fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.³²

By signing the 1951 Convention on the Status of Refugees and its 1967 Protocol, over two-thirds of states have adopted this definition of “refugee,” in recognition of international refugee law’s overall aims of protecting those fleeing

³¹ For discussion of these studies, see notes 13–18 and accompanying discussion, above. Statistics on refugees are from UNHCR. United Nations High Commissioner for Refugees, *2012 Global Trends Report: Displacement: The New 21st Century Challenge* (2013) available at http://unhcr.org/globaltrends/june2013/UNHCR%20GLOBAL%20TRENDS%202012_V08_web.pdf.

³² The 1951 Convention Relating to the Status of Refugees, U.N. General Assembly, Resolution 2198 (XXI) (July 28, 1951) [hereinafter, “1951 Convention”]. The 1951 Convention was originally intended to benefit refugees in Europe after World War II, and this geographic restriction was included in the treaty. The 1967 Protocol removed this geographic restriction. 1967 Protocol Relating to the Status of Refugees, (Oct. 4, 1967) [hereinafter, 1967 Protocol]. Through the temporal restriction, the Convention excluded from its ambit the protection of Palestinian refugees displaced by the creation of Israel in 1948. These refugees thus do not fall under the protection of UNHCR. Instead, these refugees are served by the United Nations Refugee Works Administration (UNRWA). The Agencies coordinate to protect Palestinians displaced at other times, but UNRWA provides protection for most Palestinian refugees.

persecution. To be recognized as a refugee by UNHCR,³³ those seeking asylum must ordinarily undergo Refugee Status Determination (RSD) proceedings conducted by the countries in which they seek temporary or permanent asylum, or by the Agency if host countries have given it authority to do so. Recognition as a refugee by UNHCR allows those “refugees” to receive international protection while they remain in their countries of first asylum, and to be eligible for resettlement in a third country.

The 1951 Convention guarantees certain human rights for refugees. These include the right to elementary education equal to that of nationals, the right to work equal to other foreign nationals, the right to housing equal to those of nationals, the right to public relief and assistance equivalent to nationals, and the right to freedom of religion equivalent to nationals.³⁴ At the core of the Convention is the principle of non-refoulement:

No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of his territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion.³⁵

Non-refoulement is considered to be a *jus cogens* norm, an internationally recognized norm from which derogation is not permitted.³⁶ Accordingly, Article 33 of the 1951 Convention, which covers non-refoulement, is a non-derogable provision of the treaty.

Despite this precise legal definition and the wide international acceptance of the Convention, various actors have extended the term “refugee” far beyond the Convention definition, leading to varying descriptions of who a refugee is. The Organization for African Unity (OAU), for example, takes the Convention definition as a basis and adds that its definition of refugee also includes:

[E]very person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place

³³ Pursuant to international refugee law, one becomes a “refugee” due to the circumstances of persecution outlined in the Convention, not because one is registered with, or recognized as such, by UNHCR.

³⁴ See 1951 Convention, *supra* note 32.

³⁵ See *id.*

³⁶ The majority view among highly qualified publicists and commentators is that non-refoulement has attained the status of *jus cogens* despite some state practice to the contrary. For discussion of the status of non-refoulement as a *jus cogens* norm, see Jean Allian, *The Jus Cogens Nature of Non-Refoulement*, 13 INT’L J. REFUGEE L. 4, 533, 558 (2001). See also Walter Kälin et al., *Article 33, Para. 1, in THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* 1327, 1347–49 (Andreas Zimmermann ed., 2011).

of habitual residence in order to seek refuge in another place outside his country of origin or nationality.³⁷

Drawing on the OAU's definition, the Cartagena Declaration on Refugees similarly notes the need to enlarge the concept of a refugee beyond the 1951 Convention.³⁸

Partially because of such differing definitions, estimates vary widely as to how many refugees exist. National Geographic, for example, reported that as many as 35 million refugees existed in the world as of 2003, despite noting that UNHCR recognized only 12 million at the time.³⁹ Furthermore, the term "refugee," which was intended to have a specific legal meaning, has been expanded and contracted at various times by political actors to serve their interests.⁴⁰ For example, states may have an interest in downplaying the extent of a conflict in which they are involved, and therefore may wish to deemphasize the number of "refugees" caused by that conflict. States may also have interests in calling attention to a conflict to attract international attention, and thus may wish to inflate the numbers of "refugees" involved.

UNHCR also has had incentives to expand and contract the definition of "refugee" to attract funding for its operations, or to save face in situations where political constraints prevent it from adequately assisting large numbers of refugees. Since the Agency is responsible for defining who is internationally recognized as a "refugee," the Agency has tremendous control over the rights and future prospects of those who meet its definition.

B. The Administrative and Regulatory Roles of the U.N. Refugee Agency

The U.N. Refugee Agency serves as international refugee law's regulator on the ground. The international community delegated authority to UNHCR for

³⁷ Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45.

³⁸ Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, Nov. 22, 1984.

³⁹ Hillary Mayell, *World Refugees Number 35 Million*, NAT'L GEOGRAPHIC NEWS (June 16, 2003), http://news.nationalgeographic.com/news/2003/06/0616_030616_refugee1.html. The definition of "refugee" is further complicated because some sources conflate internally displaced persons and refugees because conditions of displacement faced by the two groups are often similar. UNHCR now counts both refugees and some IDPs within its populations of concern, although it officially distinguishes between the two. Unlike refugees, IDPs still benefit from the protections of citizenship within their home country, live without constant fear of deportation, and at least in theory, receive protections from their governments.

⁴⁰ Many examples can be found in Michael N. Barnett & Martha Finnemore, *Chapter 4: Defining Refugees and Voluntary Repatriation at the United Nations High Commissioner for Refugees*, in *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* (2004).

the purpose of solving the global regulatory problem of refugee protection. The Agency is specifically tasked with supervising and promoting all international instruments created for the purpose of protecting refugees.⁴¹ States rely on UNHCR's expertise in refugee law and refugee protection, not only to ensure that refugees receive legal protections, but also to insulate themselves from problems caused by refugees. For example, in the 1990s, the U.S. and Europe called upon UNHCR to provide assistance to displaced persons in the Balkans, regardless of their refugee status, to contain the damage caused by the breakup of the former Yugoslavia.⁴² Many states delegate authority for screening and processing of refugees to the Agency, thus ensuring that applicants do not overwhelm their own asylum systems.

The behavior of the Agency is constrained by the states that it serves. The Agency gets 93 percent of its budget from individual donor states. The U.S. has consistently been UNHCR's single largest donor, typically funding about 30 percent of the Agency's budget.⁴³ The European Commission is typically the Agency's second or third largest donor in any given year, with its member states comprising most of the Agency's top ten donors.⁴⁴ Both the U.S. and the EU exclusively earmark their contributions to UNHCR, as do most countries, to ensure that the Agency serves their foreign policy goals.⁴⁵ Because the Agency receives so much of its funding from these donor states, these states exert significant control over the Agency. To the extent that donor states are committed to promoting human rights, the Agency can serve as a foreign policy tool to influence improvement of human rights practices.⁴⁶

The countries in which UNHCR operates also constrain its operations. UNHCR's field offices operate at the pleasure of host country governments, who can shut down those offices and expel UNHCR officials in protest of Agency policies. Countries have, in fact, done so when the Agency has gone too far in shaming them for their human rights practices or their noncompliance with international refugee law.⁴⁷

⁴¹ G.A. Res. 428 (V), U.N. Doc. A/RES/428(V) (December 14, 1950); 1951 Convention, *supra* note 32; 1967 Protocol *supra* note 32.

⁴² GIL LOESCHER, UNHCR AND WORLD POLITICS: A PERILOUS PATH 295–96 (2001).

⁴³ ALEXANDER BETTS ET AL., UNHCR: THE POLITICS AND PRACTICE OF REFUGEE PROTECTION 97–98 (2d ed. 2012).

⁴⁴ United Nations High Commissioner for Refugees, Donors (September 29, 2012), <http://www.unhcr.org/pages/49c3646c26c.html>.

⁴⁵ United Nations High Commissioner for Refugees, The Global Report and Funding Reports, <http://www.unhcr.org/pages/49c3646c278.html>.

⁴⁶ For further discussion of UNHCR's dependence on donor states, see BETTS ET AL., *supra* note 43.

⁴⁷ See, for example, *Libya 'Expels' UN Refugee Agency*, BBC NEWS AFRICA (Jun. 8, 2010), <http://www.bbc.co.uk/news/10264625>.

Despite these constraints, as with most administrative agencies, UNHCR has more authority than is suggested by the statute that created it or the size of its budget.⁴⁸ The Agency derives independent authority from its expertise in managing and processing refugees. The Agency also derives considerable moral authority because of its mission to protect refugees. Exercising its ethical clout, UNHCR can use this authority to appeal to states, or even shame them, into providing funding for efforts it identifies as important.⁴⁹

UNHCR also has independent authority because of its ability to promulgate regulations that then shape the behavior of other political actors. Most importantly, UNHCR can define who is and is not a “refugee” for the purposes of its operations. As discussed above, the Agency has the ultimate power to determine whether someone has “refugee” status. UNHCR decides which individuals or groups are worthy of international legal protections and access to its resettlement programs, determining the rights and opportunities of millions. UNHCR can also terminate the refugee status of individuals or groups, sometimes without the consent of the refugees themselves. At times, the Agency has ceased the status of groups of refugees and assisted in their repatriation, sometimes without their full consent.⁵⁰ Such a practice directly violates the Agency’s mission under the 1951 Convention, which requires that refugees themselves must make the decision to return to their countries of origin.⁵¹ The Agency may also expand the definition of refugee to encompass entire groups of people. For example, in cases where a mass influx of refugees quickly enters a country, UNHCR sometimes declares a “prima facie” regime, which assumes that all members of a particular group are refugees given conditions of violence in their country of origin.⁵² The Agency can thus expand and contract the definition of refugee, regardless of the individual’s reasons for flight, and regardless of the specific requirement of persecution enshrined in the Convention.

