No. 13-1067

IN THE

Supreme Court of the United States

OBB PERSONENVERKEHR AG,
Petitioner,
v.
CAROL P. SACHS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE GOVERNMENTS OF THE KINGDOM OF THE NETHERLANDS AND THE SWISS CONFEDERATION AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONER

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QUESTIONS PRESENTED

1) Whether it would be consistent with international law for a U.S. court to exercise extraterritorial jurisdiction against a foreign state-owned railway for an injury that was suffered abroad, based solely on the purchase of a ticket by a U.S. resident from a U.S.-based Internet seller.

2) Whether the Internet sale of a foreign service to a U.S. resident causes the service performed entirely abroad to become "commercial activity carried on in the United States" by a sovereign entity under the Foreign Sovereign Immunities Act ("FSIA"). 28 U.S.C. §1605(a)(2).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

CASES Page(s)

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

INTERESTS OF THE *AMICI CURIAE*

The Governments of the Kingdom of the Netherlands and the Swiss Confederation (collectively "the Governments") are committed to the rule of law, and to the basic principles of international law that impose restraints on the assertion of jurisdiction by one state over civil actions against foreign state-owned entities.[1]

In the present case, the Court of Appeals for the Ninth Circuit held that an American plaintiff could bring suit in the United States against the foreign state-owned carrier for any accident in the foreign country, if she had bought a ticket from an agent in the United States before departing. According to the Governments, this exercise of extraterritorial jurisdiction would not be in accordance with well-established principles of international law.

The Governments have consistently opposed broad assertions of extraterritorial jurisdiction over alien persons arising out of foreign disputes with little, or no, connection to the United States. They are of the view that U.S. courts should take account of the jurisdictional constraints under international law when construing domestic statutes, as was highlighted by this Court in such cases as *F. Hoffmann-La Roche Ltd. v. Empagran, S.A.*, 542 U.S. 155 (2004)

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[1] Pursuant to Supreme Court Rule 37.6, *Amici Curiae* states that no counsel for a party authored this brief in whole or in part and that no person or entity other than *Amici Curiae*, its members, and its counsel contributed monetarily to the preparation of submission of this brief. Counsel of Record for both the Petitioner and the Respondent received timely notice of *Amici Curiae's* intent to file this brief, and both the Petitioner and the Respondent have granted their consent to the filing of this brief.

("*Empagran*"), *Sosa v. Alvarez-Machain*, 543 U.S. 692 (2004) ("*Sosa*"), and *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013) ("*Kiobel*").

This brief is intended to urge this Court to interpret the Foreign Sovereign Immunities Act ("FSIA") in conformity with the basic principles of jurisdictional restraint clearly recognized in international law and this Court's precedents.

STATEMENT OF THE CASE

On April 27, 2007, the Appellee Carol P. Sachs ("Ms. Sachs" or "the Plaintiff") was injured in Innsbruck, Austria when she fell while trying to board a Prague-bound train operated by Appellant OBB Personenverkehr AG ("OBB"), a corporation indirectly owned by the Republic of Austria. Petitioner's Appendix ("Pet. App.") at 101.

Ms. Sachs was travelling on a 4-day Eurail pass issued by Eurail Group C.I.E. ("Eurail Group"), a Netherlands-headquartered consortium of 30 European railroads (including OBB). *See* Pet. App. at 104-105. Eurail passes are special tickets sold only to people outside of Europe in order to allow them unlimited travel for a specified time period on regularly scheduled trains operated by any of the participating European railroads. Ms. Sachs, a California resident, had bought her Eurail pass over the Internet a month earlier from a Massachusetts-based travel agency called Rail Pass Experts ("RPE"), which was authorized to sell Eurail passes in the United States.

SUMMARY OF THE ARGUMENT

The exercise of jurisdiction by U.S. Courts over non-resident entities or persons should be in accordance with international law principles. The case at hand touches upon the international law principles of sovereign immunity on the one hand, and of the territorial limitations of jurisdiction on the other hand.

