

COMMENT

**IMPROVING INTERNATIONAL ORGANIZATION ACCOUNTABILITY:
A PROPOSAL BASED ON
THE TOBACCO MASTER SETTLEMENT AGREEMENT**

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INTRODUCTION

Every morning, billions of people wake up in the developing world with rising uncertainty about the day ahead. Food, water, shelter, and safety—none of it is certain. And yet, nearly everyone reading this Comment rises each morning with thoughts of a run, a podcast, or a pour-over coffee. Fortunately, international organizations have answered the uncertainty by financing trillions of dollars of projects in the developing world, all of which provide countless benefits to the most vulnerable people. Although the international community has taken great strides in helping the developing world, significant work remains to alleviate poverty, child hunger, disease, and many other critical issues. Still, when development projects occasionally cause harm, either intentionally or accidentally, those same destitute populations are left with the bill.

International organizations enjoy unprecedented privileges and immunities which shield them from the neediest individuals. This Comment examines the failed immunity and internal accountability regime of international organizations. By highlighting the unique characteristics of the Tobacco Master Settlement Agreement, this Comment proposes wholesale changes to organizational accountability.

For generations, men like Budah Jam have supported their families by seasonally fishing near the Tragadi harbor off the Kutch coast of India.¹ Fishing is a family business in the Kutch coast.² While men in the village catch the fish, women in the village clean, dry, and prepare the fish for market.³ Villages like Budah's are severely impoverished; seasonal fishing is their livelihood.⁴

In 2008, the International Finance Corporation (IFC) loaned \$450 million to an Indian company for the construction of a coal-fired power plant in Gujarat.⁵ The IFC is an international organization that finances private-sector development projects under the umbrella of the World

1. Complaint at 6-7, *Jam v. Int'l Fin. Corp.*, No. 15-cv-00612 (D.D.C. Apr. 4, 2015), ECF 1.

2. *Id.* at 7.

3. *Id.* at 6-7.

4. *Id.*

5. *Jam v. Int'l Fin. Corp.*, 139 S. Ct. 759, 767 (2019).

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Bank.⁶ Unfortunately, as the IFC concedes, the plant caused tragic environmental damage to Budah's village, including the discharge of thermal pollution into the sea, extensive coal-dust exposure, and degradation of freshwater sources.⁷ As Budah and others in his village stated, the environmental damage affected the "life and existence" of over 10,000 fishermen and their families in the region.⁸ By all accounts, the impact was immediate and swift.⁹

Beginning in the early 1990s, after increased pressure from various advocacy and sustainable development groups, international organizations began establishing internal accountability mechanisms, hoping to allay the international community's concerns.¹⁰ In 1999, the IFC followed suit and established the Compliance Advisor Ombudsman (CAO).¹¹ CAO's mission is to "serve as a fair, trusted, and effective

6. Articles of Agreement of the International Finance Corporation, art. I, Dec. 5, 1955, 7 U.S.T. 2197, T.I.A.S. No. 3620.

7. *Jam v. Int'l Fin. Corp.*, 860 F.3d 703, 704 & n.1 (D.C. Cir. 2017).

8. Complaint, *Association for the Struggle for Fishworkers' Rights (MASS) Tata Mundra Power Plant*, 4, India/Tata Ultra Mega-01/Mundra and Anjar (June 11, 2011) [hereinafter MASS Complaint], http://www.cao-ombudsman.org/cases/document-links/documents/TataMundraCAOComplaint_June112011.pdf.

9. See generally EARTHRIGHTS INT'L, FACT SHEET: DESTRUCTIVE TATA MUNDRA COAL FIRED POWER PLANT [hereinafter FACT SHEET: TATA MUNDRA], https://earthrights.org/wp-content/uploads/tata_mundra_factsheet-1.pdf (last visited Nov. 25, 2019).

10. Daniel D. Bradlow, *Private Complaints and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions*, 36 GEO J. INT'L L. 403, 408-09 (2005) ("The change [in accountability] was happening because of developments in human rights law and changing views about the environmental and social responsibilities of key decision-makers and actors. The result was that those who were adversely affected by the projects began to advocate more vigorously that all decision-makers, including funding sources, be held accountable for their decisions relating to these projects."); see, e.g., Richard E. Bissell & Suresh Nanwani, *Multilateral Development Bank Accountability Mechanisms: Developments and Challenges*, 6 MANCHESTER J. INT'L ECON. L. 2, 6 (2009) (in 1993, as a result of pressure from NGOs, the World Bank established the World Bank Inspection Panel).

11. Benjamin M. Saper, *The International Finance Corporation's Compliance Advisor/Ombudsman (CAO): An Examination of Accountability and Effectiveness from a Global Administrative Law Perspective*, 44 N.Y.U. J. INT'L L. & POL. 1279, 1288 (2012).

independent recourse and accountability mechanism, and to improve the environmental and social performance of the [IFC]”¹²

Following the environmental carnage caused by the plant, Budah and others in his community filed a complaint with the CAO, seeking relief for the devastation to their environment and livelihood.¹³ In 2013, the CAO completed its investigation and issued a final audit report, finding that the IFC: (a) failed to comply with environmental and social impact standards, (b) failed to take reasonable steps to protect the local community, and (c) failed even in the face of explicit knowledge of the harms the plant would likely cause.¹⁴ The report also included extensive recommendations for remedies that would bring the IFC into compliance with its own standards.¹⁵ Two years later, in 2015, the CAO issued a monitoring report explaining that the IFC largely ignored its earlier findings and that the IFC had yet to remedy the issues caused by the plant.¹⁶ Despite the CAO’s report finding that the IFC failed to comply with environmental standards or take reasonable steps to protect the local community, the IFC rendered no monetary relief and left claimants like Budah with nothing.¹⁷

After the CAO left Budah empty-handed, he and others sought to hold the IFC accountable in United States (U.S.) federal court by filing a complaint alleging various tort claims.¹⁸ Unfortunately, as explained below, Budah’s efforts were stonewalled by an immunity and accountability scheme with serious, damaging flaws. Instead of leaving

12. OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN, OPERATIONAL GUIDELINES 2 (2013) [hereinafter CAO OPERATIONAL GUIDELINES], www.cao-ombudsman.org/howwework/documentsCAOOperationalGuidelines_2013.pdf.