⁴⁸ On the sources of UNHCR’s power, see MICHAEL N. BARNETT & MARTHA FINNEMORE, RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS (2004).

⁴⁹ For further discussion of UNHCR’s authority, see *id.* at 73–120.

⁵⁰ For example, the Agency repatriated 10,000 Salvadorans from Honduras between 1985 and 1987, without ascertaining whether their return was fully voluntary. LOESCHER, *supra* note 42, at 253–54. For discussion of cessation of refugee status, see UNHCR Guidelines on International Protection, Cessation of Refugee Status Under Article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees (The “Ceased Circumstances” Clauses), 10 February 2003.

⁵¹ See generally DELEGATION AND AGENCY IN INTERNATIONAL ORGANIZATIONS (Darren G. Hawkins et al. eds., 2006).

⁵² See generally Bonaventure Rutinwa, *Prima Facie Status and Refugee Protection* (United Nations High Commissioner for Refugees, Evaluation and Policy Analysis Unit, Working Paper No. 69, 2002).

IV. CASE STUDY: THE POST–2003 IRAQI REFUGEE CRISIS

UNHCR's actions and inactions during the post–2003 Iraqi refugee crisis present an example of how an international agency can safeguard human rights by flexibly implementing international law. Early in the Iraq War, UNHCR attempted to force Jordan and Syria to comply with international refugee law, and its efforts were met with backlash. Later in the war, the Agency shifted its tactics from promoting international law to providing humanitarian assistance to refugees. Moving away from “overlegalization” allowed the Agency to coordinate the incentives of donor and recipient countries. By providing political cover for donor states, the Agency enabled them to quietly contain the damage from the war that they had caused. By flexibly interpreting the legal term “refugee,” the Agency enabled host states to inflate the numbers of Iraqis within their borders, which allowed them to attract sufficient funding to offset the costs of hosting refugees.

A. The Beginning of the Iraqi Refugee Crisis

February 22, 2006 is widely considered to be the start of full-scale sectarian conflict in Iraq. On that date, Sunni extremists bombed the Al-Askari Mosque, a Shi'a shrine in Samarra, Iraq. Shi'a militias quickly retaliated, and fighting escalated. Shortly thereafter, a Brookings Institution report concluded that civil conflict in Iraq had reached “a point of no return.”⁵³ Analysts began to debate whether Iraq had slid into “civil war,” which became a hotly contested political term.⁵⁴

According to U.S. government sources and U.N. Refugee Agency officials, the Samarra Shrine bombing was also the birth of the Iraqi refugee crisis. The Assistant Secretary of State for Population, Refugees, and Migration, Ellen Sauerbrey, testified before Congress that mass outflows of Iraqi refugees began only after Samarra.⁵⁵ According to Radhouane Nouicer, the head of UNHCR's Middle East and North Africa Division, after Samarra, as many as 2,500 Iraqis

⁵³ DANIEL BYMAN & KENNETH M. POLLACK, *THINGS FALL APART: CONTAINING THE SPILLOVER FROM AN IRAQI CIVIL WAR* viii (2006).

⁵⁴ Nicholas Sambanis, *It's Official: There Is Now a Civil War in Iraq*, N.Y. TIMES (July 23, 2006), http://www.nytimes.com/2006/07/23/opinion/23sambanis.html?_r=0; Thom Shanker, *U.S. General Says Iraq Could Slide Into a Civil War*, N.Y. TIMES (Aug. 4, 2006), <http://www.nytimes.com/2006/08/04/world/middleeast/04rumsfeld.html>; Sheryl Gay Stolberg, *Bush Declines to Call Situation in Iraq Civil War*, N.Y. TIMES (Nov. 29, 2006), <http://www.nytimes.com/2006/11/29/world/middleeast/29prexy.html#>.

⁵⁵ *The Plight of Iraqi Refugees: Hearing Before the Comm. on the Judiciary of the U.S. Senate*, 110th Cong. (2007) (statement of Ellen Sauerbrey, Assistant Secretary of State for Population, Refugees and Migration), at 16 [hereinafter Sauerbrey Statement].

per day began to arrive at the Syrian border.⁵⁶ In December 2006, The New York Times reported a total exodus of 3,000 per day.⁵⁷

However, outflows of Iraqis into neighboring countries began long before the Samarra shrine bombing. Contrary to conventional wisdom that early flight was limited to wealthy Iraqis,⁵⁸ significant evidence suggests that Iraqis of all classes fled early in the war because their lives were at stake. The persecution of minority groups who were thought to have supported the Ba'athist regime began almost immediately after the invasion. Sunni and Shi'a holy sites alike were attacked early in the war.⁵⁹ The U.S. sieges on Fallujah in November 2004 destroyed many living areas for Sunnis. Radical Shi'a began to target Christians and other religious minorities as early as 2004. Targeting of churches, shrines, and holy sites by insurgents led to flight by Sunni, Shi'a, and religious minorities alike. UNHCR's field offices in Jordan and Syria began to report that Iraqis were approaching their offices for assistance in increased numbers. According to UNHCR's registration statistics and several studies conducted by reputable social scientists in Jordan, Syria, and Egypt, more than 20 percent of Iraqis entered these and other neighboring countries prior to 2006.⁶⁰

Before 2006, however, the international community and refugee host countries largely did nothing to protect the human rights of refugees. Refugees were treated as tourists and could therefore be deported for overstaying their visas. The governments of countries hosting Iraqis did not set up refugee camps, which generally provide UNHCR with the most convenient way to find refugees

⁵⁶ Interview with Radhouane Nouicer, Dir., Middle East & N. Africa Division, UNHCR, in Geneva, Switz. (Jul. 21, 2010).

⁵⁷ Hassan Fattah, *Uneasy Havens Await Those Who Flee Iraq*, N.Y. TIMES (Dec. 8, 2006), <http://www.nytimes.com/2006/12/08/world/middleeast/08refugees.html?hp&ex=1165554000&en=59de9e315780df34&ei=5094&partner=homepage>.

⁵⁸ Middle East Report No. 77, *International Crisis Group, Failed Responsibility: Iraqi Refugees in Syria, Jordan, and Lebanon* (2008), available at http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/ailed_responsibility___iraqi_refugees_in_syria_jordan_and_lebanon.pdf; Sauerbrey Statement, *supra* note 55.

⁵⁹ For a documentation of some of the major bombings of religious sites early in the war, see Ashraf Al-Khalidi et al., *Iraqi Refugees in the Syrian Arab Republic: A Field-Based Snapshot*, The Brookings Institution—University of Bern, Project on Internal Displacement (Jun. 2007), available at http://www.brookings.edu/fp/projects/id_p/200706iraq.pdf

⁶⁰ Twenty percent of the 185,000 Iraqis who had registered with UNHCR by 2010 did so before 2006. *Iraq Operation in Numbers* (United Nations High Commissioner for Refugees internal document, May 2010). Several studies conducted by reputable social scientists in Jordan and Syria in Spring 2007, and in Egypt in Spring 2008, suggest that more than 20 percent of Iraqis who had entered these countries had done so before 2006. Fafo Project Study of Iraqis in Jordan, http://www.fafon.no/ais/mideast/jordan/Iraqis_in_Jordan.htm; Al-Khalidi et al., *supra* note 59; Philippe Fargues et al., *Iraqis in Egypt: A Statistical Survey in 2008 (A Provisional Copy)*, Am. Univ. In Cairo: Center For Migration And Refuge Stud. (2008).

and provide them with services. Countries wished to avoid a “Palestinianization” of the Iraqi situation.⁶¹ By this, countries meant that they did not want to create camps that would induce Iraqis to remain in the country for the long term. As one senior UNHCR official explained, “[c]amps are easy to open and difficult to close.”⁶² Also, since the vast majority of Iraqi refugees came from Baghdad, they had a propensity to settle in cities, and most Iraqis moved to their host countries’ capital cities or other urban centers.⁶³ The absence of border camps meant that the inflows did not attract media attention, since no spectacle of refugees huddled in crowded conditions existed.

Although millions of refugees elsewhere lived in urban settings, providing refugee protection in the urban context—especially in Middle Eastern states that were not signatories to the 1951 Convention—posed a relatively new challenge for UNHCR.⁶⁴ The Agency first introduced a policy on urban refugees in 1997, which met with harsh criticism from NGOs and human rights organizations, who claimed that the policy discriminated against refugees who did not live in camps, did not recognize their right to international protection, and characterized them as “troublemakers.”⁶⁵ As Iraqi refugee flows grew into one of the largest urban refugee crises the Agency had ever faced, the urban refugee policy had not yet been revised.⁶⁶ The Agency also had a relatively low profile in the Middle East.⁶⁷ While it operated field offices in Jordan, Syria, Lebanon, and Egypt long before the Iraq war, the Agency had low standing in the region as a result of negative public opinion of the U.N. because of its involvement in the 1991 Iraq war, and because of the Agency’s mishandling of Iraqi Kurdish refugees and internally displaced people during the subsequent crisis of 1991-1992.⁶⁸ Thus, when Iraqis fled into urban settings after the U.S. invasion of 2003,

⁶¹ See Fargues, et. al., *supra* note 60, at 11.

⁶² Interview with Senior UNHCR official, Geneva, Switz. (Jun. 18, 2010).