Because OBB is a foreign state-owned corporation, claims against it must be brought in accordance with the Foreign Sovereign Immunities Act ("FSIA"). The FSIA, reflecting the restrictive doctrine of sovereign immunity, allows actions against foreign states if they are based on commercial activities. However, in addition to this and in accordance with international law, there must be a sufficiently close connection to the United States in order to allow U.S. Courts to exercise jurisdiction. OBB has not engaged in any direct activities or contacts within the United States and the Plaintiff's claim is not based upon commercial activity by it in the United States. The Governments believe there is no basis for a U.S. District Court in California to exercise jurisdiction over the Austrian state-owned railway under these circumstances. The fact that the Plaintiff purchased her ticket on the Internet from the United States should not alter this analysis. Under no circumstances should the FSIA be construed as extending jurisdiction over foreign states in cases in which the exercise of extraterritorial jurisdiction would not be permitted if the defendant were a private party.

This case is important because it lies at the intersection of fundamental principles of international law and comity with modern business methods using Internet technology. State sovereignty and state

immunity are basic pillars of domestic and international law that are essentially based—in reciprocal terms—on respect for national jurisdiction. The Internet tends to generate random transactions from wherever is convenient, with increasingly less attention to the geographic sources and destinations of such traffic. In the Governments' view, the use of the Internet's modern business methods should not allow participants to circumvent basic legal principles governing jurisdiction and international relations among governments.

ARGUMENT

I. IT IS ESPECIALLY IMPORTANT THAT THE FOREIGN SOVEREIGN IMMUNITIES ACT BE CONSTRUED IN WAYS THAT ARE CONSISTENT WITH INTERNATIONAL LAW AND PRACTICE

A. Sovereign Immunity Is a Cornerstone of International Law

Sovereigns have historically granted each other immunity in their own courts as a way of reducing the risks of legal, diplomatic and even military conflicts. At heart, it is a concept of reciprocal respect among sovereigns; and, as such, it is closely related to the basic principle of international law that each sovereign nation is equal and entitled to prescribe laws and to adjudicate claims regarding those persons within its sovereign territory. *The Antelope*, 23 U.S. (10 Wheat.) 66, 122 (1825) ("No principle of general law is more universally acknowledged, than the perfect equality of nations. Russia and Geneva have equal rights. It results from this equality, that no one can rightfully impose a rule on another."). Furthermore, "the purpose

of sovereign immunity in modern international law . . . is to promote the functioning of all governments by protecting a state from the burdens of defending law suits abroad which are based upon its public acts." *Segni v. Commercial Office of Spain*, 816 F.2d 344, 347 (7th Cir. 1987)(citing legislative history).

B. Both the United States and the Governments of the Netherlands and Switzerland Follow the Restrictive Theory of Sovereign Immunity in Line With International Law and Practice

It is hard to imagine a subject more fraught with political and diplomatic risk than for one sovereign to haul into its courts officers or entities of another sovereign engaged in official activities. Thus under "the classical or absolute theory of sovereign immunity" the bar was total: "a sovereign cannot, without his consent, be made a respondent in the courts of another sovereign."[2]

In the 20th century, as sovereign states became increasingly involved in running major commercial activities (including transportation companies, communications carriers, and financial institutions) which dealt with foreign nationals on a regular basis, the pressure began to rise for them to provide some form of legal redress for commercial disputes that resulted from these activities. This gave rise to what became known as the *restrictive theory* of foreign sovereign

[2] *See* Letter from Jack B. Tate, State Department Acting Legal Adviser to the Attorney General, dated May 19, 1952, 26 State Dept. Bulletin 984-85 (1952) ("Tate Letter"), attached as Appendix 2 to this Court's opinion in *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 711-716 (1976) ("*Dunhill*").

immunity, in which "immunity is confined to suits involving the foreign sovereign's public acts, and does not extend to cases arising out of a foreign state's strictly commercial acts." *Verlinden B.V. v. Cent. Bank of Nig.*, 461 U.S. 480, 487 (1983).

The restrictive theory is today recognized by a substantial majority of nations, including the *Amici*, and has been codified in major multilateral treaty regimes governing immunity. *See* European Convention on State Immunity, May 16, 1972, 1495 U.N.T.S. 182, 11 I.L.M. 470 (entered into force June 11, 1976) (hereinafter "European Immunities Convention").[3] *See also* United Nations Convention on the Jurisdictional Immunities of States and Their Property, G.A. Res. 59/38, Annex, U.N. Doc. A/RES/59/38, 44 I.L.M. 803 (Dec. 2, 2004) (hereinafter "U.N. Immunities Convention").