13. *See generally* MASS Complaint, *supra* note 8.

14. *See generally* OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN, CAO AUDIT REPORT OF IFC INVESTMENT IN COASTAL GUJARAT POWER LIMITED, INDIA (2013), <http://www.cao-ombudsman.org/cases/document-links/documents/CAOAuditReportC-I-R6-Y12-F160.pdf>.

15. *See id.* at 40 (explaining that the IFC conducted audits of the project and worked to bring client back into compliance with its obligations).

16. OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN, MONITORING OF IFC’S RESPONSE TO: CAO AUDIT OF IFC INVESTMENT IN COASTAL GUJARAT POWER LIMITED, INDIA 3-5 (2015), <http://www.cao-ombudsman.org/cases/document-links/documents/CGPLmonitoringreportJanuary2015.pdf>.

17. Complaint *Jam*, *supra* note 1, at 51-53.

18. *See generally id.* Budah’s complaint alleged claims of negligence, trespass, nuisance, and breach of contract. *Id.* at 67-80.

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claimants in the dark, the international community should look to one prior settlement scheme that successfully navigated a complex and difficult issue: the Tobacco Master Settlement.

In 1998, following years of litigation, forty-six U.S. states entered into a \$206 billion Master Settlement Agreement (MSA) with tobacco companies.¹⁹ The MSA paved the way for legislation that would require tobacco companies to deposit certain funds in escrow to secure payments for *future* claims.²⁰ This Comment proposes that the international community should consider revising its failing accountability regime by adopting certain characteristics of the MSA. Specifically, international organizations, subject to certain parameters, should (a) ensure that a pool of funds is available for claimants suffering the most extreme, devastating injuries; and (b) create an independent, binding claims tribunal to hear complaints brought by injured parties. Instead of drowning claimants in an accountability gap, international organizations should use their large endowments to right the wrongs they cause.

Part I of this Comment discusses the history and purpose of international organizations. Part II explores international organizations' immunities, both under international and U.S. law. Part III examines the CAO's formation, structure, weaknesses, and various proposals for improvement. Part IV analyzes the MSA, including the establishment of escrow statutes. Finally, Part V proposes a compensation scheme that international organizations can follow, which is modeled after the MSA.

I. INTERNATIONAL ORGANIZATIONS

A. *History of International Organizations*

In 1919, following the First World War, the League of Nations was established as the modern era's first significant international

19. *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 63 (2d Cir. 2007). Payments were to be made over a twenty-five-year period. *Id.*

20. Frank Sloan & Lindsey Chepke, *Litigation, Settlement, and the Public Welfare: Lessons from the Master Settlement Agreement*, 17 WIDENER L. REV. 159, 171 (2011).

organization.²¹ As a general matter, international organizations are “perhaps the most obvious and typical vehicles for interstate cooperation.”²² International organizations have various sizes, goals, and structures.²³

While defining international organizations is a surprisingly difficult and complex task,²⁴ organizations share several foundational features.²⁵ First, international organizations are comprised of member-states that wield decision-making authority based on their proportionate share of capital contributions to the organization.²⁶ Second, international organizations operate under charters that specify the duties of their member-states and, critical to the discussion of this Comment, lay out “certain privileges and immunities of the institutions and their staff members.”²⁷ Multi-lateral Development Banks are international organizations that provide loans to finance economic development projects.²⁸ Multi-lateral Development Banks, like the IFC, inevitably fund projects that result in harm, such as the environmental harm caused to Budah’s village. This Comment discusses the difficulty in holding international organizations accountable based on their wide-ranging privileges and immunities.

The evolution of Multi-lateral Development Banks (MDBs) can be traced to three distinct generations.²⁹ The International Bank for Reconstruction and Development (IBRD) marked the first generation.³⁰ The IBRD was formed to spur economic development outside of

21. JAN KLABBERS, AN INTRODUCTION TO INTERNATIONAL INSTITUTIONAL LAW 19 (2002).

22. *Id.* at 28.

23. *See id.* at 23.

24. *See generally id.* at 7-13 (explaining that the varying definitions of international law lead to a lack of consensus about whether international organizations are subject to customary international law).

25. John W. Head, *For Richer or for Poorer: Assessing the Criticisms Directed at the Multilateral Development Banks*, 52 U. KAN. L. REV. 241, 249 (2004). It is important to note that although this Comment mainly deals with MDBs, which are a type of international organization, these shared characteristics should not be strictly construed as only applying to MDBs.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.* at 250.

30. *Id.*

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Europe following the devastation of the Second World War.³¹ In 1960, the International Development Association (IDA) marked the second generation.³² The IDA was formed to provide loans to less developed countries, mainly those that were granted independence through decolonization.³³ The IBRD and IDA merged, forming the World Bank.³⁴ Finally, in 1990, the European Bank for Reconstruction and Development (EBRD) marked the third generation.³⁵ The EBRD was formed to assist various countries in transitioning from Communist to Democratic political control.³⁶

B. Purpose of International Organizations

International organizations, specifically MDBs, generally have a central focus: economic development.³⁷ To achieve this goal, the organizations “provide loans (and some grants) to finance economic development projects such as roads, irrigation systems, port facilities, power plants, rural health facilities, teacher training, fertilizer production, agricultural credit, and institutional strengthening.”³⁸

Not surprisingly, such a wide array of projects occasionally results in devastating injuries to local populations.³⁹ Additionally, as these projects are only conducted in the developing world, local populations are significantly less prepared to withstand injuries.⁴⁰ Regardless of the

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 248.

35. *Id.* at 251.

36. *Id.*

37. *Id.* at 249.

38. *Id.*

39. See generally OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN, ANNUAL REPORT 2019, <https://cao-ar19.org/CAO-Annual-Report-2019.pdf>. In 2018, the CAO handled sixty new cases of claimants seeking review; however, only twelve of those have been deemed eligible, with the others under further investigation. *Id.* at 2.

