Penn State Journal of Law & International Affairs

Volume 9 | Issue 2

May 2021

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ISSN: 2168-7951

Penn State
Journal of Law & International Affairs

2021 VOLUME 9 NO. 2

A FUNCTIONAL FRAMEWORK TO BALANCE ACCOUNTABILITY WITH THE NEEDS OF INTERNATIONAL ORGANIZATIONS: INTERNATIONAL ORGANIZATION IMMUNITY POST-*JAM*

By Trillium Chang[*]

ABSTRACT

Prior to 2019, international organizations were untouchable. These larger-than-life entities touch almost every corner of the international arena. Yet historically, international organizations enjoyed absolute immunity from liability in U.S. fora.

Jam v. International Finance Corp., a 2019 Supreme Court case, shifted the entire landscape of international organization immunity. The Supreme Court held that international organizations are only entitled to the "same immunity" foreign sovereigns enjoy today. But in the wake of Jam, the Court left multiple interpretive issues unresolved. Critically, Jam now raises the question of how courts are to grant international organizations the "same immunity" as foreign sovereigns, especially since the two bodies of law have diverged over time.

This Article aims to fill the gap. It first illustrates how Jam laid bare several interpretive difficulties. The Article then discusses why courts should restrain the impulse to apply foreign sovereign immunity jurisprudence wholesale to international organizations. Finally, the Article charts a rights-based functional framework that resolves Jam's interpretive issues and weighs the needs of international organizations against accountability under the rule of law.

TABLE OF CONTENTS

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INTRODUCTION

Prior to 2019, international organizations were untouchable. Whenever a person engages in international activities, whether it be purchasing groceries that originate abroad, sending a postcard on vacation, or licensing a patent in a foreign country, chances are an international organization is involved. These larger-than-life organizations seemingly touched every corner of the international arena: from the obscure North Pacific Anadromous Fish Commission, which conserves migrating fish, to those with household names, like the United Nations, which runs a yearly budget of over $53 billion. Although these entities differed drastically in their composition, mandate, and functions, they held one thing in common. Whenever these strange legal entities—neither private citizens, corporations, or states—stumbled into U.S. courts, they always emerged unscathed.

Prior to *Jam v. International Finance Corp.*,[1] a Supreme Court case decided in March 2019, international organizations ("IOs") enjoyed absolute immunity in U.S. courts. Under U.S. law, IOs are specialized intergovernmental agencies protected through executive order. Immunity rules are part and parcel of international and U.S. laws governing IOs. Whenever new IOs are created, standard immunity rules are usually specified in the constituent instruments of the organization, whether it be in multilateral treaties or headquarter agreements. Yet in the United States, Congress created an additional layer of immunity for IOs under the International Organizations Immunities Act (IOIA).[2] Prior to 2019, courts interpreted the IOIA

[1] *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019).

[2] *See* International Organizations Immunities Act, Pub. L. No. 79-291, 59 Stat. 669 (1945) (codified as amended at 22 U.S.C. §§ 288-288l) (2020) [hereinafter International Organizations Immunities Act]; *infra* Part II.B.

to mean that IOs enjoy absolute immunity in U.S. fora.[3] Under this legal regime, the IOIA cloaked IOs with an impenetrable shield from liability under almost all circumstances.

Jam, however, created a chink in the armor of IO immunity.[4] For the first time, the Supreme Court interpreted the IOIA as granting IOs restrictive—not absolute—immunity. The Court held that IOs enjoy the "same immunity" that foreign sovereigns are entitled to at the present moment. [5] In other words, IOs are stripped of liability under circumstances where foreign sovereigns do not enjoy immunity. Today, IOs may be exposed to liability in the United States for the very first time.

But in the wake of *Jam*, multiple interpretive issues remain unanswered. *Jam* raises the thorny question of how courts should grant IOs the "same immunity" from suit that foreign governments enjoy today. The Supreme Court did not resolve these derivative interpretive issues. And although lower courts may be tempted to apply the Foreign Sovereign Immunities Act ("FSIA") jurisprudence wholesale to the IOIA, this is ultimately untenable because the two statutory schemes have diverged over time. At bottom, IO immunity is based on a different entity, context, and framework.[6]

At the time of writing, no literature has addressed this interpretive gap laid bare by *Jam*. While IO immunity cases percolate, lower courts now have to break unchartered grounds.[7] Judges need a

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[3] *See, e.g.*, *Atkinson v. Inter-American Dev. Bank*, 156 F.3d 1335 (D.C. Cir. 1998) (finding that the International Organization Immunity Act ("IOIA") granted the Inter–American Development Bank immunity from garnishment); *Broadbent v. Org. of Am. States*, 628 F.2d 27 (D.C. Cir. 1980) (holding that under the IOIA, the Organization of American States was shielded from a lawsuit by its employees for alleged improper discharge); *Brzak v. United Nations*, 551 F. Supp. 2d 313 (S.D.N.Y. 2008) (holding that under the IOIA, the United Nations and its former officials were immune from suit for alleged violations of Title VII and the Racketeer Influenced and Corrupt Organizations Act).

[4] *Jam, supra* note 1; *see infra* Part II.B.

[5] *Jam*, 139 S. Ct. at 771-72.

[6] *See infra* Part III.

[7] Multiple cases related to International Organization (IO) immunity are now pending or being decided by lower courts. These courts must now address the

framework to resolve these interpretive questions. And crucially, this framework is imperative for putting IOs on notice and for allowing plaintiffs to seek redress.

Ultimately, this Article proposes a functional framework to resolve the interpretive difficulties exposed by *Jam*.[8] This framework allows courts to grant IOs the "same immunity" as foreign sovereigns while balancing the needs of IOs against accountability under the rule of law.

This Article first illustrates how *Jam* left open the interpretive issue of how courts should grant IOs the "same immunity" from suit as foreign governments. The Article then discusses why courts should restrain the impulse to apply FSIA jurisprudence whole cloth to IOs. Finally, the Article charts a functional framework that resolves the interpretive issues following *Jam* and allows courts to weigh its various values.

Part I first provides a background on the history of IOs: how IOs first emerged, their historical context, and evolution. Next, it briefly describes IOs and their characteristics. It then lays out an empirical survey of active IOs recognized by the United States through a statute.

Next, Part II analyzes the evolution of IO immunity and its relationship to foreign sovereign immunity. It illustrates how foreign sovereign immunity evolved from absolute to restrictive immunity. It also illustrates how, although IO immunity and foreign sovereign immunity initially developed in parallel, the two bodies of law

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interpretive issues left open by *Jam, supra* note 1. *See, e.g.*, Complaint & Demand for Jury Trial, *Doe v. Int'l Fin. Corp.*, No. 1:17-cv-01494-UNA (D. Del. Oct. 24, 2017) (International Finance Corporation (IFC) sued for financing palm oil corporations that allegedly dispossessed and murdered Honduran farmers); *Francisco S. v.*, *Aetna Life Ins. Co.*, No. 2:18-cv-00010-EJF, 2020 WL 1676353 (D. Utah Apr. 6, 2020) (World Bank Group sued for breach of contract); *Rodriguez v. Pan Am. Health Org.*, No. 18-cv-24995-GAYLES, 2020 WL 1666757 (S.D. Fla. Apr. 3, 2020) (Pan American Health Organization sued over employment dispute); *Renje Zhan v. World Bank*, No. 19-cv-1973 (DLF), 2019 WL 6173529 (D.D.C. Nov. 20, 2019) (World Bank sued over alleged failure to compensate contractors).

[8] *See infra* Part IV.

eventually diverged and took a life of their own. And finally, it explains how *Jam* introduced a shift in the landscape of IO immunity, where IOs are now subject to restrictive, not absolute, immunity.

Part III turns to the interpretive issues left in the wake of *Jam* and argues against reading the FSIA jurisprudence wholesale into IO immunity. After *Jam*, courts are tasked with granting IOs the "same immunity" as foreign sovereigns.[9] Yet given the long evolution of foreign sovereign immunity, and the more extensive jurisprudence under that statute, applying its case law directly to the IO context is not workable for three reasons. First, applying FSIA case law wholesale does not actually grant IOs the "same immunity" as foreign sovereigns. To illustrate this point, this Article provides an empirical overview of the level of immunity specified in the constituent documents of IOs. This overview demonstrates that IOs, even without applying the FSIA, already enjoy far more protection than foreign sovereigns in U.S. courts. This observation cuts against applying FSIA wholesale to the IO context.

Second, applying FSIA wholesale to IO immunity results in impracticable interpretive difficulties. These difficulties are rooted in FSIA's distinction between sovereign and private acts. Since IOs do not possess sovereignty, this distinction cannot easily be applied in the IO context.

Third, the legislative history of the IOIA demonstrates that IOs derive their immunity from a need to maintain their autonomy and independence, not out of an imperative to respect the autonomy of other sovereigns. This desire to protect IO functions indicates that a functional approach in determining IO immunity is more faithful to the IOIA's legislative intent.

Finally, Part IV proposes a rights-based functional framework for courts to determine what IO activities should be cloaked with immunity. This Article advances a functional framework that allows courts to balance the operational needs of IOs against other judicial

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[9] *Jam*, 139 S. Ct. at 771-72.

values, such as accountability under the rule of law and fairness to litigants.

I. BACKGROUND TO INTERNATIONAL ORGANIZATION IMMUNITY

The birth of IOs goes hand in hand with the wave of internationalism that followed World War I and II. This internationalism was coupled with an urgency to collaborate and reconstruct the world through intergovernmental bodies, also known as "international organizations." And in order to protect the autonomy and functions of IOs, sovereign states granted IOs immunity in their fora.

This Part discusses (A) the history of IOs; (B) general characteristics of IOs; (C) the evolution of IO immunity.

A. History of International Organizations

IOs came into existence in a milieu of reconstruction following World War I and II. The League of Nations was the first attempt at an IO that was multilateral, universal, and democratic.[10] Following the heels of World War I, the international community—fifty states strong—formed the League to keep the peace.[11] Its founders also intended the League to facilitate a more orderly management of world affairs, whether it be political, economic, financial, or cultural.[12] The League derived its legal force from the Covenant of the League of Nations, the first twenty-six articles of the Treaty of Versailles imposed on Germany and its allies.[13] Yet

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[10] Isabella Löhr, *The League of Nations*, LEIBNIZ INST. OF EUROPEAN HIST. (Aug. 17, 2015), http://ieg-ego.eu/en/threads/transnational-movements-and-organisations/international-organisations-and-congresses/isabella-loehr-the-league-of-nations.

[11] F.S. NORTHEDGE, THE LEAGUE OF NATIONS: ITS LIFE AND TIMES 1 (1st ed. 1986).

[12] *Id.*

[13] *See* Treaty of Versailles art. 1-26, June 28, 1919. By signing onto the Treaty of Versailles, the contracting parties agreed to create a new international body, the League of Nations, to "promote international co-operation and to achieve international peace and security." *Id.* at pmbl.

ultimately the League brought neither peace nor collaboration, but instead caved in on itself and paved the way to World War II.[14]

IOs, however, went through a reincarnation after the Second World War. The war jolted a push towards collaboration, both for strategic purposes during the war and for reconstruction efforts after the war.[15] With the failures of the League still seared in their minds, the world's leaders sought to create long-lasting institutions that would deter aggression and maintain peace.[16]

These efforts culminated in the founding of the United Nations: a first of its kind IO that aspired for a new world order where member states worked collaboratively towards peace and security. Through its quasi-governmental organs—such as the General Assembly, Security Council, and the International Court of Justice—the United Nations carries out its mandate to maintain peace and security, protect human rights, advance the rule of law and development.[17]

Crucially, the genesis of the United Nations spurred the formation of IOs with more specific mandates.[18] After World War II, the Allies advocated for other affiliate institutions, with the hopes of targeting more specific policy areas, regional issues, and political agendas. For instance, neighboring states formed regional alliances like the Organization of American States and the European Community (now the European Union). Similarly, states established specialized institutions focused on the cooperation around, regulation of, and development of various subject matters, ranging from the

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[14] Historians have provided a whole slew of reasons explaining why the League of Nations collapsed. But scholars generally agree that the League's failure stemmed for its inability to provide adequate security guarantees for its members. *See* Jari Eloranta, *Why Did the League Fail?*, 5 CLIOMETRICA 27, 46-47 (2011).

[15] DAVID CLARK MACKENZIE, A WORLD BEYOND BORDERS: AN INTRODUCTION TO THE HISTORY OF INTERNATIONAL ORGANIZATIONS 33 (2010).

[16] PAUL KENNEDY, THE PARLIAMENT OF MAN: THE PAST, PRESENT AND FUTURE OF THE UNITED NATIONS 31-32 (2007).

[17] *See The Three Pillars*, UNITED NATIONS, https://www.un.org/ruleoflaw/the-three-pillars/ (last visited June 2, 2020).

[18] BARRY E. CARTER ET AL., INTERNATIONAL LAW 494 (7th ed. 2018).

human condition (e.g., World Health Organization, International Labor Organization) to highly technical matters (e.g. International Atomic Energy Agency). Of note, a group of IOs concerned with economic regulation, collectively known as the "Bretton Woods Institutions," also emerged.[19] These finance institutions, such as the World Bank and the International Monetary Fund, were tasked with placing the international economy on a sound footing after the war.[20] Today, all of these entities are referred under the umbrella term "international organizations," and they have become a ubiquitous presence in international relations and law.[21]

B. Characteristics of International Organizations

In general, legal scholars agree that IOs share three characteristics.[22] First, IOs are unique in the sense that their members are generally sovereign states, not individuals.[23] IOs may limit membership to states from a particular region or to states concerned with a discrete subject matter. But at a minimum, two states must be involved. Sometimes, IOs may involve actors that are not states.[24] For instance, IOs themselves are sometimes founding member of other IOs, as in the case of the EU acting as a founding member of the World Trade Organization.[25]

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[19] *See generally* JOHN F. CHOWN, A HISTORY OF MONETARY UNIONS (2003); ERIC HELLEINER, FORGOTTEN FOUNDATIONS OF BRETTON WOODS: INTERNATIONAL DEVELOPMENT AND THE MAKING OF THE POSTWAR ORDER (2014).

[20] THE WORLD BANK, A GUIDE TO THE WORLD BANK 29 (3d ed. 2011).

[21] *See generally* IAN HURD, INTERNATIONAL ORGANIZATIONS: POLITICS, LAW, PRACTICE (3d ed. 2018); DAVID C. MACKENZIE, A WORLD BEYOND BORDERS: AN INTRODUCTION TO THE HISTORY OF INTERNATIONAL ORGANIZATIONS (2010).

[22] *See* JAN KLABBERS, AN INTRODUCTION TO INTERNATIONAL ORGANIZATIONS LAW 1-14 (3d ed. 2015).

[23] *Id.* at 9-10.

[24] *Id.* at 9.

[25] *See The European Union and the WTO*, WTO, https://www.wto.org/english/thewto_e/countries_e/european_communities_e.htm (last visited July 2, 2020).

