Global human rights governance and orchestration: national human rights institutions

as intermediaries[1]

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Introduction

The global human rights regime has undergone profound transformation in recent decades. It is now well-established in an increasingly sophisticated framework of treaties, institutions, networks and ambitious standards. Marking a shift from the sterile positioning and inaction of the Cold War, the transmission of international human rights standards and their effective implementation at the domestic level emerged as a priority global concern in the 1990s and has continued to galvanise diverse actors. The United Nations remains the principal international organisation (IGO) for legitimizing human rights norms and promoting efforts to secure improvement of human rights practice. However, the UN-centred regime is increasingly enmeshed in an extensive network of state and non-state governance actors operating at the bilateral, multilateral, regional and transgovernmental level.

Notwithstanding advances made at the multilateral IGO level, especially in the area of norm creation and procedural innovation, concerns surrounding the persistent disjuncture between human rights standards and practice in many domestic jurisdictions have not abated. In undermining the aspirational claim of universal human rights, this compliance gap presents a threat to the legitimacy of the project. For some observers, global human rights governance is failing (Mchangama and Verdirame, 2013). Recent social scientific research has suggested that states' human rights treaty commitments have had a negligible, even counterproductive, effect on the rights performance of states – especially where they are needed most (Hafner-

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Burton, 2013). In contrast, other statistical work has found some modest, but significant, positive effects conditional upon the presence of willing and able domestic compliance constituencies (Dai, 2007; Simmons, 2009). This is consistent with sociological research which highlights the central role of IGOs and their dedicated agencies in leveraging compliance with international commitments (Finnemore, 1996; Goodman and Jinks, 2004).

What can be done? Conflicting conclusions regarding the overall influence of the UN-centred regime have provoked a lively prescriptive debate. In line with prominent functionalist arguments of the 1990s, some scholars argue for enhanced capacity-building efforts to support states who genuinely wish to comply with their human rights obligations but find that they cannot (Börzel and Risse, 2013). However, others see persistent violating behaviour as indicative of systemic design flaws which leave 'false positives' unaccountable – states which commit to UN treaties with no intention of complying (Simmons, 2009).

This latter category highlights the inherent limitations of a supranational regime which lacks the necessary apparatus to enforce the ambitious governance objective of regulating *domestic* state behaviour (Moravscik, 2000). Some IR scholars have advocated structural reform of the UN to increase scrutiny of internal state practices and empower domestic constituencies (Weiss, 2012). Others, disenchanted with the flaws of the existing global architecture, have advocated bypassing multilateral forums for more decentralised solutions whereby 'Steward States' engage directly with local human rights stakeholders (Hafner-Burton, 2013). Still other observers highlight the potential for regional-level organisations, especially in the Americas and Europe, to more effectively translate universal human rights norms to local political, institutional and normative realities (Lagon and Kaminski, 2014).

Nevertheless, IGOs across issue areas, and especially in the human rights domain, continue to play a central role as legitimizers of norm creation as well as focal points for effective coordination in a global public domain defined by situations of complex interdependence, diverse interests, and uncertainty over causal relationships (de Búrca et al. 2013). Against a backdrop of growing regime complexity, the orthodox governance models of old, whereby states delegate a clearly defined mandate and powers to an IGO – often characterised in terms of a principal-agent model – are increasingly giving way to new modes of pluralist governance.

In particular, for our purposes, the principal-agent view of governance is less useful, if not inappropriate, when applied to global human rights governance. In this domain, the task delegated to the agent (IGO) by the principal, or collective of principals (States), is generally to close compliance gaps by monitoring those same principals for possible human rights abuses and, where necessary, publicizing their violation.[1] This introduces a high probability of 'principal's moral hazard' with competing preferences among some authorizing actors posing a threat to the independent and effective action of the agent (Miller, 2005). Indeed, as the operational focus has shifted towards implementation of an increasingly ambitious and open-ended governance framework, dedicated human rights agencies within UN structures have increasingly sought to bypass state consent by supporting and coordinating new forms of non-state and private authority.

International relations (IR) scholarship has captured this type of governance arrangement using the concept of *orchestration*, which can be defined as when an IGO enlists and supports intermediary actors to address target actors in pursuit of IGO governance goals (Abbott & Snidal, 2009; Abbott et al., 2014). Orchestration, distinct from hierarchy, delegation and

collaboration, occurs when: (1) the Orchestrator (IGO) seeks to influence the behaviour of the Target (State) via Intermediaries, and (2) the Orchestrator lacks authoritative control over the Intermediaries, which, in turn, lack the ability to compel compliance of the target. This governance configuration represents a significant departure from principal-agent theory. Orchestration responds to a shift from fully integrated governance systems towards more dynamic models which display varying degrees of non-hierarchical relationships and functional differentiation across a multi-actor system.

An emergent body of IR literature has identified a significant orchestration deficit both in practice and in scholarly work on international regimes (Jönsson 2013). Scholars have begun to enhance the conceptual precision around orchestration as well as probe the concept as a dependent variable (i.e. the conditions under which it emerges) and as an independent variable in explaining how IGOs as orchestrators may guide and shape the behaviour of states (Abbott et al. 2014, various). However, scholars have under-specified what orchestration means as an independent variable for explaining the behaviour of the intermediary (or networks of intermediaries) – a central intervening factor for viable orchestration. As intermediaries take centre stage as a possible missing link in the search for new ways to close compliance gaps, how do they react strategically to international opportunities to orchestrate activities? When is orchestration a threat to an intermediary which directly interfaces with both orchestrator and target, and when and how does it present an opportunity for advancing its governance objectives?

In this article, I explore what orchestration means for global human rights governance by focusing on the intermediary: in this case, National Human Rights Institutions (NHRIs) in the context of an established global human rights regime and orchestrator, the Office of the High

Commissioner for Human Rights (OHCHR). While scholars have produced valuable insights into how IGOs (and the OHCHR in particular) have promoted the establishment of NHRIs by states (Cardenas, 2003; Pegram, 2010; Kim, 2013), the significance of this new class of formal organisation for human rights governance is still under-theorised and not well understood.[2] To generate insight into the application of orchestration for human rights governance, we would want to identify a domain where the orchestrator addresses the target indirectly through soft (i.e. non-binding) instruments. We would also want a situation where the orchestrator does not exercise hierarchical control over the intermediary, which, in turn, lacks coercive authority over the target. The formal linkage between the OHCHR, NHRIs and states maps relatively straightforwardly onto this hypothetical framework, allowing for exploration of the important question of how, and under what conditions, multi-actor systems can achieve shared governance goals beyond the capabilities of any individual actor.

I use the experience of NHRIs to further refine the concepts of *managing* versus *bypassing* states to capture how intermediaries are affected by and respond to new opportunities within IGO structures (Abbott et al., 2014). I use the former concept to illustrate how NHRIs, facilitated by the OHCHR, have engaged *directly* with the target (states) in multilateral forums to shape their preferences and behaviour through informal channels, lobbying, and other initiatives designed to persuade government officials of the appropriateness of human rights-compliant behaviour. I use the latter concept to highlight how NHRIs seek to influence states' human rights performance *indirectly* by enhancing the influence of the orchestrator – providing information on compliance gaps to UN monitoring mechanisms and fortifying their own independent status and activities within UN procedures.