⁶³ See Fafo Project Study of Iraqis in Jordan, http://www.fafo.no/ais/middeast/jordan/Iraqis_in_Jordan.htm (last visited Apr 9, 2012); Fargues et al., *supra* note 60; Al-Khalidi et al., *supra* note 59; *Iraq Operation in Numbers* (United Nations High Commissioner for Refugees internal document, November 2010) [hereinafter *Iraq Operation in Numbers* Nov. 2010].

⁶⁴ See generally Jeff Crisp et al., *Surviving in the City: A Review of UNHCR’s Operations for Iraqi Refugees in Jordan, Lebanon, and Syria* (United Nations High Commissioner for Refugees Policy Development and Evaluation Service, July 2009).

⁶⁵ *Id.* at 7.

⁶⁶ The urban refugee policy was not revised until 2009, when the Agency evaluated the successes and failures of the Iraq operation. See *id.*

⁶⁷ *Id.* at 8.

⁶⁸ Jeff Crisp et al., “Review of UNHCR Emergency Preparedness and Response in the Persian Gulf Crisis,” UNHCR, March 1992; Humanitarianism and War Project, “United Nations Coordination of the International Humanitarian Response to the Gulf Crisis, 1990-92,” Brown University and

the Agency had no international commitments from the host countries involved, no sound policy on which to rely, and no strong track record of operations in the region. Agency officials were forced to innovate on the fly in response to the rapidly changing situation on the ground.

B. Flexible Interpretation of International Law Succeeds in Improving Rights Outcomes

Faced with the new challenge of operating in the urban context in the Middle East, the Agency had to be flexible in its implementation of international refugee law. Under its mission, the Agency's first tools to protect refugees are usually the 1951 Convention and the domestic laws of the asylum countries. In the countries hosting Iraqis, UNHCR did not have much law to work with. Of the six countries hosting Iraqis—Jordan, Syria, Egypt, Lebanon, Turkey, and Iran—only Egypt and Turkey are signatories to the 1951 Convention. Jordan and Syria have rhetorically expressed that they “believe” in the 1951 Convention, but will not sign it for fear that it may be applied to the Palestinian refugees within their borders.⁶⁹ Domestic asylum regimes in all of these countries are weak or absent. Even before the war, UNHCR regularly pressured non-signatories to accede to the 1951 Convention, believing this to be an important step toward refugee protection.⁷⁰

When it cannot convince states to accede to the 1951 Convention, UNHCR relies on Convention norms as a framework for promoting the human rights of refugees. UNHCR also turns to other instruments of international law that overlap with the 1951 Convention, such as the right to education in the Convention on the Rights of the Child.⁷¹ If countries do not live up to their

Refugee Policy Group (June 1992). The latter report was commissioned by the Geneva Office of the UN Department of Humanitarian Affairs.

⁶⁹ Mohamed Y. Olwan, *Iraqi Refugees in Neighboring Countries: A New Forced Protracted Migration in the Region* (CARIM Research Reports, 2009/13, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole: European University Institute, 2009).

⁷⁰ See generally *2003 Annual Protection Report: Jordan* (The United Nations High Commissioner for Refugees); *2003 Annual Protection Report: Syria* (The United Nations High Commissioner for Refugees). Annual Protection Reports are annual internal documents that were issued by UNHCR for each country it served, through 2009, when they were replaced by another reporting system. Annual Protection Reports for all countries document UNHCR's annual efforts to pressure non-signatories to accede to the 1951 Convention and to provide additional trainings on compliance with international refugee law in signatory countries. These reports also document each host country's commitments to other instruments of international human rights law, including the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, and explains how the Agency uses these instruments to pressure governments to provide refugee rights.

⁷¹ See generally *id.*

commitments under international law, UNHCR can publicly shame these countries for not doing so, hoping that reputation costs will pressure them into compliance.⁷² UNHCR also attempts to get countries to sign soft legal agreements, such as Memoranda of Understanding, that allow host countries to adopt part of the Convention framework.⁷³ UNHCR may also promulgate its own regulations to promote refugee protection, with or without the consent of host countries.

At the beginning of the war, UNHCR attempted to use all of these tools to protect Iraqi refugees. UNHCR signed a Memorandum of Understanding with the Jordanian Government in 1998, which provides that refugees will have the right of non-refoulement, the right to work, the right to freedom of religion, exemption from fines for overstaying their visas, and will receive treatment according to “internationally accepted standards.”⁷⁴ In 2003, UNHCR and the Government of Jordan signed an additional Letter of Understanding, affirming the commitment of both parties to the 1998 Memorandum and providing for UNHCR’s access to any refugees entering Jordan from Iraq.⁷⁵ All of the countries hosting Iraqis have delegated to UNHCR the job of Refugee Status Determination rather than screening and processing refugees themselves.⁷⁶

On the eve of the war, UNHCR declared a “Temporary Protection Regime” (TPR) for “all Iraqi nationals or those persons with habitual residence in Iraq” who would flee to neighboring countries after the start of the war. The term “temporary protection” is ordinarily a tool used by countries to grant limited, temporary asylum to nationals of a country that has experienced conflict or disaster.⁷⁷ For example, in 2012, the U.S. declared that Syrian nationals would benefit from temporary protection so that they would not have to return to rapidly deteriorating conditions.⁷⁸ Under international law, a sovereign nation is the only actor able to declare protection for nationals of another country within its borders. However, UNHCR had previously invoked TPRs with some

⁷² On the practice of “naming and shaming” generally, see Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT’L. ORG. 698–716 (2008).

⁷³ For discussion of UNHCR’s legal agreements, see MARJOLEINE ZIECK, *UNHCR’S WORLDWIDE PRESENCE IN THE FIELD: A LEGAL ANALYSIS OF UNHCR’S COOPERATION AGREEMENTS* (2006).

⁷⁴ Memorandum of Understanding between the Government of Jordan and UNHCR, April 5, 1998, available at, <http://www.unhcr.org/refworld/docid/3ae6b31920.html>.

⁷⁵ Letter of Understanding Between the Government of the Hashemite Kingdom of Jordan and the Office of the United Nations High Commissioner for Refugees (2003), on file with author.

⁷⁶ See generally Olwan, *supra* note 69.

⁷⁷ See generally Joan Fitzpatrick, *Temporary Protection of Refugees: Elements of a Formalized Regime*, 94 AM. J. INT’L. L. 2, 279–306 (2000).

⁷⁸ Original notice published in Federal Register 29 March 2012; extension announced 17 June 2013 and available at <http://www.gpo.gov/fdsys/pkg/FR-2013-06-17/html/2013-14101.htm>.

success, in settings such as the Southeast Asian exodus of the 1970s and 1980s and the Kosovo refugee crisis.⁷⁹ The Agency uses TPRs to grant some degree of legal protection to mixed flows of forced migrants and refugees pending Refugee Status Determination. When UNHCR is unable to immediately process mass flows of refugees, a TPR gives them time to sort people out.⁸⁰

UNHCR's attempts to promote international law, hard or soft, may have harmed its ability to protect refugees early in the war. UNHCR's declaration of the TPR was done without consultation of the host countries, and had no binding legal effect. Of the six major countries of first asylum for Iraqis, all except Syria officially rejected the TPR, and Syria largely ignored it in practice.⁸¹ After Saddam Hussein's government officially fell, Jordanian authorities decided that Iraqis should return home, and began to deport even those Iraqis who had UNHCR asylum cards.⁸² When the U.S. Government began to accuse Syria of harboring former members of Saddam's regime, Syria also refoiled some Iraqis, angering UNHCR.⁸³ Egypt, too, refoiled Iraqis early in the war, violating its commitments under the 1951 Convention.⁸⁴ Tensions between the Agency and host countries rose after it declared the TPR, making it difficult for UNHCR to provide protections for refugees.

C. Silence on the Iraqi Plight: 2003–2006

Thus, UNHCR's efforts to promote legal protections for Iraqis early in the war raised the ire of host countries. Tension between UNHCR and these governments limited the Agency's ability to protect Iraqis within their borders. When UNHCR-Jordan attempted to advocate for Iraqis to receive legal protections in Jordan, the government shut down its offices.⁸⁵ Security forces in Jordan and Syria did not notify the Agency when Iraqi asylum-seekers were

⁷⁹ Fitzpatrick, *supra* note 77, at 283.

⁸⁰ *Id.* at 287.

⁸¹ *Assessment on the Situation of Iraqi Refugees in Syria*, United Nations High Commissioner for Refugees et al. (2006). The Syrian Government would not allow the release of this report until long after it had been completed. NGO sources believe the release was delayed because the WFP estimated the number of Iraqis in Syria to be far lower than the Syrian government suggested, for reasons discussed below.

⁸² *2003 Annual Protection Report: Jordan* (The United Nations High Commissioner for Refugees), *supra* note 70, at 1.

⁸³ *2003 Annual Protection Report: Syria* (The United Nations High Commissioner for Refugees), *supra* note 70, at 4.

⁸⁴ Anonymous UNHCR Official, UNHCR Headquarters, in Geneva, Switz. (Summer 2010).