This Court, referring to international developments, endorsed the restrictive theory a few months prior to the enactment of the FSIA in 1976:

> this approach has been accepted by a large and increasing number of foreign states in the international community. . . . and. . . . subjecting foreign governments to the rule of law in their commercial dealings presents a much smaller risk of affronting their sovereignty than would an attempt to pass on the legality of their governmental acts.

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[3] *Available at* http://conventions.coe.int/Treaty/en/Treaties/Html/074.htm. Both of the Amici Governments have ratified the European Convention. *See* Council of Europe, Treaty Office, European Convention on State Immunity, CETS No.: 074, *available at* http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=074&CM=&DF=&CL=ENG.

Alfred Dunhill of London, Inc. v. Republic of Cuba, 425 U.S. 682, 701-704 (1976) ("*Dunhill*"). Appended to the majority opinion were two detailed letters from the Legal Adviser at the Department of State to the Attorney General (dated May 19, 1952)[4] and the Solicitor General (dated November 26, 1975)[5] recounting in detail the evolution of U.S. and international history that had led the State Department to explicitly adopt the restrictive theory of sovereign immunity as Executive Branch policy in 1952. The State Department had explained that it was bringing the U.S. policy in line with quite a few other countries that had already adopted this theory—including Austria, Switzerland, and the Netherlands.[6]

The FSIA codified the restrictive theory of sovereign immunity already set out in the above-mentioned Tate Letter, meaning that "the immunity of a foreign state is "restricted" to suits involving a foreign state's public acts . . . and does not extend to suits based on its commercial or private acts. . ."[7] The legislative history is clear that, in enacting the FSIA, Congress was seeking to bring the United States into line with international law as it was evolving from the actions of other leading countries on how they were dealing with legal questions caused by "commercial activities" of government-owned enterprises. *See Siderman de*

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[4] Tate Letter, *Dunhill*, 425 U.S. at 711-716.

[5] *See* Appendix 1 (Letter from Department of State Legal Adviser Monroe Leigh to the Solicitor General dated November 26, 1975) in *Dunhill*, 425 U.S. at 706-711.

[6] Tate Letter in *Dunhill*, 425 U.S. at 712-713.

[7] H.R. Rep. No. 94-1487, at 6 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6604, 6605.

Blake v. Republic of Argentina, 965 F.2d 699, 706 (9th Cir. 1992).

II. IN CONFORMITY WITH INTERNATIONAL LAW AND COMITY, THE "COMMERCIAL ACTIVITIES" EXCEPTION IN §1605(a)(2) OF THE FSIA IS TERRITORIAL IN ITS TERMS

A. Restrictive Immunity As Codified in the FSIA Takes Geographical Limitations of Jurisdiction Into Account

A sovereign has always been free to allow suits in its own courts for breaches of contract, torts, or other civil wrongs committed by its officials or agents. This is simply a matter of domestic law, as it was when the United States first established the U.S. Court of Federal Claims in 1855.[8] Meanwhile, the international law doctrine on sovereign immunity has always had a different focus. It has been concerned about other sovereigns not allowing claims in their courts against a foreign sovereign.[9]

The FSIA allows actions to be brought against foreign states, but only if the requirements of 'commercial activities' and of a sufficiently close connection

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[8] "An Act to establish a Court for the Investigation of Claims against the United States", Act of February 24, 1855, c. 122, 10 Stat. 612.

[9] As stated in the legislative history, "Sovereign immunity is a doctrine of international law under which domestic courts, in appropriate cases, relinquish jurisdiction over a foreign state." H.R. Rep. No. 94-1487, at 8 (1976) *reprinted in* 1976 U.S.C.C.A.N. 6604, 6606.

with the United States are fulfilled.[10] The goal of bringing greater certainty and fairness has led to the enactment of the "based upon a commercial activity carried on in the United States" proviso in Section 1605(a)(2) that is at issue in the current case. 28 U.S.C. § 1605(a)(2). The geographic limitation on this "commercial activity" exception enacted in the FSIA "denies jurisdiction to the courts of the United States unless the activity took place or had a direct effect in the United States." Restatement (Third) of Foreign Relations Law of the United States § 453, Reporters' Note 1 (1987) (hereinafter "Restatement (Third) Foreign Rel. Law").