40. Richard A. Gosselin et al., *Injuries: The Neglected Burden in Developing Countries*, 87 BULLETIN OF THE WORLD HEALTH ORG. 246, 246 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672580/pdf/08-052290.pdf> (“More than 90% of injury deaths occur in low- and middle-income countries, where preventive efforts are often nonexistent, and health-care systems are least prepared to

magnitude and probability of causing injuries to vulnerable populations, international organizations largely enjoy wide immunity from suit.⁴¹

II. IMMUNITY OF INTERNATIONAL ORGANIZATIONS

A. *Methods of Receiving Immunity*

Immunities are conferred on an international organization in several ways.⁴² First, the governing charter or treaty establishing the international organization may include an express immunity provision, as in the case of the United Nations.⁴³ Second, international organizations can enter into separate multilateral treaties that establish privileges and immunities.⁴⁴ Third, as discussed below, member states may pass legislation conferring immunity on specific international organizations, similar to the immunity conferred on the IFC by the U.S. Congress through the International Organizations Immunities Act (IOIA).⁴⁵

International organizations, even in their earliest forms, always enjoyed certain privileges and immunities, which “enabl[ed] them to carry out their tasks in an independent fashion. This functional necessity rationale for a preferential treatment . . . has long dominated the debate and has rarely been questioned by the courts or other decision-makers.”⁴⁶ The functional necessity doctrine is so widely accepted that the American Law Institute included it in the Restatement

meet the challenge. As such, injuries clearly contribute to the vicious cycle of poverty and the economic and social costs have an impact on individuals, communities and societies.”).

41. *See, e.g.*, International Organizations Immunities Act, 22 U.S.C. § 288a(b) (2002).

42. August Reinisch, *Privileges and Immunities*, in RESEARCH HANDBOOK ON THE LAW OF INTERNATIONAL ORGANIZATIONS 132, 135 (Jan Klabbers & Asa Wallendahl eds., 2011).

43. *Id.*

44. *Id.* For example, the Council of Europe and Organization of American States has passed separate agreements detailing certain privileges and immunities for its international organizations. *Id.*

45. *See id.* at 132-33; *see also* International Organizations Immunities Act, 22 U.S.C. § 288a(b) (2002).

46. Reinisch, *supra* note 42, at 132.

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Third of Foreign Relations Law.⁴⁷ Essentially, most scholars agree that international organizations should be given enough immunity as necessary to carry out their missions.⁴⁸

*B. Organizational Immunity under U.S. Law
and Effects of Jam v. IFC*

Toward the end of the Second World War, the United States and its allies decided that international organizations would be vital for rebuilding the world's devastated economic and social framework.⁴⁹ To this end, in 1945, Congress passed the IOIA, which provided international organizations the same immunity from suit as enjoyed by foreign governments.⁵⁰ At the time, foreign governments enjoyed virtually absolute immunity from suit.⁵¹ In 1976, Congress passed the Foreign Sovereign Immunities Act (FSIA), which provides several exceptions to *foreign government* immunity, including an exception for when the foreign government's conduct is based on commercial activity that has a specific connection to the United States.⁵²

47. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 467(1) (AM. LAW. INST. 1987) (“[U]nder international law, an international organization generally enjoys such privileges and immunities from the jurisdiction of a member state as are necessary for the fulfilment of the purposes of the organization, including immunity from legal process, and from financial controls, taxes, and duties.”). The American Law Institute is the United States’ leading legal organization that prepares “scholarly work to clarify, modernize, and otherwise improve the law.” *About ALI*, AM. LAW. INST., <https://www.ali.org/about-ali/> (last visited Feb. 20, 2020). The American Law Institute also provides the Restatement of the Law, which clarifies the law for courts, legislatures, and attorneys. *Id.*

48. Reinisch, *supra* note 42, at 134. This is known as the functional necessity rationale. *Id.*

49. Steven Herz, *International Organizations in U.S. Courts: Reconsidering the Anachronism of Absolute Immunity*, 31 SUFFOLK TRANSNAT’L L. REV. 471, 487-88 (2008).

50. International Organizations Immunities Act, 22 U.S.C. § 288a(b) (2002) (“International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.”).

51. *Jam v. Int’l Fin. Corp.*, 139 S. Ct. 759, 765 (2019).

52. Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3) (2012) (“A foreign state shall not be immune from the jurisdiction of courts of the United States

Budah's attempt to hold the IFC accountable in U.S. federal court eventually reached the Supreme Court of the United States.⁵³ The Court considered whether the IOIA forever crystallized the virtually absolute immunity enjoyed at the time of its passing, or, whether the FSIA also restricted, by reference, the immunity of international organizations.⁵⁴ The *Jam* Court held that the FSIA provided international organizations with the same immunity provided to foreign governments *at the time of the lawsuit*; accordingly, the IFC was less immune from suit than it was in 1945 when the IOIA was passed.⁵⁵ The Court rested its decision on the fact that the most natural interpretation of the IOIA, under the reference canon of statutory interpretation, is that the act forever linked the immunity of international organizations with that of foreign governments.⁵⁶ The majority of the Court rejected the IFC's argument that restricting immunity in this case would open up

or of the States in any case . . . in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States.”).

53. See generally *Jam*, 139 S. Ct. at 759-60 (explaining the procedural history of the case).

54. *Id.* at 765 (“This case requires us to determine whether the IOIA grants international organizations the virtually absolute immunity foreign governments enjoyed when the IOIA was enacted, or the more limited immunity they enjoy today.”).

55. *Id.* at 772 (“The International Organizations Immunities Act grants international organizations the ‘same immunity’ from suit ‘as is enjoyed by foreign governments’ at any given time. Today, that means that the Foreign Sovereign Immunities Act governs the immunity of international organizations. The International Finance Corporation is therefore not absolutely immune from suit.”). In 1945, foreign governments enjoyed “virtually absolute immunity as a matter of international grace and comity,” because the U.S. State Department adhered to the “classical theory of foreign sovereign immunity.” *Id.* at 765-66.

56. *Id.* at 769 (“The same logic applies here. The IOIA’s reference to the immunity enjoyed by foreign governments is a general rather than specific reference. The reference is to an external body of potentially evolving law—the law of foreign sovereign immunity—not to a specific provision of another statute. The IOIA should therefore be understood to link the law of international organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with the other.”).