This research is motivated by both positive and normative concerns. On the one hand, it is problem-oriented with a focus on avenues through which IGOs and their intermediaries – notwithstanding the well-known constraints of the existing regime – may exercise a margin of independent action to advance human rights governance goals. It is interested in the functional question of whether orchestration as a mode of governance is well-suited to a human rights governance function. However, it also builds upon an emergent orchestration literature which highlights the propensity for hierarchy and political conflict to assert itself (Mattli and Seddon 2014). In particular, the potential for competition among intermediaries themselves is examined. In this sense, it is also a normative inquiry. It probes the key political questions of how this regulatory governance arrangement is connected to power structures, whose interests are being served, and whose values protected and promoted? (Hurrell, 2007: 112). In so doing, the limitations of orchestration as an analytical framework for explaining the compliance gap in human rights governance are also highlighted. Orchestration is a means to an end: actual implementation of human rights standards on the ground. It is important not to lose sight of this ultimate governance objective.

A note on methodology. Given the uncertainty surrounding causal relationship in pluralist modes of governance, the approach adopted is one of careful descriptive inference. The study does not therefore offer robust claims about variation in the emergence of orchestration, the breadth or depth of goal convergence, or the potential for orchestration to achieve the desired governance outcome. However, drawing on Abbott et al. (2014), it does survey the plausibility of various causal propositions and probes deductively the larger impact of orchestration on actor behaviour and outcomes within a pluralist governance arrangement. To substantiate its claims, the article employs a range of documentary sources and qualitative evidence, including extensive human subjects work with key stakeholders.

The article begins by outlining the orchestration governance model and its component parts in the context of indirect human rights governance. The study then turns to the implications orchestration has had for NHRIs, focusing on two general modes of orchestration objectives: managing and bypassing states. The article concludes by examining what the analysis means for global human rights governance and international organisations more generally.

Human rights governance and orchestration

The UN human rights regime is codified in a dense array of treaties, institutions, networks and standards. The promotion of human rights has been a feature of the UN system since its inception. However, for much of the Cold War, human rights were consigned to the margins of institutionalised cooperation efforts. In effect, prior to the end of the Cold War, the UN human rights regime was limited by the veto power of member states, restrictive treaty mandates, limited financial and administrative resources, and few non-governmental partners at the bilateral, regional, and transnational level. A transformed ecology defines contemporary human rights governance. Propelled by the liberal internationalism of the 1990s and an operational shift towards implementation, architectural innovation has resulted in heightened scrutiny of states' human rights practices, ambitious and open-ended treaty mandates, the proliferation of dedicated institutional mechanisms at all levels, and enhanced access to UN procedures by non-state actors.

Whether the overall influence of this growing regime complexity is positive or negative for human rights practices on the ground may be in dispute. However, identifying and understanding the dynamics of this evolving governance system is important because it has significant implications for victims of human rights violations, as well as for the work of

scholars, advocates and practitioners. The state remains a prominent authority within human rights governance. However, the exercise and effects of state power in this domain is undergoing significant change, impacted upon by the emergence of new forms of non-state and hybrid authority. This development has important implications for human rights governance, creating opportunities for modes of governance which operate according to, but also extend beyond, the constraints of existing international regimes, such as *orchestration*.

	Direct	**Indirect**
	Hierarchy	*Delegation*
Hard	UN Security Council ('Responsibility to Protect')	Treaty Bodies Special Procedures
	Collaboration	*Orchestration*
Soft	HRC (and the UPR) General Assembly State-to-state technical assistance	OHCHR UNCT

Figure 1. United Nations human rights governance.

Figure 1, as elaborated in Abbott et al. (2014: 14), distinguishes orchestration from other modes of governance and is applied in this instance to global human rights governance. Delineating modes of governance along two dimensions: (1) direct or indirect interface between the rule-advocate and the target, and (2) hard (mandatory, enforceable) versus soft (non-binding, exhortatory) rules yields four ideal types: hierarchy, delegation, collaboration and orchestration. The location of actors in Figure 1 is inevitably highly stylized. In reality, distinct actors display variable degrees of 'hardness' and 'directness'. In turn, under different

conditions, their location may vary. However, importantly, this scheme sheds light on why and under what conditions different modes of influence are employed.

Hierarchical human rights governance is a contemporary (and controversial) development. Rarely exercised, but nevertheless overtly coercive dimensions of human rights enforcement have been articulated in the doctrine 'Responsibility to Protect' and the UN Security Council has recognised human rights violations as a threat to international security. In this instance, the rules are 'hard' (Chapter VII of the UN Charter) and 'direct' (enforced upon the target by the executive authority). Necessarily, such interstate enforcement requires a high degree of goal convergence among members of the Security Council – a condition which is rarely met.

Increasingly since the late 1980s, the UN has also relied on *collaborative human rights governance*. Working often at the request of government, various UN agencies have encouraged member states to improve their human rights performance through direct peer-to-peer mechanisms of influence. Member states have voluntarily placed human rights on the agenda of the UN General Assembly – however, its resolutions are non-binding (i.e. soft). Significantly, the introduction of the Human Rights Council (HRC) in 2006 was also accompanied by a new human rights mechanism: the Universal Periodic Review (UPR). The UPR provides the opportunity for all states to voluntarily affirm the positive actions they have taken to improve human rights in their countries and subject their record to peer review.[3] This mode of influence is reliant upon the voluntary cooperation of states themselves, indicating a high degree of goal convergence, with extremely limited, if any, delegation of authority to IGO actors. Unsurprisingly, the impact of such mechanisms has been inconsistent, relying on 'good faith commitments' by the target and collaborating states.

Binding international human rights treaties are at the core of the international human rights system. There are currently ten treaty bodies comprising committees of independent human rights experts who are formally delegated authority to supervise states' compliance with their obligations under the core treaties.[4] A central function of the committees is the legal interpretation of treaties and development of jurisprudence developed to guide state practice (Mechlem, 2009). This legal focal point constitutes an example of *delegative human rights governance*, although its effectiveness in monitoring state practice is disputed (Geneva Academy, 2012). More effective has been the development since the mid-1980s of a system of 'Special Procedures', independent human rights experts appointed by the HRC to report on thematic or country-specific mandates, which also incorporate international human rights obligations.[5] Described as the "crown jewel" of the HRC,[6] the Special Procedures system has nevertheless been subject to robust criticism and attempts by state actors to assert greater institutional control over their effective function and independence (Alston, 2011).

Finally, the chief focus of this article, *Orchestration*, highlights how the OHCHR in Geneva and country teams (UNCT), working *indirectly* through intermediaries such as NGOs and NHRIs, have used their formal mandate, functional capabilities and legitimate authority to leverage a margin of independent action beyond the bounds of state agreement. This mode of governance is particularly pertinent to an issue-area such as human rights which is generally not regarded as high politics (read: security) and therefore not subject to micro-management by major powers and their top-level officials.

Extrapolating beyond the human rights domain, as Dai (2014: 240) observes, 'what matters is not the issue area, but the strategic environment underlying a particular problem'. Indeed, the strategic structures and problem sets material to this study of human rights governance may

have broader applicability across thematic domains. Concretely, this study provides fertile terrain to explore three key hypotheses advanced by Abbott et al. (2014: 28) that IGO-led orchestration is more likely to arise under conditions of: (1) high goal divergence among states and/or between states and the IGO, (2) weak state oversight and institutional control mechanisms, and (3) availability of third-party intermediaries willing and able to jointly deepen the application of those rules. A further important necessary condition – particularly pertinent to human rights governance – includes a rule framework which is amenable to rule-entrepreneurship beyond the point of (some) states' agreement. An illustrative arena of human rights orchestration is provided in the next section.

Mapping orchestration: means, motive and opportunity

Orchestration occurs when an IGO enlists and supports intermediary actors to address target actors in pursuit of IGO governance goals (Abbott et al., 2014). More specifically, it occurs when: (1) the Orchestrator (IGO) seeks to influence the behaviour of the Target (State) via Intermediaries, and (2) the Orchestrator lacks authoritative control over the Intermediaries, which, in turn, lack the ability to compel compliance of the target.