Second, IOs are generally formed on the basis of a treaty specifying its mandate and functions.[26] IOs are borne from a legal act governed by international law, rather than under some domestic legal system. And since IOs are created under international law, they are also governed by international law.[27] IOs are generally established to carry out specific functions which characterize their activities.[28] Yet not all IOs are formed by treaties. Some IOs may be formed by a legal act of another existing IO. For example, the United Nations, an IO itself, has established several other IOs by General Assembly resolutions, such as the World Food Program[29] and the United Nation's Children Emergency Fund.[30]

Finally, IOs are "organs with a distinct will."[31] At least one organ of the IO must have a "will distinct from the will of its member states."[32] This characteristic is why IOs have much stronger claims to privileges and immunities, than non-governmental organizations or private corporations.[33] To justify this special treatment, IOs cannot simply be a tool of member states. Instead, an IO must have a distinct will "in order to justify its raision d'etre and its somewhat special status in international law."[34] And by possessing this distinct will—a will that is independent of the aggregate opinion of its members—IOs are able to boast a stronger claim to immunities than private entities.

And so, IOs are organizations created by states on the basis of a treaty and an organ with a distinct will. Given these characteristics, IOs occupy a unique position in international law and

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26 *See* KLABBERS, *supra* note 22, at 10-12.

27 *Id.*

28 *See* G.A. Res. 66/100, at 3 (Dec. 9, 2011) ("Unlike States, international organizations are established for specific functions which characterize their activities. They are very diverse, given the enormous variety in their size, membership, functions and resources.").

29 *See* G.A. Res. 1714 (XVI) (Dec. 19, 1961*).*

30 *See* G.A. Res. 57(I) (Dec. 11, 1946).

31 *See* KLABBERS, *supra* note, 22, at 12-13.

32 *Id.*

33 *Id.*

34 *Id.*

are granted privileges and immunities distinct from other legal personalities.

C. Current Status of International Organizations

Currently, U.S. law recognizes sixty-seven active IOs.[35] These sixty-seven active IOs are headquartered across a range of countries, with twenty in the US (30%), eleven in Switzerland (17%), seven in France (10%), five in Canada (7%), four in the U.K. (6%), and twenty in other countries (30%).[36] The majority of IOs headquartered in the United States are based in Washington D.C. or New York.[37]

The most common type of IOs are financial institutions and IOs with specialized technical expertise. Both types of IOs each make up 21% of the total number of active IOs with protections under the IOIA.[38] Of note, these financial institutions include the World Bank Group,[39] the European Bank for Reconstruction and Development,[40] and the African Development Fund.[41] IOs with technical expertise

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[35] A total of ninety-nine IOs were recognized by statute under the IOIA. *See* 22 U.S.C. § 288. Of these ninety-nine IOs, eleven IOs had their immunity revoked, while seventeen are currently inactive. *See* App. I. Currently, a remaining sixty-seven IOs are active.

[36] *See* tbl. I for the full breakdown of headquarters.

[37] For instance, the United Nations is headquartered in New York. *See* Agreement Regarding the Headquarters of the United Nations, Oct. 31, 1947. The World Bank Group is headquartered in Washington D.C. *See Articles of Agreement*, WORLD BANK, https://www.worldbank.org/en/about/articles-of-agreement (last updated Jan. 19, 2019).

[38] *See* tbl. I for the full breakdown of the different types of IOs.

[39] The World Bank Group includes five IOs: (a) International Bank for Reconstruction and Development (IBRD); (b) International Development Association (IDA); (c) International Finance Corporation (IFC); (d) Multilateral Investment Guarantee Agency (MIGA); (e) International Centre for Settlement of Investment Disputes (ICSID). *About the World Bank*, WORLD BANK, https://www.worldbank.org/en/about (last visited Mar. 20, 2020).

[40] The European Bank for Reconstruction and Development (EBRD) was founded in 1991 to "create a new post-Cold War era in central and eastern Europe." The EBRD is formed by sixty-nine member states, as well as the European Union and European Investment Bank. *Who We are,* EBRD, https://www.ebrd.com/who-we-are.html (last visited Mar. 20, 2020).

[41] The African Development Fund provides concessional funding for economic and social development projects in thirty-eight member states based in

include the International Telecommunications Satellite Organization (INTELSAT),[42] the World Intellectual Property Organization,[43] and the European Space Agency.[44] Political alliances also make up a fair share of IOs (18%). The most notable political alliance is the United Nations, which in turn also has several specialized agencies that are afforded protections under the IOIA.[45]

II. EVOLUTION OF INTERNATIONAL ORGANIZATION IMMUNITY

This Part focuses on the transition of IO immunity from absolute to restrictive immunity following *Jam v. International Finance Corp.*[46] In the past, courts construed the International Organizations Immunities Act (IOIA) to mean that IO immunity is absolute, where IOs could not be sued in U.S. courts under any circumstances. Yet in 2019, the *Jam* Court reinterpreted the IOIA to grant IOs only restrictive immunity, where IOs may be subject to suit under specific circumstances.

Africa. *About the ADF*, AFRICAN DEVELOPMENT FUND, https://www.afdb.org/en/about-us/corporate-information/african-development-fund-adf/about-the-adf (last visited Mar. 20, 2020).

[42] International Telecommunications Satellite Organization (INTELSAT) is an IO with 149 member states and was established to ensure that "communication by means of satellite should be available to the nations of the world as soon as practicable on a global and non-discriminatory basis." *About Us,* ITSO, https://itso.int/about-us/(last visited Mar. 20, 2020).

[43] The World Intellectual Property Organization (WIPO) is a specialized United Nations agency that "promote[s] the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization."[.]" *See* Convention Establishing the World Intellectual Property Organization art. 3, July 14, 1967.

[44] The European Space Agency (ESA) has twenty-two member states and "shape[s] the development of Europe's space capability." *About ESA*, ESA, https://www.esa.int/ (last visited Mar. 20, 2020).

[45] Examples include the World Health Organization, International Organization for Migration, World Meteorological Organization, World Postal Union, Food and Agricultural Organization.

[46] *Jam, supra* note 1.

A. The International Organizations Immunities Act

In 1945, Congress passed the IOIA to extend certain privileges, exemptions, and immunities to IOs.[47] Given the critical role the United States played in the establishment of IOs, U.S. lawmakers understood the need to create a legal regime for IOs to function. Since the United States was one of leading participants and funders of IOs, it was considered a "practical certainty" that many of the IOs would locate, or at least conduct many of its activities, in the United States.[48] The United States acknowledged that IO member states demanded assurance that IOs would be accorded independence and would not be so easily subject to suit.[49] The United States also recognized that although IOs were composed of sovereign nations that individually enjoyed sovereign immunity, IOs, as well as their personnel, were exposed to liability just like private parties.[50] Conscious of these political considerations surrounding IOs, Congress passed the IOIA in December 1945 to "protect[] the official character of international organizations located in this country," and to "strengthen the position of the international organizations of which the United States is a member when they are located or carry on activities in other countries."[51]

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[47] *See* International Organizations Immunities Act, *supra* note 2.

[48] Steven Herz, *International Organizations in U.S. Courts: Reconsidering the Anachronism of Absolute Immunity*, 31 SUFFOLK TRANSNAT'L L. REV. 471, 488 (2008).

[49] Josef L. Kunz, *Privileges and Immunities of International Organizations*, 41 AM. J. INT'L L. 828, 836 (1947).

[50] This friction came to a head when the United States became increasingly involved in IOs after World War II. The tension was largely a result of the U.S. Treasury's demands for income and other taxes, which was resented by IO officials. Lawrence Preuss, *The International Organizations Immunities Act*, 40 AM. J. INT'L L. 332, 334 (1946); *see also* Letter from the Director General of the United Nations Relief and Rehabilitation Agency to the Secretary of State, in Sponsorship by the Department of State of Legislation Resulting in the International Organizations Immunities Act of 1945 (1945), 1 Foreign Rel. U.S. 1557, 1557 (letters between the United Nations and the U.S. Secretary of State on the need for international immunities legislation) [hereinafter IOIA Letters]. The legislative history of the IOIA also refers to tax matters. H.R. REP. NO. 79-1203, 1st Sess. 1, at 2-5 (1945) [hereinafter 1945 House Report].

[51] 1945 House Report, *supra* note 50, at 2.

The IOIA is essentially a jurisdictional statute, where issues of personal jurisdiction, subject matter jurisdiction, and immunity from suit are intermingled.[52] For the purposes of the IOIA, an IO is an organization in which the United States has a relationship through treaty or act of Congress and is designated by the President to receive privileges and immunities under the IOIA.[53] IO immunity operates as a bar to subject matter and personal jurisdiction.[54] And so, a court must rule on the immunity claim before it can adjudicate on the merits of the case. If proper service is made on an IO, then personal jurisdiction exists for claims where there is federal subject matter jurisdiction. Federal subject jurisdiction, in turn, exists when the IO is not entitled to immunity. As such, under the IOIA's structure, a court must first determine whether the IO defendant is immune from suit in order for the court to determine whether there is personal and subject matter jurisdiction. If the court finds an IO to immune, the court lacks both personal and subject matter jurisdiction. By contrast, if the court finds that one of the exceptions to the immunities applies, the court can establish personal and subject matter jurisdiction.[55]

B. Scope of International Organization Immunity Pre-*Jam*

Although the IOIA grants IOs immunity from suit in the United States, it does not specify the exact ambit of IO immunity. Instead, it states that IOs, designated through executive order,[56] "shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments."[57] And so, the level of IO immunity accorded is closely tethered to how courts have

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[52] *See* Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1605 (2012).

[53] 22 U.S.C. § 288 (2012) (noting that an IO "means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress . . . , 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 [the IOIA].")

[54] *See* 28 U.S.C. § 1605.

[55] This is, of course, assuming proper service has been made and there are no violations of constitutional or due process requirements.

[56] *See* 22 U.S.C. § 288 (listing public international organizations formerly and currently entitled to enjoy certain privileges, exemptions, and immunities).

[57] 22 U.S.C. § 288a(b).

historically interpreted foreign sovereign immunity. This Subpart describes how international organization and foreign sovereign immunity developed in lockstep, its divergence over time, and subsequent convergence in *Jam*.

1. Interpretation of the Foreign Sovereign Immunities Act

Because the immunity IOs enjoy under the IOIA is tethered to the "same immunity" of foreign governments,[58] the interpretation of the IOIA must be viewed in the light of foreign sovereign immunity. Up until 1952, the State Department subscribed to the theory of absolute immunity for foreign sovereign governments.[59] In effect, foreign governments were entitled to virtually absolute immunity "as a matter of international grace and comity" under almost all circumstances.[60] Under this absolute immunity regime, "if the Executive announced a national policy in regard to immunity generally, or for the particular case, that policy was law for the courts and binding upon them, regardless of what international law might say about it."[61]

But by the mid-1950s, the presumption that states enjoyed absolute immunity in foreign courts began to unravel. In 1952, the State Department announced through the Tate Letter that it now

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[58] *Id.*

[59] Prior to the codification of the FSIA, the United States routinely granted absolute immunity to foreign sovereigns. *See, e.g.*, *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116, 136 (1812) (holding that the French government should be immune from the jurisdiction of U.S. courts given the "perfect equality and absolute independence of sovereigns, and [a] common interest impelling them to mutual intercourse, and an interchange of good offices with each other."); *Berizzi Bros. Co. v. Pesaro*, 271 U.S. 562, 574 (1926) (reasoning that foreign sovereign immunity also applies to commercial ships because "maintenance and advancement of the economic welfare of a people in time of peace [is no less] a public purpose than the maintenance and training of a naval force").

[60] *Jam*, 139 S. Ct. at 765-66.

[61] LOUIS HENKIN, FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION 56 (2d ed. 1997).

subscribed to a new or "restrictive theory of sovereign immunity," rather than absolute immunity.[62]

Three factors pushed the United States towards the adoption of this restrictive immunity regime.[63] First, an increasing number of states began to adopt restrictive immunity. This created an asymmetry: while the United States was more liable in foreign courts, it continued to grant foreign governments absolute protection in U.S. courts.[64] Second, the Department stated that this new theory was necessary because of the "widespread and increasing practice on the part of governments of engaging in commercial activities"[65] and international commerce through state-run businesses.[66] Absolute theory undermined U.S. business interests,[67] since private entities entering into business with foreign governments could not be certain that courts would be able to resolve legal disputes.[68] Since governments were acting more like private parties, it was "necessary" to "enable persons doing business with [foreign governments] to have their rights determined in the courts."[69] In response, the U.S. government negotiated fourteen bilateral treaties with foreign nations between 1948 and 1958, each party agreeing to waive sovereignty when operating commercial activities in each other's jurisdiction.[70]

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62 Letter from Jack B. Tate, Acting Legal Adviser, U.S. Dep't of State, to Acting U.S. Att'y Gen. Philip B. Perlman (May 19, 1952), *reprinted in* 26 DEP'T ST. BULL. 984 (1952) [hereinafter Tate Letter].

63 CARTER ET AL., *supra* note 18, at 644.

64 *Id.*

65 *See* Tate Letter, *supra* note 62, at 984-85.

66 CARTER ET AL., *supra* note 18, at 644.

67 *Id.*

68 *Foreign Sovereign Immunities Act of 1976: Hearing on H.R. 11315 Before the H. Comm. on the Judiciary*, 94th Cong., 24, 26-27 (1967) (testimony of Monroe Leigh) ("[F]rom the standpoint of the private citizen, the current system generates considerable commercial uncertainty. A private party who deals with a foreign government entity cannot be certain of having his day in court to resolve an ordinary legal dispute. He cannot be entirely certain that the ordinary legal dispute will not be artificially raised to the level of a diplomatic problem.").

69 Tate Letter, *supra* note 62.

70 *See* Italy, Treaty of Friendship, Commerce and Navigation, It.-U.S., July 26, 1949, 63 Stat. 2225; Ir.-U.S., Jan. 21, 1950, 1 U.S.T. 785; 195; Colom.-U.S., Apr. 26, 1951, S. EXEC. M, 82d Cong., 1st Sess.; Greece-U.S., Aug. 3, 1951, 5 U.S.T.

