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SYMPOSIUM ON KRISTINA DAUGIRDAS, "REPUTATION AS A DISCIPLINARIAN OF INTERNATIONAL ORGANIZATIONS"

THE COMPANY YOU KEEP: INTERNATIONAL ORGANIZATIONS AND THE REPUTATIONAL EFFECTS OF MEMBERSHIP

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Our contribution to this symposium speaks to the origins of international organization (IO) reputation. The one explored by Daugirdas is agency slack: when people delegated power and authority within an organization—in her example, UN peacekeepers and their surrounding bureaucracy—abuse their privilege and stain the institution's character. We explore another that can spark similar reactions and consequences, but which emanates from the behavior of the principals themselves (rather than their agents): the member states. The company an IO keeps—how members behave—can bolster or stain the organization's reputation. That in turn can have consequences, especially for organizations seeking to provide a venue for members to make credible commitments.

Credible commitments are efforts to convince an audience that a promise is genuine. This is helpful when states alone cannot provide such guarantees. Participation in IOs allows states to, in essence, write binding-like contracts that reassure their audience(s) that they mean what they promise, and will pay a cost for reneging. That is, for example, part of the reason why states choose to delegate peacekeeping decisions to the UN. Unilaterally, they cannot credibly commit to be objective when strategic interests are at stake. But the extent to which delegation alleviates the problem depends ultimately on the behavior of the member states–similar to the agent story depicted by Daugirdas. And this idea aligns closely with Daugirdas' premise that while a good reputation is valuable, a bad one is costly.[1]

While the logic we develop applies to many domains, we draw here upon our own research on foreign direct investment (FDI) to illustrate how "the company you keep" generates IO reputations that may have direct costs or benefits to the membership.

The Company You Keep

A key insight emerging in the field of international relations is that IOs generate reputations based not simply on their stated goals and rules but also on the behavior of their membership. These reputations provide information to relevant audiences that can help or undermine an organization's goals, quite apart from what the rules of the organization say or the way its agents behave.

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[1] Kristina Daugirdas, *Reputation as a Disciplinarian of International Organizations*, 113 AJIL 221 (2019).

A canonical commitment problem with far reaching implications concerns the issue of FDI. FDI is so important because it acts as an engine for economic growth, especially in the developing world, where the credible commitment problem is real. Foreign firms face risks of harmful treatment by host governments and deinvestment is costly, which gives rise to obsolescing bargains.[2] Knowing this, investors want reassurances. But many potential host states do not have stable or strong domestic institutions to enforce property or contractual rights credibly and they lack access to independent and neutral remedies. One problem is that states that would gain most from an influx of FDI often have weak or corrupt institutions that scare away investors. This lack of domestic commitment opportunities can amplify the problem because weak or corrupt institutions may signal that the potential host is likely to bring losses to the investor.

In an effort to convince the investment community that they are a good bet, states have created a wide range of IOs that, on paper, generate substantive commitments to suggest their good intentions. Alongside bilateral investment treaties (BITs) stand a large array of highly institutionalized international organizations with investment-related or augmenting provisions (*e.g.*, the Caribbean Community (CARICOM), the European Union, the Organisation for Economic Co-operation and Development (OECD), and many other similar IOs) intended in principle to support the flow of FDI to their membership.

For this to work, membership in an IO must appear to increase a potential host's willingness and ability to honor its commitments over the long-term, making public promises to adopt or maintain market-friendly policies and ideally providing active and independent means for dispute settlement. Institutionalizing these commitments in an IO is supposed to generate reputational risks for those who violate them.[3] In addition to creating greater markets for FDI, membership in these organizations can sometimes substitute for the lack of credible commitments at the domestic level by providing opportunities for better promise-making at the international level. This promise-making commitment parallels concerns over military intervention, for example, where justifications for unilateral actions are often seen as less credible than are UN or regional interventions based on the decision of the community of states.

How Does the IO Membership Affect Its Reputation?

Using the tools of social science and statistical data over nearly three decades (covering the membership of 128 countries in 426 IOs), our own empirical research in the domain of investment regulation suggests that the extent to which this credible commitment investment plan works depends partly on the membership of the IO, quite apart from the formal rules of the organization.[4] In our illustration, when organizations are comprised of states with established investor rights—defined as low risk environments for contract viability or expropriation, profits repatriation, and payment delays—they can provide investors with some additional reassurances that a member state's organizational commitment to investor-friendly policies is credible. Membership in that IO is not a magic bullet, and many other factors will shape investor decisions (*i.e.*, economic growth, existing BITs, a single market), but it can help to reduce uncertainty that can deter investment. And that in turn can carve a path towards greater economic development.