Orchestrator ⟶ **Intermediary** ⟶ **Target**
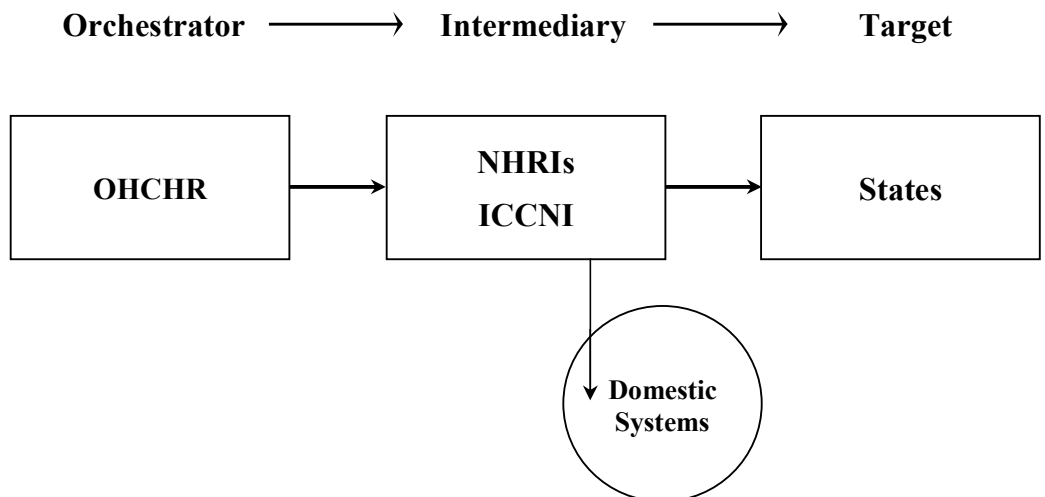
Figure 2. Indirect human rights governance through orchestration.

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Figure 2 illustrates such an arrangement in the field of human rights governance. According to the model, the UN Office of the High Commissioner for Human Rights (OHCHR) is the Orchestrator seeking to influence the behaviour and preference of the Target: states. In the middle, at the interface between the orchestrator and target, are the Intermediary, NHRIs and their peer network: the UN-affiliated, but independent, International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICCNI).

The orchestrator

Although nested within an IGO with a long record of human rights engagement, the OHCHR marks an important shift in terms of focalization of human rights within UN structures. The High Commissioner has the rank of Under-Secretary General. Appointment is made by the Secretary General, with the approval of the General Assembly. The High Commissioner is the first UN human rights official to be granted *ex officio* authority to play 'an active role' in the prevention of human rights violations (van Boven, 2000). The Commissioner is also mandated to promote an unrestrictive rights brief and work directly with government, all the main UN human rights bodies, the HRC, the Economic and Social Council (ECOSOC) and the General Assembly. Notably, the Director of the OHCHR's predecessor body, the Centre for Human Rights, had no authority to engage in dialogue with member states (Clapham, 1994: 564). The office and its dedicated Secretariat, the OHCHR, is not, however, an independent UN agency, such as the UN Refugee Agency (UNHCR). It is subject to institutional control by the Secretary General and reports annually to member states within the HRC and to the General Assembly through ECOSOC.

The OHCHR is expected to actively promote system-wide coordination. As human rights norms and structures become more intrusive, it is perhaps inevitable that the governance objectives of the OHCHR have diverged yet further from the common denominator position of UN member states, notably those of repressive governments. This tension is embodied in a mandate which is at odds with the ethos of an intergovernmental secretariat. Forming part of the overall UN Secretariat, the OHCHR is obliged to maintain neutrality in its work.[7] However, prominent former UN officials have questioned whether 'neutrality' is possible or appropriate for a Secretariat 'that perceives itself as a trustee of human rights interests'. Instead, they emphasise the basing of decisions 'on the law and on a fair and objective interpretation of the facts' (van Boven, 2000: 148). While some officials within the OHCHR today echo this sentiment in nuanced terms,[8] others deny any implication that they seek to influence Member States (their "employers").[9]

However, conflict is hard to avoid. Drawing on Abbott et al.'s (2014: 28) IGO-specific hypotheses, the OHCHR offers a good candidate for IGO orchestration, exhibiting both high goal divergence with states and significant capability deficits (in terms of legal authority and resources). Public confrontations between the High Commissioner and rights-violating governments are frequent. Powerful states, such as the US, have been accused of exercising veto powers over the reappointment of High Commissioners who have fallen out of favour.[10] The OHCHR has also remained under-resourced in comparison with other UN agencies (Boyle 2004). As such, the High Commissioner and the OHCHR must often pursue their governance goals in the face of resistance by diverse Member States and attempts at micro-management by the office's proximate political body, the HRC (Lagon and Kaminski 2014). Indeed, one OHCHR official recalls "fighting like maniacs to retain the total independence of the OHCHR...from Member States" during the move from the discredited Commission to the

new Human Rights Council in 2006.[11] In sum, the activist imperative of the OHCHR within a UN system historically geared towards harmonizing governmental interests poses a formidable challenge to its mandate-holder.

The OHCHR therefore is likely to engage in orchestration activities. What of the means and opportunity? The office has a long record of engaging with NGOs such as Amnesty International (AI) to monitor state compliance with international human rights standards (Martens, 2004). However, the case study described here identifies an unusually articulated orchestration arrangement, distinct from informal *ad hoc* engagement with NGOs and other intermediaries. Effectively, the OHCHR has sought to engineer the rapid proliferation of a new class of intermediary through both ideational and material channels of influence. The UN has strongly promoted the creation of NHRIs in accordance with international guidelines on NHRI design: the Paris Principles. Notably, this normative template emerged out of deliberations among NHRIs, rather than UN member states, at a workshop organised by the UN Centre for Human Rights in 1991.[12] Subsequently endorsed without modification by the CHR and the General Assembly in 1993,[13] this non-binding instrument has informed the rapid adoption of NHRIs globally.

The massive influx of OHCHR resources to NHRI promotion is well-documented (Cardenas, 2003). In 1995, a Special Advisor on National Institutions to the High Commissioner for Human Rights was appointed. This highly robust advocate, Brian Burdekin, the former Chief Commissioner of the Australian NHRI, is widely credited with having exercised a powerful – if sometimes contentious – influence over the 'promotional phase' of NHRI norm development (Rosenblum, 2012). Stepping down in 2003, he was not replaced. UN activities in the field of NHRIs have instead been formalised and expanded within OHCHR

structures, with the creation of a National Institutions Unit in 2003 – currently the National Institutions and Regional Mechanisms Section (NIRMS). Notably, some observers view the abolition of the Special Advisor position and the subsequent absence of an experienced NHRI practitioner within NIRMS as a backwards step (Yalden, 2014: 11).

Nevertheless, the OHCHR engages in orthodox training and capacity-building programmes for NHRIs, alongside other UN agencies, UNCTs and NHRI regional partners, and unusually serves a core administrative function as Secretariat to the independent NHRI association: the ICCNI and its advisory and executive bodies. The OHCHR continues to play a central orchestrating role in what some observers have termed a possible transition to a 'critical consolidation and refinement' phase, with a shift in focus away from formal institutional compliance (NHRIs established in accordance with the Paris Principles) towards monitoring NHRI performance in closing domestic compliance gaps (Rosenblum, 2012: 323).