Third, absolute immunity was thought to be inconsistent with the U.S. government's own sovereign immunity in its own courts.[71] For instance, the 1887 Tucker Act granted the Court of Claims (now the Court of Federal Claims) jurisdiction to render judgment on a whole variety of commercial and contractual claims against the U.S. government except for tort, equitable, and admiralty claims.[72] And the 1946 Federal Tort Claims Act grants federal court jurisdiction to entertain suits against the U.S. government for common law torts committed by government employees.[73] Notably, the Federal Tort Claims Act states that "[t]he United States [is] liable . . . in the same manner and to the same extent as a private individual under like circumstances."[74]

And so, under this restrictive theory of foreign sovereign immunity, "the immunity of the sovereign is recognized with regard to sovereign or public acts (*jure imperii*) of a state, but not with respect to private acts (*jure gestionis*)."[75] Instead, immunity should only be granted "with respect to causes of action arising out of a foreign state's public or governmental actions."[76] On the flip side, sovereign states are not entitled to immunity for their "commercial and private activities."[77]

1829; Isr.-U.S., 5 U.S.T. 550; Den.-U.S., Oct. 1, 1951, 12 U.S.T. 908; Japan-U.S., Apr. 2, 1953, 4 U.S.T. 2063; Ger.-U.S., Oct. 29, 1954, 7 U.S.T 1839; Haiti, -U.S., Mar. 8, 1955, S. Exec. H., 84th Cong., 1st Sess.; Nicar.-U.S., Jan. 21, 1956, 9 U.S.T. 449; Neth.-U.S., Mar. 27, 1956, 8 U.S.T. 2043; Kor.-U.S., Nov. 28, 1956, 8 U.S.T. 2217. Treaty of Amity, Economic Relations, and Consular Rights, Iran-U.S., Aug. 15, 1955, 8 U.S.T 899. Treaty of Friendship, Commerce and Economic Development, Uru.-U.S., Nov. 23, 1949, S. TREATY DOC. NO. 109-9 (1950).

71 CARTER ET AL., *supra* note 18, at 644.

72 *See* 28 U.S.C. § 1491 (2010) ("The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.").

73 *See* 28 U.S.C. § 1346 (2012).

74 28 U.S.C. § 2674 (2012).

75 Tate Letter, *supra* note 62.

76 *Alfred Dunhill v. of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 698 (1976).

77 *Id.*

To set these changing norms in stone, Congress enacted the Foreign Sovereign Immunities Act (FSIA) in 1976. The FSIA was designed to "codify the so called 'restrictive' principle of sovereign immunity, as presently recognized in international law."[78] And so, the FSIA afforded foreign governments immunity from both suit and attachment, but subject to specific statutory exceptions.

i. Exceptions under the Foreign Sovereign Immunities Act

Under the theory of restrictive immunity, foreign sovereigns are subject to liability under a few exceptions. Some exceptions to immunity include torts committed by IOs or their employees,[79] property taken in violation of international law,[80] action to enforce arbitration,[81] and waiver of immunity.[82]

The most important statutory exception to immunity arises when a commercial activity has a sufficient nexus with the United States.[83] This exception embodies the animating principle of restrictive immunity: that foreign sovereigns should not be entitled to immunity when they act like private entities.[84] The commercial activity exception is one the most widely invoked exceptions to immunity under the FSIA.[85] If a foreign state brings a lawsuit in U.S. fora, it is denied immunity when the underlying activity qualifies as a "commercial activity," rather than a sovereign act.[86] Under the commercial activity exception, a foreign sovereign is presumptively

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78 H.R. REP. NO. 94-1487, at 2 (1976).

79 International Organizations Immunities Act, *supra* note 2.

80 28 U.S.C. § 1605(a)(3).

81 28 U.S.C. § 1605(a)(6).

82 28 U.S.C. § 1605(a)(1).

83 28 U.S.C. §§ 1603, 1605(a)(2).

84 *See* Tate Letter, *supra* note 62.

85 CARTER ET AL., *supra* note 1819, at 665.

86 A suit can satisfy the commercial activity exception in one of three ways: either the suit must be (i) "based upon a commercial activity carried on in the United States by the foreign state"; (ii) based upon "an act performed in the United States in connection with a commercial activity of the foreign state elsewhere"; or (iii) based 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." 28 U.S.C. § 1605(a)(2).

immune from suit in federal court. This presumption erodes, however, if the suit concerns the sovereign's commercial activities or transaction. Commercial activity includes a "broad spectrum of endeavor, from an individual commercial transaction or act to a regular course of commercial conduct."[87]

To determine whether a claim falls under the commercial activity exception, courts inquire into whether the act is a sovereign and private act. Under the FSIA, the commercial activity exception applies when the lawsuit is "based upon a commercial activity" with specified connections to the United States.[88] Courts differentiate between sovereign and private acts when determining what qualifies as a "commercial activity." The FSIA defines "commercial activity" to mean "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 purpose."[89]

Crucially, this definition does not define what is "commercial." The first sentence simply establishes that whether an act is commercial does not depend on whether it is a regular course of conduct or particular transaction.[90] And the second sentence merely states that the commercial activity should be determined by the nature, not the purpose, of the act.

To address this ambiguity, the Supreme Court developed a test ("commercial activity test") for what constitutes "commercial activity." This test distinguishes between activity that rises from "powers peculiar to sovereigns" and "those powers that can also be exercised by private citizens."[91] If the latter, the activity meets definition of a "commercial activity." Put another way, a sovereign government engages in commercial activity under the FSIA when it acts "in the manner of a private player," as distinct from acts that are

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87 H.R. REP. NO. 94-1310, at 15 (1976).
88 28 U.S.C. § 1605(a)(2).
89 28 U.S.C. § 1603(d).
90 *Argentina v. Weltover*, 504 U.S. 607, 612 (1992).
91 *Saudi Arabia v. Nelson*, 507 U.S. 349, 360-61 (1993).

exclusively exercised by sovereign governments.[92] Of note, the commercial character of the act is determined by its "nature" not its "purpose."[93] And so, whether an act is a commercial activity turns on whether the *type* of action is one exclusive to sovereign governments.[94] Jurisdictional consequences flow from this distinction between sovereign and private acts. If an act is private, it does not qualify as a commercial activity and thus does not fall within the commercial activity exception.

In general, courts have found that a sovereign entity engages in a "commercial activity" when it conducts business in the public market and makes a profit. For instance, in *Republic of Argentina v. Weltover*, the Supreme Court found that the issuance of Argentinian government bonds to be a "commercial activity."[95] Although Argentina had a public purpose of addressing a domestic credit crisis, the bonds were "garden-variety debt instruments" that could be similarly issued by private parties.[96] The bonds "may be held by private parties," were negotiable, "may be traded on the international market," and "promise[d] a future stream of cash income."[97] And so, the Court held that there is "nothing distinctive about the state's assumption of debt" that would cause it be always classified as "*jure imperii*," that is state acts of sovereign rather than commercial nature.[98] Courts have also found sovereign acts as "commercial activity" in a whole spectrum of contexts, from public procurement,[99] public services,[100] to general contracting,[101] to just name a few.

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92 *Argentina v. Weltover*, 504 U.S. 607, 614 (1992).

93 *Id.* at 607-08; 28 U.S.C. 1603(d) ("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 purpose.").

94 *Argentina v. Weltover*, 504 U.S. 607, 607-08 (1992).

95 *Id.* at 620.

96 *Weltover*, 504 U.S. at 614-15.

97 *Id.* at 615.

98 *Id.*

99 *Texas Trading v. Nigeria*, 647 F.2d 300 (2d Cir. 1981).

100 *Rush-Presbyterian-St. LU.K.e's Medical Center v. Hellenic Republic*, 877 F.2d 574, 578 (7th Cir. 1989).

101 *Egypt v. Lasheen*, 603 F.3d 1166 (9th Cir. 2010).

By contrast, courts have held that acts that are unique to sovereign states and cannot be exercised by private parties are not "commercial activities." Acts that are not subject to the commercial activity exception "emanate from the power inherent in sovereignty."[102] These sovereign acts are usually political or public acts that private parties cannot perform. These acts have traditionally included internal administrative acts, such as expulsion of noncitizens; legislative acts, such as nationalization; acts concerning armed forces; acts concerning diplomatic activity; and public loans.[103]

In fact, although the FSIA is just a few decades old, this approach to sovereign immunity—by drawing distinctions between private and sovereign acts—dates to the founding era. More than two centuries ago, a federal court declined to apply immunity where the foreign power had a "commercial character."[104] And as early as the 1800s, the Supreme Court has drawn "a clear distinction is to be drawn between the rights accorded to private individuals or private trading vessels, and those accorded to public armed ships which constitute a part of the military force of the nation."[105] And so, a state that departs from its unique role as a sovereign is akin to a "private citizen or merchant."[106]

2. Interpretation of the International Organizations Immunities Act

But while the interpretation of the FSIA transitioned from absolute to restrictive immunity, IO immunity failed to keep step

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[102] *BP Chemicals v. Jiangsu*, 285 F.3d 677, 681-82 (8th Cir. 2002).

[103] *Victory v. Comisaria*, 336 F.2d 354, 360 (2d Cir. 1964).

[104] *Ellison v. The Bellona*, 8 F. Cas. 559, 559 (D.S.C. 1798).

[105] *The Schooner Exchange v. M'Faddon*, 11 U.S. (7 Cranch) 116, 143, 3 L.Ed. 287 (1812); *see also The Santissima Trinidad*, 20 U.S. (7 Wheat.) 283, 353, 5 L.Ed. 454 (1822); *Bank of the U.S. v. Planters' Bank of Ga.*, 22 U.S. (9 Wheat.) 904, 907, 6 L.Ed. 244 (1824) ("It is, we think, a sound principle, that when a government becomes a partner in any trading company, it devests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted.").

[106] *Guevara v. Republic of Peru*, 468 F.3d 1289, 1296 (1964).

with its analogue statute: even though the two bodies of law are closely intertwined by statute. IO immunity is interlaced with foreign sovereign immunity because the IOIA states that IOs "shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments."[107]

When the IOIA was first codified in 1945, courts construed "same immunity" as granting IOs absolute immunity, since foreign sovereigns in 1945 enjoyed absolute immunity. [108] But as the law surrounding foreign sovereign immunity began to evolve[109]—where foreign sovereigns were accorded restrictive, not absolute, immunity—IO immunity failed to keep pace. IOs were still entitled to absolute immunity, even though foreign sovereigns were now subject to restrictive immunity. Courts concluded that the "same immunity . . . as is enjoyed by foreign governments" language in the IOIA referred to the immunity foreign governments enjoyed at the time of IOIA's enactment: that is, absolute immunity.[110] And so, while foreign governments were subject to suit when the claim fell within the commercial activity exception, IOs were never subject to suit, regardless of the nature of the claim.[111]

This discrepancy between IO immunity and foreign sovereign immunity created rampant confusion in the courts.[112] For example, the Third Circuit held that "[w]ell established rules of statutory interpretation demonstrate" that the IOIA confers no more

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107 22 U.S.C. § 288a(b) (1945).

108 *Id.*

109 *See supra* Part II.B.1.

110 *Atkinson v. Inter-Am. Dev. Bank*, 156 F.3d 1335 (D.C. Cir. 1998).

111 Since IOs enjoyed absolute immunity, the type of claim did not matter for the purposes of immunity. *See id.*; 28 U.S.C. § 1605(a)(2) (1976).

112 The Third Circuit and D.C. Circuit were in direct disagreement over whether the IOIA granted absolute or restrictive immunity. *Compare OSS Nokalva, Inc. v. Eur. Space Agency*, 617 F.3d 756, 762-63 (3d Cir. 2010) *with Atkinson*, 156 F.3d 1335 (D.C. Cir. 1998). The district courts were also deeply split. *See e.g.*, *Enterasys Networks, Inc. v. Mexmal Mayorista*, S.A. de C.V. (In re Dinastia, L.P.), 381 B.R. 512, 519-20 (S.D. Tex. 2007); *Banco de Seguros del Estado v. Int'l Fin. Corp.*, Nos. 06 Civ. 2427(LAP) & 06 Civ. 3739(LAP), 2007 WL 2746808, at *3-4 (S.D.N.Y. Sept. 20, 2007); *Ashford Int'l, Inc. v. World Bank Grp.*, No. 1:04-CV-3822-JOF, 2006 WL 783357, at *2-3 (N.D. Ga. Mar. 24, 2006).

immunity on international organizations than the FSIA affords to foreign states.[113] That is, the IOIA only grants IOs restrictive immunity. In direct contrast, the D.C. Circuit held that IOIA cloaks international organizations with "the immunity of foreign organizations in 1945."[114] The Supreme Court of Alaska also adopted the D.C. Circuit's position, holding that "[t]he IOIA provides absolute immunity to international organizations."[115] And district courts in three other circuits also adopted the D.C. Circuit's holding in *Atkinson*.[116]

3. Transition to Restrictive International Organization Immunity Post-*Jam*

This tension between IO immunity and foreign sovereign immunity came to a head in the Supreme Court case *Jam v. International Finance Corp.*[117] In 2018, the United States Supreme Court granted certiorari to hear claims from Indian farmers adversely affected by the Coastal Gujarat Power Plant. This case concerned the International Finance Corporation (IFC), an IO that provides loans and grants to private-sector projects in lower-income countries.[118] The IFC was designated by executive order as an IO protected under the IOIA.[119]

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113 *OSS Nokalva, Inc. v. Eur. Space Agency*, 617 F.3d 756, 762-63 (3d Cir. 2010).

114 *Atkinson*, 156 F.3d 1335 (D.C. Cir. 1998).

115 *Price v. Unisea, Inc.*, 289 P.3d 914, 920 (Alaska 2012).

116 *See Enterasys Networks, Inc. v. Mexmal Mayorista*, S.A. de C.V. (In re Dinastia, L.P.), 381 B.R. 512, 519-20 (S.D. Tex. 2007); *Banco de Seguros del Estado v. Int'l Fin. Corp.*, Nos. 06 Civ. 2427(LAP) & 06 Civ. 3739(LAP), 2007 WL 2746808, at *3-4 (S.D.N.Y. Sept. 20, 2007); *Ashford Int'l, Inc. v. World Bank Grp.*, No. 1:04-CV-3822-JOF, 2006 WL 783357, at *2- 3 (N.D. Ga. Mar. 24, 2006).

117 *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019).

118 The International Finance Corporation is the private sector arm of the World Bank Group. *About IFC*, INTERNATIONAL FINANCE CORPORATION, https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new (last visited Mar. 20, 2020). The purpose of the IFC is to "assist in financing the establishment, improvement and expansion of productive private enterprises" in lower income countries. International Finance Corporation Articles of Agreement art. I(i), June 27, 2012, as amended.

119 Exec. Order No. 10680, 21 Fed. Reg. 7647 (Oct. 2, 1956).

In 2007, IFC contributed $450 million to fund the Coastal Gujarat Power Plant, [120] a plant located in Gujarat, India with the capacity to meet 2% of India's power needs.[121] All clients receiving funding from the IFC must comply with the group's sustainability framework which includes environmental and social performance standards.[122] From the outset, IFC classified the large scale coal-powered plant as a Category A project—the highest risk category—given its potential for "significant adverse social and environmental impacts that may be diverse and irreversible.[123] Yet despite these risks, the IFC greenlighted the project.

The Gujarat farmers ultimately sued the IFC.[124] The farmers alleged that the power plant polluted the air, land, and water in the

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[120] *IFC to Lend Rs 1,800 Crore to Tata's Power Project*, THE ECONOMIC TIMES (Apr. 9, 2008, 3:49 PM), https://economictimes.indiatimes.com/industry/energy/power/ifc-to-lend-rs-1800-crore-to-tatas-power-project/articleshow/2937878.cms.

