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Immunity of International Organizations in United States Courts: Absolute or Restrictive?

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ABSTRACT

Since 1945, international and intergovernmental organizations have been entitled to immunity under the International Organizations Immunities Act (IOIA) akin to that enjoyed by foreign governments, which was absolute at that time. In 1976, however, passage of the Foreign Sovereign Immunities Act (FSIA) significantly restricted the nature of foreign governments' immunity. This Article addresses the issue of whether the FSIA also restricted the immunity enjoyed by international organizations. The first two sections describe the IOIA and the FSIA. The third section discusses a number of cases involving international organizations and the ways courts have been able to avoid the issue of whether the immunity enjoyed by international organizations has changed. The final section asserts that an international organization sued in a United States court can make a good argument based primarily on the legislative history of the two statutes that it is still entitled to absolute immunity.

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I. INTRODUCTION

The number and functions of international and intergovernmental organizations are legion. They also "exercise a political, economic and social influence of massive importance."[1] Organizations such as the United Nations (UN), the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (World Bank), and the Organization of American States (OAS) are well-known and the subject of frequent news stories. Other organizations, such as the International Civil Aviation Organization and the International Telecommunications Satellite Organization (INTELSAT), receive less publicity. All, however, are international and intergovernmental organizations that receive some level of immunity in United States courts.

Since the 1940s, these organizations have been entitled to immunity under the International Organizations Immunities Act (IOIA).[2] The IOIA originally provided organizations with the immunity enjoyed by foreign governments, which at the time was absolute—even in suits arising out of a commercial activity. The nature of the immunity for foreign governments changed radically in 1976, when Congress passed the Foreign Sovereign Immunities Act (FSIA).[3] The FSIA essentially provides governments only with restrictive immunity.[4]

This Article addresses whether the nature and extent of the immunity enjoyed by international organizations changed as a result of the enactment of FSIA. No provision in the FSIA expressly states that the statute changed the nature of the immunity enjoyed by international organizations. To date, many courts have noted the issue of whether the FSIA amended the IOIA, but none have addressed it.

Sections II and III describe the two primary statutes at work. Section IV discusses a number of cases involving international organizations and the ways courts have been able to skirt the issue of whether absolute or restrictive immunity applies to the organizations. Section V asserts that an international organization sued in United States courts has a good argument that absolute immunity still applies, notwithstanding the FSIA.

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1. Thomas J. O'Toole, *Sovereign Immunity Redivivus: Suits Against International Organizations*, 4 SUFFOLK TRANSNAT'L L.J. 1, 1 (1980).

2. 22 U.S.C. § 288 (1988).

3. 28 U.S.C. § 1602-11 (1988).

4. *See id.* § 1605. For example, if an embassy in the United States contracts with a company to provide supplies and the embassy fails to pay its bill, the supplier can bring suit in United States courts to collect. *See id.* § 1605(a)(2)-(3).

II. INTERNATIONAL ORGANIZATIONS IMMUNITIES ACT

Under international and national law, international organizations possess certain judicial immunities.[5] United States law provides immunity to these organizations,[6] absent waiver.[7] The IOIA provides in relevant part:

> International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.[8]

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5. The United States is not the only government that provides international organizations with immunity. *See, e.g.,* the United Kingdom's International Organisations Act, 1968, ch. 48.

6. Section 1 of the IOIA defines an "international organization" as:

> a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.

22 U.S.C. § 288. The international organizations recognized by the President pursuant to the IOIA may be found in an addendum to 22 U.S.C. § 288.

7. Section 1 of the IOIA provides also that:

> The President shall be authorized, in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities provided for in this subchapter . . . or to condition or limit the enjoyment by any such organization or its officers or employees of any such privilege, exemption, or immunity. The President shall be authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided in this subchapter or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this subchapter.

Id.

8. *Id.* § 288a(b).

Section 2(c) of the IOIA, 22 U.S.C. § 288a(c), also may have relevance to legal proceedings in the United States. That section provides: "Property and assets of international organizations, wherever located and by whomsoever held, shall be immune from search, unless such immunity be expressly waived, and from confiscation. The archives of international organizations shall be inviolable." Thus, international organizations should be able to effectively resist subpoenas in civil or criminal proceedings for the production of documents in the archives of the organization. *See* Keeney v. United States, 218 F.2d 843 (D.C. Cir. 1954) (United Nations files and information derived therefrom is privi-

When Congress enacted the IOIA in 1945, foreign governments were absolutely immune from suit in the United States.[9] The House Ways and Means Committee report on the legislation stated that in situations when "the United States Government associates itself with one or more foreign governments in an international organization, there exists at the present time no law of the United States whereby this country can extend privileges of a governmental character with respect to international organizations or their officials in this country."[10] The report stated that

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leged from disclosure).

The United States State Department also has issued an opinion on the inviolability of premises. In a memorandum provided to the Organization of American States (OAS), the Department wrote:

> The concept of inviolability of premises has applicability to property of a recognized international organization in the United States. . . . Under [the IOIA], the property and assets of an international organization wherever located, is immune from search and confiscation, unless such immunity is expressly waived. This principle, as expressed in the domestic statute, reflects the customary rule of international law that property and premises of foreign governments and international organizations used for official purposes are entitled to inviolability and may not be entered by authorities of the receiving state without first seeking permission of the Ambassador or equivalent representative. Consequently it would be improper for officers of the Metropolitan Police Department or other persons not previously authorized by the Organization of American States to attempt to enter the premises of the OAS for the purpose of conducting a search.

Memorandum from Horace F. Shamwell, Jr. to William Mailliard (July 10, 1974) (unpublished and on file with author). The arrest of an OAS employee in OAS' Washington headquarters for charges relating to the alleged possession of a firearm prompted the memorandum. The State Department refused to opine whether the violation of the principle of inviolability would have any effect on the criminal case itself.

