

EXTENDING AUTONOMY
The Immunity of International Organizations

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Abstract

Under what conditions do governments grant greater autonomy to international organizations (IOs)? Legal immunity is a form of autonomy that provides IOs valuable protection from lawsuit. IOs argue immunity is necessary to conduct their functions and pursue missions across the borders of member states. If governments expect to gain from membership in international organizations, what explains why some IOs fail to achieve widespread protection from member states? We argue that governments are anxious to grant autonomy to international organizations. Rather than delegate vertical autonomy to the organization and commit to the organization gaining greater independence and separation from state oversight, governments form agreements with international organizations and isolate the degree of protection only within national territories. Bilateral agreements provide governments with the flexible to revoke valuable protection and are a more favorable form of delegation than vertical autonomy made through multilateral commitments. Most surprisingly, the IOs that receive high degrees of vertical autonomy are less likely to achieve widespread horizontal autonomy. We explain the IO-state bargain using original data collected from IO-state agreements. Our findings have valuable implications for understanding multilateralism, including the forms of autonomy delegated to pursue cooperation.

I. Introduction

How does the legal personality of IOs across their member states matter for international cooperation? The legal immunities that countries grant to IOs can play an important role in IO performance; legal immunity also establishes the parameters through which IOs can face litigation, which can act as an important part of IO legitimacy. And yet legal immunities are largely understudied in political science.¹ This oversight persists despite a broad literature focused on other aspects of IO legalization, such as dispute settlement² as well as the direct effect of IO decisions on domestic law. Considering that hundreds of countries -- and individuals in those countries -- have brought legal action against IOs, it is important to understand the parameters of IO legal immunities.

The landscape of IO immunities is vast and varies on many dimensions. Countries -- even member-states within the same organization -- vary in the immunities that they give to IOs. Those IOs in turn have scores of immunities that they can request from countries, ranging from staff protections to channels for lawsuits to protocols around meetings. Both country practices on immunities, and IO acquisition of immunities, vary over time, with some countries granting IOs immunities well after others.

Understanding variation in IO immunities sheds crucial light on important questions in international cooperation. The first is functional: how do IOs work, and what types of design features enable them to actually do their jobs? The second concerns the legitimacy of IOs: does clarity on the legal accountability of IOs help or hinder their accountability? But the third -- and the focus of this paper -- centers on the balance of control between states and international organizations. Immunities are a way of establishing a legal personality, and a degree of insulation, for organizations and their staffs, thus reflecting a type of principal agent problem.

This paper focuses on one core source of variation and its implications for global governance, which is the variety and number of immunities in IOs over time, and whether that comes at a sovereignty cost for the states granting those immunities. Just as IOs may claim that they need legal insulation and privileges to undertake their missions, states may be wary of granting those immunities in the fear of giving IOs too much autonomy. The tensions underlying the delegation of immunities reflect an underlying principal-agent logic. Namely, does the acquisition of legal immunities -- not just by international courts but also by a broad variety of IOs -- primarily tend to ensure IO functionality, or does it simply insulate the IO from member-state oversight and accountability?

These questions are difficult to disentangle because of the complex relationship among IO design, IO performance, and member-state preferences. Nonetheless, we argue that on balance, IOs seek immunities congruent with their modes of governance, as a way of hedging against asking states for deeper levels of autonomy to the organization overall. Rather than seeking immunities in a bid for legal insulation from member states, IO immunities allow those organizations to have an in-country presence across all their member states, not just their headquarters. Thus IOs -- even beyond international courts -- request legal immunities when their

¹ Powell 2016; Daugirdas 2016.

² McCall Smith 2000, Koremenos 2017, St John 2020

missions require them to expand the territoriality of their operations; they seek legal protection when their operational structures decentralize, either formally or informally at the expense of requesting greater centralized depth of autonomy. We argue that this does not detract from state sovereignty, but rather enables IOs to operate *horizontally* across their member states without concessions to *vertical* autonomy, a bargain that states find more palatable. We test these arguments on original (although in-progress) data on the comparative IO immunities for 75 organizations.

We connect with several bodies of literature.³ A variety of studies across international relations and law focus on the accountability of international organizations.⁴ Scholars privilege the rational design of international organizations and anticipate that clauses will be included to protect signatories. When needs at home outweigh the benefits of international obligations abroad, mechanisms such as duration provisions, escape clauses, and reservations allow states to modify obligations and temporarily escape from commitments as a means of contracting around uncertainty.⁵ Soft law and ambiguous provisions are other channels to gradually form agreements around mercurial areas of international relations plagued by uncertainty, such as emerging technologies or environmental patterns where clear expectations about future distributional consequences are murky at best.⁶ Granting international organizations imparts greater agency to the organization and protects IOs from lawsuit, limiting options for political control.⁷

We argue that international organizations have a role to play in establishing protection and autonomy. A growing literature examines the motivation and agency of international organizations.⁸ IOs take note of the immunity granted by states and are cognizant of their status within domestic law. The International Labour Organization reviews where immunity is lacking and notes this is a “cause for concern” especially during instances of technical cooperation. The ILO notes the need to “negotiate specific bilateral agreements with those States regarding particular projects or programmes” that provide legal coverage for the types of projects that the degree of within-country cooperation anticipated with individual states.⁹ The Permanent Court of Arbitration (PCA), for example, signs Host Country Agreements with countries to attract “arbitrations to the host country that would otherwise be conducted elsewhere” to raise “the international profile of the host country as an arbitral forum”, suggesting that organizations themselves are actively negotiating and bargaining with states to secure favorable status.¹⁰

We proceed in six main sections. The second section provides background on the concept of international organization immunity and the legal agreements concluded with states. In the third section, we build from principal-agent theory to produce expectations for the conditions when

³ Abbott and Snidal 1998; Koremenos, Lipson, and Snidal 2001; Koremenos 2013; Koremenos 2016.

⁴ Grant and Keohane 2005a; Daugirdas 2016.

⁵ Koremenos 2001; Koremenos 2016, 99–191.

⁶ Abbott and Snidal 2000; Guzman and Meyer 2010.

⁷ Ruth W. Grant and Robert O. Keohane, “Accountability and Abuses of Power in World Politics,” *American Political Science Review* 99, no. 1 (February 1, 2005): 29–43.

⁸ Barnett and Finnemore 1999a; Johnson 2014; Ness and Brechin 1988; McCalla 1996; Vaubel 2006.

⁹ The status of privileges and immunities of the International Labour Organization in member States, GB.297/LILS/3

¹⁰ See: <https://pca-cpa.org/en/rerelations/host-country-agreements/>

states provide international organizations with greater autonomy. Alternative explanations are considered in the fourth section, including those that describe immunity as a concept most eschewed by powerful actors and theories that suggest democracies are more likely to support multilateralism and the ability of international organizations to perform their functions. The fifth section describes our data collection process on the independence of international organizations and how it differs from other, related concepts. We conclude with initial evidence and ideas for future research.

II. The Continent of IO-State Immunity Agreements

Although dispute settlement is a widely examined function offered by international organizations, a neglected aspect of institutions is their vulnerability to lawsuit. In the case of *Broadbent v the Organization of American States*, former employees of the Organization of American States attempted to sue for breach of contract in US courts.¹¹ More recently, the World Health Organization faced international scrutiny for the handling of the global pandemic, including lawsuits within the United States judicial system.