⁸⁵ Interview with Robert Breen, Fmr. UNHCR-Jordan Country Rep., in New York, N.Y. (Jul. 24, 2012).

detained, in violation of the government's Memorandum of Understanding with UNHCR.⁸⁶

Host states decided to stay quiet about the needs of Iraqis who fled early in the war, in accordance with their own economic, security, and foreign policy reasons. Even as needy Iraqis began to enter their countries in larger numbers and tens of thousands of refugees began to register with UNHCR's offices,⁸⁷ countries hosting refugees largely remained silent about their humanitarian needs. Before 2007, none of the six countries of first asylum requested international assistance to help Iraqis. Host countries did not want to offend those wealthy Iraqis who were providing investment in their countries or benefitting their economies by spending remittances.⁸⁸ These countries also wanted to curry favor with the new Government of Iraq, who did not want to admit that it was unstable and bleeding refugees.⁸⁹ Countries also had security concerns about conflict spillover, and did not want to call international attention to the existence of Ba'ath party members and some insurgents within their borders.⁹⁰ Host countries also likely had the incentive not to contradict U.S.

⁸⁶ Interview with Khair Smadi, Fmr. UNHCR Official, in Amman, Jordan (Jul. 2009).

⁸⁷ Registration is not the same thing as Refugee Status Determination. A refugee must register to become eligible for RSD. Registration with UNHCR provides an applicant with a card or certificate stating that he or she is an asylum-seeker, which is supposed to grant protections against deportation by host countries. These documents were not officially recognized as valid or respected by any of the host countries.

⁸⁸ According to government officials, they did not use the term "refugee" to refer to Iraqis to preserve "dignity," especially because "refugee" is a negative term associated with Palestinians, who have second-class status in most Arab countries. See Al-Khalidi et al., *supra* note 59. For discussion of the economic benefits of hosting Iraqi refugees for host country economies early in the war, see generally Jill I. Goldenziel, *Aid, Agency, and the Malleability of International Law: The Post-2003 Iraqi Refugee Crisis* (unpublished Ph.D. Dissertation, Harvard University, 2012) (on file with author).

⁸⁹ Host countries had many incentives to curry favor with the new Iraqi government. Jordan, for example, hoped for a break on oil prices once the Iraqi government got back on its feet. Interview with Fares Breisat, Chair of Working Group on Counter-terrorism, Ctr. for Strategic Studies, in Amman, Jordan (Aug. 15, 2008). Syria hoped to mend relations with Iraq after a long history of enmity between the two countries, and hoped to become a conduit for supplying the European market with natural gas. U.S. Embassy Damascus, *Syria's Lack of Engagement on Iraq: Possible Causes and Remedies*, 08DAMASCUS420 (June 12, 2008, 16:40 EEST), available at <http://wikileaks.org/cable/2008/06/08DAMASCUS420.html#>. Egypt hoped for its migrant workers to be able to return to Iraq. Tens or hundreds of thousands of Egyptians previously had worked in Iraq, and Egypt hoped that once again Iraq would become a valuable source of employment and remittances for its citizens. Interview with Ayman Zaineldine, Deputy Assistant Minister, Egyptian Ministry of Foreign Affairs, in Cairo, Egypt (Jan. 17, 2010).

⁹⁰ See Al-Khalidi et al., *supra* note 59, at 15 (noting that a prominent insurgent leader was operating within Syria); *2003 Annual Protection Report: Jordan* (United Nations High Commissioner for Refugees); *2003 Annual Protection Report: Syria* (United Nations High Commissioner for Refugees) (noting fear of conflict spillover); Middle East Report No. 77, *supra* note 58; Nathan Hodson, *Iraqi*

policy, which maintained that the war was going well. Jordan, Egypt, Lebanon, and Turkey likely did not wish not to upset their strategic ally and trading partner.⁹¹ Syria and Iran also had the incentive not to upset the U.S., with which it hoped to re-establish diplomatic relations.⁹²

Without legal recognition by their host countries or UNHCR, Iraqi refugees lived in a precarious situation. Iraqis could be deported at any time for overstaying their visas. Jordan only allowed those Iraqis with valid residency permits to access its school and healthcare systems. Syria officially allowed Iraqis access to these public services, but in reality, they were turned away in large numbers.⁹³ Refugees did not have the right to work in any of their host countries, and sporadic crackdowns and deportations of those who took illegal jobs deterred Iraqis from seeking livelihoods.⁹⁴ The world did not seem to notice the rapidly developing humanitarian needs of displaced Iraqis.

D. Policy Shifts in the U.S.

By mid-2006, domestic political forces in the U.S. began to question the Bush administration's official stance that the war was going well. In March 2006, Congress appointed an independent, bipartisan commission, led by James Baker and Lee Hamilton, to lead an Iraq Study Group that would create a report on the war effort. In August 2006, a memo from the Defense Intelligence Agency analyst Derek Harvey reported that there would be an "inevitable fracturing of Iraq" if the U.S. did not change its policies.⁹⁵ On November 22, 2006, the U.N. reported that the civilian death toll in Iraq had reached a new high.⁹⁶

Opinion polls in an election year also suggested that public support for the war was changing. According to nearly all reliable polling sources, the number of Democrats and independent voters who approved of the war had plummeted by

Refugees in Jordan: Cause for Concern in a Pivotal State (Wash. Instit. for Near E. Pol'y, Research Note No. 13), available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/ResearchNote13.pdf> (discussing speech by King Abdallah of Jordan expressing fear of conflict spillover).

⁹¹ On Jordan, see Interview with Fares Breisat, *supra* note 89.

⁹² On Syria, see U.S. Embassy Damascus, *Syria's Lack of Engagement on Iraq: Possible Causes and Remedies*, *supra* note 89.

⁹³ *Assessment on the Situation of Iraqi Refugees in Syria*, United Nations High Commissioner for Refugees et al. (2006), *supra* note 81.

⁹⁴ See Human Rights Watch, *The Silent Treatment: Fleeing Iraq, Surviving in Jordan*, Nov. 2006; Patricia Weiss Fagen, *Iraqi Refugees: Seeking Stability in Syria and Jordan*, Institute for the Study of International Migration and Center for International and Regional Studies (2007).

⁹⁵ BOB WOODWARD, *THE WAR WITHIN: A SECRET WHITE HOUSE HISTORY, 2006-2008* 81 (2008).

⁹⁶ Sabrina Tavernise & Robert F. Worth, *Few Iraqis Are Gaining U.S. Sanctuary*, N.Y. TIMES (Jan. 2, 2007), <http://www.nytimes.com/2007/01/02/world/middleeast/02refugees.html?pagewanted=all>.

2006.⁹⁷ Throughout 2006, more than 70 percent of voters polled by Gallup stated that the situation in Iraq would be an “extremely important” or “very important” issue in determining their votes in the 2006 election.⁹⁸ Picking up on public opinion from their base and potential voters, Democrats began to push to change the war effort. On July 30, 2006, Congressional Democrats sent President Bush a letter advising him to change course in Iraq.⁹⁹ Democrats began to speak more vociferously against the war in their campaigns.

E. Change in UNHCR’s Legal Strategy

U.S. policy changes likely began to drive a shift in Agency and host country policy. As U.S. public opinion on the war shifted in mid-2006, UNHCR “began receiving signals from Washington” that it was time to address the Iraqi refugees, according to a Senior Adviser in UNHCR.¹⁰⁰ In mid-2006, UNHCR hired Andrew Harper, who eventually became the head of UNHCR’s Iraq Support Unit, on a three month contract to figure out for the Agency “what was going on.”¹⁰¹ Harper traveled to the region and found many Iraqis in dire straits. Harper said that at that point, UNHCR recognized that it needed to lead the effort to bring the international community’s attention to the crisis, since many political actors still wanted to downplay the humanitarian situation and believed that the U.S. efforts were working.¹⁰² According to High Commissioner Antonio Guterres, in the summer of 2006, UNHCR began planning to hold an international conference to announce massive donor support for the crisis.¹⁰³ Guterres began to travel to drum up contributions for improvements in specific human rights practices: improving Iraqis’ access to healthcare and education in their host countries, and protecting refugees from non-refoulement.

At this time, Guterres also made a conscious decision to downplay the legal aspects of the crisis. As his special assistant put it, the High Commissioner decided that rather than “banging on the Bible,” it was better to get things

⁹⁷ Comprehensive polling data provided by Matthew Baum, Professor, Harvard Kennedy School, to author (Aug. 24, 2012) (on file with author).

⁹⁸ *Key Election Indicators*, Gallup, <http://www.gallup.com/poll/24292/Key-Election-Indicators.aspx?ref=more>.

⁹⁹ WOODWARD, *supra* note 95, at 80.

¹⁰⁰ Interview with Jose Riera, Senior Policy Adviser to the High Commissioner, UNHCR, in Geneva, Switz. (June 18, 2010).

¹⁰¹ Interview with Andrew Harper, Head of Iraq Support Unit, UNHCR, in Geneva, Switz. (Jul. 23, 2010).

¹⁰² *Id.*

¹⁰³ Interview with Antonio Guterres, High Commissioner, UNHCR, in Geneva, Switz. (July 30, 2010).

done.¹⁰⁴ If pushing for international legal protections was not going to work to assist refugees, UNHCR needed to find something that would. The Agency decided to downplay the international legal aspects of its operation, and instead, to focus on the humanitarian needs of Iraqis. UNHCR stopped advocating for countries to grant Iraqis legal residence and the right to work, controversial topics in countries with other large refugee populations and high unemployment. Instead, UNHCR reframed its efforts in humanitarian terms, focusing on helping Iraqis to obtain education and healthcare, and ensuring that they would not be refouled.¹⁰⁵

This change in strategy was crucial to achieving human rights protections for Iraqis. Guterres explained that reframing the Agency's efforts in humanitarian terms was essential for gaining the trust of host country governments and ensuring the success of its operations.¹⁰⁶ As the Head of the Iraq program explained, this strategy was especially important in Syria, where the government was skeptical of international agencies and international law.¹⁰⁷ Nawaf Tell, the Director of the Center for Strategic Studies in Amman, Jordan, who also held the Ministry of Foreign Affairs' special portfolio for Iraqis in Jordan, stated that Jordanian policy changed when UNHCR stopped asking Jordan to grant Iraqis legal residence and changed its tactics to those of assisting a community in need.¹⁰⁸ According to Tell, it would have been impossible for the government to agree to give Iraqis access to education if UNHCR had continued to advocate for Jordan to give Iraqis legal residence and the right to work.¹⁰⁹ Thus, UNHCR's change in strategy, from promoting international law to promoting humanitarianism, was essential to achieving better human rights outcomes for Iraqis.