9. *See, e.g.,* Broadbent v. Organization of American States, 628 F.2d 27, 30 (D.C. Cir. 1980). This court stated that "[a]s of 1945, the statute granted absolute immunity to international organizations, for that was the immunity then enjoyed by foreign governments."

10. H.R. REP. NO. 1203, 79th Cong., 1st Sess. (1945), *reprinted in* 1945 U.S.C.C. Serv. 946-47.

In the CHARTER OF THE UNITED NATIONS, U.S. DEP'T OF STATE, PUB. NO. 2349, REPORT TO THE PRESIDENT ON THE RESULTS OF THE SAN FRANCISCO CONFERENCE 160 (1945), *reprinted in* Privileges and Immunities, 13 WHITEMAN DIGEST § 4, at 36. the Secretary of State reported:

> So far as the United States is concerned, legislation will be needed to enable the officials of the United States to afford all of the appropriate privileges and immunities due the Organization and its officials. . . . Such legislation would deal with such exemption from various tax burdens and other requirements as is commonly granted to representatives of foreign governments. The enactment of legislation and its application to such persons would not be for the purpose of conferring a favor upon any individuals. It would rather be for the purpose of assuring to the

section 288a set forth "certain general exemptions which would be extended to international organizations including immunity from suit."[11]

Congress, in enacting the IOIA, undoubtedly intended to p;rovide these organizations with the absolute immunity then enjoyed by foreign governments. The question then becomes whether Congress intended that immunity to remain static or to vary with the type of immunity provided to governments.

III. Foreign Sovereign Immunities Act

In 1976, Congress passed the FSIA. The idea of sovereign immunity as "a doctrine of international law under which domestic courts, in appropriate cases, relinquish jurisdiction over a foreign state,"[12] originated from concepts of national sovereignty. These concepts developed from natural law, the divine right of kings, and the maxim that "the king can do no wrong."[13]

The United States recognized the doctrine of sovereign immunity early. In *The Schooner Exchange v. McFadden*,[14] Chief Justice Marshall deemed sovereign status a preeminent consideration in determining immunity. The case involved a vessel owned by a United States citizen that the French government seized in the mid-Atlantic and outfitted in France as a public armed ship. A storm forced the ship into a United States harbor, and the former owner brought an admiralty action. In granting immunity, the United States Supreme Court adopted the rule that public property destined for a public use is immune from the jurisdiction of its national courts.[15] The public purpose of a sovereign's prop-

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> Organization the possibility that its work could be carried on without interference or interruption. The according of such privileges and immunities is merely one aspect of cooperating with the Organization itself.

The Ways and Means Committee report noted that passage of the IOIA would satisfy the government's obligations to the United Nations, as well as support establishment of the United Nations' headquarters in the United States. *See* 1945 U.S.C.C. Serv. at 947.

11. *Id.* at 948.

12. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 8 (1976) [hereinafter 1976 House Report], *reprinted in* 1976 U.S.C.C.A.N. 6604, 6606.

13. *See* Clark C. Siewert, Note, *Reciprocal Influence of British and United States Law: Foreign Sovereign Immunity Law From The Schooner Exchange to the State Immunity Act of 1978*, 13 Vand. J. Transnat'l L. 761, 763 (1980).

14. 11 U.S. (7 Cranch) 116 (1812).

15. *See* Berizzi Bros. v. Steamship Pesaro, 271 U.S. 562 (1926). The Court supported its decision by looking to English law. For example, in *The Parlement Belge*, [1879-80] 5 P.D. 197 (Eng. C.A.), the King of Belgium owned the vessel involved that the Belgian Navy staffed, and that carried mail and merchandise. An English tug owner sought damages resulting from a collision, yet the court granted immunity. *The Porto*

erty received expansive interpretation.

The Court, however, began to question the absolute immunity doctrine in the 1940s. In *Ex Parte Republic of Peru*,[16] the Court accepted a State Department pronouncement that immunity should be granted without looking to any other factor.[17] In *Republic of Mexico v. Hoffman*,[18] the State Department did not take a position, but the Supreme Court denied sovereign immunity.[19] The Court wrote that in subsequent cases it would examine whether granting or denying immunity would result in embarrassment to the executive branch when determining whether to grant immunity.[20] Past State Department policy also would be considered.[21] Naturally, *Hoffman* created confusion in cases when the State Department did not communicate a position to the court.

In an attempt to resolve this confusion in 1952, the State Department issued the "Tate Letter,"[22] indicating that it would no longer recognize immunity for private acts of foreign sovereigns. The Department thus adopted the restrictive theory of immunity in the United States.

The Supreme Court recognized this theory in *Alfred Dunhill of London v. Republic of Cuba*,[23] in which a plurality declared that sovereign immunity no longer would be extended to commercial transactions engaged in by foreign states.[24] That same year, Congress passed the FSIA.[25]

The FSIA grants United States district courts original jurisdiction over in personam civil actions against a foreign state[26] when the state is

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Alexander, 1920 P. 30, 31 (Eng. C.A.), established absolute immunity doctrine in which the court wrote that a "sovereign state could not be impleaded either by being served in personam or indirectly by proceedings against its property; and if that were the principle it mattered not how the property was being employed."

16. 318 U.S. 578 (1943).

17. *Id.* at 586-87.

18. 324 U.S. 30 (1945).

19. *Id.* at 38.

20. *Id.* at 35-36.

21. *Id.* at 36.

22. 26 DEP'T ST. BULL. 984 (1952). The Tate Letter was named for the letter written by the Acting Legal Adviser to the Acting Attorney General.

23. 425 U.S. 682 (1976).

24. *Id.* at 706.

25. *See* 28 U.S.C. § 1602 (1988).