Many international organizations are protected from the threat of lawsuit through agreements concluded with governments. Immunity is founded on the principle of functional necessity: IOs argue that they need immunity in order to be able to perform their functions. The ability to conduct tasks in an impartial and independent manner is threatened if national officials impose the threat of lawsuit.¹² Commentators note that immunity is an, “essential device for protecting international organizations from unilateral and sometimes irresponsible interference from individual governments”¹³ A report from the International Law Commission highlighted the benefit of immunity:

It is undeniable that, in order to guarantee the autonomy, independence and functional effectiveness of international organizations and protect them against abuse of any kind, and because national courts are not always the most appropriate forum for dealing with lawsuits to which international organizations may be parties, some degree of immunity from legal process in respect of the operational base of each organization must be granted.¹⁴

The United Nations established the paradigmatic instance of immunity in the United Nations Charter that granted international organizations legal protection. Article 105, paragraph 1, provides that “the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.” The Charter

¹¹ *Broadbent v. Organization of American States*, No. 77-1974, (D.D.C., Jan. 25, 1978)

¹² Gaillard and Pingel-Lenuzza 2002, 4; Blokker 2015, 186; Fedder 1960. See also the concept of functional necessity in the constitutions of organizations: Art. 48 Rome Statute of the International Criminal Court, 17 July 1998, in force 1 July 2002, 2187 UNTS 3; Art. 17 Charter of the Association of Southeast Asian States, 20 November 2007, in force 15 December 2008.

¹³ Szasz 1983, 153.

¹⁴ ILC Draft Articles and Report on Relations Between States and International Organizations in Leonardo Diaz-Gonzalez (Special Rapporteur), ‘Fourth Report on Relations Between States and International Organizations (Second Part of the Topic)’ (UN Doc. A/CN.4/424) Yearbook of the International Law Commission (1989), vol. II, Part One, 153–68

provided additional clarity to officials: Article 105 paragraph 2 stipulated that “[r]epresentatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.”

The Convention on the Privileges and Immunities of the United Nations was negotiated to further clarify the protection of the United Nations and Specialized Agencies. The Convention specifies the notion of “functional” immunity and outlines privileges enjoyed by United Nations officials with a high degree of precision. Article II Section II of the Convention provides that “The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity.”

Other benefits include the negotiation of privileges enjoyed within the territory of member states. Article II, section 7, of the United Nations Convention exempts the United Nations from all direct taxes as well as from customs duties and quotas concerning goods for the United Nations’ official use. This allows the UN and other organizations to efficiently conduct global operations. Other fiscal benefits include the freedom to purchase currencies and hold funds and securities without financial control from the state. Some regulation recognizes that the official communications of international organizations should not be interfered with. For example, in Ireland, the government grants that the official correspondence from the Council of Europe “may not be held up or subjected to censorship.”¹⁵

The agreements often protect the property and archives of IOs from state interference. In the headquarters agreement between the United States and the UN, law enforcement are prohibited from entering the UN premises except with the Secretary-General's consent. The receiving state will be liable for any unauthorized access. After Iran took archival documents from US consulates, the ICJ ruled Iran was liable in *Teheran Hostages* and ordered the return of documents.¹⁶ The Convention inspired a wave of contracting between IOs and states to protect the organization’s ability to operate across territories as other organizations sought valuable legal protection.

Scholars note that relative to diplomatic immunity or the immunity granted to foreign governments, the immunity international organizations receive is a growing trend. But it is also a highly variable trend. Although legal status is valuable to organizations, it is not automatically afforded by member states presenting a puzzling degree of variation in contracting between states and IOs (Figure 1). Rather than immunity becoming normalized as a principle of customary international law, states have instead granted IOs variable privileges and immunities. If cooperating through IOs allows states to achieve mutual gains, and legal immunity helps IOs

¹⁵ With regard to its official communications, EUTELSAT may employ all appropriate means of communication, including messages in code or cypher. Parties to the Protocol shall not impose any restriction on the official communications of EUTELSAT or on the circulation of its official publications. No censorship shall be applied to such communications and publications. European Telecommunications Satellite Organisation (EUTELSAT) (Privileges and Immunities) Order 2006 (S.I. No. 570/2006)

¹⁶ *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*; Order, 12 V 81, International Court of Justice (ICJ), 12 May 198

perform their mission, what explains why governments do not automatically provide this valuable legal status?

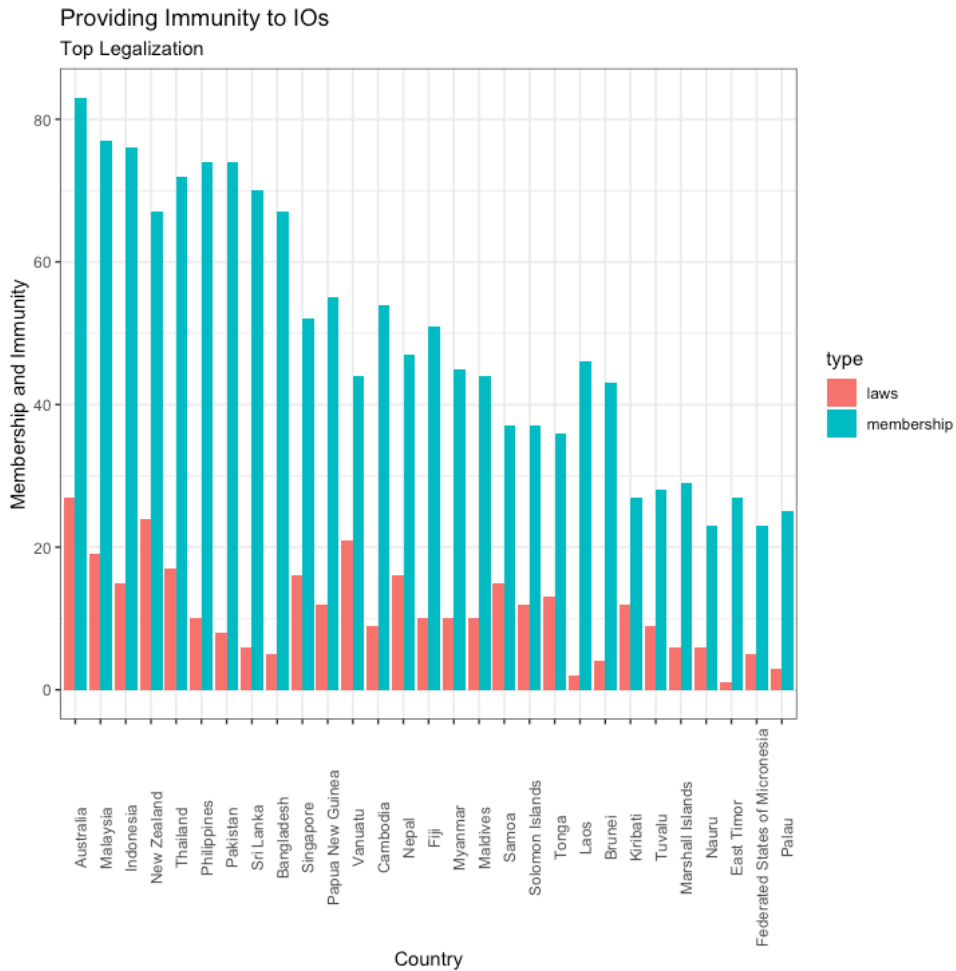


Figure 1: IO-State Agreements and Membership.
Original data collected by the authors, the IOs are randomly selected to plot.