F. Change in U.S. Policy Enhances Agency Efforts

The Agency's diplomatic efforts were gaining success in the region, and it was beginning to get funding for its efforts from non-U.S. states and private donors.¹¹⁰ The Agency's funding multiplied after the U.S.'s official policy positions on the Iraqi refugee crisis, and the Iraq War generally, began to

¹⁰⁴ Interview with Jose Riera, *supra* note 100.

¹⁰⁵ Interview with Antonio Guterres, *supra* note 103.

¹⁰⁶ *Id.*

¹⁰⁷ Interview with Andrew Harper, *supra* note 101.

¹⁰⁸ Interview with Nawaf Tell, Dir. of Ctr. for Strategic Stud., in Amman, Jordan (Aug. 19, 2008).

¹⁰⁹ *Id.*

¹¹⁰ The Agency raised more than \$7 million for its Iraq operation from non-U.S. donors in 2006, up from \$1.8 million in 2005. Data provided by Andrew Harper, Head, Iraq Support Unit, July 2010.

change.¹¹¹ In December of 2006, following a Democratic sweep in Congressional elections, President Bush convened his advisers several times to discuss how policy should change in Iraq. The bipartisan Iraq Study Group report, released in December, warned that a dramatically increasing refugee population could destabilize the region.¹¹²

Led by Senator Edward Kennedy, the Senate addressed Iraqi refugees for the first time on January 16, 2007 in a hearing on “The Plight of the Iraqi Refugees.” Senators grilled Ellen Sauerbrey, the Assistant Secretary for the Bureau of Population, Refugees, and Migration, who stated that massive displacement only began after the “Sumara [sic] shrine bombing in April” of 2006, although the bombing actually occurred in February.¹¹³ She also claimed, “So it was not until about, I would say, July or August that we started becoming aware that there was a large number of people” fleeing outside of Iraq.¹¹⁴ Kennedy then introduced into Congress a bill to assist Iraqi refugees, a version of which passed the Senate in June 2007.¹¹⁵

While the Agency’s ability to launch a major operation to protect Iraqis may have been constrained by the lack of U.S. support, the Agency had been working to coordinate state interests even before its largest donor began to support its efforts. During the January hearings, Kennedy and Sauerbrey mentioned that UNHCR had begun to coordinate international efforts to assist refugees. They said that the Agency was “moving forward” on plans for a regional conference to address the issue of Iraqi refugees, and that the Senate would learn more about this from a UNHCR representative.¹¹⁶ During his statement, the UNHCR representative asked the U.S. to attend the conference, which it soon agreed to do.

G. UNHCR’s Regulations Enable Alignment of State Interests

Soon after the U.S. agreed to back the Agency’s efforts, UNHCR relaxed the definition of “refugee” in a way that would help align state interests. Exercising its rulemaking powers, in January 2007, UNHCR declared that it was granting “prima facie” refugee status to all Iraqis originating from south and

¹¹¹ See generally Woodward, *supra* note 95.

¹¹² James A. Baker III & Lee Hamilton, Co-Chairs, The Iraq Study Group Report: The Way Forward—A New Approach (2006).

¹¹³ Sauerbrey Statement, *supra* note 55, at 16.

¹¹⁴ *Id.*

¹¹⁵ Act to Increase the Number of Iraqi and Afghani Translators and Interpreters Who May Be Admitted to the United States as Special Immigrants, and for Other Purposes, Pub. Law No. 110–36, 121 Stat. 227 (2007).

¹¹⁶ Sauerbrey Statement, *supra* note 55, at 12.

central Iraq—excluding those from Iraqi Kurdistan.¹¹⁷ All Iraqis originating from these regions would be presumed to be “refugees” by the Agency, regardless of whether host countries considered them to be so under their own domestic law. This meant a de facto classification of nearly all of these Iraqis to be “refugees.” The Agency did not then conduct Refugee Status Determination (RSD) proceedings to determine whether they met the Convention definition.¹¹⁸ The prima facie regime was also retroactive. All Iraqis originating from these governorates—regardless of when they entered the country or their reasons for flight—were now treated as “refugees” by the Agency. The prima facie regime thus encompassed, for example, Iraqi businessmen who regularly traveled back and forth to Iraq before and during the war,¹¹⁹ and those with residences in both Iraq and the countries of first asylum. In declaring the prima facie regime, UNHCR thus abandoned the 1951 Convention’s definition of refugee, which is specific to those who fled persecution.

Declaring a prima facie regime shaped the subsequent behavior of the Agency and host countries. The prima facie regime allowed the Agency to solve the practical problem of not having enough resources to conduct Refugee Status Determinations for all Iraqis entering or already present in the host countries at this time.¹²⁰ However, once the prima facie regime was announced, it became impossible to specify how many met the Convention definition of “refugee.” The prima facie regime thus also allowed host countries to inflate the numbers of Iraqis within their borders to attract more funding than they actually needed. At the Donor’s Conference in April 2007, Jordan claimed they were hosting 750,000 Iraqis, and Syria claimed they were hosting 1.2 million. UNHCR and the host countries solicited funding based on these numbers. While precise estimates of a moving population are impossible, later estimates suggest that only about 100,000–200,000 Iraqis were ever present in Jordan, and that Syria also hosted

¹¹⁷ United Nations High Commissioner on Refugees, *Strategy for the Iraq Situation, Revised 1 January 2007* (2007).

¹¹⁸ Iraqis who had high-level military involvement, members of the Ba’ath party, and other suspected criminals would be flagged for RSD interviews and potential exclusion from refugee status. Otherwise, UNHCR did not conduct Refugee Status Determination proceedings for Iraqis. Interview with Petros Mastakas, Protection Officer, UNHCR-Syria, in Damascus, Syria (Jan. 6, 2010).

¹¹⁹ *Strategy for the Iraq Situation, Revised 1 January 2007*, *supra* note 117.

¹²⁰ According to the High Commissioner, the prima facie regime was the only way to grant Iraqis some degree of protection in a situation where UNHCR was overwhelmed. Interview with Antonio Guterres, *supra* note 103.

significantly fewer.¹²¹ UNHCR itself later admitted to inflating the numbers to attract funding for its operations.¹²²

Declaring a *prima facie* regime also provided cover for UNHCR and the host and donor countries. At the Donor's Conference, host countries reported estimates of displaced Iraqis to be much higher than those registered with the Agency. It would have been embarrassing for UNHCR to admit that it had missed assisting more than two million Iraqi refugees, and politically awkward for both donor and host countries to admit that they had previously failed to recognize so many Iraqis in need. The *prima facie* regime enabled all involved parties to admit that millions of Iraqis did not show up overnight, but that previously, there were few "refugees" in need of assistance. Previously, host countries considered Iraqis to be tourists or "guests." The international community only began to treat Iraqis as "refugees"—and many Iraqis began to consider themselves refugees—after UNHCR deemed them to be so.

In instituting this *prima facie* regime for Iraqi refugees, UNHCR deviated from the letter of international law, as well as the intentions of the law's framers. According to the preferences of 147 of the U.N.'s 192 member states, as expressed in the 1951 Convention and its 1967 Protocol, refugees are victims of persecution who merit certain legal protections that others do not. In declaring the *prima facie* regime, UNHCR enabled wealthy and needy Iraqis alike to be deemed "refugees." This allowed both refugees and migrants access to its third-country refugee resettlement program, which became the largest in the Agency's history. UNHCR thus allowed resettlement countries to cherry-pick economically productive or wealthy Iraqis while it advocated for the most vulnerable refugees to be resettled. By allowing resettlement to pull in both refugees and economic migrants, UNHCR may have facilitated Iraq's brain drain.

UNHCR also softened its terminology regarding legal protection of refugees, the core of its mandate under international law. The Agency began to phase out its use of the term "protection," replacing it with "protection space." According to Andrew Harper, the semantics mattered a great deal to the countries of first asylum.¹²³ "Protection" connoted international legal obligations to refugees and the Agency's attempts to enforce them; "protection space" did

¹²¹ U.S. Embassy Amman, *Jordan: Scenestetter for Vice President Biden*, 10AMMAN459 (Feb. 25, 2010), available at <http://wikileaks.org/cable/2010/02/10AMMAN459.html>.

¹²² U.S. Embassy Amman, *Staffdel Cammack Views Iraqis in Jordan through UNHCR's Eyes*, 08AMMAN264 (Jan. 28, 2008), available at <http://wikileaks.org/cable/2008/01/08AMMAN264.html>.

¹²³ Interview with Andrew Harper, *supra* note 101.

not. Harper saw “protection space” as the Agency’s attempt to offer refugees more than just legal protection.¹²⁴

However, according to others in the organization, this change in terminology signaled that the Agency was actually offering less protection to refugees. As one protection officer at UNHCR-Syria, Petros Mastakis, explained, UNHCR was denying its responsibilities to refugees under international law by refusing to use these terms.¹²⁵ For lawyers within the organization, “protection” was a well-developed concept that had been given teeth by national courts throughout the world. By refusing to enforce “protection,” UNHCR effectively signaled to countries of first asylum that it would not attempt to enforce the letter of international law. Instead, UNHCR would attempt to preserve a vague “protection space” in which most Iraqis could subsist, but with no guarantees of human rights.