The intermediary

National Human Rights Institutions (NHRIs) are independent national agencies that protect and promote human rights. Although established in domestic legal processes, they have gained growing attention as a possible missing link in the transmission of international human rights norms and their implementation at the domestic level (Carver, 2010). The most common models of NHRI are the National Human Rights Commission and National Human Rights Ombudsmen, which have a core human rights promotion and protection function, and are empowered to investigate *ex officio* as well as on receipt of individual complaints (Reif, 2004). In accordance with the Paris Principles, NHRIs are state-funded, but formally independent, human rights agencies, enacted by constitutional amendment or legislation, generally appointed by the legislature, and composed of representatives with human rights

expertise, including civil society. NHRIs are therefore uniquely situated in a chain of orchestration extending down to the domestic political system: accountable to multiple constituencies, serving as interlocutor between rights stakeholders, and able to facilitate state compliance across institutional domains.

They offer a promising gateway for bridging the compliance gap between international human rights norms and domestic practice, serving as potential implementation mechanisms in their own right or in coordination with other sub-intermediaries. Disenchantment with the effects of international agreements on domestic state practice strongly informs the widespread conception of NHRIs as local agents of international law. Indeed, this role is emphasised in the Paris Principles which strongly recommend that NHRIs have an unrestrictive international human rights law mandate. Related to this, an NHRI should also be given an express mandate to engage with international and regional organisations, and specifically the monitoring apparatus of the UN human rights machinery. Reflecting the cumulative compliance pull of the Paris Principles, NHRIs created after 2000 are significantly more likely to have an explicit mandate to apply international human rights treaty law (Carver 2010: 7-9).

As such, NHRIs possess a range of governance capabilities which make them desirable candidates for orchestration at the international level. Effective NHRIs can ensure better understanding of local context, monitoring, follow-up and facilitating implementation of international human rights commitments. Aiding this endeavour, the Paris Principles provide a minimum (perhaps, necessary) baseline regarding structure, form and legal basis and are widely regarded as important in ensuring independent and effective function (Carver 2000). In turn, orchestration with the UN can yield significant domestic benefits for NHRIs,

legitimising their activities, encouraging stakeholder coordination, and elevating the NHRI as a national focal actor. International political and financial support can serve to underwrite the *de facto* independence of the NHRI at the local level with many NHRIs receiving significant funding from international agencies, including the OHCHR. However, it is important to acknowledge the limitations of OHCHR orchestration as a platform for ensuring NHRIs are enabled to secure improvement of human rights practices. Actual implementation is contingent on a host of local relational factors, potentially amenable to a domestically-oriented theory of orchestration.

Nevertheless, international engagement with UN human rights bodies can bolster an NHRI's domestic mandate. Publicising compliance gaps internationally may serve to ramp up pressure on state officials at home. From 1996, participation rights of NHRIs have been gradually strengthened within the procedures of the Commission on Human Rights and its successor body, the HRC. In this regard, Rule 7(b) issued by the HRC in 2007 was particularly significant, codifying NHRI participation rights in the formal rules of the new body.[14] As one NHRI official puts it, this was "one of the real 'big bang' moments".[15] Notwithstanding, by 2007 – shepherded by the OHCHR – NHRIs had become a fixture of UN activities in Geneva, and their integration continues to accelerate under the umbrella of an NHRI peer network: the ICCNI.

The International Coordinating Committee of NHRIs. Central to the growing integration of NHRIs within UN procedures is a novel collective intermediary structure, whose core component is a transgovernmental network composed of NHRIs deemed to be in compliance with the Paris Principles. A growing number of actors are engaged in the promotion and ongoing monitoring of NHRIs, including civil society actors, steward states and NHRI

regional partner organisations. The hub for this activity is the autonomous but UN-affiliated International Coordinating Committee of NHRIs (ICCNI) and its Sub-Committee on Accreditation (SCA). The ICCNI is not a body composed of UN bureaucrats or member state delegates. It is a transgovernmental association of NHRIs which serves as a collective intermediary at the UN with the consent of its membership. In 2008, the ICCNI was formalised as a non-governmental association under Swiss law. Widely recognised as the representative of NHRIs within the UN system, it has achieved formal status within UN structures although it is not a UN body.[16] The work of the ICCNI is currently facilitated by the OHCHR secretariat through NIRMS. However, echoing the novel insertion of the Paris Principles into UN procedures, the ICCNI is unique within UN governance arrangements.

Significantly, the ICCNI has also positioned itself as the gatekeeper of the Principles, within, but independent of, UN structures. In contrast to NGOs, for example, who must seek accreditation from the governmental ECOSOC, it is the ICCNI Sub-Committee on Accreditation (SCA) which grants NHRIs access to the UN human rights system. The SCA operates a peer-review system, not a system of review led by UN Member States. This body grants letter grades to NHRIs indicating 'full compliance' (A status), 'partial compliance' (B status), and 'non-compliance' (C status) with the Paris Principles. This rule-making power represents an important source of authority for the intermediary (Mattli and Seddon 2014: 459). The OHCHR supports the work of the ICCNI in monitoring NHRI compliance, serving as a permanent observer to the SCA and its Secretariat. However, it is the SCA which makes the formal recommendation for accreditation to be forwarded on to the ICCNI Bureau for approval. As NHRIs have become more visible within UN structures, the ICCNI and its gatekeeper function have attracted increased scrutiny from transnational advocacy

organisations, notably the Asian NGO Network on NHRIs (ANNI), as well as Member States (Renshaw 2012).

The ICCNI also serves as a transgovernmental advocacy organization to advance NHRI interests within UN structures. Collective action on the part of ICCNI members has led to A-status NHRIs being afforded participation rights in the HRC. In a parallel diplomatic effort, NHRIs have also been integrated into core mechanisms of treaty compliance arrangements (Carver 2010). Such breakthroughs continue to accelerate. NHRI participation was further enhanced in the 2011 Human Rights Council Review, including explicit status among stakeholders and the right to intervene *immediately* following the State delegation.[17] Remarkably, with the 2011 review, NHRIs have now surpassed NGOs in their participation rights within Council proceedings. In June 2012, astute diplomacy by the regional partner body, the Asia-Pacific Forum of NHRIs, alongside the Australian government delegation to the HRC, the traditional sponsor country for NHRI resolutions, led to the Council taking the momentous step of recommending to the General Assembly that it grant Paris Principles-compliant NHRIs access to its own procedures in New York.[18] This would constitute unprecedented access for a non-governmental actor within the apex political body of the UN.

As this discussion clearly shows, both orchestrator and intermediary display sufficient motive, means and opportunity to engage in indirect human rights governance through orchestration. The symbiotic emergence of the OHCHR and NHRIs in the early 1990s in both ideational and material terms has served to reinforce expectations around shared governance objectives, as well as foster a pioneering example of orchestration based on functional differentiation at the international and domestic level. However, this analysis also points to change. While (many) NHRIs may be a product of promotional efforts by the

OHCHR,[19] the formalisation and growing visibility of NHRIs within UN procedures has important implications for the orchestrator-intermediary relationship, serving potentially to reinforce or destabilise a voluntary governance arrangement. NHRIs have reacted strategically and positively to opportunities to enmesh themselves within the international system. However, the questions remain: when is orchestration a threat to an intermediary which directly interfaces with both orchestrator and target, and when and how does it present an opportunity for advancing its governance objectives?

What orchestration means for NHRIs

Orchestration creates both opportunities and constraints for intermediaries such as NHRIs. From one standpoint, it offers new international opportunities for a national-level organisation to advance its mandate to protect and promote human rights at home. As NHRIs become further enmeshed within UN procedures, they may also enhance the overall effectiveness of the UN human rights system. The OHCHR has been an important partner in facilitating and seeking out opportunities for NHRIs to advance their governance goals within UN structures. However, such an arrangement also poses significant challenges for the intermediary. Two modes of orchestration merit particular attention: *managing* and *bypassing* states.