Section 1603(e) of the Act provides a definition that a "'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such a state and *having substantial contact with the United States*." 28 U.S.C. § 1603(e) (emphasis added).

Interestingly, the FSIA was enacted at a time when foreign governments were increasingly raising concerns about extraterritorial exercises of U.S. civil jurisdiction against foreign commercial enterprises for their activities conducted outside the United States.[11] Thus, the risk of likely diplomatic difficulties may have been seen as flowing less from the "commercial

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[10] Sir Robert Jennings & Sir Arthur Watts, eds., *Oppenheim's International Law*, at 457-8 (9th ed. 1992) (emphasis added).

[11] William Laurence Craig, *Application of the Trading with the Enemy Act to Foreign Corporations Owned by Americans: Reflections on Fruehauf v. Massardy*, 83 Harv. L. Rev. 579 (1970)(stating "The extraterritorial application of the Act to the activities of foreign corporations controlled by Americans frequently gives rise to conflicts with the laws and policies of the host country.").

nature" of a foreign government's activities, as from the geographic location of where they had taken place. At the time, the growing concern among foreign governments about what they regarded as unwarranted exercises of extraterritorial jurisdiction concerned private companies engaged in activities abroad, sometimes at the behest of the foreign government.[12] Such diplomatic risks are even more likely to become acute where the defendant is a governmental entity, rather than a private enterprise, engaged in "commercial" activities having no sufficiently close connection to the United States.

B. The FSIA Clearly Resolved the Issue of the Geographic Scope of the Restrictive Doctrine That Was Still Open in the United States Prior to Its Enactment

Acceptance of the restrictive doctrine in principle (as the United States had done since at least 1952) still left open two practical issues. The first was how to draw the line between what entities were "sovereign" and what were "commercial" activities. The second was whether and how the doctrine applied when the alleged "commercial activities" were conducted outside the United States.

Thus, less than a year before the passage of the FSIA, this Court held that the "act of state" doctrine did not supply a defense, even though the "commercial activity" had occurred in a foreign country (Cuba). *Dunhill*, 425 U.S. at 705-706.

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[12] Bruno Zanettin, *Cooperation Between Antitrust Agencies at the International Level* 50 (2002) ("[M]ost of those blocking statutes of general application were adopted in the 1970s, or beginning of the 1980s . . . [T]hey are the direct result of the extraterritorial application of US antitrust [law].").

In enacting § 1605(a)(2), Congress effectively *reversed* the practical result of the *Dunhill* decision that had ignored geographic limitations when applying the restrictive theory. Thus, even if the activities were "commercial" (as the *Dunhill* majority had believed), they were not activities being "carried on in the United States" (as the dissenters had emphasized). *Dunhill*, 425 U.S. at 716-718, 726. The "commercial activities" issue would generate further clarification by this Court in *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993) ("*Nelson*"), eighteen years later; and now the "carried on in the United States" limitation can be clarified by the decision in this case.

C. The FSIA Further Codified the Territorial Limitations of Jurisdiction As Developed in International Law and Practice and Is the Only Basis for Exercising U.S. Jurisdiction Over a Government-Owned Entity Such As OBB

The FSIA further codified territorial limitations on the exercise of jurisdiction over foreign states: it "prescribe[s] the necessary contacts which must exist before our courts can exercise personal jurisdiction."[13] As the Ninth Circuit stated in an earlier case:

> [N]othing in the legislative history [of the FSIA] suggests that Congress intended to assert jurisdiction over foreign states for events occurring wholly within their own territory. Such an intent would not be

[13] H.R. Rep. No. 94-1487, at 13 (1976) *reprinted in* 1976 U.S.C.C.A.N. 6604, 6612.

> consistent with the prevailing practice in international law. That practice is that a state loses its sovereign immunity for tortious acts only where they occur in the territory of the forum state.

McKeel v. Islamic Republic of Iran, 722 F.2d 582, 588 (9th Cir. 1983) (interpreting the FSIA in conformity with the European Immunities Convention).