UNHCR thus softened its stance on seeking compliance with international human rights law and relaxed its definition of “refugee” to help align the interests of donor and host countries. Rather than attempting to impose international law on host states, UNHCR chose to focus on humanitarian assistance such as access to education, access to healthcare, and access to social services that it and its NGO implementing partners would provide. UNHCR launched a campaign to get funding to achieve these three goals.¹²⁶ By softening its stance on seeking compliance with international human rights law, the U.N. Refugee Agency signaled to countries that it would not attempt to shame them or infringe on their sovereignty by forcing legal commitments these states did not want. Instead, the Agency sought to coordinate the incentives of donor and host states to get host states to improve human rights outcomes without characterizing them as legal requirements.

H. The Effects of International Regulation

UNHCR successfully coordinated the international community’s efforts to assist Iraqis. Working through UNHCR, donors provided economic incentives that led to a change in the host countries’ cost-benefit analysis in hosting refugees. As such, UNHCR’s funding for its Iraq operation increased dramatically. Between 2006 and 2007, Jordan’s field office expenditure went from 3.4 million in 2006 to over 40.5 million in 2007, and the Syria office’s

¹²⁴ *Id.*

¹²⁵ Interview with Petros Mastakas, *supra* note 118.

¹²⁶ Fundraising was coordinated through a UN Inter-Agency Coordinated Appeals Process. *See, for example*, United Nations Office for the Coordination of Humanitarian Affairs, *Iraq and the Region: 2009 Consolidated Appeal* (2009), available at https://docs.unocha.org/sites/dms/CAP/CAP_2009_Iraq_VOL1.pdf.

expenditure went from 2.8 million to 55.4 million.¹²⁷ While most money for UNHCR's Iraq operation came from the U.S., non-U.S. contributions also multiplied from seven million to 80.4 million during this period.¹²⁸ The Agency also began to coordinate bilateral aid to host countries, which was not an uncommon strategy for the Agency, but not a usual one.¹²⁹ Following the Donor's Conference and UNHCR's relaxation of the definition of "refugee," both Jordan and Syria began to change their policies regarding Iraqis. Both notoriously repressive authoritarian regimes responded to UNHCR's coordination efforts, and began to allow Iraqis greater access to social services provided by the government and also by NGOs.

Following the receipt of funding from UNHCR, Syria permitted the Agency to expand its operations.¹³⁰ It also allowed UNHCR to begin food distributions every other month for needy Iraqis. Syria also began to allow Iraqis unrestricted access into their public healthcare systems, with UNHCR subsidizing care for Iraqis. UNHCR and other international donors also enabled the building of new health clinics that served Syrians and Iraqis alike.¹³¹

Syria also slowly began to allow International NGOs (INGOs) into the country, which introduced programs to assist both Iraqis and Syrians. Syria had long been wary of the presence of any international organizations, believing that they were spies for the United States or for "Zionist organizations."¹³² After the Donor's Conference, Syria took steps to authorize INGOs to operate in the country. In February 2008, the first INGO was authorized to operate in Syria,¹³³ and fifteen other NGOs had followed suit by the middle of 2010.¹³⁴ The Syrian Arab Red Crescent (SARC) supervised these INGOs.¹³⁵ While SARC is a member of the International Federation of the Red Cross, there is also a Ministry of SARC Affairs within the Syrian government, making it part of the state apparatus. SARC, along with the Ministries of Health and Education,

¹²⁷ United Nations High Commissioner for Refugees, *The Global Report and Funding Reports*, available at <http://www.unhcr.org/pages/49c3646c278.html>.

¹²⁸ Data on non-U.S. contributions provided by Andrew Harper, Head, Iraq Support Unit (on file with author).

¹²⁹ Interview with Dag Sigurdson, Deputy Head, Donor Relations & Resource Mobilization Unit, UNHCR, in Geneva, Switz. (Jul. 21, 2010).

¹³⁰ Rachel Alpert, *Contained Change: International Non-Governmental Organizations Come to Syria in the Wake of the Iraqi Refugee Crisis*, 42 GEO. WASH. INT'L L. REV. 57, 70 (2010).

¹³¹ *Id.* at 108.

¹³² U.S. Embassy Damascus, *Syria Update on Iraqi Refugees*, 07DAMASCUS683 (July 5, 2007), available at <http://wikileaks.org/cable/2007/07/07DAMASCUS683.html>.

¹³³ Alpert, *supra* note 130, at 141.

¹³⁴ Telephone Interview with Phillippe Leclerc, Deputy Representative, UNHCR-Syria (Jul. 29, 2010).

¹³⁵ *Id.*

provided close—and sometimes intrusive—government monitoring of INGO operations within the country.¹³⁶ The U.S. and other donor countries funneled aid to Syria through UNHCR and its NGO implementing partners, using them as cover to distribute money to a regime with which it refused to politically engage in public. Since host countries required all INGOs to have 20 to 30 percent of their beneficiaries be members of the host country population, tens of thousands of needy locals were assisted alongside the Iraqis.

UNHCR's offer of funding induced Jordan, too, to change its policies. UNHCR began to donate funding directly to the Government of Jordan. In June 2007, UNHCR gave 61 percent of its operational budget, or about \$21 million, directly to the Jordanian government.¹³⁷ Country Representative Imran Riza stated that this donation was given as a “signal to Jordan that the international community would support the creation of ‘protection space’ for the Iraqis.”¹³⁸ Only after that, in August 2007, did the Jordanian government officially announce that it was opening up its healthcare and education systems to Iraqis, assuring Iraqis that they would not be deported for using public services.¹³⁹ At this time, UNHCR also gained increased access to those in need of legal protections, for example, those who were detained by the authorities for crimes.

Thus, Jordan and Syria began to give human rights to refugees, including the right to education, the right to services such as healthcare, and protections against refoulement, when UNHCR relaxed its commitment to international law, and when wealthier states agreed to fund the Agency's efforts. Even as facts on the ground changed and hundreds of thousands of Iraqis entered their countries, Jordan and Syria did not offer them rights or humanitarian assistance until the international community offered them economic incentives to do so. Although these countries began to acknowledge that needy Iraqis were within their borders and to assess their needs when the U.S. changed its position on the war, changing U.S. policy alone was not enough for these countries to improve human rights for Iraqis. Instead, as this case study demonstrates, UNHCR's management of international assistance turned the presence of needy Iraqis from a cost into a benefit. In addition to short-term humanitarian and long-term development aid, significant evidence also exists that the Jordanian and Syrian governments derived some direct benefits from the payment of foreign aid designated for Iraqis.¹⁴⁰

¹³⁶ Interview with Anonymous INGO Officials, in Damascus, Syria (Jan. 2010).

¹³⁷ Nicholas Seeley, *The Politics of Aid to Iraqi Refugees in Jordan*, 256 MID. EAST REP. (Fall 2010).

¹³⁸ *Id.*

¹³⁹ See generally Alpert, *supra* note 130; Seeley, *supra* note 137.

¹⁴⁰ See generally Goldenziel, *supra* note 88.

The Agency's role in coordinating state actions was essential to protecting the rights of Iraqis. Countries could not have bribed Jordan and Syria to grant rights to Iraqis directly, resulting in what Goldsmith and Posner call "nonlegalized asymmetric cooperation."¹⁴¹ Without the cover of UNHCR as an administrative agency, coercing countries into providing international human rights for Iraqis would have been far less likely. By coordinating efforts to assist Iraqis, UNHCR provided cover for the U.S., the U.K. and members of the Multi-National Force who invaded Iraq and likely wanted to minimize their visibility in assisting Iraqi refugees fleeing the war they had wrought. The U.S. and others especially wanted to hide their aid to Syria, which seemingly contradicted their other foreign policy objectives.¹⁴² The Government of Iraq, too, funneled its contributions through UNHCR,¹⁴³ which enabled it not to publicly admit that it was unstable.

Thus, UNHCR used its status as a regulator charged with implementation and enforcement of international refugee law to shape the behavior of the states in which it operated, granting money to countries who agreed to provide refugees with the *de facto* rights to education, social services, and non-refoulement guaranteed by the 1951 Convention, even if these countries did not recognize them as rights *per se*. Without the Agency on the ground to monitor administration of its funding, the international community could not have ensured that its goals of providing certain rights would be achieved. If the Agency had not relaxed the term "refugee," the host countries would not have been able to attract the funding that changed their cost-benefit analysis. Thus, the Agency's flexibility in interpreting international law, recasting of the Iraqi refugee crisis in humanitarian rather than legal terms, combined with its coordination of donor and host state interests, coerced notorious "bad actors" to give Iraqis human rights.

V. APPLICATIONS

A. Positive Implications of Human Rights Regulation by International Agencies

The example of the implementation of international refugee law during the post-2003 Iraqi refugee crisis suggests that treating human rights implementation as a regulatory problem might, under certain conditions, help

¹⁴¹ For discussion of this term, see GOLDSMITH & POSNER, *supra* note 6, at 115.

¹⁴² Interview with William Hopkinton, Second Secretary—Political, British Embassy, in Damascus, Syria (Jan. 2010).

¹⁴³ Interview with Ziad Ayad, Assoc. External Relations & Research Officer, UNHCR-Jordan, in Amman, Jordan (Aug. 6, 2008).

induce bad actors to improve their human rights practices. International agencies may be better positioned than treaty regimes to change human rights practices because of their capacity for responsiveness and flexibility, their expertise, their inclusiveness, and their ability to provide cover for state actions.