Managing states

First, orchestration provides the intermediary with the opportunity to engage directly with state officials to coordinate decision-making related to human rights law, policy and practice at the international level with significant domestic consequences. For example, government

delegations to Geneva may be responsive to NHRI counsel on how instructions from capital are implemented. This is particularly the case for delegates from steward states – official supporters of UN human rights standards and its machinery. However, it may also be the case for instrumentally-minded state delegations who, while ambiguous regarding the content of human rights standards, can nevertheless be persuaded of the extrinsic rewards of support. Australia has long been regarded as the traditional sponsor country for NHRI resolutions. However, bilateral lobbying of the Indian and Indonesian government delegations by NHRI norm entrepreneurs proved vital to the successful passage of the Paris Principles through the General Assembly in 1993.[20] Direct lobbying by NHRI entrepreneurs of diverse government delegations continues to play a pivotal role. The momentous 2012 HRC resolution on NHRIs was adopted by consensus following intensive negotiation by Asia-Pacific Forum representatives, alongside supportive government delegates.

When states and the OHCHR disagree on governance goals, NHRIs may serve to bridge the gap. NHRIs have been granted unprecedented access to a growing set of UN venues and contexts within which to inform decision-making about human rights policy. Their status as state agencies can give them access and lobbying opportunities denied to OHCHR officials or NGOs. Many senior NHRI representatives have experience working within government ministries, the diplomatic service, and other branches of the state. Interpersonal networks and familiarity with target behaviour can serve to bolster the strategic influence of these 'human rights diplomats' (Roberts, 2012). For example, in 2006, NHRI entrepreneurs, alongside senior OHCHR officials, successfully provided the draft text directly to the President of the Human Rights Council which would become Rule 7(b), granting NHRIs formal participation rights in the Council's rules of procedure (Lee, 2011: 30). During the 2011 review of the Human Rights Council, the Council President referred to NHRIs as "partners" in the Council

and stated that NHRIs "should be given prominence" (Lee, 2011: 32). As a senior OHCHR official puts it:

"National institutions have matured; they are not seen [by states] as overtly threatening, as a threat to the system. They are viewed as credible actors who can bring issues to the table. They are "team players", I suppose, if you want to call them that".[21]

Compliance with the Paris Principles by Member States now carries significant reputational rewards – amplifying the rule-making authority of the ICCNI. Continued endorsement of 'A status' NHRIs by the HRC confers a seal of legitimacy that is gaining recognition in other UN forums.[22] For the OHCHR and steward states, 'A status' NHRIs should offer a valuable source of information and a credible and independent voice to that of the government under review.[23] However, concerns focus on NHRIs making an independent and effective contribution to the Council. In particular, the practice of NHRIs contributing to official state reports may blur the line between government counsel and watchdog, echoing earlier ambiguities in NHRI practice.[24] National Institutions also often find that their efforts to produce 'shadow reports' are impeded by government, through lack of resourcing and obstructive behaviour.[25] Certainly, not all governments welcome the enhanced role of NHRIs within UN procedures. The Chinese delegation to the Council privately objected to the 2012 Resolution, indicating that while no veto would be exercised (or possible) at the HRC, further progress at the General Assembly would be blocked.[26]

The growing status of NHRIs as 'team players' cuts both ways. NHRI access provides unparalleled opportunities to inform human rights-relevant political and policy decisions

within UN multilateral forums. But it may incentivise states to exert greater institutional control over the NHRI – placing their *de jure* or *de facto* autonomy in jeopardy. Such an eventuality poses a fundamental danger not only to the intermediary, but to the entire human rights orchestration enterprise, threatening to reverse the polarity to one where the Target instrumentalizes the Intermediary to influence the IGO – in effect, engineering a reverse-orchestration. This fear motivates claims of a 'zero-sum game' among potential competitor intermediaries, whereby NGOs find themselves crowded out of UN procedures by ineffective or – in the worst-case scenario – non-credible NHRIs. A desire to contain or insulate the pressure from the UN human rights system does in all likelihood inform the strategic calculation of some Member States. Notably, Algeria and Nigeria (each having a 'B status' NHRI) have argued for all NHRIs to be granted participation rights in Council proceedings, irrespective of ICCNI status (Lee, 2011: 24). As one observer puts it:

> "...it is actually a very clever move because eventually you have two strong actors on the international scene from your own country, both of them state bodies – your government and your national institution. I think that it is an advantage rather than a disadvantage from the point of view of your standing, of your image".[27]

Certainly, image has played a role in the extraordinary proliferation of NHRIs through the 1990s, bearing a similarity to how the UN Educational, Scientific and Cultural Organization (UNESCO) convinced governments to adopt national science structures as important features of statehood (Finnemore, 1996). This rationale continues to influence NHRI adoption, with government officials in contested territories, such as Kosovo and Taiwan, keen to establish National Institutions eligible for accreditation (and therefore standing within the HRC). It is important, however, that the promotional imperative be balanced by consideration of how to

ensure legitimate and effective NHRIs. The potentially conflicting governance objectives of 'promotion' versus 'consolidation' have provoked growing goal divergence between intermediary and orchestrator. While the ICCNI, in cooperation with some officials within the OHCHR, has sought to strengthen the accreditation system based on the Paris Principles, officials within the highest echelons of the OHCHR have continued to insist on NHRI creation, and even accreditation, without sufficient critical reflection.

The issue has become acute in recent years given that the majority of countries who are now contemplating NHRI adoption are those where strong resistance was encountered initially. In highly unstable or autocratic contexts, the questions arise: what function does an NHRI serve and is early creation always advisable? These new entrants may also test the integrity of ICCNI structures and deliberative processes, especially where they are granted 'A Status' accreditation and may therefore hold prominent positions within key bodies such as the ICCNI Bureau and the SCA.[28] In mid-2012, the ICCNI SCA Chair was assumed by the Chairman of the Qatari National Human Rights Committee. Observers question whether the Qatari NHRI should have been granted 'A Status' accreditation.[29] In March 2012 the Commissioner General of the Jordanian National Centre for Human Rights became ICCNI Chairperson – the official representative of the association. The former Ambassador of Jordan to the UN, his appointment raised serious concerns within the NHRI community and among external observers. To the relief of many, the Chairpersonship of the ICCNI rotated to the African region in early 2013, with the Chair of the South African Human Rights Commission duly appointed ICCNI Chairperson.

The OHCHR has done much to facilitate and support cooperation among NHRIs during an initial promotional phase of governance. However, as NHRIs have gained in capacity they

have also begun to assert more autonomy, focused, above all, on protecting their privileged status as gatekeeper to international acceptance. While some OHCHR officials have supported this shift, and the peer-review accreditation process, others have sought to steer the ICCNI's governance agenda to align more with OHCHR priorities and the general UN ethos: open inclusive membership. This resistance to deepening the application of rules speaks to the limitations of human rights orchestration within a UN inter-governmental system. Some observers also point to orchestrator-drift, suggesting that NHRIs have been deprioritised within OHCHR structures, with prominent officials more focused on UN Country Teams and NGOs as preferred intermediaries and NIRMS demoted within the hierarchy. Conversely, a minority of 'hard-liners' within the OHCHR voice frustration at resistance among certain NHRIs to a more robust policing of performance, as well as the vulnerability of an accreditation process based on peer-review.[30]

The future credibility of the NHRI project is likely to hinge on enhancing the accreditation process to ensure that 'A status' is a meaningful reflection of both design and performance. To advance this governance objective, committed NHRIs within the ICCNI may need to renegotiate the orchestration architecture with the OHCHR, as well as confront resistance within their own ranks. They may also have to devise new strategies of indirect influence, building on formal achievements within UN structures, focused on bypassing (mobilising other actors in order to fortify their own independent status and activities) as much as managing the target.