26. Section 1603(a) defines "foreign state" to include "a political subdivision of a foreign state or an agency or instrumentality of a foreign state." 28 U.S.C. § 1603(a) (1988). The later term is defined by Section 1603(b) as any entity:

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or

not entitled to immunity by reason of an exception or an applicable international agreement.[27] Section 1604 of the FSIA indicates that foreign states generally are immune from suit, unless an exception can be found or an international agreement applies.[28] The legislative history indicates that once a foreign state produces prima facie evidence of immunity, the burden of going forward shifts to the plaintiff to produce evidence establishing that the state is not entitled to immunity.[29] The ultimate burden of proving immunity rests with the foreign state,[30] and the FSIA sets forth the sole and exclusive standards to be used in resolving questions of foreign sovereign immunity.[31] As Judge Gesell wrote, even under the

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political subdivision thereof, and

(3) which is neither a citizen of a State of the United States . . . nor created under the laws of any third country.

Id. § 1603(b).

27. 28 U.S.C. § 1330. For the FSIA exceptions, see 28 U.S.C. § 1605-07 (1988). *See generally In re Matter of Sedco*, 543 F. Supp. 561, 564 (S.D. Tex.), *vacated*, 610 F. Supp. 306 (S.D. Tex. 1984).

28. This section provides the following:

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act[,] a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

28 U.S.C. § 1604.

The most common exceptions to immunity are waiver (§ 1605(a)(1)), commercial activity (§ 1605(a)(2)-(3)), and certain tortious acts (§ 1605(a)(5)).

Moreover, the statute continues:

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

(a) for which the foreign state would not be entitled to immunity under section 1605 of this chapter had such claim been brought in a separate action against the foreign state; or

(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

28 U.S.C. § 1607.

29. *See In re Sedco,* 543 F. Supp. at 564.

30. 1976 House Report, *supra* note 12, at 17, *reprinted in* 1976 U.S.C.C.A.N. at 6616.

31. *Id.* at 12, *reprinted in* 1976 U.S.C.C.A.N. at 6610.

Foreign states—but not their agencies or instrumentalities—may not be held liable for punitive damages, even if immunity is denied. 28 U.S.C. § 1606. That section provides:

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 [commercial activities/torts] or section 1607 [counterclaims] of this chapter, the foreign state shall be liable in the same manner and

FSIA "immunity remains the rule rather than the exception."[32]

The FSIA also provides states with immunity from attachment of, or execution against, certain property they own.[33] At least one of these provisions strongly suggests, however, that Congress did not intend FSIA immunity to apply to international organizations.[34]

IV. CURRENT STATE OF INTERNATIONAL ORGANIZATIONS' IMMUNITY

Courts have not yet addressed the issue of whether the FSIA limits the immunity granted by the IOIA.[35] *Boimah v. United Nations General Assembly* precisely outlines the dispute: "It is unclear whether the [IOIA], by granting to international organizations immunity co-extensive with that of foreign governments, confers the absolute immunity foreign governments enjoyed at the time of the Act's passage, or the somewhat restrictive immunity provided for in the [FSIA]. . . ."[36]

The courts deciding international organization immunity questions have been able to avoid resolving this question because those cases in which the issue has arisen have resulted generally in a finding that such organizations are immune from suits over employee relationships or other purely internal administrative matters.[37] In other words, courts have not been forced to decide this question because of the very specific and limited context in which organization immunity cases have arisen. The "relationship of an international organization with its internal administrative staff is noncommercial, and, absent waiver, activities defining or arising out of that relationship may not be the basis of an action

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to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages.

Id.

See Gibbons v. Republic of Ir., 532 F. Supp. 668 (D.D.C. 1982) (foreign state not liable for punitive damages).

32. *Gibbons*, 532 F. Supp. at 671. The court went on to note that it "must respect the immunity of a foreign sovereign unless some exception to the rule of sovereign immunity is clearly warranted." *Id.*

33. 28 U.S.C. § 1609-11 (1988).

34. *See* discussion *infra* notes 76-77 and accompanying text.

35. *See* Mendaro v. World Bank, 717 F.2d 610, 618 n.54 (D.C. Cir. 1983); Tuck v. Pan American Health Org., 668 F.2d 547, 550 (D.C. Cir. 1981); Broadbent v. Organization of American States, 628 F.2d 27, 31 (D.C. Cir. 1980); Boimah v. United Nations General Assembly, 664 F. Supp. 69 (E.D.N.Y. 1987).

36. *Boimah*, 664 F. Supp. at 71.

37. *See* discussion *infra* at notes 61-66 and accompanying text.

against the organization. . . ."[38] Therefore, the immunity enjoyed by international organizations under either the IOIA or the FSIA insulates those organizations from jurisdiction in suits by its employees, as well as in suits concerning internal administrative matters.

In *Broadbent v. Organization of American States*,[39] seven discharged OAS staff members filed a breach of contract suit against the organization.[40] The court refused to decide the "difficult question" of whether an absolute or restrictive theory governed.[41] Instead, the United States Court of Appeals for the District of Columbia found that, under either theory, the OAS was immune from employment-related suits.[42] The court stated that international organizations must not be hindered in performance of their functions by individual member states. The international civil service is unique in nature and should operate free from national politics.[43] Similarly, "[a]n attempt by the courts of one nation to adjudicate the personnel claims of international civil servants would entangle those courts in the internal administration of those organizations."[44] Judge Leventhal expressed concern that denial of immunity would open the door to divided decisions of different courts, which would undercut uniformity in the application of staff rules and negotiations and impair the organization's ability to function effectively.[45]

Broadbent set the tone for other courts to follow in employment or administration-related cases. For example, *Mendaro v. World Bank* involved sexual harassment and discrimination claims brought by a former World Bank employee.[46] The district court dismissed the suit. The Court of Appeals for the District of Columbia affirmed,[47] finding that World Bank's immunity applied and that the Bank's Articles of Agree-

38. *Broadbent*, 628 F.2d at 35; *see also Mendaro*, 717 F.2d 610; *Tuck*, 668 F.2d 547; Donald v. Orfila, 618 F. Supp. 645 (D.D.C.), *aff'd per curiam*, 788 F.2d 36 (D.C. Cir. 1986); Morgan v. Int'l Bank for Reconstruction and Dev., 752 F. Supp. 492 (D.D.C. 1990); *Boimah*, 664 F. Supp. 69; Chiriboga v. Int'l Bank for Reconstruction and Dev., 616 F. Supp. 963 (D.D.C. 1985); Novak v. World Bank, No. 81-1329 (D.D.C. Dec. 21, 1983); Kissi v. De Larosiere, No. 82-1267 (D.D.C. June 23, 1982); Jacob v. Curt, No. 88-591-PA (D. Or. June 8, 1989); Weidner v. Int'l Telecommunications Satellite Org., 392 A.2d 508 (D.C. 1978).