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the floodgates to a flood of litigation against international organizations, thereby defeating the initial purpose of immunity.⁵⁷ Critically, although the Court sided with Budah and remanded the case for further proceedings,⁵⁸ the District Court found the IFC immune from suit because none of the FSIA's immunity exceptions applied.⁵⁹

Officials of many international organizations often claim, as the IFC did in *Jam*, that social safeguard policies increase costs and impede lending.⁶⁰ However, the IFC has experienced steady growth since the establishment of its internal accountability mechanism, the CAO.⁶¹ Specifically, in the past decade alone, the IFC's commitments have nearly tripled.⁶² Further, while restricting immunity may lead to more

57. *Id.* at 772. Justice Breyer wrote a dissenting opinion largely agreeing with the IFC's contention that restricting immunity would lead to a flood of litigation against international organizations. *See id.* at 772-87 (Breyer, J. dissenting). However, numerous facts suggest that restricting organizational immunity would neither have a chilling effect on the organizations nor open the floodgates to waves of litigation. *See generally* Brief of Amicus Curiae of Dr. Erica R. Gould in Support of Plaintiffs-Appellants and Reversal, *Jam v. Int'l Fin. Corp.*, 860 F.3d 703 (D.C. Cir. 2017) (No. 15-cv-00612) [hereinafter Gould Brief] (arguing that institutional factors and prior history disprove the IFC's contention that restrictive immunity would inhibit the organization's mission and lead to significant litigation).

58. Once Budah's case was remanded to the U.S. District Court for the District of Columbia, the IFC filed a renewed motion to dismiss. *See generally* Motion to Dismiss, *Jam v. Int'l Fin. Corp.*, No. 15-cv-00612, (D.D.C. June 19, 2019), ECF 40.

59. The FSIA provides several exceptions to immunity, including when the conduct in question was based on commercial activity with a sufficient nexus to the United States. *See* Foreign Sovereign Immunities Act, 28 U.S.C. § 1605 (2012). On remand, the District Court found that the commercial activity exception, the only exception applicable to Budah's case, did not apply "because the suit is not, as its core, based upon activity—commercial or otherwise—carried on or performed in the United States." Memorandum Opinion, *Jam v. Int'l Fin. Corp.*, No. 15-cv-00612, (D.D.C. Feb. 14, 2020), ECF 61.

60. *See Jam*, 139 S. Ct. at 771-72.

61. *See* OFFICE OF THE COMPLIANCE ADVISOR/OMBUDSMAN, IFC ANNUAL REPORT 2015 113 (2015) ("IFC's total resources available consist of paid-in capital, retained earnings net of designations and certain unrealized gains, and total loan-loss reserves. The excess available capital, beyond what is required to support existing business, allows for future growth of our portfolio while also providing a buffer against unexpected external shocks. As of June 30, 2015, total resources available reached \$22.6 billion, while the minimum capital requirement totaled \$19.2 billion.").

62. *Id.* at 76 ("In FY15, we invested nearly \$4.7 billion in the 78 poorest countries — those eligible to borrow from the World Bank's International

litigation, the number of complaints lodged with the CAO is minimal to begin with. According to the IFC, the organization received complaints for only two percent of the projects funded in 2015.⁶³ With so few complaints, it is unlikely that restricting immunity would lead to prohibitively costly litigation.

While greater accountability is needed, international organizations cannot adequately fulfill their vital missions without certain privileges and immunities.⁶⁴ In fact, it is well-accepted that some immunity is critical for international organizations to succeed.⁶⁵ As a general matter, absent certain rare statutory exceptions, international organizations are largely immune from suit in U.S. courts.⁶⁶ Therefore, holding international organizations accountable is a complicated endeavor.⁶⁷ International organizations may be held accountable to their member states, other nations, and contracting parties; however, non-state actors, like Budah, have frequently been placed in the “accountability gap.”⁶⁸ Fortunately, international law, unlike U.S. law, provides compelling arguments and precedent for ensuring access to real, effective remedies.⁶⁹

Development Association, or IDA. Our long-term investments in those countries have more than tripled over the past decade.”).

63. Gould Brief, *supra* note 57, at 22; Katie Redford, “*We Are Above the Law*” — *World Bank Asks Supreme Court for Absolute Immunity*, EARTHRIGHTS INT’L (Nov. 5, 2018), <https://earthrights.org/blog/we-are-above-the-law-world-bank-asks-supreme-court-for-absolute-immunity/>.

64. Reinisch, *supra* note 42, at 573.

65. *Id.*

66. International Organizations Immunities Act, 22 U.S.C. § 288a(b) (2002); *see also* Foreign Sovereign Immunities Act, 28 U.S.C. § 1605(a)(3) (2012) (outlining exceptions to the general immunity that foreign governments and international organizations enjoy).

67. *See generally* Bradlow, *supra* note 10, at 405-06 (discussing that international organizations are usually only accountable to a limited pool of actors).

68. *Id.* at 405-06 (explaining that this gap is created because there are usually no contractual relationships between international organizations and non-state actors); *see generally* Reinisch, *supra* note 42, at 573 (discussing the increased awareness of accountability gaps and the need for limited immunity).

69. *See generally* Lea Brilmayer, *International Law in American Courts: A Modest Proposal*, 100 YALE L.J. 2277, 2292 (1991) (discussing the procedure of how international claims used to be brought and resolved).

C. *Organizational Immunity under International Law*

Traditionally, non-state actors struggled to hold international organizations accountable under international law, which was itself concerned only with the “rights and remedies of states” in their interactions with each other.⁷⁰ International law considered only state interests, not individual interests.⁷¹ As individuals were not subjects of international law, claimants were required to first exhaust available domestic remedies before persuading their own state to commence diplomatic international efforts on their behalf.⁷²

However, the aftermath of the Second World War prompted a remarkable shift in previously state-centered notions of international law.⁷³ Following the Nuremberg and Tokyo war crimes tribunals, international law began recognizing individual rights and official responsibility.⁷⁴ Both tribunals “pierced the veil of state sovereignty and dispelled the myth that international law is for states only Thereafter, private citizens, government officials, *nongovernmental organizations* and multinational enterprises could all be rightsholders and responsible actors under international law.”⁷⁵

Under this modern approach, international organizations, as subjects of international law, are bound by the rules of customary international law.⁷⁶ Additionally, customary international law requires that international organizations provide injured non-state actors with

70. *See id.*

71. *See id.*

72. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 422-23 (1964).

73. Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L.J. 2347, 2358-89 (1991).

74. *Id.*

75. *Id.* (emphasis added).