[121] TATA POWER, TATA POWER MUNDRA ULTRA MEGA POWER PROJECT: TOWARDS A CLEANER AND GREENER FUTURE 8-9; *Plants and Projects: CGPL 4150 MW*, TATA POWER, https://www.yumpu.com/en/document/read/11752972/tata-power-mundra-ultra-mega-power-project- (last visited June 23, 2019).

[122] *Environmental and Social Performance Standards*, IFC, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards (last visited June 23, 2019).

[123] *IFC Project Information Portal: Tata Ultra Mega*, IFC, https://disclosures.ifc.org/#/projectDetail/ESRS/25797 (last visited June 23, 2019). IFC defines Category A projects as "business activities with potential significant adverse environmental or social risks and/or impacts that are diverse, irreversible, or unprecedented." *Environmental and Social Risk Categorization*, IFC, https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/es-categorization (last visited June 23, 2019).

[124] This case has an extensive legal history that dates even before the Gujarat farmers filed in U.S. court. The case was first filed with the International Finance Corporation's (IFC) Compliance Advisor Ombudsman (CAO), the IFC's internal dispute resolution mechanism. *See* COMPLAINT FROM MACHIMAR ADHIKAR SANGHARSH SANGATHAN (MASS: ASSOCIATION FOR THE STRUGGLE FOR FISHWORKERS RIGHTS) REGARDING TATA ULTRA MEGA (June 11, 2011), http://www.cao-ombudsman.org/cases/document-links/documents/TataMundraCAOComplaint_June112011.pdf (last visited July 2, 2020). The CAO issued a report concluding that the IFC had failed to ensure the project met the Environmental and Social standards required for IFC projects. *See* OFFICE OF THE COMPLIANCE ADVISOR OMBUDSMAN, CAO AUDIT OF IFC INVESTMENT IN

surrounding area and sought damages and injunctive relief.[125] In response, the IFC claimed absolute immunity from suit under the IOIA, arguing that the IOIA grants IOs the "same immunity" from suit that foreign governments enjoyed at the time of the IOIA's enactment in 1945.[126] The Gujarat farmers argued, however, the IFC is entitled to the "same immunity" from suit that foreign governments are entitled to today: restrictive immunity.[127] The Gujarat farmers reasoned that the IFC is no longer entitled to absolute immunity since foreign governments may be subject to suit under exceptions to the 1976 Foreign Sovereign Immunities Act (FSIA).

The Court ultimately ruled in favor of the Gujarat farmers, holding that the IOIA "grants international organizations the '*same immunity*' from suit 'as is enjoyed by foreign governments' at any time."[128] In the majority's reading, Congress framed the words "same immunity" dynamically, where "same as" creates a continuous relationship between the referencing statute (the FSIA) and the referred statute (IOIA).[129] Accordingly, the IOIA "link[s] the law of international organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with other."[130] Put differently, since foreign governments currently enjoy restrictive immunity,[131] post-*Jam*, so too do IOs enjoy restrictive immunity.[132]

The final section of the majority opinion addresses the web of immunities IOs may be entitled to. The majority explains that the immunities accorded by the IOIA "are only default rules."[133] And

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COASTAL GUJARAT POWER LIMITED, INDIA 15-43 (2013), http://www.cao-ombudsman.org/cases/document-links/documents/CAOAuditReportC-I-R6-Y12-F160.pdf (last accessed July 2, 2020). The report also found that the FIC failed to take necessary steps to protect the local community and the environment. *Id.*

125 *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 764-65 (2019).

126 *Id.* at 767-68.

127 *Id.*

128 *Id.* at 778 (emphasis added).

129 *Id.* at 768-69.

129 *Id.* at 768-69.

130 *Id.* at 769.

131 *See supra* Part II.B.

132 *Jam*, 139 S. Ct., at 772.

133 *Id.* at 771.

that "if the work of a given international organization would be impaired by restrictive immunity, the organization's charter can always specify a different level of immunity."[134] Functionally, this means that although *Jam* has held that IOs enjoy restrictive immunity, IOs can specify a higher level of immunity in their constituent documents.

Jam, of course, holds significant consequences for IOs, as IOs can no longer operate under the assumption that all of their operations are immune from suit.[135] Yet the Court left multiple interpretive issues unresolved. Critically, *Jam* now raises the question of how courts are to grant IOs the "same immunity" as foreign sovereigns, especially since the two bodies of law have diverged over time. Part III illustrates *Jam*'s interpretive gap and why courts should refrain from applying the FSIA wholesale to the IO context.

III. "SAME IMMUNITY" BUT DISTINCT ENTITIES: THE INAPPLICABILITY OF THE FOREIGN SOVEREIGN IMMUNITY CASE LAW TO THE INTERNATIONAL ORGANIZATION CONTEXT

Post-*Jam* courts are tasked with according IOs the "same immunity" that foreign governments enjoy today.[136] But the *Jam* court did not delineate how courts are to determine this same level of immunity.

At first blush, courts may be tempted to apply the FSIA jurisprudence to IO immunity whole cloth, for instance by directly

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134 *Id.*

135 The import of this case, of course, did not escape IOs. This is evidenced by the numerous *amici* filed by IOs. *See, e.g.*, Brief for Member Countries and the Multilateral Investment Guarantee Agency as Amici Curiae Supporting Respondents, *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019) (No. 17-1011), 2018 WL 4504285; Brief for International Bank for Reconstruction and Development et al. as Amici Curiae Supporting Respondents, *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019) (No. 17-1011), 2018 WL 4504286; Brief for the African Union, Food and Agriculture Organization, and Great Lakes Fishery Commission et al. as Amici Curiae Supporting Respondents, *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (2019) (No. 17-1011), 2018 WL 4522294.

136 *See Jam*, 139 S. Ct., at 767-68.

importing FSIA exceptions and case law to IO immunity. This approach may seem like a simple solution, but it is ultimately unworkable. Although IO and foreign sovereign immunity are tied at the hip by statute, the two bodies of law have diverged over time and taken a life of their own. Decades of case law from the foreign sovereign immunity cannot simply be transplanted onto IO immunity in one fell swoop.

This Article argues against applying FSIA exceptions and case law wholesale to IO immunity for three reasons. First, applying the FSIA to IO immunity does not result in IOs enjoying the "the same" level of immunity as that of foreign governments.[137] Second, the conceptual bases for IO immunity does not support the direct application of the FSIA to determine IO immunity. Third, applying the FSIA wholesale to the IO context results in unworkable interpretive difficulties.

A. Applying Foreign Sovereign Immunity Body of Law Wholesale to International Organization Immunity Does Not Grant International Organizations "The Same" Immunity as That of Foreign Sovereigns

The foremost reason why FSIA case law should not be directly applied to IO immunity is that doing so would *not* grant IOs "the same immunity from suit that foreign governments enjoy today under the FSIA."[138]

The Supreme Court has repeatedly held that the FSIA is the *sole* and *exclusive* basis for foreign sovereign immunity.[139] Put another

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[137] *See* 22 U.S.C. § 288.

[138] *Jam*, 139 S. Ct. at 761.

[139] *See* 28 U.S.C. § 1604 (foreign states "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."); *Argentina v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989) (holding that the FSIA " provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country"); *see also Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993) (holding that "a foreign state is presumptively immune from the jurisdiction of United States courts[,] unless a specified exception [under the FSIA] applies"). This is also supported by FSIA's legislative history. *See, e.g.*, H. R. REP. NO. 94-1487 ¶ 12 (1976) (H. R. Rep.); S. Rep.

way, in the United States, foreign sovereigns are only entitled to the level of protections specified by the FSIA. In direct contrast, IOs enjoy multiple levels of protection from liability. IOs enjoy at least five overlapping sources of immunity. These sources include 1) constituent documents; 2) other international agreements such as headquarters agreements; 3) customary international law; 4) the IOIA.

As a threshold matter, IOs are able to specify their own level of immunity through their own constituent documents.[140] In fact, out of the sixty-seven active IOs protected under the IOIA,[141] twenty-one IOs, or 31%, grant themselves absolute immunity in their founding documents.[142] This means that the founding agreements for 31% of IOs require member states to grant them immunity from suit under all circumstances. The United Nations, for instance, requires member states to grant it "immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity."[143] And the Bretton Woods Agreement provides that the International Monetary Fund "shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity."[144] Courts almost always respect the level of immunity

No. 94-1310, pp. 11-12 (1976) (S. Rep.) (FSIA "sets forth the sole and exclusive standards to be used in resolving questions of sovereign immunity raised by sovereign states before Federal and State courts in the United States," and "prescribes . . . the jurisdiction of U.S. district courts in cases involving foreign states").

140 As described previously, the IOIA merely sets the default level of IO immunity. The *Jam* Court clarified that IOs are free to specify a higher level of immunity in their constituent documents. *See supra* Part II.B.3; *Jam*, 139 S. Ct. at 771-72 ("[T]he organization's charter can always specify a different level of immunity. The charters of many international organizations do just that.").

141 *See supra* Part I.C; app. I.

142 *See* app. I.

143 Convention on Privileges and Immunities of the United Nations art. II, § 2, Feb. 13, 1946, 21 U.S.T. 1422, T. I. A. S. No. 6900.

144 Articles of Agreement of the International Monetary Fund art. IX, § 3, Dec. 27, 1945, 60 Stat. 1413, T. I. A. S. No. 1501.

specified in the IO's constituent document, unless the IO explicitly waives immunity.[145]

Many IOs also enjoy an extra layer of protection through headquarters agreements, treaties that regulate the status and privileges of an international organization in the territory of a host state.[146] Headquarter agreements frequently grant immunity to IO officials and representatives of member states. For instance, in 1947, the United Nations and the United States signed a headquarter agreement establishing the headquarters of the United Nations in New York City.[147] This headquarters agreement also grants the United Nations a whole array of diplomatic immunity.[148] Moreover, the Agreement permits the General Assembly to promulgate regulations for the headquarters that supplant any U.S. federal, state, or local law.[149] Similarly, the headquarters agreement between the United Kingdom and the European Bank of Reconstruction and Development states that "Persons Connected with the Bank shall . . .

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[145] *See, e.g.*, *Nyambal v. International Monetary Fund*, 772 F.3d 277, 281 (D.C. Cir. 2014) (holding that "jurisdictional discovery against international organization protected by International Organizations Immunity Act (IOIA) may be warranted only in comparatively rare circumstances" and that the International Monetary Fund was entitled to absolute immunity pursuant to its Articles of Agreement); *Brzak v. United Nations*, 597 F.3d 107 (2d Cir. 2010) (holding that the United Nations "enjoys absolute immunity from suit unless 'it has expressly waived its immunity.'") (citing Convention on Privileges and Immunities of the United Nations art. II, § 2, Feb. 13, 1946, 1970, 21 U.S.T. 1418).

[146] *See Headquarters Agreements*, THE EUCLID TREATY, https://www.euclidtreaty.org/headquarters-agreements/ (last visited Mar. 27, 2020).

[147] *See* Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United States, June 26, 1947 (establishing the headquarters of the United Nations in New York city); Headquarter Agreement Between the Organization of American States and the Government of the United States of America, May 14, 1992 (establishing the headquarters of the Organization of American States in Washington, D.C.).

[148] *See* Agreement Between the United Nations and the United States of America Regarding the Headquarters of the United States, at art. V.

[149] *Id.* at art. III.

be immune from jurisdiction and legal process, including arrest and detention."[150]

And third, many scholars argue that IOs enjoy immunity under customary international law (CIL). There is a recognition in recent scholarship that "some form of immunity—sometimes, even absolute immunity—is part of international law."[151] CIL is a primary form of international law.[152] It is defined as a "general and consistent practice of states followed by them from a sense of legal obligation."[153] Typically, national courts apply CIL as a rule of decision, defense, or canon of statutory construction.[154] As such, even in the absence of treaties or constituent documents explicitly granting immunity, national courts may still grant immunity to IOs under the international law theory of CIL.

And fourth, of course, IOs also enjoy immunity under the provisions set forth by the IOIA. For instance, IOs enjoy immunity from search and confiscation of any property and assets owned (unless immunity is waived),[155] exemption from any internal-revenue taxes imposed, [156]and officers of the IO are exempted from legal suit "relating to activities performed in their official capacity."[157]

Since IOs are already blessed with four sources of immunity, importing in FSIA exceptions and case law would not grant IOs "the

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[150] Headquarters Agreement Between the Government of the United Kingdom of Great Britain and Northern Ireland and the European Bank for Reconstruction and Development art. 15, Apr. 15, 1991.

[151] *Report of the International Law Commission to the General Assembly*, *reprinted in* 2 Yearbook of the International Law Commission pt. 2, ¶ 3 201-05 (2006); *See* Lalive, *L'immunité de juridiction des Etats et des organisations internationales*, *in* RECUEIL DES COURS 209, 304 (1953); E.H. Fedder, *The Functional Basis of International Privileges and Immunities: A New Concept in International Law and Organization*, 9 AM. U. L. REV. 60 (1960).

[152] *See* Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113 (1999).

[153] RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (AM. LAW INST. 1987).

[154] Goldsmith & Posner, *supra* note 153, at 1113.

[155] 22 U.S.C. § 288(c).

[156] § 288(b).

[157] § 288(d).

same immunity from suit . . . as is enjoyed by foreign governments."[158] This is because foreign sovereigns derive immunity exclusively from the FSIA. Foreign sovereigns do not have constitutive documents that specify their desired level of immunity. Nor do they require headquarters agreements when operating within foreign territory. By contrast, IOs have multiple sources of immunity beyond the IOIA, including immunity from their constituent documents, other international agreements, customary law, and the IOIA. And so, applying FSIA whole cloth to IO immunity does not actually grant IOs the "same immunity" that foreign sovereigns currently enjoy.

B. The Conceptual Basis of International Organization Immunity Does Not Support the Direct Application of FSIA Case Law

What is more, the different conceptual bases of foreign sovereign and IO immunity militate against the wholesale application of the FSIA in determining the level of IO immunity.[159] Unlike foreign sovereigns, IOs derive their immunity from a need to protect their functions, not from their claim to sovereignty. This difference in conceptual bases for immunity cuts against applying FSIA case law directly into the IO context, and calls for a more functional approach.

Foreign states derive immunity from their sovereignty.[160] Under international law, sovereignty refers to when "the legal authority or competence of a State [is] limited and limitable only by international law and not by the national law of another State."[161] The basis of state immunity stems from the maxim *par in parem imperium*

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158 22 U.S.C. § 288(a), (b).

159 *See* Niels Blokker, *International Organizations: The Untouchables?*, *in* IMMUNITY OF INTERNATIONAL ORGANIZATIONS 2 (Niels Blokker & Nico Schrijver eds., 2015) (stating that "the rationale for [IO] immunity is different from that for state immunity. While state immunity is based on the *par in parem non habet imperium* principle, the immunity of international organizations is generally founded on the principle . . . [that] international organizations need immunity in order to be able to perform their functions.").

160 *See* Robert B. von Mehren, *The Foreign Sovereign Immunities Act of 1976*, 17 COLUM. J. TRANSNAT'L L. 33, 34-37 (1978); *see also* Blokker, *supra* note 160, at 1-17.