Take, for example, Mexico's accession to the OECD. The OECD has a great reputation for promoting investment—it currently is made up of thirty-four countries with strong-to-stellar investment profiles and espouses

[2] Obsolescing bargains are likely when the investor sinks assets into the host country that are not easily removed, which gives incentives to the host government to change the terms of the agreement in its favor. In the extreme, this turns fixed assets into liabilities with great costs to the foreign investor. Raymond Vernon, Sovereignty At Bay: The Multinational Spread Of U.S. Enterprises (1971).

[3] Axel Dreher et al., *Membership Has Its Privileges – The Effect of Membership in International Organizations on FDI*, 66 World Dev. 346 (2015).

[4] Emilie Hafner-Burton et al., *(In)Credible Commitments? International Organizations and Foreign Direct Investment* (Jan. 2019).

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rules and standards such as those articulated in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Mexico's accession required substantial domestic reform, including liberalization of markets that went far beyond the commitments under the North American Free Trade Agreement and new laws favoring investors—for example, providing foreign issuers access to the domestic stock market.[5] Since accession, Mexico has almost quadrupled its FDI inflows, the top sources of which include investment from other OECD members.

While this illustration is anecdotal—and many factors other than OECD membership affect investor decisions—it is in line with the idea that the reputation that IOs may generate with respect to investor-friendly policies, and consequently its potential influence on FDI flows to member states, depends on the composition of the membership itself. The European Union—among the world's most highly reputable organizations—has without doubt provided similar benefits to its members for similar reasons.

Our evidence also suggests that while a state's association with reputable IOs can boost investor confidence, and thus FDI, a reputation for bad company does not. Membership in IOs comprised of other members with high perceived risk will not serve as a positive signal to investors, even if the IO rules contain formal promises to ensure stable and predictable investor-friendly conditions. In effect, part of what determines whether these organizations and their rules can develop a reputation for being effective—in other words, solve the commitment problem—is the reputation of the company they keep to make good on the organization's promises.

Consider, for example, the small state of Suriname, which joined CARICOM in 1995. CARICOM on paper aims to deepen integration among its twenty member states, stretching from the Bahamas to Guyana. Included among the organization's formal goals is increasing investment. Membership in CARICOM surely offers benefits to Suriname, but investment is certainly not one of them. Surrounding itself with countries such as Haiti, which pose extremely high risks for investors, did nothing to reassure investors that Suriname, by joining, would become a safer bet. FDI inflows have remained mainly negative, and more than a decade after accession, FDI reached an all-time low.

Of course, the ease with which IOs acquire reputations for good (or bad) behavior depends on the costliness of the commitments that states make in the first place, which is affected by an organization's capacity to enforce standards. That capacity varies tremendously. Our data show that membership in IOs with reputations for investor-friendly member states is most effective in achieving positive FDI inflows when organizations also offer some kind of enforcement, such as binding international adjudication, a remedy for noncompliance, or reaching legal determinations that have direct legal effect. This creates a more predictable environment for investors.[6]

A More General Phenomenon

This form of reputation is hardly unique to our illustration: IOs attempting to regulate FDI. It is a much broader phenomenon. The reputation that IOs develop from the company their members keep has been shown to directly affect an organization's ability to promote human rights,[7] spread democracy,[8] deter corruption[9] and resolve debt

[5] Christina Davis, *Membership Conditionality and Institutional Reform: The Case of OECD* (Jun. 2016).

[6] Hafner-Burton et al., *supra* note 4.

[7] Brian Greenhill, Transmitting Rights: International Organizations and the Diffusion of Human Rights Practices (2015).

[8] Jon Pevehouse, Democracy From Above: Regional Organizations And Democratization (2005).

[9] Emilie Hafner-Burton & Christina Schneider, *A Dark Side of Cooperation: When International Organizations Spread Political Corruption*, Int'l. Stud. Q. (forthcoming 2019).

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crises.[10] And on these issues, too, the consequences of attaining a good versus bad organizational reputation can be substantial for participating states.

One important implication of this mechanism is that not being able to exclude some unsavory members can hinder an IO from establishing a good reputation. Whereas the behavior of one individual member may not tarnish an IOs reputation, an increasing number of them easily may. If the number of unsavory members reaches a critical mass, then this likely comes with a serious reputational cost. This is certainly the argument that the United States makes when it discounts decisions and actions of the UN Human Rights Council.

How Can Organizations Improve Their Reputation?