III. The Impact of IO-State Bargains

Member states delegate varying degree of autonomy to international organizations. Relationships between international organizations and states are often modeled using principal-agent (P-A) theory.¹⁷ Bargaining occurs between states (principals) and international organizations (agents) where agent demands for greater independence are met with resistance from anxious principals.

Governments are hesitant to provide autonomy. Discretion provides IOs with the opportunity to make decisions on behalf of states. Delegation involves a “grant of authority to

¹⁷ Hawkins et al. 2006.

make decisions or take actions”¹⁸ that can lead to unintended consequences as international organizations gain power and move away from the terms contained within original grants of authority.¹⁹ Agency slack is a common problem in principal-agent relationships where actors escape their obligations and drift from the preferences of the principal.²⁰ Governments are mindful of the sovereignty costs associated with delegation. As Dai notes, “delegation is a matter of delicate balance between conflicting concerns, such as efficiency on the one hand and political control on the other”.²¹

We argue that IOs overcome the concerns of sovereignty costs to operate *horizontally* across their member states without concessions to *vertical* autonomy, a bargain that states find more palatable. Rather than pursue a high degree of vertical delegation, governments are more comfortable granting international organizations immunity through bilateral agreements. Isolating the provision of autonomy to bilateral agreements has three benefits. First, immunity agreements often involve hosting the headquarters or regional offices of an organization. These features have valuable benefits for governments in terms of attracting travel and raising the status of the country.

Second, immunity agreements ease the ability for IOs to conduct technical and capacity building projects within territorial boundaries, allowing governments to reap benefits from the missions. IOs argue legal immunity is critical to the ability to perform missions across borders. The International Labour Organization (ILO) organized a special committee to review the privileges and immunities granted by member states. The committee report noted that legal status is relevant to the ability to “properly deliver technical cooperation activities and to support the efforts of constituents”.²² Failure to secure immunity can result in delays in the commencement of technical cooperation to negotiate individual agreements, difficulties organizing events and conferences from the denial of visas; official meeting materials being searched, or customs duties being requested by national authorities, non-respect by national authorities of official immunity from legal process, including arrest and detention, and the burden of registering with tax inspectors or social security offices and paying fees from limited budgets.²³

Third, the agreements can be easily revoked, allowing governments to reign in any perceptions that the IO is abusing immunity and privileges granted through the bilateral agreement. Higher vertical delegation to the organization is difficult to manage when granted through a multilateral agreement, leading to collective actions problems associated with accountability. Horizontal autonomy is more palatable as it allows governments to negotiate specific terms within the agreement and include clauses that the president or executive can at any time revoke the provisions for a more manageable degree of oversight.

H1: IOs with a lesser degree of *vertical* delegated autonomy will achieve greater *horizontal* autonomy in the form of separate member-country agreements.

¹⁸ Bradley and Kelley 2008, 3.

¹⁹ Barnett and Finnemore 1999b.

²⁰ Cortell and Peterson 2006.

²¹ Dai 2002.

²² *The status of privileges and immunities of the International Labour Organization in member States* 2007, 1.

²³ *Ibid.*, 3.

Other factors involve the motivation of the organization to appeal for protection. IOs are not passive, but instead act strategically. The staff of international organizations desire to further their mandates, to survive and be secure, and achieve autonomy.²⁴ Legal immunity shields organizations from undue pressure and influence from states and involves increasing autonomy. Although the literature has tended to focus on the differences between agent and trustee functions²⁵, we focus on the motivations of IOs to demand immunity through the lens of administrative models. The design of international agreements is impacted by the involvement of international bureaucrats who appeal for particular types of contracts that promote the effectiveness of the organization.²⁶ Bureaucrats are essential to the implementation of policy and contribute to change and vitality within the organization.²⁷

In some cases, the staff of an international organization will operate almost entirely within one country. In other cases, an international organization, such as an international court, will have constant movement of its officials and visitors across borders. The global movement of delegates, counsel and participants drives the need to secure protection.²⁸ Financial organizations are impacted by the reach of activities. A recent United States Supreme Court Case, *Jam v. IFC*, considered allegations from farmers and fishermen living near a power plant financed by the International Financial Corporation. The petitioners claimed that the power plant resulted in the contamination of local drinking water, the degradation of local air quality, and the displacement of local fishermen. When considering arguments, Justice Breyer noted that organizations pursuing commercial activities are particularly dependent on legal immunity to avoid facing a flood of civil lawsuits.

Similar to firms, transnational functions can be outsourced or handled by permanent staff. As the policy scope of the international organizations changes, IOs often outsource to private actors or the officials of member states to perform particular types of activities. IOs that outsource to private actors have fewer motivations to protect staff since the bureaucrats of the organization are not performing activities abroad and subject to the risk of lawsuit. Outsourcing involves limited risk to the staff of the organization, whereas coordination of projects through an extensive in-house bureaucracy raises the motivations for the organization to demand legal protection from member states.

H2: IOs with a greater degree of *outsourcing* will be less motivated to achieve *horizontal* autonomy, securing fewer member-country agreements.

IV. Competing Explanations

When considering variation in international immunity, the conventional wisdom advances instrumental motivations as the source of variation: governments provide organizations with immunity when it is in their interests to do so. Granting immunity involves sovereignty

²⁴ Barnett and Coleman 2005, 597–598.

²⁵ Alter 2008; Elsig and Pollack 2014; Grant and Keohane 2005.

²⁶ Johnson 2013.

²⁷ Shanks, Jacobson, and Kaplan 1996; Haftel 2013; Gray 2018.

²⁸ Webb 2014, 326.

costs where governments forfeit the ability for individuals and businesses to bring cases in domestic courts. All governments seek to maintain full sovereignty and it is widely assumed that governments “are always anxious to shake off the restraining influence that international law might have upon their foreign policies”.²⁹ In the case of legal immunity, governments undertake risks to provide international organizations with protection from legal recourse. Providing immunity means that citizens lack recourse when harmed by international organizations in domestic courts. When the United Kingdom considered granting immunity to the International Atomic Energy Agency (IAEA), the House of Commons recommended a reservation on the degree of legal immunities granted to inspectors, “to limit to the absolute minimum the extent of the privileges and immunities to be accorded by Her Majesty’s Government”.³⁰ Powerful governments have the motives and means to resist providing unpopular privileges.

Many powerful governments, however, grant high levels of legal immunity. In the United States, the International Organizations Immunity Act (IOIA)³¹ of 1945 represents a Congressional attempt to facilitate the ability of IOs to perform functions without the threat of lawsuit.³² The IOIA delegates power to the president to grant immunity through executive agreements. Across different administrations, United States presidents selectively granted certain organizations this valuable status, elevating the US as one of the countries with the largest provision of immunity to IOs. Many US presidents have used immunity as a bargaining tool. The World Organization for Animal Health (OIE), for example, was founded in 1926 but received privileges during the Obama Administration³³ after the OIE agreed to open a liaison office in Texas.³⁴ The negotiations between the OIE and the United States suggest that powerful states do not always eschew immunity, but rather have used legal status and privileges to bargain with international organizations.