Therefore, the oft-repeated dictum that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains", unless the act contains "express words or a very plain and necessary implication" to the contrary, is especially applicable the FSIA. *See Alexander Murray, Esq. v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804). Thus, the *Charming Betsy* principle simply reinforces the concept that "commercial activity carried on in the United States" should have to be substantial, rather than incidental, and that the plaintiff's claim should have to be "based upon" such substantial U.S. activity.

This Court, having recognized in numerous cases that U.S. litigation against a foreign sovereign can be fraught with risks of conflict, has been very explicit that, "[t]he Foreign Sovereign Immunities Act provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country." *Saudi Arabia v. Nelson*, 507 U.S. 349, 355 (1993) (citation omitted).

D. This Case Offers the Court the Chance Put to Rest Any Lingering Uncertainties Left After Its 1993 Decision in *Saudi Arabia v. Nelson*

The *Nelson* case offers some useful parallels and left open some questions that should be clearly resolved here. 507 U.S. 349 (1993). As in the present case, *Nelson* involved an initial contract entered into in the United States followed by an alleged overseas tort. The plaintiff had been recruited in the United States by a clearly authorized agent for the Defendant sovereign to work in the Defendant's hospital in Saudi Arabia, where the alleged torts occurred at the hands of employees or agents of the State. Thus, there was a fairly clear U.S. "commercial" activity (i.e., the recruitment).

In *Nelson*, the "commercial activity" in the United States involved face-to-face negotiations and training. Yet only Justice Stevens thought the initial U.S. contracting was sufficient to support the Plaintiff's claim for the injuries that he had unmistakably suffered at the hands of the Defendant State. 507 U.S. at 377. Instead, the majority (in an opinion by Justice Souter), emphasized the "based upon" language in the statute:

> Congress manifestly understood there to be a difference between a suit 'based upon' commercial activity and one 'based upon' acts performed 'in connection with' such activity. The only reading of the former terms calls for *something more than a mere connection with, or relation to commercial activity*.

Id. at 358 (emphasis added). Thus, while the Defendant State was engaged in "commercial activity" in running a hospital, the majority ruled that the

Defendants' overseas tortious misconduct (i.e., arrest and torture) did not constitute "commercial activity". *Id.* at 361. Thus, the majority said that it "need not reach the issue of *substantial contact* with the United States." *Id.* at 356 (emphasis added). The Court also emphasized that, "[u]nder international law, a state or state instrumentality is immune . . . except with respect to claims arising out of activities of the kind that may be carried out by a private person." *Id.* at 360 (quoting Restatement (Third) Foreign Rel. Law § 351).

Justice White's concurring opinion (joined by Justice Blackmun) focused directly on this geographic issue and shows the way the Governments respectfully believe this Court should proceed now. Even though he thought the overseas retaliation against an employee for whistle-blowing was "commercial activity", Justice White concurred in the judgment because this activity "was not 'carried on in the United States,'" as required by the FSIA. *Id.* at 364. He then added, "while these [prior recruiting activities] may well qualify as commercial activity in the United States, they do not constitute the commercial activity upon which respondents' action is based." *Id.*

Nelson stands for the proposition that the plaintiff's claim must be "based upon" commercial activity in the United States 28 U.S.C. § 1605(a)(2). This means that "the foreign state's commercial activity in the United States must be the basis of (i.e., a necessary element of) the plaintiff's claim." *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1133 (9th Cir. 2012). Here, even if OBB was deemed to have engaged in commercial activity in the United States, it is clear that Plaintiff's claim is not "based upon" her purchase of a ticket, which was not limited to travelling with OBB but allowed unlimited travel for a specified time

period on regularly scheduled trains operated by any of the participating European railroads. Instead, plaintiff's claim is based upon the injury she suffered in Austria. In other words, the causal link between the purchase of the ticket on the Internet in the United States before she left and the injury suffered at the Austrian train station is not sufficient to satisfy the 'based upon' requirement of the FSIA.