161 *See* Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L. J. 207, 208 (1944).

nonhabet ("an equal has no power over an equal.").[162] This maxim has its origins in traditional theories of international law, where the state is viewed as a juristic entity with distinct personality and is entitled to fundamental rights, including absolute sovereignty, exclusive control over a territory, and absolute independence.[163] Part and parcel of these fundamental rights is also the acknowledgement of legal equality, the recognition that sovereigns exist as equals on the international plane.[164] This recognition is based on a strict quid pro quo of reciprocity, where states respect the authority and territorial boundaries of other sovereigns, with the expectation that this respect will be reciprocated.[165] The reciprocal independence of states is considered one the most universally respected principles of international law.[166] As a result, states generally agree that other states cannot be subjected to the jurisdiction of another against its will. Further, there is a consensus that state sovereignty inherently entails

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[162] The principle of *par in parem non habet imperium* states that "a state should not exercise over another state jurisdiction which it has but that (save in cases recognized by international law) a state has no jurisdiction over another state." *Jones v. Saudi Arabia* (HL), 283, para 14, endorsing *Holland v. Lampen-Wolfe* [2000] 1 WLR 1573 (HL) 1588 (Lord Millett); *see generally* EDWARD CHU.K.WUEMEKE OKEKE, JURISDICTIONAL IMMUNITIES OF STATES AND INTERNATIONAL ORGANIZATIONS 37-39 (2018) (describing the history of state immunity and legal equality).

[163] Heybatollah Najandi-Manesh & Abdollah Abedini, *Struggle Between State Immunity and Jus Cogens at the International Court of Justice*, 10 INT'L STUD. J. 73, 84 (2014).

[164] Ernest K. Bankas, *The Origins of Absolute Immunity of States*, THE STATE IMMUNITY CONTROVERSY IN INTERNATIONAL LAW 9 (2005).

[165] PETER H.F. BEKKER, THE LEGAL POSITION OF INTERGOVERNMENTAL ORGANIZATIONS: A FUNCTIONAL NECESSITY ANALYSIS OF THEIR LEGAL STATUS AND IMMUNITIES 155 (1994).

[166] The principles of reciprocal independence of states and legal equality have been widely adopted throughout domestic courts. *See, e.g.*, *The Prins Frederik*, 2 Dods. 451 (1820) (English case) (declining jurisdiction on the grounds that the foreign sovereign was equally sovereign and independent and that to implead the foreign would insult its "regal dignity"); *Jones v. United Kingdom*, (App. Nos. 34356/06 and 40528/06), ECTECt HR Judgment, ¶ 188 (holding that state immunity "should be taken as a point of departure in any logical treatment of the topic" and that "[s]tate immunity [is] the general rule."); *Democratic Republic of Congo v. FG Hemisphere Associates LLC* [2011] 4 HKC 151 (holding that Hong Kong's laws on absolute immunity were still in force after its handover and rejecting the enforcement of an arbitral award against the Democratic Republic of Congo).

the right of each state to assert jurisdiction over litigation arising from its own acts.[167]

Unlike foreign sovereigns, IOs derive their immunity from a protection of its functions, not their sovereignty.[168] In general, legal scholars agree that IOs possess immunities necessary for the

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[167] *Spanish Government v. Lamberge et Pujol*, Cass. [Supreme Court of France] (1849).

[168] Many legal scholars agree that the foremost rationale for granting immunities to international organizations is to "secure[] their independence and guarantee[] their functions." AUGUST REINISCH, INTERNATIONAL ORGANIZATIONS BEFORE NATIONAL COURTS 233 (2000); *see also* C. T. OLIVER ET AL., THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS 613 (4th ed. 1995) ("The Privileges and immunities of international organizations are designed mainly to protect the *independence* of organizations from undue outside influence and otherwise to ensure that they are able to carry out their missions."); Kunz, *supra* note 50, at 846-52 (1947) ("The only adequate method [of protecting international organizations] is to grant these immunities in [a] basic international treaty, creating identical and binding international obligations upon all Member States."); Lawrence Preuss, *The International Organizations Immunities Act*, 40 AM. J. INT'L L. 332 (1946) ("This legislation constitutes belated recognition of the need for granting to international organizations of which the United States is a member, and to their personnel, a legal status which is adequate to ensure the effective performance of their functions and the fulfillment of their purposes."); Michael Singer, *Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns*, 36 VA. J. INT'L L. 53, 64-67 (1995); *see also Jurisdictional Immunities of Intergovernmental Organizations*, 91 YALE L. J. 1167, 1180-83. And according to the International Legal Commission, the justification for organizational immunity lies in their aim to "guarantee the autonomy, independence and functional effectiveness of international organizations and protect them against abuse of any kind." *Fourth Report on Relations Between States and International Organizations*, [1989] 2 Y.B. Int'l L. Comm'n 153, 157, U.N. Doc. A/CN.4/424 (Apr. 24, 1989).. In its report on the privileges of international organizations, the Council of Europe also noted that the independence of the organization is the main reason for according IOs privileges and immunities. *Conseil de l'Europe (ed.), Privile`ges et immunitie´s des organisations internationales, Resolution (69) 29 adopte´e par le Comite´ des Ministres du Conseil de l'Europe le 26 septembre 1969 et rapport explicatif* 12 (1970). Moreover, IOs also argue that the fundamental purpose of its immunities is to protect the functions the IO has been tasked with. *See* OFFICE OF THE LEGAL COUNSEL OF THE FAO, 1982 U.N. JURID. Y.B. (arguing that the "fundamental purposes for which immunity from legal processes was accorded to intergovernmental organizations" is to "ensure that the intergovernmental organizations concerned could carry out their aims smoothly and independently.").

fulfillment of their purposes and independence from any state's control.[169] An IO has no sovereignty or right to self-determination. It does, however, have a right, subject to obligations set out in its constituent instrument, to create and enforce policies appropriate to fulfill its purpose. As such, many IOs explicitly protect activities necessary for the fulfillment of its functions in its founding documents.[170]

The basis of a functional approach to IO immunity is well-established.[171] It is widely accepted that IOs should enjoy a degree of immunity from the jurisdiction of national courts in order to achieve their founding objectives. This recognition is generally founded on the principle of "functional necessity": the idea that "[a]n international organization shall be entitled to (no more than) what is strictly necessary for the exercise of its functions in the fulfilment of its purposes."[172] The doctrine of functional necessity assumes that without immunity, IOs would not be able to perform their functions because of interference in their work.[173] Yet at the same time, over-insulating IOs from judicial scrutiny may lead to IOs abusing their

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169 *See* C. WILFRED JENKS, INTERNATIONAL IMMUNITIES 18 (1961); DEP'T OF STATE REPORT TO THE PRESIDENT ON THE RESULTS OF THE SAN FRANCISCO CONFERENCE, Pub. No. 2349, 159 (1945) [hereinafter San Francisco Report] ("The United Nations, being an organization of all the member states, is clearly not subject to the jurisdiction or control of any one of them.").

170 The constituent documents of many IOs recognize the need to protect their functions from liability. *See, e.g.*, Constitution of the World Health Organization art. 67(a) (1947) ("The Organization shall enjoy in the territory of each Member such privileges and immunities as may be necessary for the fulfilment of its objective and for the exercise of its functions."); Charter of the Organization of American States art. 133 (1967) ("The Organization of American States shall enjoy in the territory of each Member such legal capacity, privileges, and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes."); Agreement Between the United Nations and the United States Regarding the Headquarters of the United Nations § 2(b) ("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.").

171 *See* Blokker, *supra* note 160, at 1-7; *see* app. I (illustrating that over thirteen IOs invoke functional reasons when specifying privileges and immunities in their constituent documents).

172 BEKKER, *supra* note 166, at 5.

173 *See* Singer, *supra* note 169, at 54-55.

responsibilities.[174] Accordingly, under this functional necessity doctrine, an organization should only be accorded immunities that are strictly necessary for it to achieve its organizational objectives.[175]

In fact, the doctrine of functional necessity is so well-established that a whole host of foreign national courts adopt a functional test when determining the level of IO immunity in their fora. For instance, Italian courts have inquired into the necessary functions of an IO when deciding whether to grant immunity in labor disputes.[176] And the Netherlands Supreme Court has held that international organizations in the Netherlands enjoy functional immunity, where an IO "is in principle not subject to the jurisdiction of the courts of the host State in respect of all disputes which are immediately connected with the performance of the tasks entrusted to the organization question."[177]

Further, both the conceptual framework and legislative history of IO immunity supports a functional approach in determining the level of IO immunity.[178] The history and purpose of the IOIA indicates that the basis for IO immunity is wholly different compared to that of foreign sovereign immunity.[179] Close analysis of the legislative history of the IOIA evinces that IO immunity was specifically designed to "enable [the US] to fulfill its commitments in connection with its membership in international organizations."[180] Prior to the enactment of the IOIA, IOs were not protected from liability in the United States. But the United States recognized that

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174 REINISCH, *supra* note 4, at 234-35; BEKKER, *supra* note 173, at 48.

175 Kunz, *supra* note 50, at 836; Singer, *supra* note 173, at 56; REINISCH, *supra* note 169, at 56.

176 *See* Beatrice I. Bonafè, *Italian Courts and the Immunity of International Organizations*, IMMUNITY OF INTERNATIONAL ORGANIZATIONS 262-69 (Niels Blokker & Nico Schrijver eds., 2015).

177 *A. Spaans v. The Netherlands*, 20 December 1985, Hoge Raad, NJ 1986/438 [Supreme Court], ¶ 3.3.4, English translation available in 18 NETHERLANDS YEARBOOK OF INTERNATIONAL LAW (1987).

178 *See supra* Part III.B.

179 *See Jurisdictional Immunities of Intergovernmental Organizations*, 91 YALE L. J. 1167, 1181-84.

180 1945 House Report, *supra* note 51, at 6.

IOs could be exposed to suit, just like private parties.[181] As a result, the US codified IO immunity through the IOIA in 1945.[182]

The codification of IO immunity was galvanized by the US's membership in the United Nations.[183] The Department of State drafted and sponsored the IOIA.[184] And much of the drafting of the IOIA was influenced by a report written by the Secretary of State, documenting the US delegation to the San Francisco Conference on the United Nations Charter.[185] This report concluded that in order to abide by the United Nations Charter's immunities provisions, specifically Article 105 of the United Nations Charter,[186] the United States—as a member of the United Nations—was required to enact legislation codifying IO immunity.[187] And notably, the United Nations Charter required that it "enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes." The IOIA, therefore, should be understood to confer immunities to IOs, not because of their sovereign nature, but because the need to protect their independence and functions.[188]

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181 *See supra* Part II.A.

182 *Id.*

183 1945 House Report, *supra* note 51, at 2 ("Finally, the probability that the United Nations Organization may establish its headquarters in this country, and the practical certainty in any case that it would carry on certain activities in this country, makes it essential to adopt this type of legislation promptly. The committee considers that the passage of this legislation is essential to implement our participation in [the United Nations.]").

184 1945 House Report, *supra* note 51, at 7.

185 *See* San Francisco Report, *supra* note 170 ("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 [United Nations] and its officials under this provision.")

186 *Id.*

187 U.N. Charter art. 105 ("The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.").

188 *See* San Francisco Report, *supra* note 170 ("("It accordingly seemed better to lay down as a test the necessity of the independent exercise of the functions of the individuals in connection with the Organization."),

Although some scholars have argued that IOs derive immunity from its members[189]—individual states that enjoy sovereignty in their own right—this argument is ultimately untenable. Practically speaking, an IO is not an association or extension of states. Rather, it is an entity that was established through treaty among states. To be sure, it is difficult to draw a clear line between a state and a closely unified association of states that blurs into a unified entity. But no such entity exists. The closest example is the European Union, where the twenty-seven member states function under a standardized system of laws that allow free movement of people, goods, services, and capital within the internal market.[190] Yet individual states in the European Union still exercise sovereignty and control their territories exclusively.[191] It is possible, although unlikely, that European integration may reach a point where it eventually subsumes all member states. Only in that scenario would an IO truly be a federation of states and only then would it be able to derive its sovereignty from the member states. But very few IOs are even structured to ease its transition into statehood. The only plausible candidates are regional organizations, like the European Union.[192] And even for these IOs, progression to statehood is highly unlikely.[193]

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189 *See, e.g.*, ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 46-47 (1994) ("[O]ther international organizations, which have the [ ] indicia of international legal personality, are truly international actors in their own right."); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES pt. IV, subch. B, ¶ 467, cmt. a (AM. LAW INST. 1987) ("In some cases, an international organization might be considered a grouping of individual states entitled to the privileges and immunities of the constituent states.").

190 *The EU in Brief*, EUROPEAN UNION, https://europa.eu/european-union/about-eu/eu-in-brief_en (last visited July 2, 2020).

191 *See generally* DESMOND DINAN, ORIGINS AND EVOLUTION OF THE EUROPEAN UNION (2d ed. 2014).

192 Some regional organizations include the Organization of American States, African Union, East African Community, Economic Community of West African States.

193 The recent backlash against the European Union that culminated in Brexit captures this tension. Most supporters of Brexit opposed the EU's progression to a more federated state, worrying about the loss of British sovereignty. *See* Alex Barker, *Brexiters Fear 'Biggest Loss of Sovereignty' Since 1973*, FIN.

The bottom line is that IOs, unlike states, do not derive their immunity from any notion of sovereignty. Instead, IOs are granted immunity out of a desire to protect their core functions and preserve their independence from states.[194] And as evidenced by the IOIA's legislative history, the United States granted IOs immunity so that IOs can carry out the mission they were created for in the first place. Since IOs and states have separate bases for their immunity, it stands to reason that it is inappropriate to read FSIA case law wholesale into the IOIA context.

C. Applying the Case Law on FSIA Exceptions to International Organization Immunity Creates Unworkable Interpretive Difficulties

Furthermore, directly applying the foreign sovereign immunity exceptions and its corresponding case law to international organization immunity creates a whole host of thorny interpretive difficulties.

TIMES (July 9, 2018) (citing that the British ambassador believed that retaining the EU customs union and single market would "result in the biggest loss of U.K. sovereignty since accession in 1973."). Brexit slogans crying out "take back control" illustrate an underlying anxiety that continuing down the path of federation of an international organization, the European Union, would erode the U.K.'s own sovereignty and control. Take the East African Community, a pan-nation trade bloc in East Africa, as another example. The East African Community was borne out of the pan-African movement to encourage greater cooperation between East African countries, encourage socio-economic development, and boost the political and economic clout of the region. Baruti Katembo, *Pan Africanism and Development: The East African Community Model*, 4 J. PAN AFR. STUD. 108 (2008). The mission of the East African Community is to "widen and deepen economic, political, social and cultural integration." *Pillars of EAC Regional Integration*, EAST AFRICAN COMMUNITIES, https://www.eac.int/integration-pillars (last visited Mar. 18, 2020). The Community collapsed in 1977 because member states were unwilling to cede more power to the Community. *See generally* Agrippah T. Mugomba, *Regional Organisations and African Underdevelopment: The Collapse of the East African Community*, 16 J. MOD. AFR. STUD. 261. Although the Community was revived again in 2000, the East African Community has still failed to consolidate a political federation. *See* CRAIG MATHIESON, THE POLITICAL ECONOMY OF REGIONAL INTEGRATION IN AFRICA THE EAST AFRICA COMMUNITY (EAC) 2016.