Other rival explanations focus on the composition of the organization. The provision of immunity varies significantly from country to country which itself suggest considering the influence of regime type within the organization. Some conceive of support for multilateralism as driven by democratic norms and expect that democracies are more likely to participate in a zone of law and comply with the rules protecting the rights of the individual.³⁵ Democracies trust international procedures because they align with domestic political processes.³⁶ Many democratic governments support ideas advanced by theories of democracies and multilateralism. During debates regarding the ratification of immunity provisions in New Zealand, members of parliament reflected on an amendment to extend privileges to the International Criminal Court as “it would be extraordinary” for a country that has put “a great deal of faith in international

²⁹ Mearsheimer 1994; Morgenthau 1985, 259.

³⁰ See <https://api.parliament.uk/historic-hansard/lords/1960/dec/19/international-atomic-energy-agency>

³¹ 22 U.S.C. §§ 288-2881(2006).

³² Preuss 1946; Young 2012.

³³ Executive Order 13759, Designating the World Organisation for Animal Health as a Public International Organization Entitled to Enjoy Certain Privileges, Exemptions, and Immunities, <https://obamawhitehouse.archives.gov/the-press-office/2017/01/12/executive-order-designating-world-organisation-animal-health-public>

³⁴ OIE to establish US-based liaison office in College Station, Texas, <https://www.oie.int/en/for-the-media/press-releases/detail/article/oie-to-establish-us-based-liaison-office-in-college-station-texas/>

³⁵ Slaughter 1995

³⁶ Dixon 1994.

institutions, and a great deal of faith in international law, not to be party to the convention” suggesting that countries see particular immunity as supporting the continued vitality of the international system of laws and institutions.

Democracies face a tension in granting immunity due to the conflict with human rights. Democracies face a dilemma between supporting international organizations and addressing concerns about due process and backlash from affected individuals when they have limited recourse through domestic courts.³⁷ The issue came to a fore under reports of sexual crimes under UN peacekeeping operations who possess immunity for the acts committed while on missions.³⁸ Despite the possibility of revoking the grant of immunity, states have often decided to preserve the privileges granted.³⁹ In the United Kingdom, Members of Parliament were sensitive that granting immunity to international organizations meant that “no redress was possible to the citizens of this country.”⁴⁰ The Earl of Swinton summarized the irony of granting immunity to an organization dedicated to human rights, as “one of the elementary human rights that used to exist under the law and comity of nations, and certainly in this country, was that it was the human right of the citizen to be free to go to the courts if he was damnified by anybody.”⁴¹ More recent backlash includes instances when immunity allows officials to escape crimes, ranging from parking violations to drunk driving offenses.⁴²

V. Operationalizing Organizational Immunity

Data Collection: IO-State Agreements

Using legal databases⁴³ and the records of IOs, and the United Nations Treaty Series⁴⁴, our team produced two original measurements. We recruited a team of research assistants with language skills and assigned each student to a world region. Using legal databases, our team searched for domestic law and bilateral agreements granting privileges and immunities to international organizations.

One pathway for this to occur is through domestic regulation. For instance, Canada passed the *Foreign Missions and International Organizations Act* in 1991, establishing a process where grants of immunity to specific organizations are later stipulated through specific orders and amendments.⁴⁵ A similar process occurred in Australia through the *International Organizations (Privileges and Immunities) Act* that was passed in 1963. Privileges the

³⁷ Webb 2016.

³⁸ Freedman and Lemay-Hébert 2019, 591.

³⁹ Chachko 2016.

⁴⁰ HL Deb 25 July 1956 vol 199 cc202-5 <https://api.parliament.uk/historic-hansard/lords/1956/jul/25/international-organisation-immunities>

⁴¹ HL Deb 20 May 1958 vol 209 cc442-5, The Earl of Swinton, See <https://api.parliament.uk/historic-hansard/lords/1958/may/20/international-organisations-immunities>

⁴² Benedictus 2016.

⁴³ A variety of legal databases hosted at the University of Pennsylvania Law School were consulted, including the Foreign Law Guide, Global Regulation, and vLex.

⁴⁴ United Nations Treaty Collection, https://treaties.un.org/pages/UNTSONline.aspx?id=3&clang=_en

⁴⁵ The International Civil Aviation Organization, for example, was provided privileges through the *ICAO Privileges and Immunities Order (SOR/94-563)* in 1994.

International Sugar Organization, for example, were executed much later, as this IO received separate protections in 2013 through amendment procedures.⁴⁶

In the United States, the *International Organizations Immunity Act* represents a Congressional attempt to avoid the entanglement of national courts in the administration of international organizations to facilitate the ability of IOs to perform functions without the threat of lawsuit. Across different administrations, United States presidents have selected certain organizations to possess this valuable status through executive agreements.

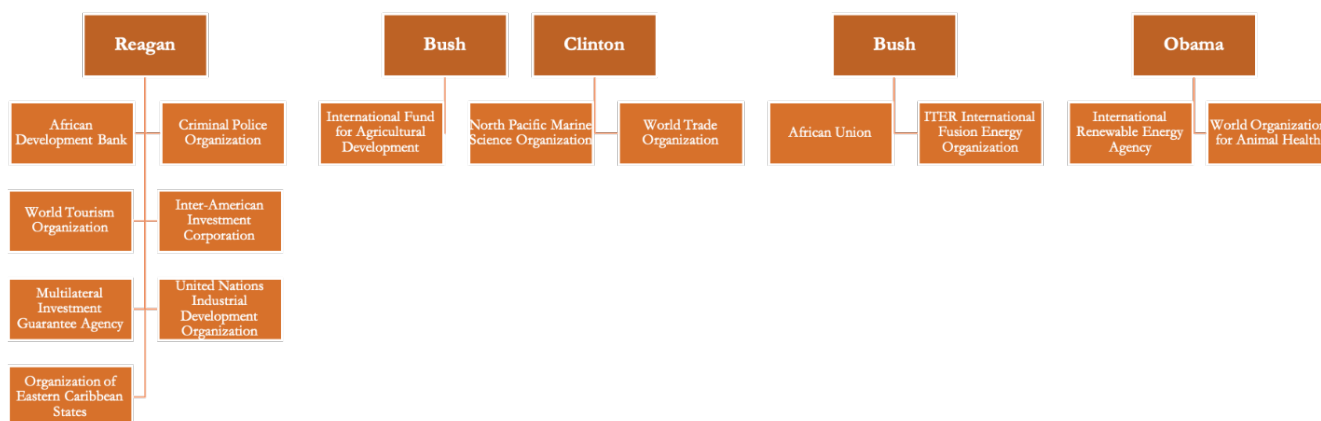


Figure 2: US Presidents and IO Immunity (1981 – 2016)

International agreements with IOs also include entering into bilateral agreements to extend additional privileges to the organization beyond the original mandate. One common form of law includes Headquarter and Host Country Agreement Acts that formally grants independence to the personnel and organization for operations within countries. The Permanent Court of Arbitration, for example, concluded agreements with a variety of different countries where arbitrations occur on an ad hoc basis outside of the Hague to provide protection for the officials adjudicating decisions and independence for the proceedings.