76. Daniel D. Bradlow, *Using a Shield as a Sword: Are International Organizations Abusing Their Immunity*, 31 TEMP. INT'L & COMP. L.J. 45, 59 (2017); *see* Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 I.C.J. 73, 89-91 (Dec. 20, 1980) (“International organizations are subjects of international law, and as such, are bound by any obligations incumbent upon them under general rules of international law, under their constitutions or under international agreements to which they are parties.”).

access to real, effective remedies for their injuries.⁷⁷ The right to a remedy is not a novel concept of international law.⁷⁸

Over ninety years ago, the Permanent Court of International Justice⁷⁹ decided the *Factory at Chorzow* case, a cornerstone case in the development of international reparations. The court held that “it is a principle of international law, and even a general conception of law, that any breach of an engagement involves an *obligation to make reparation*.”⁸⁰

Beginning in 1947, the United Nations expressly sought to diminish the “accountability gap” by requiring otherwise immune organizations to provide appropriate modes of settlement for disputes with non-state actors.⁸¹ In 1948, the Universal Declaration of Human Rights specifically stated that “[e]veryone has the right to an effective remedy . . . for acts violating the fundamental rights granted him.”⁸²

In 1976, the international community accepted the International Covenant on Civil and Political rights, which provides that “any person whose rights or freedoms as herein recognized are violated shall have an [e]ffective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”⁸³ Further, the covenant provides that those claimants “shall have [their] right[s] . . .

77. See DINAH SHELTON, REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW 182 (1999).

78. *Id.*

79. The Permanent Court of International Justice (PCIJ) was an international court attached to the League of Nations. The PCIJ disbanded in 1946. *The Permanent Court of International Justice*, INT’L CT. OF JUST., <https://www.icj-cij.org/en/history> (last visited Feb. 23, 2020).

80. *Factory at Chorzow*, Judgment (Ger. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, ¶ 73 (Sept. 13, 1928) (emphasis added); see generally Brief of International Law Scholars as Amici Curiae in Support of the Petition for Certiorari at 16, *Jam v. Int’l Fin. Corp.* (No 17-1011) (discussing the foundational principle derived from *Factory of Chorzow* that makes international organizations subjects of international law).

81. Convention on the Privileges and Immunities of the Specialized Agencies, art. IX, Nov. 21, 1947, 33 U.N.T.S. 521 (“Each specialized agency shall make provision for appropriate modes of settlement of . . . [d]isputes arising out of contracts or other disputes of private character to which the specialized agency is a party . . .”).

82. G.A. Res 217A (III), Universal Declaration of Human Rights, art. 8 (Dec. 10, 1948).

83. International Covenant on Civil and Political Rights art. 2, Dec. 16, 1966, 999 U.N.T.S. 171.

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determined by competent judicial, administrative . . . authorities, or by any other competent authority provided for by the legal system of the State.”⁸⁴

A majority of the international community has signed and ratified treaties holding that international law requires providing an effective remedy for relief.⁸⁵ As a subject of international law, the IFC and other international organizations must provide injured, non-state actors with access to real remedies. Unfortunately for Budah and others affected by IFC funded projects, the IFC’s international accountability mechanism, the Compliance Advisor Ombudsman, fails to provide real, effective remedies, despite customary international law.

III. THE COMPLIANCE ADVISOR OMBUDSMAN

A. *Establishment of the CAO*

The World Bank is comprised of the IFC, International Bank of Reconstruction and Development, International Development Association, and the Multilateral Investment Guarantee Agency.⁸⁶ The United States is the largest donor to the IFC, contributing nearly one quarter of the organization’s capital.⁸⁷ The IFC is one of the two bodies of the World Bank that finances private-sector projects in the developing world.⁸⁸ In 1999, the CAO was established to advise IFC management on compliance with the organization’s social and

84. *Id.*

85. Brief of Amicus Curiae Professor Daniel Bradlow in Support of Plaintiffs-Appellants at 13-14, *Jam v. Int’l Fin. Corp.*, 860 F.3d 703 (D.C. Cir. 2017) (No. 15-cv-00612) [hereinafter Bradlow Brief] (describing how the following international treaties include right to remedy principles: International Convention on Elimination of All Forms of Racial Discrimination; American Convention on Human Rights; African Charter on Human and Peoples’ Rights; Arab Charter on Human Rights; European Convention for the Protection of Human Rights and Fundamental Freedoms; ASEAN Human Rights Declaration; Vienna Declaration and Program of Action).

86. Saper, *supra* note 11, at 1282.

87. *Id.* at 1283 n.10 (citing Susan Park, *Becoming Green: Diffusing Sustainable Development Norms Throughout the World Bank Group*, in *THE WORLD BANK AND GOVERNANCE: A DECADE OF REFORM AND REACTION* 168, 173 (Diane Stone & Christopher Wright eds., 2007).

88. *Id.* at 1283. The other body of the World Bank that does such work is the Multilateral Investment Guarantee Agency (MIGA). *Id.*

environmental policies.⁸⁹ Some believe the IFC formed the CAO in response to the increasing pressure from advocacy groups, the IFC's own board of directors, and the inadequate internal investigation of a prior damaging project in Chile.⁹⁰

B. The CAO's Roles and Procedures

The CAO is governed by its operational guidelines.⁹¹ It has three separate, distinct roles: (1) the compliance branch audits projects to ensure compliance with IFC social and environmental policies, (2) the advisory branch advises management concerning certain projects, and (3) the ombudsman branch responds to complaints and attempts to resolve issues.⁹² The ombudsman is the only branch that allows private citizens to file complaints alleging social or environmental damages caused by IFC funded projects.⁹³

CAO complaints are first screened for eligibility before a full assessment is conducted of the issues.⁹⁴ Subsequently, the parties have an opportunity to agree to a joint resolution or seek a compliance appraisal.⁹⁵ If the parties reach an agreement, the CAO assists in monitoring to ensure the terms of the agreement are fulfilled.⁹⁶

89. *Id.* at 1290. In the 1990s, the IFC financed the Pangué Hydroelectric dam project in Chile. The project displaced and impacted several indigenous communities. According to the IFC, "no other project in the history of the IFC has led to such ongoing controversy, and far-reaching institutional change." INT'L FIN. CORP., LESSONS LEARNED; PANGUE HYDROELECTRIC, https://www.ifc.org/wps/wcm/connect/6a808313-bf7a-4d36-b49f-eaf5ea4bfc6d/pangué_summary.pdf?MOD=AJPERES&CACHEID=ROOTWORKS PACE-6a808313-bf7a-4d36-b49f-eaf5ea4bfc6d-jqeEQqr (last visited Feb. 23, 2020).