A central premise in Daugirdas' analysis is that, while good reputations are desirable, IOs do not always seek to achieve or succeed in achieving them, and at times may even take measures that are hollow or perverse. If we are right that, at least in a credible commitment context, IO reputation is affected by "the company you keep," meaning the reputation of members, then why would IOs ever include members that regularly flout the rules?

One reason may be that some IOs simply do not care about compliance—or their reputation for it—because no one punishes them or their principals for breaking the rules. Perhaps the IO and its members are not concerned about credible commitments. Maybe they have a different objective, such as amassing resources, assuaging political interests, or projecting power. This interpretation could explain why, for example, many regional economic organizations in Africa have consistently failed to reach good economic objectives, such as promoting trade and incentivizing FDI. To the extent that these organizations primarily exist to achieve other member objectives (such as promoting development, engaging in collective security initiatives, or deterring intervention from outside of the region), a reputation for credible economic commitments may not be important.[11]

Part of the explanation may be exactly Daugirdas' point that IOs often have different reputations for the multiple goals they pursue, and thus multiple audiences. That is certainly true for the many development-oriented IOs that aim to promote FDI alongside a host of other goals, and that is likely also true of any organization that seeks to accomplish multiple things, for multiple constituents. What might make one organization effective in the eyes of one audience—say local industry or regional partners—might make it ineffective in the eyes of another—say the FDI community. It may be that the IO is a "zombie" in some regards but not others. Return to African regional cooperation: These IOs may be zombies with respect to trade and investment, but they are certainly very alive in promoting other goals of the membership.

Sometimes, these "high risk" IOs may have no choice in their membership: perhaps they are bound by geography or similarity in need, or there is no screening mechanism to keep states with bad reputations out. The IO's bad reputation is, in effect, incidental and unavoidable. In the context of universal organizations, such as the UN, this helps explain why poor reputations of this flavor, once developed, are very difficult to change.

Other times, IOs may not care if member states tend to ignore some subset of the organization's collective agreements. It may therefore not matter to CARICOM and the Economic Community of Central African States (ECCAS) if high risk investment states are members. Yes, CARICOM espouses an intention to promote FDI, but it also expresses the desire to facilitate social cohesion, ensure good governance, and reduce poverty; meanwhile ECCAS seeks to promote cooperation and economic development more broadly. These broader portfolios target different audiences, and these other audiences may assess IO reputations differently. There might also

[10] Axel Dreher & Stefan Voigt, *Does Membership in International Organizations Increase Governments' Credibility? Testing the Effects of Delegating Powers*, 39 J. Comp. Econ. 326 (2008).

[11] Fredrik Soederbaum, "*With a Little Help from My Friends": How Regional Organizations in Africa Sustain Clientelism, Corruption and Discrimination* (Sept. 2010).

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be tradeoffs between competing objectives, or the organization may simply be unable to credibly address the broader set of values and goals that stakeholders identify. If true, IOs may be making strategic choices about which issues to prioritize and which constituents to please.

The implications are also troubling, because this suggests that IOs quite often set goals and induce promises that are easily broken, at little cost. In Daugirdas' terms, they make symbolic commitments; in the language of international relations, it is "cheap talk."[12] We observe this in the effort to regulate investment all the time——and there are actually many areas where an IO makes commitments with little expectation that its members will uphold or that the IO will actively try to enforce the commitment.

This all raises the fundamental question of whether and when a wide net for membership is advantageous, even when it leads to bad reputations for following collective rules. Put somewhat differently, when is garnering a better reputation for compliance helpful? When might an IO be better off either excluding—or correcting—the behavior of states that are failing to comply with the IO's goals and rules?

Like Daugirdas, we do not believe that the most drastic tools (such as the exclusion of states) are the most effective in the long term. Nor would it be effective to impose harsh legal sanctions on states that fail to punish wrongdoing by IO staff or their peers. The perceived threat to sovereignty would be too great, which would minimize opportunities for cooperation. IOs serve many goals and even if they fail to reach their goals, the relevant benchmark to assess their effectiveness is the counterfactual wherein the IO did not exist. Just as treating violations and bad behavior as reputational demerits may make IO staff more accountable and thereby foster better behavior, as Daugirdas suggests, identifying noncompliance and treating it as a demerit can affect the behavior of leaders and governments that stand to gain from the long-term survival—and the good reputation—of the IOs of which they are members.

What is clear is that passing new rules and making new promises does not boost an IOs reputation per se, unless their members are also willing to add and use credible muscle to enforce their efforts and remedy known problems. And all too often—and increasingly in world politics more generally—states seem happy to offer cheap talk, and little else.

[12] Joseph Farrell & Matthew Rabin, *Cheap Talk*, 10 J. Econ. Persp. 103 (1996).

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