E. The Risks for International Relations From an Unwarranted Exercise of Extraterritorial Jurisdiction Is Particularly Acute When the Defendant is a Foreign Sovereign Entity

In *Kiobel*, *Empagran* and *Morrison*, this Court recently reemphasized a clear presumption against a cause of action created by a federal statute being construed to allow suit in U.S. courts by foreign plaintiffs for injuries suffered abroad. It emphasized the "longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 248 (2010) (quoting *EEOC v. Arabian American Oil Company*, 499 U.S. 244, 248 (1991) ("*Aramco*")). *See* also *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013). This "presumption against extraterritoriality" avoids the "serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs." *Empagran*, 542 U.S. at 165 (2004).

In the present case, as in *Aramco* and *Kiobel*, an American plaintiff is suing for injuries suffered abroad at the hands of a foreign corporation operating abroad—but this time the presumption should be even stronger because the Defendant is a foreign State.

Under no circumstances should the FSIA be construed as extending jurisdiction over foreign states in cases in which the exercise of extraterritorial jurisdiction would not be permitted if the defendant was a private party. The resulting interference is not just about a foreign government's ability to *regulate* commercial activities of private entities within its borders; it is about how the sovereign defendant *operates* and provides *legal remedies* for its commercial activities within its borders. Moreover, 28 U.S.C. § 1605(a)(2) of FSIA is more explicit in its non-applicability to claims based on overseas activities than any of the statutes at issue in *Aramco*, *Empagran*, or *Morrison*.

F. Just like FSIA § 1605(a)(2), International Treaties on State Immunity Take Geographical Limitations of Jurisdiction Into Account

The U.N. Immunities Convention states the general rule of modern international law that "[a] State enjoys immunity, in respect of itself and its property, from the jurisdiction of the Courts of another State subject to the provisions of the Present Convention" or some other convention or consent. *Id.* 44 I.L.M. 803, art. 5. Thus, it remains clearly recognized that exceptions to strict sovereign immunity are those that are defined and limited. Importantly, under both the U.N. Immunities Convention and the European Immunities Convention (1495 U.N.T.S. 182), the "commercial" wrong being challenged must take place in or be closely related to the forum state that seeks to exercise jurisdiction.

Thus, the European Immunities Convention only allows claims against a state for personal injury when "the injury or damage occurred in the territory of the

State of the forum, and if the author of the injury or damage was present in that territory at the time." 1495 U.N.T.S. 182, art. 11.

Secondly, the European Immunities Convention allows the exercise of jurisdiction where a state "engages in the same manner as a private person, in an industrial, commercial or financial activity and the proceedings relate to that activity of the office, agency or establishment" that the defendant state has "on the territory of the State of the forum." *Id.*, art. 7.

The provisions in the U.N. Immunities Convention broadly parallel the earlier European Immunities Convention. Jurisdiction over a state in a claim for personal injuries is only permitted "if the act or omission occurred in whole or in part in the territory of that [forum] State and the author of the act or omission was present in that territory at the time. . . ." U.N. Immunities Convention, art. 12. And a forum state can assert jurisdiction over a state's commercial transactions when "by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of [the forum] State." *Id*., art. 10.

The FSIA likewise limits jurisdiction over foreign states to cases concerning claims based upon commercial activities in the United States. Members of this Court have previously used the European Immunities Convention to help interpret the FSIA. *See, e.g.*, *Republic of Aus. v. Altmann*, 541 U.S. 677, 708 (2004) (concurring opinion of Justices Breyer and Souter using the European Immunities Convention to help interpret the FSIA).

Questions concerning sovereign immunity are threshold issues in civil litigation. The International Court of Justice found in a 2012 case that "a national court is required to determine whether or not a foreign State is entitled to immunity as a matter of international law before it can hear the merits of the case brought before it and before the facts have been established."[14]

In this case, the geographic limitations on the exercise of jurisdiction, common to most European legal systems as a freestanding concept, also apply to cases against sovereign-owned entities. This is a major reason why the Governments believe that the international law concepts of jurisdiction and sovereign immunity should be analyzed separately, even if they coincide in the present case.[15]

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[14] *See Jurisdictional Immunities of The State* (*Germany v. Italy: Greece Intervening*), 2012 I.C.J. 143, ¶ 82 (Feb. 3) *available at* http://www.icj-cij.org/docket/files/143/16883.pdf.