To capture *immunity agreements* across countries, we reviewed the records of governments and international organizations. We analyzed IO records to confirm the terms each organization received. Most IOs keep detailed records of the status of legal immunity granted, allowing our team to outline the year and country concluding legal agreements with IOs. For example, each year the United Nations Secretary-General is required to publish laws that impact the functioning of international organizations, allowing our team to locate bilateral agreements with UN organizations that grant legal protection and immunity. We produce a time-series measurement of the immunity laws each organization concludes in a given year and an IO-level score reflecting the number of immunity agreements an IO secures per member state.

⁴⁶ International Sugar Organization: <https://www.legislation.gov.au/Details/F2004C00161>

To capture the *intensity of immunity*, we reviewed the domestic legal records and recorded whether specific types of privileges were granted to IOs. Our team reviewed the official gazette where records are housed in each country to identify specific privileges granted under domestic law. Immunity is not strictly conceptualized as freedom from lawsuit but also includes immunity to import goods and send communications without interference from states. Other laws provide generous terms that offer IOs the right to display their emblem on domestic territory and receive protection of key meetings by national security forces or law enforcement.

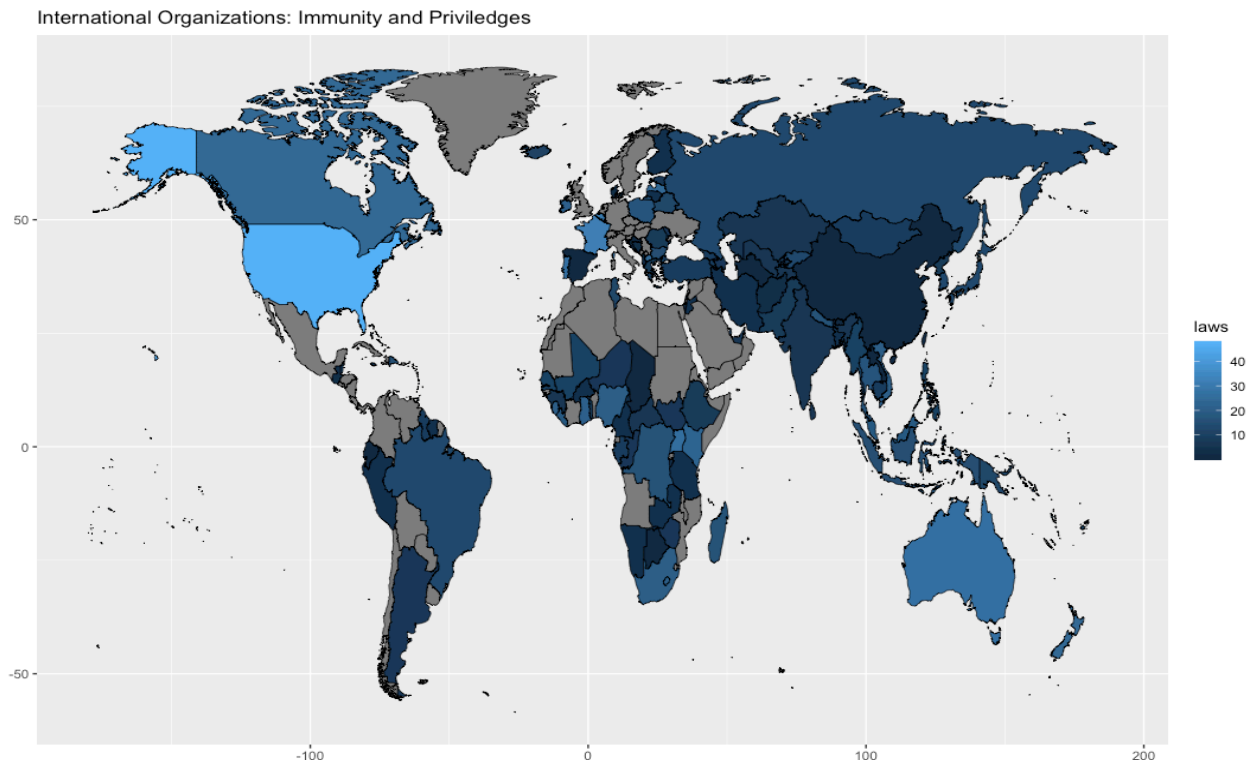


Figure 3: IO-State Immunity and Privileges Agreements

VI. Empirical Analysis

Validation

Our measurement of *immunity* should be compared to other measurements designed to capture characteristics of the relationship between states and international organizations. For a new measurement to have analytic purchase, it must adequately capture the dimensions of interest and reflect the independence of international organizations.⁴⁷ It must also be distinguished from adjacent concepts.⁴⁸

⁴⁷ Adcock and Collier 2001.

⁴⁸ Trochim and Donnelly 2008, vol. 2.

Scholars have widely explored delegation by tracing international agreements that empower third parties. In the Continent of International Law (COIL) project, Koremenos selects a random sample of 146 international agreements from the United Nations Treaty Series and codes design characteristics. To capture delegation, the COIL team operationalizes delegation as provisions that call for of arbitration and/or adjudication.⁴⁹ However, since this component makes up a small fraction of the overall mission of the project to describe the sample of international agreements, more specific attempts to examine delegation are stymied. Likewise, we are unable to compare which states delegate authority to specific international organizations. The COIL data tells us if the agreements refer to international organizations, but aspects of delegation are not specifically matched to international organizations leaving us with only a general understanding of agreements mentioning international organizations.

Others built upon studies of autonomy to closely examine variation in the authority granted to specific international organizations. Hooghe and Marks analyze 72 international organizations that cross a threshold of vitality, including having a certain number of staff and a permanent address to eliminate those that may be defunct or have a “zombie status” from analysis. Hooghe and Marks measure of “pooling” captures the extent to which governments cede their capacity to block decisions and relinquish authority over the policymaking process, coming closer to our concept of immunity that prevents the ability to bring lawsuits within domestic courts.⁵⁰ We analyze the relationship between pooling and immunity to determine if there is a relationship between two related concepts. These concepts are positively related as organizations that have greater autonomy over procedures are also the same organizations most protected by lawsuit with a Pearson’s correlation of 0.37 ($p < .01$).