39. 628 F.2d 27 (D.C. Cir. 1980).

40. *Id.* at 28.

41. *Id.* at 32.

42. *Id.* at 35.

43. *Id.* at 34 (footnote omitted).

44. *Id.* at 34-35.

45. *Id.* (footnote omitted).

46. 717 F.2d 610, 612 (D.C. Cir. 1983).

47. *Id.* at 613.

ment[48] did not constitute a waiver of immunity for internal disputes. The court acknowledged that the Bank's Articles of Agreement did not waive immunity from actions arising from external activities. The court, however, held that article III, section 1 did not dictate a waiver of immunity to actions arising from internal operations.[49] Instead, the court held that the Articles provided the World Bank with functional immunity—immunity that would enable the organization to carry out its mission properly.[50] A waiver of immunity involving "internal administrative grievances is not necessary for the Bank to perform its functions, . . . could severely hamper its worldwide operations"[51] and "would lay the Bank open to disruptive interference with its employment policies."[52]

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48. Article VII, section 3 provides:

> Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Articles of Agreement of the Int'l Bank for Reconstruction and Dev., Dec. 27, 1945, art. 7, sec. 3, 60 Stat. 1440, 1457-58, 2 U.N.T.S. 134, 180.

Compare article VII, section 3 *with* IMF article IX, section 3, *infra* note 59 and accompanying text.

49. *Mendaro*, 717 F.2d at 618.

50. *Id. See* United States *ex rel.* Casanova v. Fitzpatrick, 214 F. Supp. 425 (S.D.N.Y. 1963).

51. *Mendaro*, 717 F.2d at 615.

52. *Id.* Also, courts have found that United States labor laws do not apply to international organizations. For example, the court in *Herbert Harvey, Inc. v. NLRB*, 424 F.2d 770 (D.C. Cir. 1969), ruled that the World Bank was outside the ambit of the National Labor Relations Act and was not subject to National Labor Relations Board (NLRB) orders. In *National Detective Agencies, Inc.*, 237 N.L.R.B. No. 72, 1978 NLRB Dec. (CCH) ¶19,530, 32,474 (Aug. 14, 1978), the NLRB refused to assert jurisdiction over a third-party employer with respect to security guards assigned to the Inter-American Development Bank and the IMF. *Id.* at 32,478. The NLRB found that immunity existed even though a third party actually employed the security guards. The NLRB found this primarily because the immune international organizations exercised almost complete control over the working conditions of the security guards. *Id.* at 32,477 In a letter ruling, the NLRB subsequently declared the World Bank not to be subject to its jurisdiction, stating:

> The charge alleges that a security official employed by the . . . World Bank, unlawfully threatened an employee with termination for having engaged in union activity. The Board has held that, as an international organization, The World Bank enjoys the privileges and immunities from the laws of the sovereignty in which it is located customarily extended to such organizations, absent a clear ex-

Following and quoting *Mendaro*, the court upheld the World Bank's immunity from employment-related suits in *Novak v. World Bank*,[53] dismissing an action involving allegations of age discrimination and conspiracy on the ground that it "does not touch on the Bank's external, commercial activities but rather on its internal personnel practices."[54]

In *Chiriboga v. International Bank for Reconstruction and Development*,[55] the United States District Court for the District of Columbia extended the scope of *Mendaro* by holding that the Bank was immune from suits brought by employees and third party beneficiaries over matters relating to the administration of employee benefits.[56] Judge Joyce Green wrote that "[i]t is difficult to imagine a suit that touches more closely on the internal operations of an international organization."[57]

Kissi v. De Larosiere[58] involved an employment discrimination case brought against the Managing Director of the IMF. In that case, the district court held the IMF and its Managing Director to be immune for actions performed in his legal capacity. The court relied on the IMF's Articles of Agreement, which provided the organization with immunity from every form of judicial process, unless waived.[59] The court deemed rejection of an employment application, even if discriminatory, to be official action to which immunity attached.

In *Tuck v. Pan American Health Organization* (PAHO),[60] the court found PAHO immune from suit by an outsider, a nonemployee who had contracted to provide legal services to the PAHO Staff Association.[61] The plaintiff claimed that PAHO had breached and tortiously interfered with his contract, that it had discriminated against him on the basis of race, and that it had interfered with his attorney-client relationship with PAHO employees.[62] The court confirmed PAHO's immunity, holding that the suit "arose from PAHO's supervision of its civil service person-

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pression of Congress that particular legislation was intended to apply to such an organization.

Letter from Albert W. Palewicz, NLRB Acting Regional Director, to Local 525, Service Employees Int'l Union (Dec. 20, 1988) (unpublished and on file with author).

53. No. 81-1329 (D.D.C. Dec. 21, 1983).
54. *Id.*, slip op. at 2.
55. 616 F. Supp. 963 (D.D.C. 1985).
56. *Id.* at 967.
57. *Id.*
58. No. 82-1267 (D.D.C. June 23, 1982).
59. *See* Articles of Agreement of the Int'l Monetary Fund, Dec. 27, 1945, art. ix, sec. 3, 60 Stat. 1401, 2 U.N.T.S. 39, 74.
60. 668 F.2d 547 (D.C. Cir. 1981).
61. *Id.* at 550.
62. *Id.* at 548-49.

nel and from its provision and allocation of office space."[63]

In *Boimah v. United Nations General Assembly*,[64] the court found that the United Nations was immune from an employment discrimination suit brought by a temporary worker at the United Nations.[65] "Recent case law is clear that an international organization's self-regulation of its employment practices is an activity essential to the 'fulfillment of its purposes,' and thus an area to which immunity must extend."[66]

In the recent case of *Alpha Lyracom Space Communications, Inc. v. Communications Satellite Corp.*,[67] the court held that COMSAT, a private corporation created by Congress and designated as the United States representative to INTELSAT, an international organization designed to facilitate world-wide communications systems, is immune from a lawsuit brought under the antitrust laws.[68] INTELSAT's member nations are all signatories to a definitive agreement, which provides that any member nation wishing to establish or use a non-INTELSAT international satel-

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63. *Id.* at 550.