90. Bissell & Nanwani, *supra* note 10, at 15.

91. *See generally* CAO OPERATIONAL GUIDELINES, *supra* note 12, §1.1 ("To carry out its mandate, it is essential that CAO be able to work in a flexible manner and retain its discretion. While these Guidelines provide a procedural framework to inform CAO, the complainant, and those engaged in a CAO process, they are not intended to unduly restrict CAO.").

92. Bissell & Nanwani, *supra* note 10, at 15-16.

93. *Id.* at 16.

94. CAO OPERATIONAL GUIDELINES, *supra* note 12, §2.4. This preliminary step takes around 15 working days. *Id.*

95. *Id.*

96. *Id.* §3.2.3 ("This may be achieved by setting mutually agreed timelines and outcome indicators within the body of the agreement.").

C. *Lack of Independence, Fairness, and Binding Authority*

Most international organizations view their internal accountability mechanisms as tools for improving operational effectiveness, rather than providing effective remedies to injured parties.⁹⁷ Although the CAO provides increased accountability, it fails to provide a real, effective remedy.⁹⁸ For instance, some claimants are not given opportunities to rebut arguments advanced by IFC management.⁹⁹ Additionally, the CAO is not definitively independent because IFC senior management holds final decision-making powers.¹⁰⁰ Critically, the CAO's finding and recommendations are non-binding; therefore, the IFC is free to follow its own path.¹⁰¹

Many organizations' accountability mechanisms suffer from various defects including lack of transparency, lack of democratic processes, and overall inadequacy; therefore, the public largely refuses to believe that international organizations are accountable.¹⁰² Professor Daniel Bradlow, a leading scholar of international organization accountability, posits that international organizations "use the doctrine of international-organization immunity—originally intended to be a shield to protect it from interference from member states—as a sword for warding off the claims of those who are adversely affected by its actions."¹⁰³ Professor Bradlow is far from the only voice seeking to fix this issue.

D. *Calls for Change*

Numerous international law scholars have advanced options for improving international organization accountability. Eisuke Suzuki and Suresh Nanwani propose that claims should proceed directly to the organization's administrative tribunal, which generally hears contract

97. Eisuke Suzuki & Suresh Nanwani, *Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks*, 27 MICH. J. INT'L L. 177, 181 (2005).

98. Bradlow Brief, *supra* note 85, at 22-23.

99. *Id.* at 23.

100. *Id.*

101. *Id.*

102. Herz, *supra* note 49, at 483.

103. Bradlow Brief, *supra* note 85, at 24.

and employment claims.¹⁰⁴ Gerhard Thallinger proposes that domestic courts should deny the organization's immunity if the court determines the organization has failed to provide adequate quasi-judicial remedies or access to an administrative tribunal.¹⁰⁵ Dana Clark proposes that accountability mechanisms should focus more on problem-solving and providing real, effective relief, rather than on investigating the projects' compliance with organizational policies.¹⁰⁶ Enrique R. Carrasco and Alison K. Guernsey propose the creation of an Office of Claims Resolution which would initially handle claims and potentially refer the claims to an arbitration panel empowered to award damages.¹⁰⁷ Finally, Professor Bradlow proposes numerous methods and frameworks for potential reforms of accountability mechanisms.¹⁰⁸

The above proposals offer excellent options for increasing accountability; however, they do not ensure binding, remedial measures for injured non-state actors. Critically, none of the proposals mandate U.S. legislative involvement, which is likely necessary for a meaningful, systemic improvement of international organizational accountability.¹⁰⁹ This Comment's proposal is modeled after the successful Tobacco Master Settlement Agreement, which involved legislation requiring funds be made available for payment of *future* claims.

104. Suzuki & Nanwani, *supra* note 97, at 224 & n.212.

105. Gerhard Thallinger, *Piercing Jurisdictional Immunity: The Possible Role of Domestic Courts in Enhancing World Bank Accountability*, 2 VIENNA ONLINE J. ON INT'L CONST. L. 4, 30 (2008).

106. Dana L. Clark, *The World Bank and Human Rights: The Need for Greater Accountability*, 15 HARV. HUM. RTS. J. 205, 224-26 (2002).

107. Enrique R. Carrasco & Alison K. Guernsey, *World Bank's Inspection Panel: Promoting True Accountability through Arbitration*, 41 CORNELL INT'L L.J. 577, 616-18 (2008).

108. *See generally* Bradlow, *supra* note 10, at 462-86 (proposing reforms including an inspection committee, a full-time inspection panel, and a "virtual" inspection panel).

109. According to the IFC's latest financial statements, the United States contributes twenty-two percent of the organization's capital stock, more than any other country. INT'L FIN. CORP., FINANCIALS 2019 59 (2019), https://www.ifc.org/wps/wcm/connect/CORP_EXT_Content/IFC_External_Corporate_Site/Annual+Report/Financials/Financial-Reporting/.

IV. THE TOBACCO MASTER SETTLEMENT AGREEMENT

A. *History of Tobacco Litigation and the MSA*

From the 1950s to the 1990s, various plaintiffs tried, largely unsuccessfully, to initiate litigation against tobacco companies.¹¹⁰ Although tobacco companies enjoyed no immunity from suit, lawsuits were doomed for two primary reasons. First, at the time, plaintiffs lacked sufficient scientific evidence linking smoking with various diseases.¹¹¹ Later, even once scientific evidence proved a sufficient causal link, juries were unsympathetic to plaintiffs that well understood the inherent dangers of smoking.¹¹²

Starting in the mid-1990s, parties to class action lawsuits and medical care recovery suits successfully reached settlements with various tobacco companies.¹¹³ Specifically, lawsuits filed by State Attorneys General had unprecedented success, seeking recovery for medical costs.¹¹⁴ In 1997, the states enjoyed a banner year for tobacco lawsuit settlements with Mississippi, Florida, Texas, and Minnesota each settling cases for between three and fifteen billion dollars.¹¹⁵ Class action lawsuits were even a greater success, as exemplified by a class of 500,000 Florida smokers that was awarded \$145 billion in punitive damages.¹¹⁶

In 1998, forty-six states entered into the MSA with the four largest tobacco manufacturers requiring a \$206 billion payout over twenty-five years.¹¹⁷ The MSA divided tobacco companies into three distinct groups: (1) the Original Participating Manufacturers (OPMs), which included the original parties to the MSA; (2) the Subsequent Participating Manufacturers (SPMs), which included any tobacco companies later signing the MSA; and (3) Non-Participating

110. Sloan & Chepke, *supra* note 20, at 163.

111. *Id.*

112. *Id.* at 164.