[194] *See supra* Part II.A. The United States originally codified the IOIA in order to preserve the autonomy of IOs and to protect IOs from excessive lawsuits by nationals of the host state.

The very heartland of restrictive immunity in the foreign sovereign context is centered on the distinction between sovereign and private or commercial acts.[195] This distinction is captured by the commercial activity exception.[196] Not only is this exception the centerpiece of restrictive immunity, but it is also the exception that has gotten the most play in courts.[197] But at bottom, this exception relies on a distinction between sovereign and private acts that is not easily applied to the IO context.

The commercial activity exception turns on one central question: whether the underlying activity in question is based on a sovereign or private act.[198] Yet this distinction sits uneasily within the context of international organization immunity because, at its core, international organizations lack sovereignty.

IOs lack sovereignty because they do not possess physical control over territory, citizens, legal equality, and the ability to reciprocate immunity. As such, the distinction between private and sovereign acts under the commercial activity exception simply does not have any relevance in the IO context.[199]

Unlike states, IOs do not possess several characteristics necessary for sovereignty.[200] First, IOs do not have physical control over a territory. Under this Westphalian framework of sovereignty, an

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195 *See supra* Part. II.B.

196 *See id.*

197 CARTER ET AL., *supra* note 198, at 665.

198 *See supra* Part. II.B.

199 *See generally* Alain Pellet, *International Organizations Are Definitely Not States*, RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS 41-54 (M. Ragazzi ed., 2013).

200 According to the Third Restatement, sovereign states possess four characteristics. First, they have a defined territory, where "[a]n entity may satisfy the territorial requirement for statehood even if boundaries have not been finally settled." Second, the state must have "a population that is significant and permanent." Third, the state must possess "some authority exercising governmental functions and able to represent the entity in international relations." Fourth, the state must be able to "conduct international relations with other states, as well as the political, technical, and financial capabilities to do so." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 (AM. LAW INST. 1987).

entity is "sovereign" when there is a recognition of the entity's right to exclusive authority within a given authority.[201] But IOs do not have authority over a territory. Instead, IOs function within the territory of states under headquarter agreements or other treaties.[202]

Second, IOs do not have citizens like states do.[203] IOs merely have officials who are citizens of other member states. But these officials do not have additional protections or responsibilities from belonging to the international organization.

Third, from a realist perspective, IOs do not enjoy legal equality with states under international law.[204] Although international organizations are generally thought to be subject to customary international laws and *jus cogens* norms, IOs do not enjoy the same duties and rights as states. IOs do not have equal power as states in most international fora. For instance, they are not voting members in the United Nations and they cannot nominate judges on international courts.

And lastly, the ability of states and IOs to leverage immunity differ on a fundamental level. In general, states have a level of autonomy not enjoyed by IOs because they are able to protect themselves from undue intrusion by invoking the principle of reciprocity.[205] States can protect themselves not only through their ability to grant protection to other states, but also through their

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[201] Derek Croxton, *The Peace of Westphalia of 1648 and the Origins of Sovereignty*, 21 INT. HIST. R. 569, 570 (1999).

[202] *See, e.g.*, Agreement Regarding the Headquarters of the United Nations, June 26, 1947; *Articles of Agreement*, WORLD BANK, https://www.worldbank.org/en/about/articles-of-agreement (last visited Jan. 19, 2019).

[203] To be a sovereign state, the entity "must have a population that is significant and permanent." RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 201 (AM. LAW INST. 1987).

[204] *See* Kelsen, *supra* note 162, at 207, 209 (1944) (noting that legal equality refers to the "equality of capacity for duties and rights . . . that under the same conditions States have the same duties and the same rights).

[205] The principle of reciprocity implies that state actions are contingent on rewarding reactions from other states and these actions cease when expected reactions are not reciprocated. *See* Robert O. Keohane, *Reciprocity in International Relations*, 40 INT. ORG. 1, 5-8 (1986).

ability to retaliate. Similarly, when it comes to immunities, states can both be a grantor and recipient of immunity. States generally grant or withhold immunity from each other based on agreements or principles of comity under international law. And because of the principle of reciprocity, states generally do not grant broader immunities than they receives.[206] By contrast, this principle of reciprocity does not hold true for IOs. Although IOs may receive immunity by domestic courts, they are not able to grant or withhold immunity. IOs do not exercise jurisdiction over any person except, in limited circumstances, its own officials. As a result, IOs are only in the position of receiving, not granting, immunities. An IO that wishes to be shielded from liability cannot be asked to grant reciprocal immunity. And so, IOs do not have the incentives to police their own immunities.

Given that IOs do not possess sovereignty, it is clear that applying FSIA case law wholesale to IO immunity creates difficult interpretive questions. The commercial activity exception requires an analysis of powers peculiar to the sovereign.[207] But since IOs lack sovereignty, this test is essentially meaningless in the IO context. This interpretive difficulty was recognized by both the respondent and amici for *Jam*,[208] but still remained unresolved in the *Jam* remand.[209] Applying the FSIA case law wholesale leads to absurd results as there

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[206] Singer, *supra* note 169, 53-55.

[207] *See supra* Part II.B.

[208] *See, e.g.*, Petition for Writ of Certiorari, *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759 (No. 17-1011), 2018 WL 509826 ("T]he imperii /gestionis distinction is inadequate to deal with these cases.") (citing Singer, *supra* note 169, 63); Brief for International Bank for Reconstruction and Development et al. as Amici Curiae Supporting Respondents, *Jam*, 139 S. Ct. 759 (2019) (No. 17-1011), 2018 WL 4504286 ("The wholesale incorporation of the FSIA into the IOIA would raise a host of difficult questions regarding how to apply a statute specifically crafted for sovereigns to international organizations in general and MDBs in particular.").

[209] On remand, the court did not reach the question of whether the underlying activity in *Jam*, 139 S. Ct. 759, qualified as a "commercial activity." Instead, the court found that the commercial activity exception does not apply because the plaintiffs did not establish that the suit is based on conduct in the United States. *Jam.*, Civil Action No. 15-612 (JDB), 2020 WL 759199, at *4-7 (D.D.C. Feb. 14, 2020). And so, courts still have yet to rule on how the sovereign and private distinction works in the context of the commercial activity exception post-*Jam*.

is no workable line to determine whether an international organization is subject to suit. All in all, these interpretive difficulties under the commercial activity exception cuts against applying the FSIA case law wholesale to the IO context.

IV. RIGHTS-BASED FUNCTIONAL APPROACH TO INTERNATIONAL ORGANIZATION IMMUNITY

Judges need a roadmap on how to apply the holdings of *Jam* to future IO immunity cases. But as illustrated in Part III, the urge to apply FSIA exceptions and case law wholesale to the IO context is facile and ultimately unworkable.

Rather than transplanting FSIA case law wholesale into the IO context, this Article proposes an alternative framework for courts to determine IO immunity post-*Jam*: a functional approach that is simultaneously anchored in a system of rights and corresponding obligations established by international law. This approach not only upholds *Jam*, granting IOs the "same immunity" as foreign sovereigns, but it is also more faithful to the animating principles granting IOs immunity in the first place. Further, this framework enables courts to delicately balance IO immunity with human rights considerations.

This Part (A) illustrates the mechanics of this rights-based functional approach; (B) explains why a functional approach is superior to applying FSIA whole cloth to IO immunity.

A. Mechanics of a Functional Approach to International Organization Immunity

This Article advances a rights-based functional approach in determining the level of IO immunity in U.S. courts. Under this framework, an IO is *exclusively* entitled to immunity for activities that are strictly necessary for the exercise of its functions and the fulfilment of its purposes.[210] At bottom, this Article proposes that a rights-based functional approach to IO immunity would require the

[210] *See supra* Part III.A.

court to engage in a three-step inquiry: 1) What is the function and purpose of the IO? 2) What is the "gravamen" of the suit? 3) Does the "gravamen" overlap with the function and purpose of the IO? Under this framework, if the gravamen of the lawsuit overlaps with the function and purpose of the IO, then the IO is entitled to immunity. Here, this Article outlines how courts could adopt this three-step functional approach.

1. Determining the Function and Purpose of the International Organization

The first step of this functional approach is to determine the function and purpose of the defendant IO. This is the most critical step of the approach as whether IOs will be accorded immunity will largely turn on the scope of the IO's function and purposes.

Courts should look at the IO's specific constituent documents and its internal policies and standards. Since IOs are formed on the basis of treaties,[211] the 1969 Vienna Convention on the Laws of Treaties (VCLT) provides some insight on how to determine the function and purpose of IOs.[212] The VCLT is the "treaty of treaties": the treaty that regulates treaties between states.[213] It is known as one of the most important instruments governing treaty law and is widely considered as customary international law on the law of treaties.[214]

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[211] *See* KLABBERS, *supra* note 23; *supra* Part I.B.

[212] *See generally* Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331; 8 ILM 679 [hereinafter Vienna Convention].

[213] IAN MCTAGGART SINCLAIR & IAN ROBERTSON SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 3 (1984).

[214] The United States signed the Vienna Convention on the Law of Treaties (VCLT) on April 24, 1970. Although the U.S. Senate has not given advice and consent on the treaty, the United States considers "many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties." *Vienna Convention on the Law of Treaties*, U.S. STATE DEPARTMENT, https://2009-2017.state.gov/s/l/treaty/faqs/70139.html. *See also* 50 Years Vienna Convention on the Law of Treaties, UNIVERSITÄT WIEN (Nov. 18, 2019), https://juridicum.univie.ac.at/news-events/news-detailansicht/news/50-years-vienna-convention-on-the-law-of-treaties/?tx_news_pi1%5

Article 31 of the VCLT outlines the hierarchy of interpretation for treaties. First, a treaty "shall be interpreted in good faith in accordance with the ordinary meaning to be given in the terms of the treaty in their context and in the light of its object and purpose."[215] Second, the treaty should also take into account "any subsequent agreement between the parties regarding the interpretation of the treaty or application of its provision"[216] and "any subsequent practice in the application of the treaty."[217]

And so, the inquiry into the function and purpose of an IO should start with the ordinary meaning of the IO's constituent documents.[218] For many IOs, the preamble or opening articles list a set of purposes or principles of the IO.[219] Yet these purposes are generally very broad and do not shed light on whether the subject of the suit squarely falls within the functions and purposes of the IO. To discern the more specific functions of an IO, a court should then inquire into the "subsequent agreement"[220] and "subsequent practice"[221] in the application of the treaty. These subsequent agreements and practices can include the IO's secondary materials, such as its rules, standards, policies, and guidance issued by the IO while fulfilling its mission and function. For instance, the environmental, social, and governance standards set by IOs can provide insight on what activities are considered acceptable by the IO and fall within the function and purpose of the IOs.[222] These

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215 Vienna Convention, *supra* 214 art. 31(1).

216 *Id.* at art. 31(2)(a).

217 *Id.* at art. 31(2)(b).

218 *Id.* at art. 31(1).

219 *See, e.g.*, International Monetary Fund Articles of Agreement art. (I)(i)-(vi) (listing the purposes of the International Monetary Fund); International Finance Corporation Articles of Agreement art. I (stating that the purpose of the International Finance Corporation is to "further economic development by encouraging the growth of productive private enterprise in member countries").

220 *Id.* at art. 31(2)(a).

221 *Id.* at art. 31(2)(b).

222 For instance, the International Finance Corporation has a list of Performance Standards that define the scope and standards its projects must abide by. *See Performance Standards*, INTERNATIONAL FINANCE CORPORATION, https://

constituent documents and secondary material form the corpus of texts where the court can infer the IO's function and purpose.

i. Rights-Based Approach to Determining the IO's Function and Purposes

This functional approach also goes hand in hand with United States' commitment to human rights and international legal norms. It is important to note that *jus cogens* and customary law violations would never fall within the IO's function and purposes. In other words, IOs that facilitate international law violations could be subject to suit under this functional approach to IO immunity. This is because, by definition, these violations do not fall within the ambit of the functions and purposes of an IO.

All member states party to IOs have various international law obligations. First, member states party to IOs are beholden to *jus cogens* norms. By definition, *jus cogens* norms are non-derogable and prevail over any inconsistent rule of international law.[223] This is underscored by the VCLT, which states that a "is void if . . . it conflicts with a preemptory norm of general international law."[224] Second, the majority of member states, including the United States, have ratified a whole slew of international human rights treaties that codified customary international laws. For instance, the United States has ratified the Convention International Covenant on Economic Social and Cultural Rights, Universal Declaration of Human Rights, Convention on the Rights of the Child.[225] Upon ratification, these treaties become "the supreme law of the land" under the Supremacy Clause of the U.S. Constitution, which grants treaties the status of federal law.[226] The United States must comply with and implement

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www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards (last visited Apr. 23, 2020). These policies provide insight into how the IFC carries out its functions.

223 *See* CARTER ET AL., *supra* note 19, at 95.

224 Vienna Convention, *supra* note 214 art. 53, 64.

225 *See United States Ratification of International Human Rights Treaties*, HUMAN RIGHTS WATCH (July 24, 2009 12:24 PM), https://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties#.

226 U.S. CONST. art. VI, cl. 2

provisions of the treaties, just like other domestic legislation.[227] Because of these commitments, IO member states are unable to enter treaties that violate these *jus cogens* and customary international law norms. IO's constituent documents thus cannot incorporate or tolerate—whether explicitly or implicitly—*jus cogens* or customary international law violations.

The bottom line is that under this rights-based functional approach, IOs may be subject to suit when the underlying activity implicates an international law violation, because the violation cannot fall within the functions and purpose of the IO.

2. Identifying the Gravamen of the Lawsuit

The second step of this functional approach is to determine the "gravamen" of the suit, the particular conduct on which the lawsuit is based. Courts already adopted this gravamen test in the FSIA context.[228] To determine the gravamen of a lawsuit, courts should look to the "basis or foundation for a claim, those elements that, if proven, would entitle a plaintiff to relief."[229]

For instance, in *OBB Personenverkehr AG v. Sachs*, the court determined that the gravamen of the lawsuit is the "conduct that gives rise to the plaintiff's cause of action."[230] In *Sachs*, the respondent sued an Austrian railway for injuries sustained while boarding a train in Austria. To determine whether the court had jurisdiction over the claims, the court analyzed what constituted the gravamen of the lawsuit. The court ultimately held that the gravamen was the act that injured the respondent: "the wrongful conduct and dangerous conditions in Austria."[231]

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[227] The United States must comply with these treaties, subject to reservations, understandings, and declarations. CARTER ET AL., *supra* note 19, at 69-72, 99-107.

[228] *See, e.g.*, *Saudi Arabia v. Nelson*, 507 U.S. 349, 357 (1993); *OBB Personenverkehr AG v. Sachs*, 136 S. Ct. 390, 395 (2015).