64. 664 F. Supp. 69 (E.D.N.Y. 1987).

65. *Id.* at 72. Article 105(1) of the United Nations Charter 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." U.N. CHARTER art. 105(1). One court interpreted this provision to provide the United Nations with functional immunity. United States *ex rel.* Casanova v. Fitzpatrick, 214 F. Supp. 425, 431 (S.D.N.Y. 1963). The history of this article states:

> The draft article proposed by the Committee does not specify the privileges and immunities respect for which it imposes on the member states. This has been thought superfluous. The terms *privileges* and *immunities* indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. . . . But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other.

XIII DOCUMENTS OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION 703, 704-05 (1945), *reprinted in* Privileges and Immunities, 13 WHITEMAN DIGEST § 4, at 35-36.

The United Nations immunities are also grounded in the Convention on Privileges and Immunities. Article II, section 2 of the Convention provides that the United Nations "shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity." Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, art. 2, sec. 2, 21 U.S.T. 1418, 1422, 1 U.N.T.S. 15, 16-18.

66. *Boimah*, 664 F. Supp. at 71.

67. 1990-2 Trade Cas. (CCH) ¶69,188 (S.D.N.Y. 1990).

68. *Id.* at 64,584.

lite system must first receive approval from an INTELSAT group.[69]

Plaintiff owned such a non-INTELSAT satellite. It filed an action under the Sherman and Clayton Acts, seeking injunctive relief and damages. It alleged that COMSAT refused to negotiate with INTELSAT on its behalf and that COMSAT had engaged in anticompetitive conduct to hinder its entry into the domestic and international telecommunications markets.[70]

COMSAT argued that it was immune under the IOIA and INTELSAT agreements. The court, however, relied on language in the statute establishing COMSAT and on the complaint's allegations concerning COMSAT as the United States representative to INTELSAT, but not COMSAT as an owner of a communications common carrier.[71]

Morgan v. International Bank for Reconstruction and Development,[72] decided in September 1990, illustrates the breadth of the current rule on sovereign immunity. Morgan filed an action against the World Bank for false imprisonment, libel, slander per se, and intentional infliction of emotional distress.[73] Morgan's complaint alleged that he was a temporary secretary assigned to the World Bank by an employment agency. He asserted that on November 14, 1989, after arriving at work, his World Bank identification pass was confiscated, and he was taken into custody by World Bank security personnel or agents, who accused him of theft.[74] World Bank agents purportedly told Morgan that he was terminated, but they later allowed him to return to his position at the Bank. He claimed continued harassment by the Bank's security personnel.[75]

The World Bank asserted immunity from Morgan's suit as an international organization and moved to dismiss. The district court granted the motion on the basis that "[d]ecisions in this Circuit have uniformly upheld immunity in cases involving relations between an international organization and its employees."[76] Following *Mendaro*, the court ruled that "employee relations of any kind cannot be the subject of litigation against the Bank,"[77] and that the Bank's Articles of Agreement "constitute a waiver of immunity only from those suits 'arising out of its exter-

69. *Id.* at 64, 582-83.
70. *Id.* at 64, 580.
71. *Id.* at 64, 582-83.
72. 752 F. Supp. 492 (D.C. Cir. 1990).
73. *Id.* at 493.
74. *Id.*
75. *Id.* at 495.
76. *Id.* at 493.
77. *Id.* at 494.

nal commercial contracts and activities.' "[78] The court then went on to find that Morgan's claims arose directly from the World Bank's employment practices, for which the World Bank did not waive its immunity.[79]

According to the court, nothing about the claim in that case related to the World Bank's external lending or commercial activities.[80] Based on the facts pleaded by Morgan, Judge Gesell had no trouble finding that the case was limited to the grievances of an individual staff member concerning an employment relationship.[81] If this suit were allowed to proceed, it "would force the Bank to defend internal employment practices traditionally shielded by immunity."[82] Consequently, the district court found an absence of any waiver of immunity in the situation prevented Morgan from litigating his claim.

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78. *Id.* at 493 (quoting *Mendaro*, 717 F.2d at 618).

79. *Id.* at 494.

80. *Id.* The only case that declined to recognize an asserted claim of immunity by an international organization is Lutcher S.A. Celulose e Papel v. Inter-American Dev. Bank, 382 F.2d 454 (D.C. Cir. 1967). Lutcher was a Brazilian company that received a World Bank loan. *Id.* at 455. It brought an action when the Bank made a loan to Lutcher's competitor, allegedly in violation of its loan agreement. *Id.* The court denied immunity in that case, which, as the court recognized in *Mendaro*, "arose out of the Bank's external lending activities." 717 F.2d at 620. The *Lutcher* court wrote:

> Just as it is necessary for the Bank to be subject to suits by bondholders in order to raise its lending capital, it may be that responsible borrowers committing large sums and plans on the strength of the Bank's agreement to lend would be reluctant to enter into borrowing contracts if thereafter they were at the mercy of the Bank's good will, devoid of means of enforcement.

382 F.2d at 459-60 (footnote omitted). *See also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, § 467, Reporters' Note 3 (1987) ("The charters of the International Bank for Reconstruction and Development and other international financial institutions contain provisions permitting suits against the organization under some circumstances and in selected venues; these provisions were designed to permit suits by bondholders and related creditors.").