[15] As noted by the ICJ, "jurisdiction does not imply absence of immunity, while absence of immunity does not imply jurisdiction." *Case Concerning the Arrest Warrant of 11 April 2000 (Dem. Rep. of Congo v. Belg.)* 2002 I.C.J. 3, ¶ 59 ("*Arrest Warrant Case*"), *available at* http://www.icj-cij.org/docket/files/121/8126.pdf.

III. UNDER INTERNATIONAL LAW PRINCIPLES ON THE EXERCISE OF JURISDICTION, A FOREIGN GOVERNMENT ENTITY SUCH AS OBB CANNOT BE MADE SUBJECT TO U.S. CIVIL JURISDICTION FOR INJURIES SUFFERED ABROAD

A. International Law Requires a Sufficiently Close Connection to the United States in Order for An American Court to Exercise Civil Jurisdiction

It is now widely accepted that states must rely on an internationally recognized principle of jurisdiction before exercising extraterritorial jurisdiction. The International Court of Justice has required states to prove a relevant basis of jurisdiction.[16] And it is axiomatic that the exercise of *civil* jurisdiction by a state depends on "there being *between the subject matter and the state exercising jurisdiction a sufficiently close connection* to justify that State in regulating the matter and perhaps also to override any competing rights of other States."[17] International law imposes this requirement in order to minimize such conflicts between states and to prevent forum shopping by plaintiffs and defendants rushing to obtain judgments in a forum that favors their own interests.

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[16] *See The Nottebohm Case* (*Liech. v. Guat.*), 1955 I.C.J. 4 (Apr. 6). *See also Anglo Norwegian Fisheries Case* (*U.K. v. Nor.*), 1951 I.C.J. 116 (Dec. 18), and Malcolm N. Shaw, *International Law* 469 (7th ed. 2014).

[17] Sir Robert Jennings & Sir Arthur Watts, eds., *Oppenheim's International Law*, at 457-8 (9th ed. 1992) (emphasis added); *See also* Bernard H. Oxman, *'Jurisdiction of States', in Encyclopedia of Public International Law* (Rudolf Bernhardt, ed., 1997).

Furthermore, the Court's due process jurisprudence governing when foreign corporations can be sued in a U.S. state has generally been consistent with international law principles of jurisdiction. *See, e.g. Daimler AG v. Bauman*, 134 S.Ct. 746, 751 (2014) ("*Daimler*"); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846 (2012) ("*Goodyear*"). This jurisprudence generally coincides with the "sufficiently close connection" requirement of international law as recognized by the International Court of Justice and other traditional sources; and is useful in deciding the international law questions starkly presented by the Ninth Circuit's decision in the present case.

B. Plaintiff's Tort Claims Do Not Fall within Any Category of Civil Jurisdiction Recognized by International Law as Reflected in the Third Restatement of Foreign Relations Law of the United States

Appellee's tort claims are all based on a serious injury suffered while she was trying to board a passenger train operated by the Austrian state railway in Austria. The sole connection to the United States, accepted by the Ninth Circuit, is an Internet sale by an independent third party: "Under traditional theories of agency, RPE's act of selling the Eurail pass to Ms. Sachs within the United States can be imputed to OBB as the principal." Pet. App. at 18. That connection is simply nowhere near enough to establish U.S. jurisdiction.

First, the alleged acts of negligence by OBB that caused the Plaintiff injury did not occur within U.S. territory—territoriality being "by far the most common basis for the exercise of jurisdiction to prescribe,

and . . . generally free of controversy." Restatement (Third) Foreign Rel. Law § 402 (1987).

Second, since OBB is a foreign entity, the facts of the case do not call into play the "active personality principle" of international law, which allows a forum state to exercise jurisdiction over its nationals. *Id.* § 402(1)(e).

Third, the challenged conduct did not have a "substantial effect" within the territory of the United States—and thus does not call into play the so-called "effects principle" that is provided for in the FSIA. *Id.* § 402(1)(c). Even in U.S. practice, it only applies to "foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States."[18]

Fourth, the "passive personality" principle, where jurisdiction is based on the nationality of the plaintiff only, "has not been generally accepted for ordinary torts. . . ." *Id.* § 402, cmt. g. Thus, the Appellee should not be able to invoke this principle either. Additionally, the Ninth Circuit's reasoning does not even depend on the citizenship of the Plaintiff: a U.S. resident, regardless of nationality, who had purchased a Eurail pass online while still in the United States could then sue any European railway in the United States for a personal injury suffered in Europe.