[229] *Sachs*, 136 S. Ct. at 395.

[230] *Id.*

[231] *Id.* at 396-97.

This gravamen test can also be adapted to the IO context, where the court should also hone into the central feature of the suit as the focus of the functional test.

3. Does the IO's Function and Purpose Overlap with the Gravamen of the Suit?

Lastly, under this functional framework, the court should determine whether the gravamen of the suit falls within the function and purposes of the IO. If the gravamen of the suit overlaps with the function and purpose of the IO, the IO should be accorded immunity in U.S. courts. Conversely, however, if the gravamen does not overlap with the function and purposes of the IO, the court should not accord the IO immunity. Under this analysis, an international organization would only be entitled to what is strictly necessary for the exercise of its functions in the fulfilment of its purposes.

B. In Defense of a Functional Approach

Unlike the approach of applying FSIA whole cloth to immunity, a functional framework to IO immunity can overcome the challenges delineated in Part II. Moreover, this rights-based functional approach gives courts the flexibility to balance competing judicial values.

First and foremost, a functional approach to IO immunity will allow courts to grant IOs the "same immunity" that foreign sovereigns currently enjoy.[232] The conceptual bases for IO and foreign sovereign immunity are distinct.[233] States derive immunity from their sovereignty, where states enjoy autonomy and independence from external interference.[234] IOs, on the flip side,

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[232] *See Jam*, 139 S. Ct. 759, 761 (2019).

[233] *See supra* Part III.B-C.

[234] Sovereignty is defined as when "the legal authority or competence of a State [is] limited and limitable only by international law and not by the national law of another State." Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L J. 207, 208.

derive immunity to protect their functions and independence.[235] But while an IO has no right to self-determination, it does have a right, coterminous with its obligations as set out in its constituent instruments, to set policies to fulfill its purposes.[236] And so, foreign sovereigns and IOs do share something in common: both require jurisdictional immunity to protect their autonomous and independent functions. It stands to reason that within this commonality, courts are able to grant IOs the "same immunity from suit" that a foreign sovereign enjoys.

Crucially, if IO immunity is exclusively based on this functional approach, IOs will then be entitled to the same level of protections as foreign sovereigns. As analyzed in Part III.A, foreign sovereigns enjoy much less legal protections than IOs. The FSIA is the exclusive basis of foreign sovereign immunity, while IOs enjoy up to four layers of immunities.[237] But by narrowing immunities to this functional approach, IOs are more likely entitled to the same immunities as foreign sovereigns.

Second, and relatedly, a functional approach is more faithful to the animating principles behind IO immunity.[238]

Third, a functional approach avoids the interpretive issues that bedevil the application of FSIA exceptions to IO immunity. This is because a functional approach to IO immunity would not rely on the distinction between sovereign and private acts, as required under the FSIA's commercial activity exception.[239] Instead, this framework would start with the essential functions and purpose of the IO, and ask whether the activity underlying the suit falls within these functions.

And lastly, on a policy level, the functional approach is more favorable because it allows courts to weigh the operational needs of IOs against other core judicial values. At the end of the day, IOs can

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235 *See supra* Part III.B.
236 *Id.*
237 *See supra* Part III.A.
238 *See supra* Part III.B.
239 *See supra* Part III.C.

be useful forums of international exchange, collaboration, and rulemaking. But this utility must also be balanced by considerations of accountability under the rule of law and fairness to litigants.[240] By protecting only the core functions and purposes of an IO and carving out exceptions to immunity when IOs violate international law, this functional approach empowers courts to better balance competing judicial values.

CONCLUSION

IO immunity has undergone a sea change post-*Jam*. In this new age of restrictive liability, courts are now in unchartered waters when determining the level of immunity to accord IOs. Although it may be tempting to apply the body of law surrounding foreign sovereign immunity wholesale to the IO context, this approach is ultimately shortsighted and unworkable. Instead, this Article presents an alternative approach based on the functions of IOs. This functional framework not only addresses the interpretive challenges left open by *Jam*, but also allows courts to delicately balance the operational needs of IOs with accountability under the rule of law.

[240] Herz, *supra* note 48, at 474-75.

TABLE I: LOCATION OF INTERNATIONAL ORGANIZATION HEADQUARTERS AND BREAKDOWN OF SUBJECT AREA

IO Headquarters	**Number**	**Percentage**
US	20	30%
U.K.	4	6%
France	7	10%
Switzerland	11	16%
Canada	5	7%
Other	20	30%
Total	67	100%
IO Subject Area	**Number**	**Percentage**
Financial Institution	14	21%
Natural Resource/ Agriculture	11	16%
Disputes	1	1%
Trade	4	6%
Technical Expertise	14	21%
Human Condition	11	16%
Political Alliance	12	18%
Total	67	100%

APPENDIX I: OVERVIEW OF THE LEVEL OF IMMUNITY SPECIFIED BY INTERNATIONAL ORGANIZATION CONSTITUENT DOCUMENTS

Organization	*Status*	*Executive Order*	*HQ*	*Type of Org.*	*Specify level?*	*Level*	*Specific Provision*
International Renewable Energy Agency	Active	Ex. Ord. No. 13705, Sept. 3, 2015, 80 F.R. 54405.	U.A.E.	Natural Resource / Agriculture	Yes	Absolute immunity	International Renewable Energy Agency (Privileges and Immunities) Order 2017, art. III § 3: "The Agency, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Assembly has expressly waived the immunity of the Agency. It is, however, understood that no waiver of immunity shall extend to any measure of execution."
International Boundary and Water Commission, United States and Mexico	Active	Ex. Ord. No. 12467, Mar. 2, 1984, 49 F.R. 8229.	U.S.	Natural Resource / Agriculture	No, only personal immunity for officials	Personal immunity for officials	Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande, art. 2: "The Commissioner, two principal engineers, a legal adviser, and a secretary, designated by each Governemnt as members of its Section of the Commission, shall be entitled in the territory of the other country to the privileges and immunites appertaining to diplomats."
Inter-American Defense Board	Active	Ex. Ord. No. 10228, Mar. 26, 1951, 16 F.R. 2676.	U.S.	Political Alliance	No, only personal immunity for officials	Personal immunity for officials of the Regional Security System	Treaty Establishing the Regional Security System, art. 4 2(b) "agree that service personnel of one Member State taking part in operations in another Member State or in the territorial sea or exclU.S.ive economic zone of that other Member State shall have all the rights, powers, duties, privileges and immunities conferred on service personnel of the second mentioned Member State by the laws of that State."

Inter-American Development Bank	Active	Ex. Ord. No. 10873, Apr. 8, 1960, 25 F.R. 3097; Ex. Ord. No. 11019, Apr. 27, 1962, 27 F.R. 4145.	U.S.	Financial Institution	No, only personal immunity for officials	Personal immunity for officials	Agreement Establishing the Inter-American Development Bank , art. XI § 4 " Immunity from legal process with respect to acts performed by them in their official capacity, except when the Bank waives this immunity."
Inter-American Investment Corporation	Active	Ex. Ord. No. 12567, Oct. 2, 1986, 51 F.R. 35495.	U.S.	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence	Agreement Establishing the Inter-American Investment Corporation, art. VII § 3: "Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member country in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities."
Inter-American Tropical Tuna Commission	Active	Ex. Ord. No. 11059, Oct. 23, 1962, 27 F.R. 10405.	U.S.	Natural Resource / Agriculture	No		
International Bank for Reconstruction and Development	Active	Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.	U.S.	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence	IBRD Articles of Agreement, art. VII §3: "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."
International Centre for Settlement of Investment Disputes	Active	Ex. Ord. No. 11966, Jan. 19, 1977, 42 F.R. 4331.	U.S.	Disputes	Yes	Absolute immunity	Convention on the Settlement of Investment Disputes, art. 20 : "The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity"
International Cotton Advisory Committee	Active	Ex. Ord. No. 9911, Dec. 19, 1947, 12 F.R. 8719.	U.S.	Trade	No		

International Development Association	Active	Ex. Ord. No. 11966, Jan. 19, 1977, 42 F.R. 4331.	U.S.	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence	International Development Association Articles of Agreement, art. VIII § 3: "Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities."
International Fertilizer Development Center	Active	Ex. Ord. No. 11977, Mar. 14, 1977, 42 F.R. 14671.	U.S.	Natural Resource / Agriculture	No		
International Finance Corporation	Active	Ex. Ord. No. 10680, Oct. 2, 1956, 21 F.R. 7647.	U.S.	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence	Articles of Agreement of the International Finance Corporation, art. 6 § 3: "Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service 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 Corporation 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 Corporation."
International Food Policy Research Institute	Active	Ex. Ord. No. 12359, Apr. 22, 1982, 47 F.R. 17791.	U.S.	Natural Resource / Agriculture	No		
International Monetary Fund	Active	Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.	U.S.	Financial Institution	Yes	Absolute immunity	Articles of Agreement of the International Monetary Fund, art. IX, § 3: "IMF enjoys "immunity from every form of judicial process except to the extent that it expressly waives its immunity"

International Telecommunications Satellite Organization (INTELSAT)	Active	Ex. Ord. No. 11718, May 14, 1973, 38 F.R. 12797; Ex. Ord. No. 11966, Jan. 19, 1977, 42 F.R. 4331.	U.S.	Technical Expertise	No	Personal immunity for officials	United States of America and International Telecommunications Satellite Organization Headquarters Agreement, art. 16: "The officers and employees of INTELSAT, the representatives of the Parties and of the Signatories and persons participating in arbitration proceedings pursuant to the INTELSAT Agreement shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions"
Multilateral Investment Guarantee Agency	Active	Ex. Ord. No. 12647, Aug. 2, 1988, 53 F.R. 29323.	U.S.	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence	Convention Establishing the Multilateral Investment Guarantee Agency, Chap. VII, art. 44: "Actions other than those within the scope of Articles 57 and 58 may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice of process."
North American Development Bank	Active	Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.	U.S.	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence	Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank, art. VIII, § 3: "Actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a Party 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."

Organization of American States	Active	Ex. Ord. No. 10533, June 3, 1954, 19 F.R. 3289.	U.S.	Political Alliance	Yes	Functional immunity	Agreement on Privileges and Immunities of the Organization of American States, art. 103 : "The Organization of American States shall enjoy in the territory of each Member such legal capacity, privileges and immunities as are necessary for the exercise of its functions and the accomplishment of its purposes."
Pan American Health Organization (includes Pan American Sanitary Bureau)	Active	Ex. Ord. No. 10864, Feb. 18, 1960, 25 F.R. 1507.	U.S.	Human Condition	Yes	Functional immunity	Constitution of the World Health Organization, art. 67(a): "The Organization shall enjoy in the territory of each Member such privileges and immunities as may be necessary for the fulfilment of its objective and for the exercise of its functions."
			U.S.			Absolute immunity	Convention on the Privilegs and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
United Nations	Active	Ex. Ord. No. 11484, Sept. 29, 1969, 34 F.R. 15337.	U.S.	Political Alliance	Yes	Functional immunity	Charter of the United Nations, art. 105 "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."
						Absolute immunity	Convention on Privileges and Immunities of the United Nations, art. II, § 2: "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".

International Coffee Organization	Active	Ex. Ord. No. 11225, May 22, 1965, 30 F.R. 7093.	U.K.	Natural Resource / Agriculture	Yes	Functional Immunity	International Coffee Agreement of 1962, art. 22(1): "The Organization shall have in the territory of each Member, to the extent consistent with its laws, such legal capacity as may be necessary for the exercise of its functions under the Agreement." (https://treaties.un.org/doc/Publication/UNTS/Volume%20469/v469.pdf)
European Bank for Reconstruction and Development	Active	Ex. Ord. No. 12766, June 18, 1991, 56 F.R. 28463.	U.K.	Financial Institution	No, only personal immunity for officials	Personal immunity for officials	
Intergovernmental Maritime Consultative Organization	Active	Ex. Ord. No. 10795, Dec. 13, 1958, 23 F.R. 9709.	U.K.	Political Alliance	Yes	Functional immunity	Convention of the Intergovernmental Maritime Consultative Organization, § Section 2(a): "The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and the exercise of its functions."
						Absolute immunity	Convention on Privileges and Immunities of the United Nations, art. II, § 2: "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".
International Maritime Satellite Organization	Active	Ex. Ord. No. 12238, Sept. 12, 1980, 45 F.R. 60877.	U.K.	Technical Expertise	No, only personal immunity for officials	Personal immunity for officials	Protocol on the Privileges and Immunities of the International Maritime Satellite Organization (INMARSAT), art. 7(1)(a): "Staff members shall enjoy the following privileges and immunities: (a) Immunity from jurisdiction"

African Development Fund	Active	Ex. Ord. No. 11977, Mar. 14, 1977, 42 F.R. 14671.	Tunisia	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence or when the action does not arise from borrowing powers	Agreement Establishing the African Development Fund, art. 52(1): "The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers when it may be sued only in a court of competent jurisdiction in the territory of a member in which the Bank has its principal office, or in the territory of a member or non-member State where it 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."
Global Fund to Fight AIDS, Tuberculosis and Malaria	Active	Ex. Ord. No. 13395, Jan. 13, 2006, 71 F.R. 3203.	Switzerland	Human Condition	Yes	Absolute immunity	The Global Fund to Fight AIDS, Tuberculosis and Malaria, art. 2(1): "(1) The Global Fund, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in a particular case it has expressly waived its immunity. "
International Committee of the Red Cross	Active	Ex. Ord. No. 12643, June 23, 1988, 53 F.R. 24247.	Switzerland	Human Condition	Yes	Absolute immunity	
International Labor Organization	Active	Ex. Ord. No. 9698, Feb. 19, 1946, 11 F.R. 1809.	Switzerland	Human Condition	Yes	Functional immunity	International Labour Organization Constitution, art. 40 "The International Labour Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes."
International Union for Conservation of Nature and Natural Resources	Active	Ex. Ord. No. 12986, Jan. 18, 1996, 61 F.R. 1693.	Switzerland	Natural Resource / Agriculture	No		

Inter-Parliamentary Union	Active	Ex. Ord. No. 13097, Aug. 7, 1998, 63 F.R. 43065.	Switzerland	Political Alliance	No		
International Organization for Migration (IOM)	Active	Ex. Ord. No. 10335, Mar. 28, 1952, 17 F.R. 2741.	Switzerland	Human Condition	Yes	Functional immunity	International Organization for Migration Constitution, art. 23L "The Organization shall enjoy such privileges and immunities as are necessary for the exercise of its functions and the fulfilment of its purposes."
					Yes	Absolute immunity	Convention on the Privileges and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
World Intellectual Property Organization	Active	Ex. Ord. No. 11484, Sept. 29, 1969, 34 F.R. 15337.	Switzerland	Technical Expertise	Yes	Absolute immunity	Convention on the Privileges and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"

Universal Postal Union	Active	Ex. Ord. No. 10727, Aug. 31, 1957, 22 F.R. 7099.	Switzerland	Trade	Yes	Absolute immunity	Convention on the Privileges and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
World Health Organization	Active	Ex. Ord. No. 10025, Dec. 30, 1948, 13 F.R. 9361.	Switzerland	Human Condition	Yes	Absolute immunity	Convention on the Privileges and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
World Meteorological Organization	Active	Ex. Ord. No. 10676, Sept. 1, 1956, 21 F.R. 6625.	Switzerland	Technical Expertise	Yes	Absolute immunity	Convention on the Privileges and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
World Trade Organization	Active	Ex. Ord. No. 13042, Apr. 9, 1997, 62 F.R. 18017.	Switzerland	Trade	Yes	Functional immunity	World Trade Organization Agreement, art. VIII, § 2: "The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its

							functions."
World Tourism Organization	Active	Ex. Ord. No. 12508, Mar. 22, 1985, 50 F.R. 11837.	Spain	Trade	Yes	Absolute immunity	Convention on the Privilegs and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
Organization of Eastern Caribbean States	Active	Ex. Ord. No. 10533, June 3, 1954, 19 F.R. 3289.	Saint Lucia	Political Alliance	No, only personal immunity for officials	Personal immunity for officials	Convention Treaty Establishing the Organization of Eastern Carribean States, "The privileges and immunities to be granted to the senior officials of the Organisation at its headquarters and in the Member States shall be the same accorded to members of a diplomatic mission accredited at the headquarters of the Organisation and in the Member States under the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961. Similarly the privileges and immunities granted to the Secretariat at the headquarters of the Organisation shall be the same as granted to diplomatic missions at the headquarters of the Organisation and in the Member States under the said Convention."