81. *Morgan*, 752 F. Supp. at 494. Judge Gesell further said:

> Morgan attacks the Bank's handling of its internal investigation into cash allegedly stolen from one of the offices at its headquarters. Bank guards and officials allegedly detained Morgan, questioned him about personal details, denied access to counsel, failed to show cause, questioned his colleagues about him, placed him under surveillance in-house, caused a coworker to believe that Morgan had been fired for stealing money and gave conflicting signals as to whether he would receive a letter of exoneration. This alleged course of conduct arose directly from Morgan's work at his job. Accordingly, the fact that Morgan is not in all respects formally an employee of the Bank but serves on detail from his agency is of no legal consequence. . . . That the conduct of Bank officials may have been improper is irrelevant.

Id.

82. *Id.*

The district court also found that the commercial activity and tort exceptions of the FSIA[83] did not justify piercing the Bank's immunity. The court reached these conclusions after "assuming arguendo that the restrictive immunity standard of [the FSIA], rather than the absolute immunity of international organizations, applies to the World Bank."[84] Thus, according to Judge Gesell, even if the FSIA's restrictive theory of immunity governed, as Morgan claimed, the World Bank would still be immune, and Morgan's complaint would be dismissed.[85]

The district court first ruled that the "commercial activity" exception of the FSIA[86] did not apply and thus did not remove the World Bank's immunity. Morgan argued that because he was a temporary employee assigned to World Bank under contract with an employment agency, the action should be considered commercial in nature. The court rejected this argument. Because Morgan's claims arose from the World Bank's employment practices, rather than from the arrangement between World Bank and Morgan's temporary employment agency, it involved no "commercial activity."[87]

Second, the court held that even assuming that the FSIA applied, Morgan's suit could not be maintained under the tort exception of the FSIA.[88] "By its own terms, the tort exception does not pierce immunity

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83. 28 U.S.C. § 1605(a)(5).

84. *Morgan*, 752 F. Supp. at 494.

85. *Id.*

86. 28 U.S.C. § 1605(a)(2). That provision denies immunity in any case:

> in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States.

Id. "Commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purposes." 28 U.S.C. § 1603(d).

87. *Morgan*, 752 F. Supp. at 494.

88. *Id.* The tort exception of the FSIA denies immunity in any case:

> in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—
>
> (A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or
>
> (B) any claim arising out of malicious prosecution, abuse or process, libel, slander,

for two of the complaint's four counts, those alleging libel and slander."[89] Consequently, the court deemed Morgan's libel and slander counts precluded by the express language of the FSIA.

The court found the remaining two claims, false imprisonment and intentional infliction of emotional distress, to be foreclosed by the discretionary function exemption of the FSIA.[90] The district court relied on *MacArthur Area Citizens Association v. Republic of Peru.*[91] In *MacArthur*, the United States Court of Appeals for the District of Columbia held that the Peruvian Government's decision to purchase a building and modify it to incorporate "specific security measurements" was immune from a suit by neighbors alleging zoning violations by FSIA immunity as a "decision[] made in the execution or implementation of a discretionary policy or activity, namely, establishing a chancery for the Naval Attache in the District of Columbia."[92] Applying *MacArthur*, Judge Gesell noted that the complaint alleged a continuous investigation process, involving the participation of high-level World Bank Security and Ethics Department officials, designed to locate missing money.[93] "The alleged false imprisonment and intentional infliction of emotional distress clearly involved the exercise of policy judgment. According to the complaint Morgan was singled out, detained, and extensively questioned, and there was strong indication that Morgan's supervisor knew in advance that security personnel would be questioning Morgan."[94] World Bank executives also clearly monitored and guided Morgan's treatment after the first incident.[95] Therefore, no waiver or FSIA exception applied to the immunity enjoyed by the World Bank for these actions.[96]

Because of holdings that organizations are immune from suits concerning employee relationships or other purely internal administrative matters, irrespective of which immunity theory applies, the issue remains open.

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misrepresentation, deceit, or interference with contract rights.
28 U.S.C. § 1605(a)(5).

89. *Morgan*, 752 F. Supp. at 494-95 (citing 28 U.S.C. § 1605(a)(5)(B)).

90. *Id.* at 495; *see* 28 U.S.C. § 1650(a)(5)(A).

91. 809 F.2d 918 (D.C. Cir. 1987).

92. *Id.* at 922-23.

93. *Morgan*, 752 F. Supp. at 495.

94. *Id.*

95. *Id.*

96. Employees of at least some international organizations have a forum for employment-related disputes. For example, the World Bank has an administrative tribunal that hears and decides grievances. *See Mendaro*, 717 F.2d at 616; *see also Broadbent*, 628 F.2d at 28 (OAS Administrative Tribunal).

V. Which Theory of Immunity Applies?

At some point, a case will arise that joins the issues presented in this Article. For example, an employee of an international organization may negligently injure a third party during the course of this employee's duties on a public street. In a resulting suit against the international organization, the plaintiff will assert that the restrictive theory applies and the international organization is not immune under the FSIA tort exception.[97] If the organization asserts its immunity and moves to dismiss, the court cannot avoid ruling on the absolute versus restrictive issue.

A well-supported argument can be made to the effect that recognized international organizations should receive absolute immunity. Indeed, the District of Columbia Circuit expressly wrote in a footnote "arguments exist for an immunity under the [IOIA] exceeding that offered under the FSIA."[98]

The two relevant statutes standing alone do not support this argument.[99] The FSIA does not contain a provision that clearly applies the statute to international organizations. Therefore, the history of the two acts may be relevant.[100]

A review of the legislative history of the IOIA indicates that it refers to "foreign governments."[101] The IOIA legislative history does not reveal, however, that Congress intended the immunity to vary with that granted to those governments. The House Report said something very different: "In general, . . . the privileges and immunities provided in this legislation are similar to those granted by the United States to foreign

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97. *See* 28 U.S.C. § 1605(a)(5).