Unlike treaty regimes, international agencies have the potential to improve international human rights practices in the short term. As discussed above, while processes such as persuasion and acculturation may work to convince these actors to change their behavior over time, empirical studies have shown that these strategies do not influence known human rights violators to change their practices in the short term. By contrast, international agencies may be able to get even bad actors to improve their human rights practices through quick, flexible responses to rapidly changing, volatile circumstances in which grave human rights violations can occur. Treaty monitoring bodies are primarily positioned to “name and shame” countries for human rights violations after they have occurred. International agencies, by contrast, have offices in host countries and working relationships with the governments and communities in which they operate. With their boots positioned on the ground, these agencies can more easily become apprised of potential human rights violations and prevent them or to swiftly respond. Expert knowledge of local and regional contexts also enables international agencies to calibrate the response of the international community to most effectively protect human rights in particular circumstances. In Jordan and Syria during the Iraqi refugee crisis, this meant that UNHCR shifted its focus from providing legal protection for refugees to providing humanitarian aid for needy populations, and softened its use of international legal terminology accordingly. Whether emergency situations force non-compliance with the letter of trade agreements, labor standards, environmental agreements, or other international agreements, international organizations can promulgate flexible rules to improve human rights outcomes rather than forcing countries to accept major multilateral human rights instruments in their entirety. Employing their discretion as regulators on the ground, these organizations may be best positioned to determine how to flexibly interpret law to improve human rights practices while avoiding the problem of backlash in their host states.

The expertise of international agencies also means that they provide tangible benefits that signing a treaty alone cannot provide. Agencies perform valuable services for host countries. All international agencies provide a valuable liaison function between the host nation and the rest of the world. While the functions of international agencies vary greatly, all offer programs and services that help countries solve social welfare problems, such as education, food provision, development, or public health. Many international agencies perform functions that host governments do not otherwise have the capacity to perform, such as distributing vaccines or providing school supplies. In the case of UNHCR, the Agency operates in many countries where domestic asylum

regimes are weak or absent. When faced with mass influxes of displaced foreigners, host countries rely on UNHCR for their expertise in managing population flows, registering and processing refugees, and coordinating humanitarian assistance by working with the international NGOs that partner with the agency worldwide and training local organizations as well. When states come to rely on these and other valuable services, this gives the agency leverage over state behavior. If the agency were to threaten to stop providing some of its services as a consequence of a state engaging in human rights violations, the costs of losing those services could easily outweigh the costs of improving human rights. When regulatory agencies provide a valuable service within countries, the cost of kicking an agency out of a country is also much higher than the cost of withdrawal from other human rights instruments, such as multilateral human rights treaties. Thus, the presence of international agencies makes it more likely that actual consequences will ensue for states that improve their human rights practices, rather than the vague promise of reputational benefits for treaty compliance.

International agencies may also have the advantage of being more inclusive than treaty regimes. While states may be reluctant to sign international treaties, they may be more likely to join international organizations and work with them, particularly when those organizations provide valuable services.¹⁴⁴ As the services of UNHCR and other international agencies develop, their potential to protect human rights may increase.

International agencies can also provide an important function in aligning the economic interests of states to promote human rights. Tying economic benefits to human rights protections is not new. Linking rights protections with economic agreements began at least as long ago as British attempts to abolish the slave trade by conditioning trade on other states' agreement to do so.¹⁴⁵ Economic sanctions have been used for years to attempt to force states to adopt better human rights practices. However, as discussed above, providing economic incentives may be more effective when done in conjunction with an international administrative agency. International agencies derive considerable authority and legitimacy from the international law that enables and underpins their operations. An agency's authority to interpret law and promulgate regulations applicable to a particular situation can enable its success in situations involving political actors with competing interests. An international agency can

¹⁴⁴ See José Alvarez, *International Organizations: Then and Now*, 100 AM. J. INT'L. L. 324, at 332–33 (2006) (noting that international organizations have “democratized” international law by encouraging participation from diverse states).

¹⁴⁵ GOLDSMITH & POSNER, *supra* note 6; see generally Jenny S. Martinez, *Antislavery Courts and the Dawn of International Human Rights Law*, 117 YALE L.J. 550 (2008).

provide valuable cover for states who do not wish to be seen dealing with each other directly for other political reasons. During the Iraq war, for example, it would have been impossible for the U.S. to provide direct humanitarian aid to Syria when diplomatic relations with the country were strained. Providing aid through UNHCR, contacting Syrian officials primarily under Agency auspices such as at the Donor's Conference, and allowing UNHCR to coordinate aid to Iraqi refugees enabled the U.S. to achieve its strategic goals of managing Iraqi refugee flows while also credibly claiming to have suspended relations with the Syrian government. In this way, the Agency provided valuable legal cover to enable the coordination of state interests in a delicate political context.

B. How Other International Agencies Can Regulate Human Rights

Other international agencies have begun to promote human rights by coordinating state interests in a flexible legal context. The International Labour Organization (ILO), with its multiple conventions and regulations relevant to labor rights,¹⁴⁶ presents the closest analog to the U.N. Refugee Agency in its administrative and rulemaking authority, its monitoring capacity, and its expansion of its mission. The ILO flexibly interprets the legal definitions in its "core conventions," extending its mission to protect labor rights even in member countries that have not signed those instruments.¹⁴⁷ Like UNHCR, the ILO operates through a network of field offices throughout the world, enabling it to monitor activities in states. It uses supervisory mechanisms, technical assistance, and sanctions as tools to get countries to improve their labor standards.¹⁴⁸ Many of the ILO's programs are funded directly by donor states through a supplemental budget, giving individual states significant control over the agency's activities. Unlike UNHCR, however, most of the ILO's supplemental budget comes from states other than the U.S., suggesting that human rights protections can be achieved even without U.S. backing.

Besides UNHCR and the ILO, other international regulatory agencies also have the potential to coordinate state incentives to promote human rights.

¹⁴⁶ See generally International Labour Organization, *Migration for Employment Convention (Revised)*, No. 97 (1949), available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312242; International Labour Organization, *Migrant Workers (Supplementary Provisions) Convention*, No. 143 (1975), available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C143.

¹⁴⁷ See generally Laurence Helfer, *Monitoring Compliance with Un-Ratified Treaties: The ILO Experience*, 71 LAW & CONTEMP. PROBS. 193 (2008).

¹⁴⁸ Kimberly Elliott, *The ILO and Enforcement of Core Labor Standards*, INSTITUTE FOR INTERNATIONAL ECONOMICS: INTERNATIONAL ECONOMICS POLICY BRIEFS (July 2000).

Scholars have proposed the model of WTO dispute settlement to be expanded to encompass human rights litigation that is linked to trade regulation.¹⁴⁹ Ernst-Ulrich Petersmann has argued that, in the context of international trade, international organizations should serve as a “fourth branch of government” that protects human rights across countries.¹⁵⁰ According to Petersmann, the WTO already functions to protect human rights by promoting freedom and non-discrimination.¹⁵¹ Emilie Hafner-Burton has empirically shown that as the inclusion of human rights provisions in preferential trade agreements has increased over time, these provisions have influenced even bad actors to improve their human rights practices.¹⁵² The WTO’s backing of these treaties has supported their effectiveness.

Human rights are also becoming an increasing concern for other international organizations.¹⁵³ The European Union conditions membership, in part, on human rights practices, as discussed above. Organizations as diverse as the World Bank and Interpol have added human rights as an area of fundamental concern to their activities.¹⁵⁴ Investment arbitration tribunals may also have the potential to promote human rights.¹⁵⁵ The incorporation of human rights into the missions of these organizations suggests that these agencies are beginning to see themselves as regulators of human rights. It remains to be seen

¹⁴⁹ See, for example, Thomas Cottier, *Trade and Human Rights: A Relationship to Discover*, 5 J. INT’L ECON. L. 111, 130 (2002); Patricia Stirling, *The Use of Trade Sanctions as an Enforcement Mechanism for Basic Human Rights: A Proposal for Addition to the World Trade Organization*, 11 AM. U. J. INT’L L. & POL’Y 1, 34 (1996); Sarah H. Cleveland, *Human Rights Sanctions and International Trade: A Theory of Compatibility*, 5 J. INT’L ECON. L. 133, 137 (2002).

¹⁵⁰ Ernst-Ulrich Petersmann, *Time for a United Nations “Global Compact” for Integrating Human Rights into the Law of Worldwide Organizations: Lessons from European Integration*, 13 EUR. J. INT’L L. 621, 649 (2002).

¹⁵¹ *Id.*

¹⁵² Emilie M. Hafner-Burton, *Trading Human Rights: How Preferential Trade Agreements Influence Government Repression*, 59 INT’L ORG 593 (2005) [hereinafter *Trading Human Rights*]; EMILIE M. HAFNER-BURTON, *FORCED TO BE GOOD: WHY TRADE AGREEMENTS IMPROVE HUMAN RIGHTS* (2009) [hereinafter *FORCED TO BE GOOD*].

¹⁵³ José Alvarez, *International Organizations: Then and Now*, 100 AM. J. INT’L LAW 324, 328 (2006).

¹⁵⁴ World Bank, *FAQs: Human Rights* (June 2012), available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:95474,00.html#3>; Interpol, *Human Rights*, available at <http://www.interpol.int/About-INTERPOL/Legal-materials/Human-rights>.

¹⁵⁵ Yannick Radi, *Realizing Human Rights in Investment Treaty Arbitration: A Perspective from Within the International Investment Law Toolbox*, 37 N.C. J. INT’L L. & COM. REG. 1107 (2012); James D. Fry, *International Human Rights Law in Investment Arbitration: Evidence of International Law’s Unity*, 18 DUKE J. COMP. & INT’L L. 77 (2007); Ian H. Eliasoph, *A Missing Link: International Arbitration and the Ability of Private Actors to Enforce Human Rights Norms*, 10 NEW ENG. J. INT’L & COMP. L. 83 (2004).

what effect these organizations can have on improving the human rights practices of bad actors.