113. *Id.* at 164-65.

114. *Id.* at 165.

115. *Id.* at 166.

116. *Id.* at 167. One reason for such a high reward was that the “jury cited the industry’s blatant fraud and misrepresentation as the basis for liability.” *Id.*

117. *Grand River Enter. Six Nations*, 481 F.3d at 63.

Manufacturers (NPMs), which included other tobacco manufactures not party to the MSA.¹¹⁸

B. Establishment of Escrow Statutes

Critically, most NPMs were not in the U.S. market when the MSA was signed; therefore, the NPMs would not be subject to U.S. federal court jurisdiction until they conducted business in the United States.¹¹⁹ To prohibit NPMs from receiving a competitive advantage due to the settlement costs imputed to OPMs and SPMs, the MSA required that states pass statutes (Escrow Statutes) compelling NPMs to deposit funds in escrow as security for future lawsuits.¹²⁰

The MSA included an example of an Escrow Statute that each state must enact.¹²¹ The Escrow Statute required NPMs to deposit funds relative to cigarettes sold within each respective state.¹²² NPMs were allowed to retain and invest interest earned on the escrow funds into extremely safe investments.¹²³ Finally, the NPMs could withdraw any funds in excess of minimum escrow requirements as defined in the MSA.¹²⁴

C. Learning from the Success of the MSA

Although scholars frequently highlight several shortfalls of the MSA,¹²⁵ the agreement marked significant success in litigation against tobacco companies. Many institutional factors contributed to

118. Sloan & Chepke, *supra* note 20, at 170-71. This Comment will not focus on OPMs or SPMs.

119. *Id.* at 171.

120. *Id.*

121. NAT'L ASS'N OF ATTORNEYS GEN., MASTER SETTLEMENT AGREEMENT, EXHIBIT T (Nov. 1998), <https://oag.ca.gov/sites/all/files/agweb/pdfs/tobacco/1msa.pdf> [hereinafter MSA].

122. *Id.* For example, beginning in 2007 and each year after, tobacco companies were to deposit into escrow "\$.0188482 per unit sold after the date of enactment of this Act." *Id.*

123. *Id.* ("A tobacco product manufacturer that places funds into escrow . . . shall receive the interest or other appreciation on such funds as earned.")

124. *Id.*

125. *See generally* Sloan & Chepke, *supra* note 20, at 223-26 (discussing six major shortfalls of the MSA).

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previously unsuccessful litigation, including the overwhelming influence held by large tobacco companies and their deep pockets.¹²⁶ The MSA provided effective relief to the injured parties and provided governments with billions of dollars in funding for various state programs, including healthcare and education.¹²⁷

Instead of merely improving pre-existing features of various internal accountability mechanisms, as proposed by numerous scholars, this Comment proposes a wholesale shift in accountability. Although immunity is a critical component of international organization effectiveness, the fact remains that injured non-state actors are left without a real, effective remedy for their meritorious claims. Vulnerable individuals such as Budah cannot afford to be left out in the rain.

A key as to why the MSA might be an effective way to address the accountability of international organizations, as it was with tobacco companies, lies in the commonality of the power disparity that each entity possesses. Tobacco companies are large, powerful institutions with significant advantages over injured individuals. Similarly, the economic and power disparity between massive international organizations and claimants from the developing world creates unique accountability challenges. The MSA offered a unique solution to the confounding problem of holding tobacco companies accountable. As a result, the international community should consider adopting several characteristics of the MSA to improve international organization accountability.

126. Tobacco companies used a variety of strategies block regulations around the world, including political funding, intelligence gathering, intimidation, and even bribery. The 1990s saw a cigarette exportation increase of 260%. Yussuf Saloojee & Elif Dagli, *Tobacco Industry Tactics for Resisting Public Policy on Health*, 78 BULLETIN OF THE WORLD HEALTH ORG. 902, 902-04 (2000), <https://www.who.int/bulletin/archives/78%287%29902.pdf>.

127. See Sloan & Chepke, *supra* note 20, at 215.

V. MODELING A REMEDY AFTER THE MSA

A. *Requirements of International Organizations*

1. *Common Relief Accounts*

As a condition for retaining immunity, each international organization should be required to comply with a compensation scheme modeled after the MSA. For every financed development project, the organization must deposit a corresponding amount in an escrow-like account called a Common Relief Account (CRA). The funds deposited in CRAs will be used to secure payment of *future* claims. Organization-approved algorithms will determine the amount to be deposited into CRAs. The algorithms will incorporate a variety of factors including: (a) the riskiness of the project; (b) the scope of potential harm; (c) the size of the organization's operating budget; (d) the organization's history of damage causing projects; and (e) the level of immunity afforded to the organization by the laws of the claimant's jurisdiction.

As mentioned above, the United States is the largest single contributor to many international organizations. Accordingly, the U.S. Congress should amend the IOIA to require establishment of CRAs. Otherwise, international organizations will not be sufficiently motivated to join this compensation scheme.¹²⁸ Legislation conditioning immunity on establishment of CRAs will hold international organizations' feet to the fire and ensure adequate accountability.

Additionally, just as the MSA allows NPMs to retain and invest interest earned on the escrow funds into safe investments, international organizations will be allowed to invest CRA funds into certain safe, pre-approved investments. International organizations will only be permitted to invest certain CRA funds over a minimal threshold, set by the above described algorithms. To ensure CRA funds are properly distributed, claims must first be decided by an adjudicative body.

128. See Saper, *supra* note 11, at 1325 (noting that significant improvements to internal accountability mechanisms will require "hard" force, including potential action from member states).