98. Millen Indus. v. Coordination Concil for American Affairs, 855 F.2d 879, 883-84 n.5 (D.C. Cir. 1988). By finding immunity under the FSIA, the court did not reach the IOIA question.

Commentators are split on the question. *Compare* Note, *Jurisdictional Immunities of Intergovernmental Organizations*, 91 Yale L.J. 1167, 1179 (1982) ("as a matter of law, the passage of the FSIA has had no effect on the IOIA," but arguing that international organizations should be entitled to only restrictive immunity) *with* O'Toole, *supra* note 1, at 11-12 ("The overriding Congressional intent which springs from a reading of the immunity provisions of the [IOIA] is that international organizations and foreign sovereigns shall be treated the same. This purpose cannot be achieved without adjusting the scope of the IOIA immunity to match the provisions of the FSIA.").

99. *See, e.g.*, Caminetti v. United States, 242 U.S. 470, 485 (1917) ("Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion.")

100. *See, e.g.*, K Mart v. Cartier, Inc., 486 U.S. 281, 291 (1988) ("In ascertaining the plain meaning of the statute, the court must look to the particular statutory language, as well as the language and design of the statute as a whole.").

101. 22 U.S.C. § 288a(b); *see supra* note 7 and accompanying text.

governments and their officials. However, this legislation has the advantage of setting forth in one place all of the specific privileges which international organizations will enjoy."[102] The implication of the report is plain: Congress intended for IOIA immunities to remain static and not to change as the immunities provided to foreign governments changed.

The plain language and legislative history of the FSIA indicate that Congress did not mean to change the immunity status of IOIA organizations. By its own terms, the FSIA only applies to "foreign states" or to an "agency or instrumentality of a foreign state," which Congress specifically defined in the Act.[103] International organizations do not fall within either of these definitions.[104] Therefore, nothing in the legislative history reveals that Congress intended the FSIA to amend implicitly the IOIA. Rather, the House Report stated that the FSIA "is intended to pre-empt any other State or Federal law (excluding applicable international agreements) for according immunity to foreign sovereigns, their political subdivisions, their agencies, and their instrumentalities."[105] Because Congress fails to mention international organizations, one can only presume this silence meant Congress did not intend to disturb the IOIA.

The legislative history of the only FSIA section that mentions international organizations directly supports this interpretation of the IOIA and the FSIA. Section 1611(a) of the FSIA provides:

> the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the [IOIA] shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.[106]

The House Report clearly indicates that Congress designed section 1611(a) "to permit international organizations designated by the President pursuant to [IOIA] to carry out their functions from their offices located in the United States without hindrance by private claimants seek-

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102. H.R. REP. No. 4489, 79th Cong., 1st Sess. (1945), *reprinted in* 1945 U.S.C.C. Serv. 946, 950 [hereinafter 1945 House Report].

103. 28 U.S.C. § 1603(a).

104. The House Report's examples of what would be an agent or instrumentality (state trading corporation, mining enterprise, transport organization, central bank, government procurement agency) do not include any international organization. 1976 House Report, *supra* note 12, at 15-16, *reprinted in* 1976 U.S.C.C.A.N. at 6614.

105. *Id.* at 12, *reprinted in* 1976 U.S.C.C.A.N. at 6610.

106. 28 U.S.C. § 1611(a).

ing to attach the payment of funds to a foreign state. . . ."[107] The Report said that this provision specifically included the World Bank and the IMF.[108] It concluded by stating that "[t]he reference to 'international organizations' in this subsection is not intended to restrict any immunity accorded to such international organizations under any other law or international agreement."[109] The emphasized language could not be clearer, and the Senate Report reiterates it.[110] The IOIA is obviously an "other law." The language of the Report provides powerful evidence that Congress did not intend to disturb the immunity of international organizations by enacting the FSIA.

In addition, the introduction of legislation in the last session of Congress that would have expressly provided those international organizations entitled only to FSIA immunity implies that those organizations are currently entitled to broader immunity from suit. Senator Roth of Delaware introduced a bill that amended the IOIA to include a provision stating that "For purposes of [section 288a(b)], the phrase 'same immunity from suit and every form of judicial process as is enjoyed by foreign governments' means the same immunity to which foreign states are entitled under [the FSIA]."[111] The bill also would have amended the FSIA to make clear that it applies to recognized international organizations.[112]

In introducing the legislation, Senator Roth explained its purpose:

> Pursuant to the International Organizations Act of 1945, international organizations were granted the same immunity from suit and judicial process enjoyed by foreign governments. At that time, foreign governments generally enjoyed absolute immunity from suit and judicial process.
>
> During the years since 1945, the degree of foreign governments' immunity has changed from absolute to restrictive. As I understand it, the primary feature of restrictive immunity is that a foreign government would still be immune from judicial process for its governmental and sovereign acts, but not for its commercial acts. Even though the immunity enjoyed by foreign governments has changed, the 1945 law has not been changed

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107. 1976 House Report, *supra* note 12, at 30-31, *reprinted in* 1976 U.S.C.C.A.N. at 6629-30.

108. *Id. reprinted in* 1976 U.S.C.C.A.N. at 6629-30.

109. *Id. reprinted in* 1976 U.S.C.C.A.N. at 6630.

110. S. REP. NO. 1310, 94th Cong., 1st Sess. 30 (1976). The Committee reports should be particularly important here because Congress passed FSIA without debate during its rush to adjourn. 122 CONG. REC. H33,536 (daily ed. Sept. 29, 1976).

111. S. Res. 2715, cl. (B), 101st Cong., 2d Sess., 136 CONG. REC. 7601 (1990) (not enacted).

112. *Id.* The bill was given prospective application. *Id.* at cl. (C).

> and the listed international organizations retain absolute immunity.
>
> I have been contacted by officials from a domestic corporation which held contracts from an international organization. In seeking redress for a perceived commercial wrong, this constituent corporation was informed that the organization enjoyed absolute immunity from every form of judicial process. I believe that restrictive immunity as defined above is in the best interest of domestic corporations who deal with international organizations. For this reason I am introducing a bill to amend the International Organizations Immunities Act and Title 28, United States Code, to restrict the jurisdictional immunity to which certain international organizations are entitled.[113]

The Senate Judiciary Committee did not report the bill in 1990, and it has not been re-introduced this session.