Asian Development Bank	Active	Ex. Ord. No. 11334, Mar. 7, 1967, 32 F.R. 3933.	Philippines	Financial Institution	Yes	Immunity in jurisdictions where IO has no presence or when the action does not arise from borrowing powers	Agreement Establishing the Asian Development Bank, art. 50(1): "The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank in a court of competent jurisdiction in the territory of a country in which the Bank has its principal or a branch office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities."
South Pacific Commission	Active	Ex. Ord. No. 10086, Nov. 25, 1949, 14 F.R. 7147.	New Caledonia	Political Alliance	No		
Organization for the Prohibition of Chemical Weapons	Active	Ex. Ord. No. 13049, June 11, 1997, 62 F.R. 32471.	Netherlands	Human Condition	Yes	Functional immunity	Convention on the Prohibition of the Development, Production, Stockpiling and U.S.e of Chemical Weapons and on Their Destruction, Chap. E, art. 48: "The Organization shall enjoy on the territory and in any other place under the jurisdiction or control of a State Party such legal capacity and such privileges and immunities as are necessary for the exercise of its functions. "
International Hydrographic Bureau	Active	Ex. Ord. No. 10769, May 29, 1958, 23 F.R. 3801.	Monaco	Technical Expertise	Yes	Functional immunity	Convention on the International Hydrographic Organization As Amended by the Protocol Dated 14 April 2005 That Entered Into Force on 8 November 2016, art. XIII: "In the territory of each of its Member States it shall enjoy, subject to agreement with the Member State concerned, such privileges and immunities as may be necessary for the exercise of its

							functions and the fulfilment of its object."
Border Environment Cooperation Commission	Active	Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.	Mexico	Political Alliance	Yes	Functional immunity	Agreement Concerning the Establisment of a Border Environment Cooperation Commission and a North American Development Bank, art. 4, § 3: "The Commission, its property and its 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 the Commission may expressly waive its immunity for the purposes of any proceedings or by the terms of any contract."
International Telecommunications Satellite Organization (INTELSAT)	Active	Ex. Ord. No. 11718, May 14, 1973, 38 F.R. 12797; Ex. Ord. No. 11966, Jan. 19, 1977, 42 F.R. 4331.	U.S.	Technical Expertise	No		
Food and Agriculture Organization	Active	Ex. Ord. No. 9698, Feb. 19, 1946, 11 F.R. 1809.	Italy	Natural Resource / Agriculture	Yes	Absolute immunity	Convention on the Privilegs and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"

International Development Law Institute	Active	Ex. Ord. No. 12842, Mar. 29, 1993, 58 F.R. 17081.	Italy	Human Condition	No		
International Fund for Agricultural Development	Active	Ex. Ord. No. 12732, Oct. 31, 1990, 55 F.R. 46489.	Italy	Financial Institution	Yes	Absolute immunity	Convention on the Privilegs and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
Multinational Force and Observers	Active	Ex. Ord. No. 12359, Apr. 22, 1982, 47 F.R. 17791.	Italy	Political Alliance	Yes	Absolute immunity	1981 Protocol to the 1979 Egypt-Israel Peace Treaty "the MFO enjoys immunity from the civil and criminal jurisdiction of local courts and other privileges and immunities cU.S.tomarily accorded international organizations."
Israel-United States Binational IndU.S.trial Research and Development Foundation	Active	Ex. Ord. No. 12956, Mar. 13, 1995, 60 F.R. 14199.	Israel	Technical Expertise	No		
European Central Bank	Active	Ex. Ord. No. 13307, May 29, 2003, 68 F.R. 33338.	Germany	Financial Institution	Yes	Functional immunity	Protocol on the Privileges and Immunities of the European Communities 1965, Preamble: "CONSIDERING that, in accordance with Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities, these Communities and the European Investment Bank shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks"

Council of Europe in Respect of the Group of States Against Corruption (GRECO)	Active	Ex. Ord. No. 13240, Dec. 18, 2001, 66 F.R. 66257.	France	Political Alliance	No, only personal immunity for officials	Personal immunity for officials	Agreement Establishing The Group of States Against Corruption - GRECO, art. 6(3): "The representatives appointed to the GRECO shall enjoy the privileges and immunities applicable under Article 2 of the Protocol to the General Agreement on Privileges and Immunities of the Council of Europe."
European Space Agency	Active	Ex. Ord. No. 11318, Dec. 5, 1966, 31 F.R. 15307; Ex. Ord. No. 11351, May 22, 1967, 32 F.R. 7561; Ex. Ord. No. 11760, Jan. 17, 1974, 39 F.R. 2343; Ex. Ord. No. 12766, June 18, 1991, 56 F.R. 28463.	France	Technical Expertise	Yes	Absolute Immunity	Convention for the Establishment of a European Space Agency, Convention: Annex I, art. IV, § 1 ("The Agency shall have immunity from jurisdiction and execution, except: a. to the extent that it shall, by decision of the Council, have expressly waived such immunity in a particular case").
*International Criminal Police Organization (INTERPOL) (*limited privileges: IOIA §2(c) withheld)*	Active	Ex. Ord. No. 12425, June 16, 1983, 48 F.R. 28069; Ex. Ord. No. 12971, Sept. 15, 1995, 60 F.R. 48617; Ex. Ord. No. 13524, Dec. 16, 2009, 74 F.R. 67803.	France	Political Alliance	No		
ITER International FU.S.ion Energy Organization	Active	Ex. Ord. No. 13451, Nov. 19, 2007, 72 F.R. 65653.	France	Technical Expertise	No, only personal immunity for officials	Personal immunity for officials	Agreement on the privileges and immunities of the ITER International FU.S.ion Energy Organization for the Joint Implementation of the ITER Project, art. 13(1) ("Representatives of the Parties shall, while exercising their functions as a representative and in the course of their journeys to and from the place of meeting convened by the ITER Organization, enjoy the following privileges and immunities")

Organization for Economic Cooperation and Development	Active	Ex. Ord. No. 10133, June 27, 1950, 15 F.R. 4159.	France	Human Condition	Yes	Functional Immunity	Supplementary Protocol No. 1 to the Convention for European Economic Cooperation on the Legal Capacity, Privileges and Immunities of the Organisation, preamble ("CONSIDERING that according to the provisions of Article 22 of the Convention, the Organisation for European Economic Co-operation shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes")
United Nations Educational, Scientific, and Cultural Organization	Active	Ex. Ord. No. 9863, May 31, 1947, 12 F.R. 3559.	France	Human Condition	Yes	Absolute immunity	Convention on the Privilegs and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"
World Organisation for Animal Health	Active	Ex. Ord. No. 13759, Jan. 12, 2017, 82 F.R. 5323.	France	Technical Expertise	No, only personal immunity for officials	Personal immunity for officials	
African Union	Active	Ex. Ord. No. 13377, Apr. 13, 2005, 70 F.R. 20263.	Ethiopia	Political Alliance	No		
African Development Bank	Active	Ex. Ord. No. 12403, Feb. 8, 1983, 48 F.R. 6087	Côte d'Ivoire	Financial Institution	No		
Commission for Environmental Cooperation	Active	Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.	Canada	Technical Expertise	No		
International Civil Aviation Organization	Active	Ex. Ord. No. 9863, May 31, 1947, 12	Canada	Technical Expertise	No		

		F.R. 3559.					
North Pacific AnadromoU.S. Fish Commission	Active	Ex. Ord. No. 12895, Jan. 26, 1994, 59 F.R. 4239.	Canada	Natural Resource / Agriculture	No		
North Pacific Marine Science Organization	Active	Ex. Ord. No. 12894, Jan. 26, 1994, 59 F.R. 4237.	Canada	Natural Resource / Agriculture	No		
Pacific Salmon Commission	Active	Ex. Ord. No. 12567, Oct. 2, 1986, 51 F.R. 35495.	Canada	Natural Resource / Agriculture			
CU.S.toms Cooperation Council	Active	Ex. Ord. No. 11596, June 5, 1971, 36 F.R. 11079.	Belgium	Technical Expertise			
International Atomic Energy Agency	Active	Ex. Ord. No. 10727, Aug. 31, 1957, 22 F.R. 7099.	AU.S.tria	Technical Expertise	Yes	Absolute immunity	Agreement on the Privileges and Immunities of the International Atomic Energy Agency, Art. III § 3: "The Agency, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."
United Nations IndU.S.trial Development Organization	Active	Ex. Ord. No. 12628, Mar. 8, 1988, 53 F.R. 7725.	AU.S.tria	Human Condition	Yes	Absolute immunity	Convention on the Privileges and Immunities of the Specialized Agencies, art. 3 § 4: "The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however,understood that no waiver of immunity shall extend to any measure of execution"

Caribbean Organization	Inactive	Ex. Ord. No. 10983, Dec. 30, 1961, 27 F.R. 32.
Commission for Labor Cooperation	Inactive	Ex. Ord. No. 12904, Mar. 16, 1994, 59 F.R. 13179.
Commission for the Study of Alternatives to the Panama Canal	Inactive	Ex. Ord. No. 12567, Oct. 2, 1986, 51 F.R. 35495.
Great Lakes Fishery Commission	Inactive	Ex. Ord. No. 11059, Oct. 23, 1962, 27 F.R. 10405.
Hong Kong Economic and Trade Offices	Inactive	Ex. Ord. No. 13052, June 30, 1997, 62 F.R. 35659.
Inter-American Institute of Agricultural Sciences	Inactive	Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.
Inter-American Statistical Institute	Inactive	Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713.
International Civilian Office in Kosovo	Inactive	Ex. Ord. No. 13568, Mar. 8, 2011, 76 F.R. 13497.
International Cotton Institute	Inactive	Ex. Ord. No. 11283, May 27, 1966, 31 F.R. 7667.
International Joint Commission-United States and Canada	Inactive	Ex. Ord. No. 9972, June 25, 1948, 13 F.R. 3573.
International Pacific Halibut Commission	Inactive	Ex. Ord. No. 11059, Oct. 23, 1962, 27 F.R. 10405.
International Secretariat for Volunteer Service	Inactive	Ex. Ord. No. 11363, July 20, 1967, 32 F.R. 10779.

International Wheat Advisory Committee (International Wheat Council)	Inactive	Ex. Ord. No. 9823, Jan. 24, 1947, 12 F.R. 551.
Korean Peninsula Energy Development Organization	Inactive	Ex. Ord. No. 12997, Apr. 1, 1996, 61 F.R. 14949.
Office of the High Representative in Bosnia and Herzegovina	Inactive	Ex. Ord. No. 13568, Mar. 8, 2011, 76 F.R. 13497.
Preparatory Commission of the International Atomic Energy Agency	Inactive	Ex. Ord. No. 10864, Feb. 18, 1960, 25 F.R. 1507.
United States-Mexico Border Health Commission	Inactive	Ex. Ord. No. 13367, Dec. 21, 2004, 69 F.R. 77605.
Caribbean Commission	Immunity Revoked	Ex. Ord. No. 10025, Dec. 30, 1948, 13 F.R. 9361; revoked by Ex. Ord. No. 10983, Dec. 30, 1961, 27 F.R. 32.
Coffee Study Group	Immunity Revoked	Ex. Ord. No. 10943, May 19, 1961, 26 F.R. 4419; revoked by Ex. Ord. No. 12033, Jan. 10, 1978, 43 F.R. 1915.
Inter-American Coffee Board	Immunity Revoked	Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713; revoked by Ex. Ord. No. 10083, Oct. 10, 1949, 14 F.R. 6161.

Intergovernmental Committee on Refugees	Immunity Revoked	Ex. Ord. No. 9823, Jan. 24, 1947, 12 F.R. 551; revoked by Ex. Ord. No. 10083, Oct. 10, 1949, 14 F.R. 6161.
Interim Communications Satellite Committee	Immunity Revoked	Ex. Ord. No. 11227, June 2, 1965, 30 F.R. 7369; revoked by Ex. Ord. No. 11718, May 14, 1973, 38 F.R. 12797
International Refugee Organization	Immunity Revoked	Ex. Ord. No. 9887, Aug. 22, 1947, 12 F.R. 5723; revoked by Ex. Ord. No. 10832, Aug. 18, 1959, 24 F.R. 6753.
International Telecommunications Satellite Consortium	Immunity Revoked	Ex. Ord. No. 11277, Apr. 30, 1966, 31 F.R. 6609; revoked by Ex. Ord. No. 11718, May 14, 1973, 38 F.R. 12797.
Lake Ontario Claims Tribunal	Immunity Revoked	Ex. Ord. No. 11372, Sept. 18, 1967, 32 F.R. 13251; revoked by Ex. Ord. No. 11439, Dec. 7, 1968, 33 F.R. 18257.
Organization of African Unity (OAU)	Immunity Revoked	Ex. Ord. No. 11767, Feb. 19, 1974, 39 F.R. 6603; revoked by Ex. Ord. No. 13377, §3, Apr. 13, 2005, 70

		F.R. 20263.
Southeast Asia Treaty Organization	Immunity Revoked	Ex. Ord. No. 10866, Feb. 20, 1960, 25 F.R. 1584; revoked by Ex. Ord. No. 12033, Jan. 10, 1978, 43 F.R. 1915.
United Nations Relief and Rehabilitation Administratio	Immunity Revoked	Ex. Ord. No. 9698, Feb. 19, 1946, 11 F.R. 1809; revoked by Ex. Ord. No. 10083, Oct. 10, 1949, 14 F.R. 6161.