Bypassing states

The growing constraints on the ICCNI pose fundamental dilemmas. To what extent should it continue to participate in governance activities initiated by the OHCHR? Or, to what extent should it strike out beyond the integrated UN human rights regime? Close ties between the OHCHR and the NHRI project since their mutual inception underpin a high degree of symbiosis in their governance relationship. However, the emergent rule-authority of the ICCNI challenges this assumption. The objectives of a core constituency of NHRIs to extend self-governance beyond the point of state agreement (the 1993 General Assembly resolution) and to more rigorously apply admission rules to the club of internationally recognised NHRIs (the SCA) poses a challenge to goal convergence with the orchestrator, as well as the authority of states in applying a check on their authority over the intermediary. As one NHRI entrepreneur remarks:

> We started out with the Paris Principles being a purely normative set of standards. There was nothing built into it about an accreditation process and frankly had there been we wouldn't have stood a snowball's chance in hell of getting it through the General Assembly.[31]

As such, this consolidation governance agenda forces NHRIs to seek out support and involve other organisations and actors at the margins of the UN regime, or beyond its boundaries. An orchestration strategy of managing states has paid dividends, introducing the formal participation of NHRIs within the decision-making apparatus of UN human rights bodies. The challenge now confronting advocates of effective human rights governance is to ensure that these structures are actually enabled to secure human rights advances. To advance this agenda, NHRIs must engage more effectively as an autonomous rule-entrepreneur working within and outside existing orchestration arrangements to advance their interests – shifting

emphasis onto bypassing states. The ICCNI and NHRI entrepreneurs have adopted three strategies in response to this imperative, aimed at making it difficult for obstructionist elements to veto a shift in governance strategy.

Rule-authority: obligation and precision. The ICCNI and its peer networks have been extremely successful in promoting NHRIs through the Paris Principles via a General Assembly resolution, a non-binding standard. NHRIs have emerged as legitimate rule-makers, but also rule gatekeepers. Member states have deferred to the ICCNI and its monitoring apparatus on questions of NHRI participation within UN structures. As one observer puts it, the Principles and working practices of the ICCNI have been effectively "endorsed by reference".[32] The depth of formal integration of a non-governmental actor within UN procedures is unprecedented. However, the Paris Principles remain non-binding. On a parallel track, NHRIs have sought to 'harden' the obligations arising from this international instrument. This has entailed a dual strategy. First, working closely with Steward States, the APF in particular has lobbied to transform what remains a policy set by the ICCNI – that NHRI participation at the HRC should be limited to those fully Paris-Principles compliant – into a procedural rule. Paragraph 16 of the 2012 HRC Resolution recommending NHRI participation at the General Assembly seeks to formalise this policy in the official rulebook.[33]

Second, the most important advance in the legal status of the Paris Principles has been their inclusion in treaty law, most notably in the Optional Protocol to the Torture Convention (OPCAT) and the Convention of the Rights of Persons with Disabilities (CRPD) (Carver 2010). Both instruments envisage a potential role for NHRIs as designated monitoring bodies and instruct states to give due regard to the Paris Principles.[34] This new generation of

international treaty law represents a radical shift towards a three-tier monitoring arrangement, focused on enhancing coordination among human rights stakeholders at all levels. It also represents the outer bounds of state agreement on the legitimate reach of global norms and structures into domestic politics. Reference to the Paris Principles within these instruments is the result of skilful diplomacy by individual NHRI and OHCHR officials within highly challenging negotiation contexts. Inclusion of NHRIs within binding treaty structures provides a legal focal point for their independent standing, distinct to the political arena of the HRC or General Assembly. In effect, NHRIs have advanced their governance agenda through institutional channels which are designed to bypass (to some extent) state and even orchestrator oversight.

The focus of NHRIs as rule-makers and gatekeepers has not only been on enhancing the obligation surrounding the Paris Principles, but also on their precision. Without formal authorisation by states, the ICCNI has nevertheless developed a jurisprudential function. Since 2006, the SCA has issued General Observations (GOs) as interpretative statements of the Paris Principles intended to guide institutional designers and reformers as well as standardise ICCNI accreditation decisions. Cognisant of the imperfections of the Paris Principles, but wary of State capture in a process of official renegotiation, NHRI entrepreneurs have sought to informally refine the content of the Paris Principles. In a series of GOs, the SCA has enhanced precision around questions of independence, restrictions on jurisdiction, complaint-handling, financial resourcing, among others. The GOs have also increasingly addressed questions of actual norm implementation: NHRI performance.[35] Underlining the legal aspirations of this process, in mid-2012 the OHCHR sent a letter to the Irish government headed 'legal advice' referring to the GOs with respect to the proposed

reform of the Irish NHRI. The intervention had significant domestic political consequences (Pegram, 2013: 60).

The SCA, facilitated by the OHCHR, has also sought to ramp up implementation of the Paris Principles, in line with the guidance set down by the GOs. Emphasis has been placed on the independence of the NHRI from government and its freedom to undertake a human rights mandate without higher instruction. Success in the accreditation process not only confers a seal of legitimacy regarding participation within UN forums, it also casts judgement on the legitimate standing of the individual NHRI. NHRIs are vulnerable to government interference at the domestic level. The SCA and OHCHR have used the accreditation process to apply pressure on states that undermine the integrity of their NHRIs. For example, the demotion to B Status of the Honduran commission in 2010 served to highlight the failure of the chairperson to maintain neutrality amidst a military coup d'état. It also places the spotlight on the legitimate conduct of member states. The demotion of the Sri Lankan NHRI in 2007 was invoked in HRC plenary as evidence of the state's dereliction of duty. Sometimes downgrade can invoke a constructive response by states. Sometimes not. The threatened demotion of the Malaysian NHRI, for example, led to a commitment by government to strengthen the existing structure and regain A Status (Renshaw 2012).

However, the emergence of a new non-governmental authority focused on narrowing state discretion has not been welcomed by those at the sharp end of downgrades. Such developments could draw unwanted attention to a previously inconspicuous accreditation process. For some independent experts, this marks a necessary shift towards transparency and participative decision-making (Rosenblum, 2012). However, others caution that the accreditation process is more rigorous than any equivalent state-led UN procedure (in

particular NGO accreditation through ECOSOC) and must be preserved.[36] As the next section illustrates, reinforcement and reformulation of the relationship between the ICCNI and OHCHR is likely to be crucial to this governance objective.

Formalising orchestrator-intermediary boundaries. The relationship between the ICCNI and OHCHR has been subject to change and adaptation. In recent years, what began as often *ad hoc* interactions between an informal group of NHRI practitioners and the OHCHR has assumed more substantial form in step with the creation of the National Institutions Unit in 2002 and establishment of the ICCNI as an independent association in 2008. The OHCHR has facilitated this evolution of an autonomous NHRI infrastructure and its interlinkage with official UN procedures. It has also retained a significant presence within the ICCNI. The National Institutions and Regional Mechanisms Section (NIRMS) currently serves as Secretariat to the ICCNI and SCA. The OHCHR is a permanent observer to the work of the SCA. The ICCNI permanent representative in Geneva serves the ICCNI membership exclusively, but is located within NIRMS. OHCHR orchestration has been a vital resource, both in terms of materially facilitating internal ICCNI decision-making, deliberation and international activities, and, most crucially, by legitimating the NHRI project within the UN body politic.

However, as the ICCNI has formalised its own corporate identity and the governance objectives of these two actors have been more sharply defined, there has arisen a dynamic of *competitive orchestration*. As orchestrator, the OHCHR must strike a delicate balance between facilitating the voluntary cooperation of the ICCNI in a joint governance enterprise without imposing an agenda or competing for resources. This balance would appear to have been lost in recent years. For example, controversy erupted in 2012 when it emerged that the

first of three $300,000 Australian dollar allocations earmarked for ICCNI activities had instead been diverted by the OHCHR to fund the general budget of the NIRMS. Given the limited funding and capacity of the ICCNI, this has acutely sharpened division between orchestrator and intermediary. It has also led to some within the ICCNI community advocating a formal decoupling and institutional independence from the OHCHR. They contend that the 'OHCHR has had too influential a role in colouring the ICCNI's political perspectives and priorities' (Lee, 2011: 41). According to this proposal, the OHCHR would be re-indentified as an ICCNI 'partner', an equivalent status to the ICCNI's four regional coordinating bodies.