Little judicial authority exists for an argument that international organizations still should recieve absolute immunity. One analogous case, *Jacob v. Curt*,[114] may be helpful. That case involved a wrongful death action against two PAHO employees and others alleged an improper deprivation of the right to receive medical treatment. The complaint alleged that the Bahamas's government shut down a cancer clinic based, in part, on false reports by the PAHO employees. PAHO itself was not a defendant. The court dismissed the complaint on the basis of section 228d(b).[115] The court deemed the employees to possess absolute immunity for acts taken in the course of their official duties.

Jacob provides only marginal support for the proposition that PAHO also is absolutely immune. The court granted IOIA immunity in *Jacob* on the basis of a different section, section 228a, which ties the immunity possessed by international organizations to that possessed by foreign governments. No comparable provision exists in section 288d(b), and the FSIA does not apply to individuals. In addition, policy reasons may exist for giving broader immunity to the employee instead of the organization, such as a breakdown of the loss shifting and spreading. The converse policy argument, however, could also be made.

In *Donald v. Orfila*,[116] the district court noted that an international organization should receive "absolute immunity" under the IOIA.[117] The statement, however, was in dicta because the court again applied

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113. 136 CONG. REC. S7601-02 (daily ed. June 7, 1990).

114. No. 88-591-PA (D. Or. June 8, 1989).

115. That section protects officers and employees of international organizations by providing immunity "from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as . . . officers or employees."

116. 618 F. Supp. 645 (D.D.C.), *aff'd per curiam*, 788 F.2d 36 (D.C. Cir. 1986).

117. *Id.* at 648.

section 228(b). The opinion failed to address the FSIA at all. Consequently, while the legislative history seems rather clear, little case support exists for the preservation of the absolute theory to protect international organizations.

In addition, the United States has taken the position that international organizations now receive only the restrictive immunity provided for by the FSIA. In a June 24, 1980 letter to the Equal Employment Opportunity Commission, the State Department Legal Adviser wrote that: "The [FSIA] amended [United States] law by codifying a more restrictive theory of immunity subjecting foreign states to suit in U.S. courts in respect of their commercial activities . . . while continuing their exemption from U.S. jurisdiction for sovereign or governmental activities. . . ."[118] Under this view, international organizations now are subject to United States jurisdiction for their commercial activities, but retain immunity for their public acts.[119]

VI. CONCLUSION

An argument can still be made, however, that the IOIA's absolute immunity protections remain undisturbed. As indicated in *Mendaro*, the joint action of several states creates international organizations,[120] while private corporations are organized only under the laws of one or more individual nations. "By definition, activities of international organizations are designed to resolve problems spanning national boundaries, with a benefit to be reaped collectively by the organizations' member nations."[121] Thus, United States national law would provide recognized international organizations with a higher level of immunity in order to better achieve the benefits conferred.

In *Balfour, Guthrie & Co. v. United States*,[122] the court wrote: "International organizations, such as the United Nations and its agencies, of which the United States is a member, are not alien bodies. The interests of the United States are served when the United Nations' [sic] interests are protected."[123] Indeed, the House Ways and Means Committee Report on the IOIA noted that United States self-interest in this type of

118. Letter from Robert B. Owen, State Department Legal Adviser, to Leroy D. Clark, General Counsel, Equal Employment Opportunity Commission (June 24, 1980), *reprinted in* 74 AM. J. INT'L L. 917-18 (1980).

119. *Id.*

120. *Mendaro*, 717 F.2d at 619.

121. *Id.*

122. 90 F. Supp. 831 (N.D. Cal. 1950).

123. *Id.* at 834.

legislation is two-fold because "such legislation will not only protect the official character of public international organizations located in this country but it will also tend to strengthen the position of international organizations of which the United States is a member when they are located or carry on activities in other countries."[124] The immunity provided to foreign governments has been described as designed "to promote the functioning of all governments by protecting a state from the burden of defending lawsuits abroad which are based on its public acts."[125]

The same rationale does not apply, however, to nonpublic acts of the foreign government. By entering the market place or acting as a private party, modern international law provides no justification "for allowing the foreign state to avoid the economic costs of the agreements it breaches or the accidents it creates; the law should not permit the foreign state to shift these everyday burdens of the marketplace onto the shoulders of private parties."[126] In other words, the reason for granting foreign governments immunity differs from the justification for providing international organizations with such protection.

Moreover, as section 1 of the IOIA contemplates,[127] an international organization could have its immunity curtailed by the President if the organization abuses its privileges or engages in improper activities in the United States.[128] Thus, the immune organizations have a powerful incentive not to abuse their immunity. International organizations always have the option to waive their immunity, whether absolute or restrictive, and submit to the jurisdiction of United States courts for particular cases. Consequently, a finding that international organizations are still entitled to absolute immunity, even in the face of the restrictive immunity afforded to foreign governments by the FSIA, would be rational and further the interest of United States policy.

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124. 1945 House Report, *supra* note 102, *reprinted in* 1945 U.S.C.C. Serv. at 947.

125. *Jurisdiction of U.S. Courts in Suits Against Foreign States: Hearings Before the Subcomm. on Administrative Law and Governmental Relations*, 94th Cong., 1st Sess. (1976) (statement of Monroe Leigh, Legal Adviser, State Department).

126. *Id.*

127. *See* 22 U.S.C. § 288.

128. The House Report clearly states that:

> The Committee believes that the interests of the United States are adequately protected by the restrictions which have been created. The board powers granted to the President will permit prompt action in connection with any abuse of the privileges and immunities granted hereunder or presumably for other reasons such as the conduct of improper activities by international organizations in the United States.

1945 House Report, *supra* note 102, *reprinted in*, 1945 U.S.C.C. Serv. at 948.