⁴⁹ Specifically question 172, “Is adjudication or court a form of dispute resolution that is used?” and question 174, “is there a court or adjudication body created by the agreement”

⁵⁰ See footnote 9: “The minimum score is unanimous decision making. Discounts are applied to non-unanimous decisions that are partially binding or non-binding or require partial or full ratification. Super-majoritarian decision rules, partial ratification, and partial bindingness produce intermediate scores. Scores are calculated for each domain and summated on a scale from 0 (no pooling) to 6 (maximum pooling), then rescaled to 0 to 1”

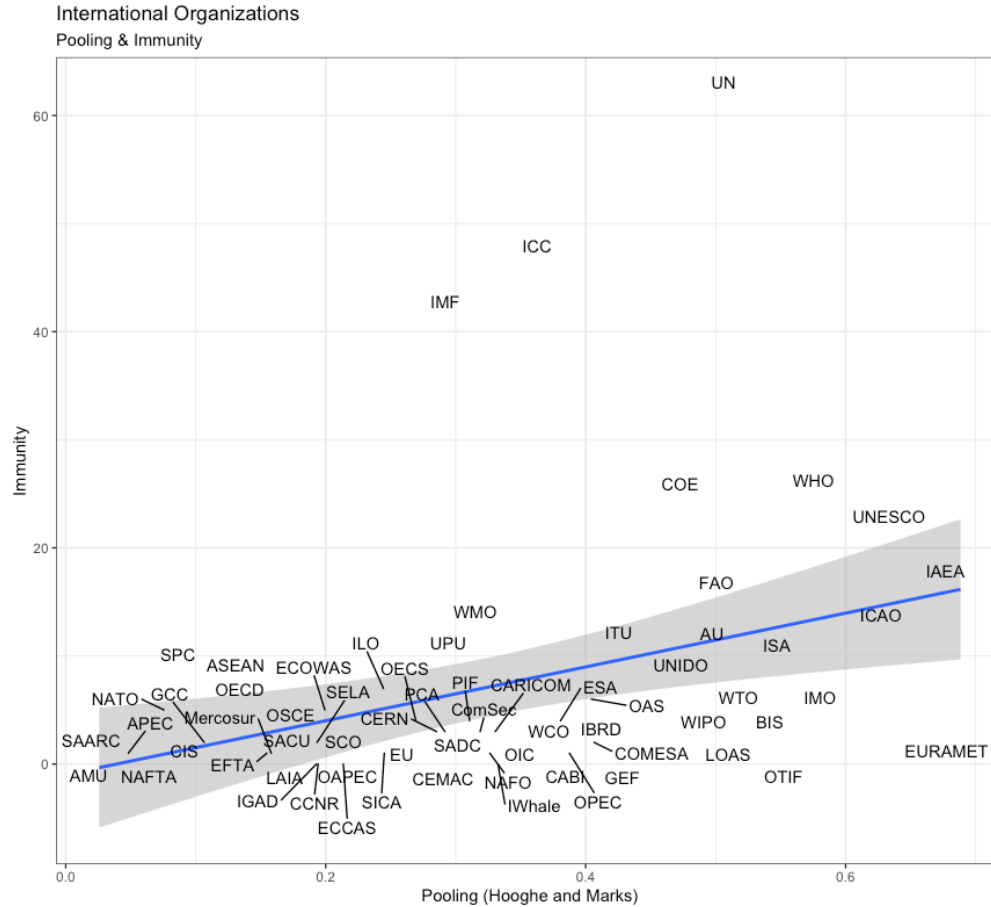


Figure 4: Pooling and Immunity

Immunity is original data measuring the number of agreements and pooling is downloaded from the International Authority website: <https://garymarks.web.unc.edu/data/international-authority/>

Delegation is operationalized by highlighting whether the secretary-general is empowered to take initiative in domains such as policy initiation, budget drafting, and the suspension of member states from the organization.⁵¹ The HM conception of delegation highlights the power and authority of a central leader within the organization to pursue decision-making on behalf of states. We explore the relationship between Hooghe and Marks’ measurement of delegation (vertical autonomy) with our measurement of immunity (horizontal autonomy). Some may argue that our measurement of immunity is simply capturing the overall delegation within the organization. We find that these measures are only weakly related, having a Pearson’s correlation of 0.182 that is not significant $p = .406$. The evidence suggests that we captured a distinct concept about the immunity of the organization from lawsuit that does not neatly overlap with delegation.

⁵¹ See footnote 8: “Delegation is calculated as a summated rating scale ranging from 0 (no delegation) to 9 (maximum delegation) by adding scores across these items, then rescaled from 0 to 1”

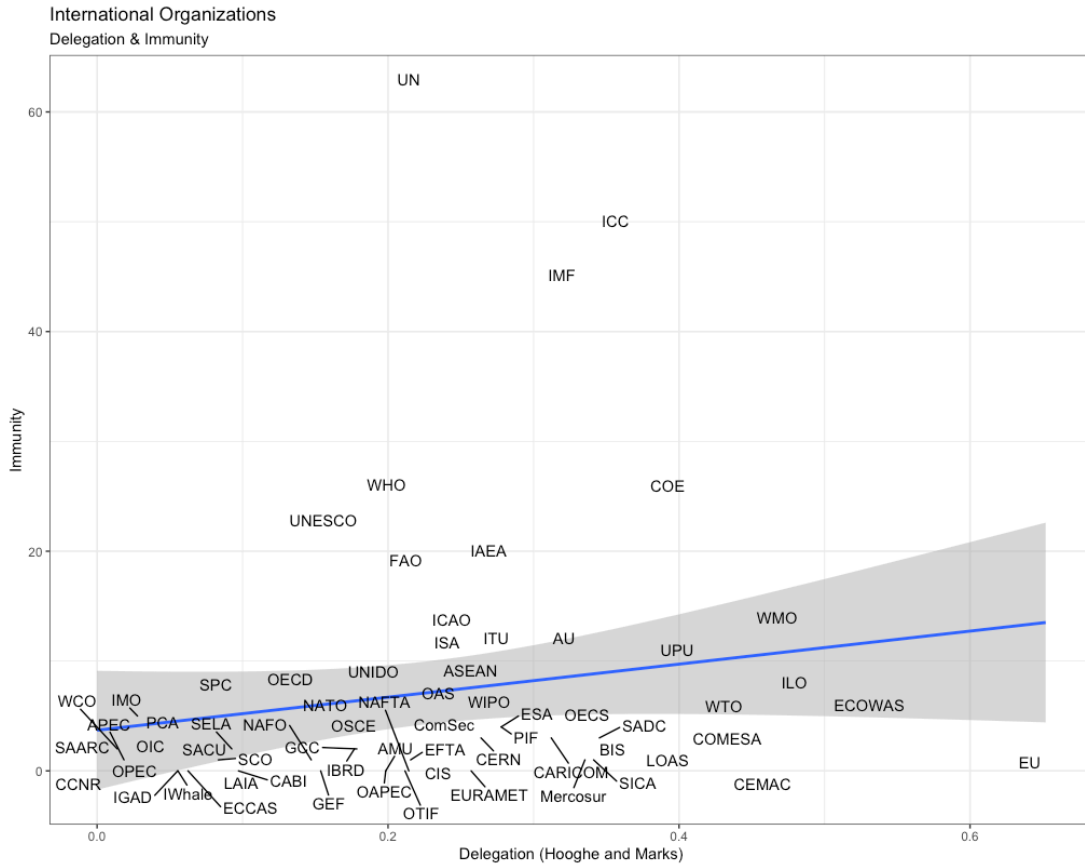


Figure 5: Delegation (Vertical Autonomy) and Immunity (Horizontal Autonomy)
Immunity is original data measuring the number of agreements and delegation is downloaded from the International Authority website: <https://garymarks.web.unc.edu/data/international-authority/>

The measure of delegation sheds light on the hypothesis that vertical and horizontal autonomy are not consistently accorded to international organizations. IOs with a lesser degree of *vertical* delegated autonomy like Association of Southeast Asian Nations (ASEAN), the International Seabed Authority (ISA), and the International Telecommunications Union (ITU) receive higher *horizontal* autonomy in the form of separate member-country agreements. Many IOs such as World Customs Organization (WCO), and the South Asian Association for Regional Cooperation (SAARC), however, fail to secure high levels of immunity agreements demanding greater evaluation of the differences between organizations with low vertical autonomy. We observe similar patterns with organizations with lower delegation securing higher levels of protection such as the European Organization for Nuclear Research (CERN) and the Council of Europe (COE).