2. *Claims Tribunal*

Similar to the establishment of CRAs, the U.S. Congress should amend the IOIA to require organizations to form an independent, neutral, and binding administrative tribunal (Claims Tribunal) that will hear claims brought by injured parties. Unlike the CAO, which has no binding authority over the IFC, the Claims Tribunal must be given binding authority to direct the release of CRA funds to claimants. The Claims Tribunal will consist of a three-member panel, including representatives from various international arbitration companies. To ensure independence, the arbiters must not have any prior connections with the organization or its leaders.

The Claims Tribunal will receive evidence from both parties in an open, recorded, and transparent process. Each proceeding of the Claims Tribunal must be videotaped, except for valid security and privacy concerns. Once both sides present their factual evidence, each party will have an opportunity for rebuttal. Once the Claims Tribunal hears all testimony and receives all evidence, the tribunal will issue its order either directing the release of certain CRA funds or denying the complaint. In the interest of efficiency, all Claims Tribunal orders will be final and non-appealable.

B. Requirements for Claimants

1. Exhaust Domestic Remedies

CRA funds will not be made available to every claimant seeking damages from international organizations. Qualifying for CRA funds should be a difficult, though not impossible, process. First, claimants seeking CRA funds must sufficiently exhaust all available domestic remedies against the international organization.¹²⁹ Requiring claimants to exhaust available judicial remedies ensures that this compensation scheme does not fracture certain established international norms.¹³⁰ Court systems around the world allow for varying degrees of access to claimants. For instance, as discussed above, the U.S. Congress and U.S. courts have extended subject matter jurisdiction to claimants if a

129. Domestic remedies will include judicial process in the state where the harm was done and the state where the organization is headquartered.

130. One such norm being immunity.

statutory immunity exception applies. For example, in Budah's case, before qualifying for CRA funds, Budah would be required to exhaust all available remedies in both Indian and U.S. courts, in the event that either jurisdiction finds a waiver of immunity or a statutory immunity exception. Allowing claimants to access CRA funds *without* first proceeding in their respective domestic jurisdiction would trample on a state's ability to regulate its judicial system.

2. *Allege Sufficient Damages*

Claimants must allege sufficiently extensive damages for access to the Claims Tribunal. For example, monetary damages of \$5 million dollars may establish requisite harm.¹³¹ This restriction allows CRA funds to be used for only the most serious claims, usually those that affect vast groups of people, like in Budah's case. If CRA funds were available to every claimant, international organizations would effectively be stripped of any immunity. Additionally, individuals in a struggling, developing country could be motivated to pursue frivolous claims if aware of potential compensation. Restricting access to the most damaging cases ensures that international organizations retain necessary functional immunity, while allowing devastated claimants access to critical compensation funds.

C. *Advantages of the CRA Proposal*

Unlike previous proposals for improving accountability, this proposal requires U.S. legislation for the establishment of CRAs and Claims Tribunals. Enacting legislation is a difficult, costly, and arduous task; however, the weight behind legislative mandates is significant, especially in the field of international organizations. As mentioned above, the United States and its allies jumpstarted the role of international organizations following the devastation of the Second World War. Ever since, the United States has positioned itself as a world leader with many critical international organizations. If U.S. legislation compelled the funding of CRAs and Claims Tribunals,

131. This minimum damage requirement is used to ensure that international organizations are not flooded with numerous minor lawsuits seeking funds from the CRA.

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international organizations around the world would be forced to comply.

Additionally, this proposal provides claimants with access to a real, effective remedy for their injuries while, at the same time, allows organizations to largely retain the functional immunity necessary to carry out their core tasks. Instead of opening the doors to waves of costly, time-consuming litigation, organizations would consider claims through their Claims Tribunals. Given the minimum damage requirement, organizations would only be responsible for the most devastating injuries.

D. Potential Issues

Although this proposal establishes a mechanism for holding international organizations accountable, there might be numerous potential issues. First, the algorithm used to determine the CRA amount requirement may not be able to accurately predict eventual harm. For instance, a project could appear relatively safe from a preliminary review, only to turn costly, even deadly, in unexpected ways.

Second, the adjudication of claims may present numerous challenges. Unlike the CAO, which simply reviews the facts and determines if the IFC complied with environmental and social standards, this proposal requires that international organizations create Claims Tribunals to fairly adjudicate claims and determine if access to CRA funds is warranted. However, it remains unclear how the Claims Tribunals will handle, among other concerns, evidentiary and legal representation issues. While resolution of these issues is critical to the effectiveness of this proposal, specific solutions are best left to an international community keen on improving accountability.

Additionally, it remains unclear to what extent the international community will be able to force international organizations to establish CRAs and Claims Tribunals. U.S. legislation might be a significant step in improving accountability; however, because international organizations are governed by charters and comprised of member states from around the world, the United States cannot unilaterally force this proposal. Therefore, any significant change will require charter amendments and member states consensus. Without a doubt, establishment of CRAs and Claims Tribunals will increase costs and

operating budgets of international organizations. However, the cost placed on injured populations will likely outweigh operational costs.

CONCLUSION

International organizations serve vital interests for the international community. The developing world is forever indebted to the great work done by many international organizations. Additionally, international organizations cannot adequately fulfill their missions without some level of privileges and immunities. However, in developing countries, the likelihood of harm to vulnerable individuals is increased because they lack sufficient resources to mitigate injuries caused by projects financed by international organizations. On the other hand, fortunate citizens of the developed world enjoy several institutional safety nets, such as insurance, greater mobility, and significantly higher wages, all of which prevent injuries from having otherwise catastrophic effects.

On the other hand, Budah and others in the developing world struggle daily to provide their families with basic necessities such as food, water, and shelter. To make matters worse, environmental damage frequently exacts harsher injuries on impoverished societies whose survival is closely linked to natural resources. While noble in spirit and mission, international organizations should not escape liability simply because of their unique non-governmental status.

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Claimants like Budah deserve access to a system that will provide a fair and independent adjudication of their claims and a real, effective remedy for relief. When injuries are caused by a project funded by the deep pockets of an international organization, the organization should be held accountable. This proposal allows international organizations to largely retain their necessary immunity while providing claimants effective relief when warranted. Establishing CRAs and Claims Tribunals is the first step toward minimizing the accountability gap. If international organizations truly strive to improve the developing world, they should remedy their wrongs.¹³²

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