VI. LIMITATIONS AND POTENTIAL DRAWBACKS OF HUMAN RIGHTS REGULATION BY INTERNATIONAL AGENCIES

This study presents one example of how flexible interpretation of international human rights law by a regulatory agency allowed the alignment of the interests of bad actors and states interested in promoting human rights. I do not suggest that regulatory regimes present a comprehensive solution to the bad actor problem, nor that regulatory regimes will improve human rights in all situations. The case of the post-2003 Iraqi refugees simply suggests that regulatory agencies may have the potential to get bad actors to improve human rights protections when they are able to align state interests under the cover of law. More research is needed to determine how this model might apply in other contexts involving problems of global governance. Developing international agency programs to protect human rights, such as the ones discussed above, is a ripe area for further research.

Critics may protest that international refugee law is too unique to provide lessons for other areas of international human rights law. International refugee law is unlike other instruments of international human rights law that commit states not to harm their own citizens, because it commits states to provide rights for citizens of other states. Moreover, while major international human rights treaties have monitoring bodies and some procedure for individual complaints, most do not have a large international organization that promulgates regulations to implement the law, and that maintains field offices in most of the countries of the world.

However, the other major instruments of international human rights law implicitly commit states to protecting the rights of individuals beyond their borders. The very act of commitment to multilateral treaties involving international human rights law implies that states have an interest in the wellbeing of citizens of other states. Otherwise, these states would not sign multilateral treaties, but instead would create constitutional provisions or domestic regulations to bind themselves to protecting human rights. Violation of international refugee law, like violations of other human rights treaties, carries with it the possibility of reciprocal or retaliatory behavior by other state signatories against citizens of the violating state.¹⁵⁶ States and individuals regularly protest human rights violations in other countries, signatories and non-signatories alike. And citizens of liberal democracies have vigorously protested

¹⁵⁶ GOLDSMITH & POSNER, *supra* note 6.

their countries' violations of foreigners, forcing their states to respond.¹⁵⁷ Moreover, increasing numbers of international agreements, including trade agreements, contain provisions that bind states to protect the human rights of non-citizens resident in their countries in the context of labor migration.¹⁵⁸ The United Nations International Convention on the Protection of Migrant Workers, which entered into force in July 2003, has fifty-one signatories and represents a major multilateral effort to address protections of non-citizens by the states that host them.¹⁵⁹ As other international organizations are increasingly assuming the role of protecting human rights, UNHCR's model may not be so unique.

Having international organizations regulate human rights may have some drawbacks. International agencies are susceptible to many of the same pathologies as domestic regulatory agencies. They may be prone to manipulation by either host or donor governments seeking to advance their own foreign policy agendas, or may be subject to capture by regulated entities. Accountability and oversight may be difficult in a decentralized international system. A full discussion of these pathologies and how to avoid them lies far beyond the scope of this paper. However, careful institutional design can help mitigate many of these problems.

More broadly, international agencies may potentially weaken the human rights regime because of their function in coordinating the economic incentives of states. Philip Alston, for example, has been critical of linkage between economic incentives and human rights, particularly in the context of international trade.¹⁶⁰ Alston argues that linking trade and human rights would cause human rights to "become detached from their foundations in human dignity and would instead be viewed primarily as instrumental means for the achievement of economic policy objectives."¹⁶¹ Alston's concerns are echoed by others working in the human rights field, especially in the area of immigration and refugee law. Applying a legal or economic framework to human rights always risks dehumanizing the most tragic of circumstances.

¹⁵⁷ Controversies over human rights treatment of detainees after 9/11 that led to changes in United States' policies represent a recent, prominent example; backlash against a U.S. Supreme Court decision in which the Supreme Court ruled that Coast Guard interception and return of persecuted Haitian Boat People did not violate the 1951 Convention was also vigorously protested, resulting in a reversal of U.S. policy. See *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993); BRANDT GOLDSTEIN, *STORMING THE COURT* (2005).

¹⁵⁸ *Trading Human Rights*, *supra* note 152; FORCED TO BE GOOD, *supra* note 152.

¹⁵⁹ G.A. Res. 45/158, U.N. Doc. A/RES/45/158 (December 18, 1990).

¹⁶⁰ Philip Alston, *Resisting the Merger and Acquisition of Human Rights by Trade Law: A Reply to Petersmann*, 13 EUR. J. INT'L L. 815 (2002).

¹⁶¹ *Id.* at 843.

However, human rights have always been a part of state policy objectives, economic or otherwise. Goldsmith and Posner argue that powerful states intervene to protect human rights primarily when they have a corresponding security interest.¹⁶² The development of the modern human rights regime in the wake of World War II was tied to broader foreign policy goals, namely, the idea that human rights are fundamental to democracy, and that democracies are unlikely to go to war with each other. During the Cold War, the U.S. wielded human rights violations as a rhetorical tool to emphasize the divide between democracy and communism. Countries give foreign aid to further their own policy objectives while conditioning it on good human rights and development practices. If human dignity has not already been compromised by these practices, additional, more formalized links between economic incentives and human rights are unlikely to do so.

Other authors have expressed a concern with the fragmentation of international human rights law.¹⁶³ Those who fear fragmentation argue that having multiple international human rights regimes creates a risk that the meanings of particular norms will conflict.¹⁶⁴ This may decrease the unity of international human rights law and prevent an individual from fully asserting all of the human rights and dignities to which she is entitled.¹⁶⁵ However, I argue that this concern is overstated. The Universal Declaration of Human Rights, together with the ICCPR and the ICESCR, already provide a comprehensive set of aspirational human rights norms that have been recognized by most of the countries of the world.¹⁶⁶ The ultimate goal of universal achievement of these rights will not be undermined if international agencies provide incentives for bad actors to improve their human rights practices. Human rights are public goods; the enjoyment of human rights by some individuals in specific situations does not preclude other people from enjoying their human rights in other times and places. Similarly, a state's allowing an individual to assert her rights in one instance does not preclude it from allowing others to assert the same or different rights at another time.

¹⁶² GOLDSMITH & POSNER, *supra* note 6.

¹⁶³ On the fragmentation of international law generally, see International Law Commission, *Fragmentation of International Law*, 2006.

¹⁶⁴ See Anthony E. Cassimatis, *International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law*, 56.3 INT'L AND COMP. L.Q. 623 (2007).

¹⁶⁵ See, for example, Alexandra R. Harrington, *Don't Mind the Gap: The Rise of Individual Complaint Mechanisms Within International Human Rights Treaties*, 22 DUKE J. COMP. & INT'L L. 153, 180–81 (2012).

¹⁶⁶ These documents, taken together, are sometimes called the International Bill of Rights.

Moreover, flexible interpretation of human rights treaties can be viewed not as fragmenting rights, but as part of a process of unifying human rights norms. Attempts by multiple actors to improve human rights practices may be steps along the way to a unified human rights regime. In line with other theories of human rights that suggest that states will adopt practices over time through processes leading to persuasion or acculturation, a state's guarantee of rights in a situation-specific context may open it to the idea of providing rights in a broader way in the future.

VII. CONCLUSION

Rigid systems for implementation of law have benefits and drawbacks. Sentencing guidelines in criminal law, or administrative regulations that are consistent and uniformly applicable, with minimal room for agency or judicial discretion, promote predictability, consistency, and equal application of the law. Rigid systems, however, cannot adapt to changing contexts and individual circumstances. Regulatory enforcement addresses these concerns by granting regulators discretion to apply law more flexibly, taking into consideration specific facts on the ground and the context of individual needs. Regulatory regimes also allow the regulated entity to express its particular, circumstantial needs.

As the case of the post-2003 Iraqi refugee crisis shows, an international regulatory agency may achieve improvements in human rights practices of known bad actors by interpreting international law flexibly. Here, an international regulator relaxed the definition of "refugee" to allow its services to a broader group of people. This flexible interpretation of international refugee law, plus the Agency's successful efforts to align donor and host country incentives through economic transfers, led to a change in state behavior and the improvement of the human rights of refugees. Without the flexible regulatory approach adopted by UNHCR, donor countries would not have had the cover to provide the economic incentives to host states that changed their human rights practices. The Agency's actions may have been contrary to the intentions of the framers of international refugee law, who desired to provide specific legal protections to persecuted individuals. However, this flexible approach likely improved the human rights of Iraqis as a group more than otherwise would have been possible. While some refugees certainly remained in difficult circumstances, the baseline treatment of needy Iraqi refugees, as a group, in Jordan and Syria certainly improved after UNHCR's legal and regulatory efforts.

This example suggests that regulation of human rights by international organizations can help induce bad actors to change their behavior. International organizations promulgate rules that allow for flexibility in implementing human rights protections given the constraints of particular country contexts. Through

monitoring and enforcement functions, international agencies also provide boots on the ground to ensure that compliance with their rules actually occurs. International organizations may provide a valuable intermediary between states who wish to improve human rights outcomes and known bad actors, with whom they may not want to politically engage. International organizations can align state interests, through financial incentives or otherwise, in a way that can change the cost-benefit analyses of states to get them to improve their human rights practices. International organizations also can enhance the credibility of a multilateral commitment to improve the behavior of bad actors. By providing valuable services to host countries, international agencies may be well positioned to negotiate for human rights protections over time. Thus, by using international organizations to promote human rights, we may get more than what we pay for.