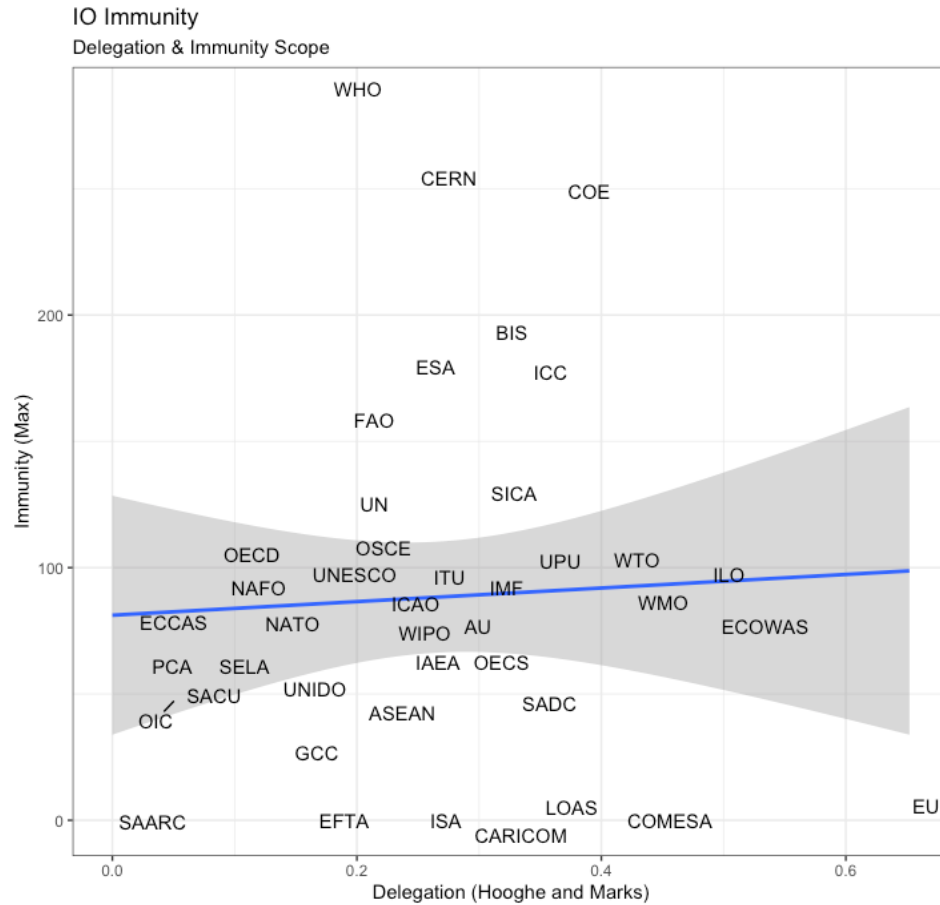


Figure 6: Delegation (Vertical Autonomy) and Immunity (Horizontal Autonomy)
 Immunity is measured as the length of text granting legal protection to the organization

Cases

We proceed with a most similar case design, holding as many characteristics as possible of the organization constant to assess differences in outcome. We analyze the number of immunity agreements the IO concludes across member states and variation in the ability of the organization to secure protection. We select two organizations with similar organizational characteristics and institutional design. ASEAN and APEC pursue economic integration in Southeast Asian and were constituted as weak organizations operating under soft law. ASEAN secured full immunity from all member states whereas APEC only secured protection from one country. We find that the APEC process of outsourcing and resulted in limited motivation for the bureaucrats to demand and secure legal protection.

Low Vertical Autonomy and High Horizontal Autonomy: ASEAN

The Association of Southeast Asian Nations (ASEAN) secured widespread immunity among all member states but possesses a low degree of vertical autonomy. ASEAN is an intergovernmental organization of ten Southeast Asian countries. Established by the 1967 Bangkok Declaration, ASEAN was constituted to promote peace and security. Governments designed ASEAN to operate through soft law mechanism and consensus-based decision-and dialogue. The ‘ASEAN way’ includes a process of compromise and consolidation that is

reflected in the governance structure of loose arrangements rather than legally binding documents.⁵²

The ASEAN Charter⁵³ codified institutional changes that reflected a commitment to “a more structured intergovernmental organization, in the context of legally binding rules and agreements”.⁵⁴ Within the Charter, ASEAN members conferred protection from lawsuit on the Secretary General and staff of the ASEAN Secretariat.⁵⁵ The Agreement on the Privileges and Immunities of the Association of Southeast Asian Nations concluded in 2009 reinforced the immunity conferred by the Charter and codified additional privileges, including immunity from taxation, financial controls, and import duties.⁵⁶

Part of the reason for pursuing immunity includes bureaucratic motivations to secure legal protection. A Secretariat was established in 1976⁵⁷ to achieve greater efficiency in coordinating more effective implementation of ASEAN projects. ASEAN began to promote economic cooperation in addition to regional security. Numerous legal documents were signed after the creation of the Secretariat that codified initiatives of the organization, including preferential trading arrangements⁵⁸, food security⁵⁹, and energy cooperation⁶⁰. In 1979, the government of Indonesia signed the Privileges and Immunities of the ASEAN Secretariat Agreement, which provided the Secretariat the opportunity to work in Indonesia without the threat of lawsuit.⁶¹ In the ASEAN Charter Article 7 requires member states to appoint permanent representatives to be based in the Jakarta headquarters, forming a Committee of Permanent Representatives that needs protection to work effectively across borders.

Low Vertical Autonomy and Low Horizontal Autonomy: APEC

The Asia-Pacific Economic Cooperation (APEC) promotes growth, cooperation, and investment among 21 economies in the Asia-Pacific region. APEC has been largely unsuccessful at securing legal privileges from members with only Singapore conferring valuable privileges and immunities on the organization.

APEC operates primarily through soft law mechanisms with limited legal protection.⁶² The 1992 Bangkok Declaration was a declaration of intent that mandates no legal obligations for member states. Since the Bangkok Declaration is not binding, APEC negotiated legal immunities for its headquarters granted under domestic law in Singapore.⁶³ However, the organization was unable to secure wider legal protection and privileges from member states. The lack of widespread protection has problematic implications. First, official travel to member states

⁵² Seah 2009, 199.

⁵³ 2005 Kuala Lumpur Declaration on the Establishment of the ASEAN Charter, 12 December 2005

⁵⁴ Phan 2016, 294.

⁵⁵ ASEAN Charter, Chapter VI, Article 18

⁵⁶ Agreement on the Privileges and Immunities of the Association of Southeast Asian Nations.