Politically, tensions have also arisen. In particular, the momentous strides made in recent years in achieving formal NHRI recognition within UN procedures have often resulted not from the sustained advocacy of the ICCNI and its representative in Geneva but rather from the regional NHRI coordinating body for the Asia-Pacific, the Asia-Pacific Forum (APF). The ICCNI's strategic engagement with the HRC has not always been successful – finding itself locked out of key negotiations. The influence of the OHCHR in managing the approach and policy of the ICCNI has also been sharply criticised. For example, the head of the NIRMS is reported to have 'cautioned the [ICCNI] Chairperson against active [ICCNI] participation in the [2011 HRC] review, recommending a minimalist approach to engagement' (Lee, 2011: 41). This position was supported by the ICCNI Geneva representative, but opposed by the APF and ultimately overruled by the ICCNI Chairperson (Lee, 2011: 41). In this instance, the OHCHR overstepped the bounds of orchestration to approximate a governor role, seeking to gain control over the intermediary.

In response, a proposal to reformulate the arrangement between the ICCNI and OHCHR is gaining momentum. Central to this idea is a decoupling of the OHCHR from ICCNI substantive and administrative activities through the creation of a stand-alone ICCNI Secretariat and relocation of the ICCNI Geneva representative outside NIRMS. Currently, the ICCNI Chairperson is reliant upon the OHCHR or regional secretariats for support. In effect, this would break the existing chain of orchestration and recast it with the ICCNI potentially asserting an active orchestration role in its own right. Opposing voices question what kind of political leverage the ICCNI would have without the OHCHR serving as Secretariat. However, notwithstanding diverse views on formalising boundaries, there is one core governance domain where all remain in agreement: the accreditation process. OHCHR officials claim that their participation underwrites the credibility and independence of the SCA. Indeed, the OHCHR plays an important role in legitimising a process which remains relatively closed to external review or verification. Importantly also, the role of the OHCHR may serve to ensure that states remain willing to defer to the judgments of the SCA as authoritative. As one observer puts it:

"...by having the OHCHR there as a Secretariat, they are providing the UN rubber stamp to the [SCA] without providing substantive input. They are the legitimizers of the process; we can "UN brand" what we are doing because we have the UN onboard as the secretariat".[37]

Decentralising Authority. As well as meeting the challenge of recalibrating orchestration overlaps, the ICCNI also has the opportunity to identify complementary overlaps with its 'partners' or sub-intermediaries further down a chain of orchestration, and thereby enhance the efficiency with which it fulfils its governance objectives. Reflecting the regional bloc

formations of the UN, regional coordinating committees for Africa, the Americas, Asia-Pacific and Europe play a prominent role within the ICCNI. The Asia-Pacific Forum (APF) has been active in regional-level advocacy and support for NHRI activities since 1996.[38] Notably, until 2007 it administered its own accreditation process, since 'suspended' in light of advances made at the SCA. Networks of transgovernmental NHRI have begun to consolidate across regions. The Network of African NHRIs was created in 2007, with its Secretariat currently supporting the work of the South African ICCNI Chairperson.[39] The European Group of NHRIs established its permanent Secretariat in 2012, modelled on the APF, and now employs a full-time Director. The Americas is the outlier, a vocal minority resistant to efforts by the ICCNI Bureau and OHCHR to establish a regional Secretariat. This increasingly dense arena of regional transgovernmental activity offers additional opportunities to identify how the ICCNI membership can be mobilised to engage meaningfully in advancing a human rights governance agenda.

Greater prominence to regional coordinating committees within the work of the ICCNI may serve to strengthen the strategic voice of NHRIs within UN procedures, as well as provide additional points of access for engagement with regional and local rights stakeholders. By decentralising authority to the regional level and encouraging greater participation in decision-making, the ICCNI may find it has greater leeway for innovation and experimentation, with no single set of actors (member states or others) able to veto or sanction the majority decision of the collective. This shift towards decentralising authority has been prompted, to some extent, by growing concerns over the influence of the OHCHR, as well as the complexion of new entrants to ICCNI membership. Diluting authority to regional groups may serve as a bulwark against orchestration blurring into delegation. However, this decentralisation to generate positive feedback loops will also require

maintaining a strong legitimate centre. Orchestration with the OHCHR will likely continue to be a vital element in this endeavour.

Wider implications for global human rights governance

Orchestration offers a window into an important and underappreciated domain of human rights governance. Exploring the relationship between the OHCHR and NHRIs has demonstrated how orchestration can serve to activate and even strengthen national structures dedicated to the promotion and protection of human rights. This study highlights the untapped potential for regulating domestic state behaviour from within a UN-centred human rights infrastructure enmeshed in a web of state and non-state governance networks. It is a formulation of influence distinct from dominant theoretical models in IR scholarship which focus on external pressure via transnational advocacy networks or the benevolent stewardship of liberal guardian states. Instead, it locates diverse drivers of human rights governance within a global public domain defined by growing complexity, diversity of interests and preferences, and emergent official and non-state authority.

The article finds that orchestration may be particularly well-suited to a human rights mobilisation function, with the study affirming a number of hypotheses advanced by Abbott et al. (2014) as increasing the likelihood of orchestration, including: (1) high goal divergence among states and/or between states and the IGO, (2) significant IGO capability deficits, (3) weak state oversight and institutional control mechanisms, and (4) availability of third-party intermediaries. However, further factors also emerge as central to explaining orchestration in this study, including a rule framework amenable to rule-entrepreneurship by both orchestrator and intermediary. In turn, these hypotheses might also be modified and applied to the

intermediary in evaluating the likelihood that they will engage in orchestration. A key consideration in this regard is to evaluate how the orchestrator can serve to ameliorate the capability deficits of the intermediary in terms of focality, authority and resources. A follow-on research project will evaluate how NHRIs might instrumentalize international orchestration activities to discipline 'principal moral hazard' at the local level.

This study has uncovered an unusually formalised arena of indirect human rights governance through orchestration within an integrated regime: the UN. The OHCHR-NHRI complex bears the hallmarks of orchestration, with a legitimising focal actor facilitating and integrating NHRIs into a broader governance programme of action. However, the extent of integration, with the intermediary formalised as an independent association within UN structures, combined with the orchestrator serving a core governance function as secretariat, represents a novel deepening of orchestration architecture. It has achieved results, opening up UN forums to a new class of official but independent bodies able to report from the front line of domestic human rights advocacy. At their best, NHRIs have served as authoritative counterpoints to governments. Robust and imaginative advocacy by NHRIs will continue to be crucial to affirming their independent status as team-players. Notably, NHRIs have now surpassed NGOs – the traditional intermediary for the OHCHR – in their participation rights within UN proceedings. In detailing this shift in intermediary focality of NHRIs and NGOs, the study also highlights the potential for competition among intermediaries. As articulated by one observer:

"I think that the only way for NHRIs to respond to the concerns sometimes raised is to prove that they are not mouthpieces for governments by being there, by being loud and by being critical. And NGOs have a role in keeping them to that standard".[40]

As such, while this study augments our understanding of how orchestration functions within a human rights domain, it also provides more fine-grained insight into how this mode of governance shapes the behaviour of actors, in particular the incentives acting on the intermediary. The focus of this study is necessary given the pivotal role played by intermediaries of directly interfacing with both orchestrator and target. However, intermediaries are themselves strategic actors accountable to multiple (and often competing) constituencies and operate on structurally highly uneven playing fields. In particular, careful scrutiny is required of intermediary relations with the target to ascertain their independent status and, by extension, the direction of influence within orchestration arrangements. Intermediaries are not vectors for IGO governance objectives, but rather voluntary partners whose willingness to engage is logically predicated on: (1) their governance objectives, (2) available venues for advancing those objectives, and (3) the relative likelihood of success mobilising through one or other available forums. Change across one or more of these factors may serve to reinforce or destabilise the fragile equilibrium between orchestrator and intermediary and the orchestration enterprise more broadly. The degree of deviation from intermediary preferences therefore also appears to be an important factor in explaining successful IGO orchestration.

Sufficient goal convergence between orchestrator and intermediary is therefore a threshold condition for orchestration to work. This study demonstrates the challenge posed by goal divergence and counterproductive attempts by an orchestrator to correct intermediary-drift. In this regard, it challenges the underlying assumption of orchestration based on voluntary coordination and non-hierarchical relations. Implicit in the metaphor of an orchestrator is hierarchy, be it between conductor and orchestrator, or first and second violinist. The

potential for power asymmetries to assert themselves is evident in this study, with the OHCHR's promotional paradigm of formal institutional compliance (NHRI establishment) at odds with – an admittedly uneven and contested – shift by the ICCNI towards a focus on the end goal; the ability of 'A Status' NHRIs to actually secure human rights advances in domestic jurisdictions. However, in accordance with Mattli and Seddon (2014), the study also speaks to the potential for the intermediary to challenge the authority of the orchestrator through rule-making power.

In large part, conflict within the orchestration arrangement reflects linkages to power structures and shadows of authority cast by the OHCHR's proximate political body, the Council, as well as within domestic political systems. I have refined the concepts of managing and bypassing states to explore strategies through which the intermediaries have sought to recast orchestration at the international level to better reflect their interests and preferences. In turn, the study provides additional insight into a central and largely unanticipated finding by Abbott et al. (2014: 43); the active encouragement of IGO orchestration by states. This study suggests that states have actively supported OHCHR orchestration with NHRIs for a number of reasons, including goal convergence between the state and OHCHR, skilful advocacy by norm entrepreneurs within both orchestrator and intermediary structures, as well as for less normatively desirable reasons – most problematic of all with the intention of engineering a form of 'reverse-orchestration'.

However, this analysis also poses a more fundamental challenge to orchestration. It highlights the limitations of an IGO-focused conceptual framework to engage meaningfully with the compliance gap in human rights governance, both in descriptive and analytical terms. Specifically, orchestration offers valuable additional insight into why and under what

conditions states may introduce and even formally strengthen NHRIs. However, it is far more limited in its ability to explain a compliance gap principally located at the domestic level – a problem which requires examination of local political structures and the capability of intermediaries to exercise social influence (Goodman and Pegram 2012). With some notable exceptions (Simmons 2009), this limitation reflects a broader absence within IR literature of engagement with a domestic politics of implementation (or orchestration), beyond formal institutional compliance.

Notwithstanding, the challenge of orchestration within IGO settings is amply demonstrated in this study. The well-publicised shortcoming of the UN human rights regime must nevertheless be balanced by the pragmatic observation that it remains one of very few governance venues with the potential to positively influence the exercise of state power. As this study attests, we are witnessing the disaggregation of the traditional integrated regime and the growth of increasingly experimentalist pockets of networked governance. New conventions and optional protocols are characterised by intrusive norm frameworks, the formalisation of multi-actor systems within core implementation activities, and modest but significant reallocations of authority. The concepts of managing and bypassing states could be usefully extended to describe the way in which stakeholders within issue-specific pluralist regimes may strategically extend rules to the limits or beyond of state agreement, with a view to securing human rights governance goals. In sum, the international human rights system remains a key focal point for global human rights governance. Future effectiveness is likely to hinge on its ability to combine and connect with other organisations and actors at all levels in the construction of a legitimate and accountable global governance system.

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[1] Alston (2011: 630-33) provides a thoughtful human rights-specific critique of principal-agent theory.

[2] The NHRI can be defined as 'a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights'. See UN (1995: 4).

[3] UN UPR website: http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx;

[4] See http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx

[5] See http://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx

[6] UN News Centre, 'Annan calls on Human Rights Council to strive for unity, avoid familiar fault lines', 29 November 2006.

[7] Article 100, Charter of the United Nations.

[8] "Neutrality does not mean we do not have a position". Confidential interview with OHCHR official.

[9] "We are an intergovernmental organisation so it would be a little bit unwise for us to influence...our employers or those who are actually setting the policy." Confidential interview with NIRMS official.

[10] See *The Guardian*, 'America forced me out, says Robinson', 31 July 2002.

[11] Confidential interview with OHCHR official.

[12] See CHR Res. 1990/73, 7 March 1990, para. 3.

[13] Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights, adopted by the UN Human Rights Commission, Res. 1992/54, 3 March 1992 and the UN General Assembly, Res. 48/134, 20 December 1993

[14] HRC, Res. 5/1, 18 June 2007.

[15] Interview with Ben Lee, UN Human Rights Mechanisms Manager to the Asia-Pacific Forum of NHRIs (12 September 2012).

[16] See, for example, GA resolution A/RES/58/175, 10 March 2004.

[17] HRC, UN Doc. A/HRC/RES/16/21, 12 April 2011

[18] See HRC, UN Doc. A/HRC/20/L.15, 29 June 2012, para. 16

[19] Not all NHRIs are part of the international process described here. Many offices, particularly in Eastern Europe and Latin America, do not conform to the model promoted by the OHCHR.

[20] Interview with Brian Burdekin, former Special Advisor on National Institutions to the UN High Commissioner for Human Rights (1995-2003) (7 May 2013).

[21] Confidential interview with OHCHR official.

[22] Most recently see HRC Resolution A/HRC/23/L.15, 7 June 2013.

[23] See submissions under the OHCHR-prepared Summary of Stakeholders' Information to the UPR.

[24] 56% of respondents to an OHCHR survey reported contributing to the official state report for submission to the UPR. See also Carver, 2000: 49.

[25] See for instance Luxembourg and Philippines Stakeholder Summary, 2nd Cycle of UPR

[26] Confidential interview with NHRI practitioner.

[27] Confidential interview with OHCHR official.

[28] NHRIs in highly unstable and autocratic settings, including Egypt, Jordan, Nepal and Qatar, have all been admitted to the ICC and accredited 'A Status' in recent years.

[29] Reservations would appear to be warranted. In October 2013 the Chairman of the Qatar National Human Rights Committee robustly rejected allegations of labour rights abuses on behalf of the Qatari government. See *Al Jazeera*, 'Qatar under the spotlight for workers' rights', 4 October 2013.

[30] Confidential interview with OHCHR official.

[31] Interview with Brian Burdekin, former Special Advisor on National Institutions to the UN High Commissioner for Human Rights (1995-2003) (30 March 2012).

[32] Interview with Chris Sidoti, former Australian Human Rights Commissioner (1995-2000) (26 July 2012).

[33] See HRC Res. A/HRC/20/L.15, 29 June 2012, at 16

[34] OPCAT, Article 18(4); CRPD Article 33(2).

[35] See ICC Sub-Committee on Accreditation General Observations as adopted in Geneva in May 2013.

[36] Interview with Ben Lee (12 September 2012).

[37] Confidential interview with NHRI practitioner.

[38] See http://www.asiapacificforum.net/

[39] See http://www.nanhri.org/

[40] Interview with Chris Sidoti (26 July 2012).

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