⁵⁷ 1976 Agreement on the Establishment of the ASEAN Secretariat, signed 24 February 1976

⁵⁸ 1977 Agreement on Preferential Trading Arrangements, signed 24 February 1977

⁵⁹ 1979 Agreement on ASEAN Food Security Reserves, signed 4 October 1979

⁶⁰ 1986 Agreement on ASEAN Energy Cooperation, signed 24 June 1986

⁶¹ 1979 Agreement between the Government of Indonesia and ASEAN Relating to the Privileges and Immunities of the ASEAN Secretariat, signed 20 January 1979.

⁶² Feinberg 2003, vol. 7.

⁶³ The International Organizations (Immunities and Privileges) (APEC Secretariat) Order 1993

between is stymied. APEC officials use their own passports and are subject to visa requirements and immigration restrictions.⁶⁴ More troubling, APEC and the Secretariat are not entitled to legal protection in foreign courts, so the Secretariat and APEC staff are exposed to legal risks when engaging in operations in APEC host countries.

Part of the reasoning for the low horizontal autonomy includes limited motivations to secure protection. Leadership of the organization is conferred in the APEC Secretariat. However, rather than centrally coordinating projects through the Secretariat, APEC operates through a decentralized structure. The Secretariat is largely described as a weak institution.⁶⁵ The executive director is rotated annually, limiting the ability for a central leader to set the agenda and drive policy initiatives. Program officers are staffed from member state governments on a temporary basis, where loyalty remains with home governments rather than APEC.⁶⁶ APEC's administrative tasks are undertaken by host economies, committees, and working groups, involving horizontal rather than centralized coordination. Even research tasks are outsourced to the Pacific Economic Cooperation Council, a partnership between government, business, and academia. These projects are often supported by national committees financed by their home governments.

Alternative Explanations

Some governments could have a stronger commitment to multilateralism that is reflected in the passage of immunity provisions in domestic law. Legislators in New Zealand suggested this purpose in passing the amendment to the Diplomatic Privileges and Amendments Bill granting the International Criminal Court immunity with the statement, “so we are proud, not only of the specific purposes of this International Criminal Court matter but also of underlining our commitment to multilateralism, which New Zealand is putting forward in this bill”.⁶⁷ Forming legal agreements with international bodies allows officials to bind themselves and “lock in” preferred international arrangements where IOs manage particular components of world affairs.⁶⁸ Officials in American politics, for example, seek “bureaucratic lock-in” where winners design structures that preserve decisions. However, we find a Pearson's correlation of 0.27 ($p < .01$) that suggests there is only weak correlation between regime type and providing immunity to organizations.

⁶⁴ Hsieh 2013, 127.

⁶⁵ Feinberg 2008; Hsieh 2013.

⁶⁶ Feinberg 2008, 224.

⁶⁷ See New Zealand “Diplomatic Privileges and Immunities Amendment Bill — Second Reading” https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20040219_00000718/diplomatic-privileges-and-immunities-amendment-bill-second

⁶⁸ Milner 1997, 45.

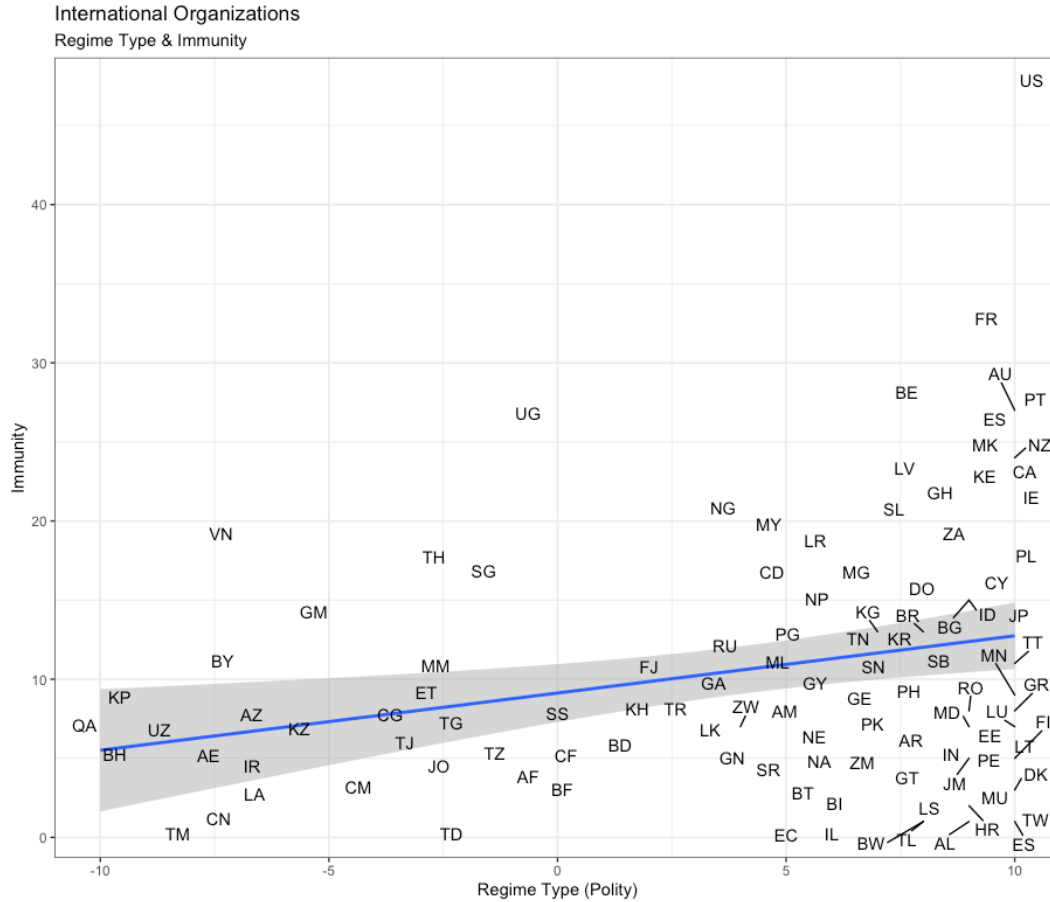


Figure 7: Regime Type and Immunity

Immunity is original data collected by the authors and regime type is measure by the 21 point Polity2 data: <https://www.systemicpeace.org/polityproject.html>

VI. Conclusion and Extensions

In all the literature on the legalization of international cooperation and delegation of authority, the concept of legal autonomy is overlooked, despite being a prominent part of relations between member states and IOs. This paper situates legal autonomy for IOs in the landscape of both the design of institutions and the bargain between states and IOs.

The study of the design and bargain of IOs is vast; so too the research agenda for IO immunity. We have collected – but have yet to fully explore – data on when countries bring IOs and their staff to trial in their own domestic judiciaries. IO immunity is an important ‘first stage’ of estimation: knowing which states offer which IOs legal immunity conditions the subsequent probability of a case being brought to court.

Scholars interested purely in the endogenous design of institutions could also further interrogate the relationship among such attributes as flexibility, delegation, obligation, and precision with respect to various types and degrees of IO legal immunity. Further, the study of

how IO design features diffuse – either through emulation or adaptation – could as well be applied to legal immunities.

There are also implications for IO legitimacy and accountability. The early justifications for IO legal immunity centered on a functional necessity for IOs and their staff to operate in foreign jurisdictions, but such insulation could prove controversial, suggesting that IOs can conduct business with impunity, unaccountable for their actions. Future research could examine the instances when government walk back immunity and revoke agreements.

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