Even though the United States could not exercise jurisdiction over this case without violating international law, Ms. Sachs was not without access to a proper legal remedy. She could have pursued her claim against OBB in an Austrian court, which the

[18] *Hartford Fire Insurance Co. v. Cal.*, 509 U.S. 764, 796 (1993).

Governments believe would have provided her a fair and adequate forum for her claims.

C. The Court's Jurisprudence Involving Specific U.S. Jurisdiction Over Foreign Defendants for Injuries Occurring Abroad Tends to Coincide with the *Sufficiently* Close Connection Requirement of International Law

In the case of government owned entities, the U.S. Restatement of Foreign Relations explains:

> Although a foreign state has been held not to be a "person" within the meaning of the due process clause [of the Fifth and Fourteenth Amendments], it was apparently the intention of the Foreign Sovereign Immunities Act that foreign states be treated like private entities for the purpose of determining the necessary connection with the forum.[19]

Even if this Court accepted the Ninth Circuit's conclusions about OBB's alleged "commercial activities carried on in the United States" (i.e., contracting with the Plaintiff via an indirect agent), these facts would not come close to satisfying the sufficiently close connection to the forum that this Court has required in recent cases in rejecting specific jurisdiction in the United States for tort claims of plaintiffs injured abroad. *See Daimler AG v. Bauman*, 134 S.Ct. 746 (2014) (reversing another expansive Ninth Circuit "agency" decision); *Goodyear*, 131 S.Ct. 2846 (2012);

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[19] Restatement (Third) Foreign Rel. Law, § 453, Reporters' Note 3.

and *Helicopteros Nationales de Columbia, S.A. v. Hall*, 466 U.S. 408 (1987) ("*Helicopteros*").

D. In the Internet Age, Respect for Sovereignty Still Remains Very Important to the International Legal System

In the modern Internet world, the widespread business and consumer use of a powerful search engine means that ever more impersonal and international transactions are likely to occur—thus potentially raising jurisdictional and substantive legal questions under international law and the laws of more than one sovereign state. This basic reality makes adherence to international law regarding national jurisdiction more important than ever.

Customary international law is founded on a broad international consensus, which is based on "evidence of a general practice accepted as law."[20] In an often-quoted passage, the International Court of Justice has stated that for a rule of customary international law to be created:

> An indispensable requirement would be that . . . State practice, including that of the States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; –and should moreover have occurred in such way as to show a general recognition

[20] Statute of the International Court of Justice, Art. 38, June 26, 1945, 59 Stat. 1055, 1060 (1945).

> that a rule of law or legal obligation is involved.[21]

The same theme is sounded in the U.S. Restatement of Foreign Relations Law: "[C]ustomary international law results from a general and consistent practice of states followed by them from a sense of legal obligation."[22]

International law clearly requires that national courts respect the international legal rules on jurisdiction—which is precisely what the Ninth Circuit has avoided doing in this case. As already emphasized (in Argument III.B above), the bases for the exercise of civil jurisdiction under international law are generally well-defined, based mostly on territoriality where the alleged wrong occurred or the nationality of the alleged wrongdoer. Customary international law has never accepted extraterritorial civil jurisdiction for a tort claim against a foreign national for foreign conduct abroad that had no sufficiently close connection with the forum state.

It would be illogical for the FSIA, whose main purpose is to limit jurisdiction over foreign sovereign entities, to be interpreted to allow broader jurisdiction than is permitted under international law. In effect, such a result would mean that state-owned entities are more likely to end up in American courts than private entities.

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[21] *North Sea Continental Shelf (F.R.G. v Den.; F.R.G. v. Neth.)*, 1969 I.C.J. 3, 43 (Feb. 20).

[22] Restatement (Third) Foreign Rel. Law, § 102, cmt. 1 (1987).

Under international law, the proper forum for adjudication of Ms. Sachs' claims is Austria regardless of whether she had bought her ticket to travel online from a website in Massachusetts, California, the Netherlands or Austria—or even in person from a travel agent in California. The existence of the Internet should not be allowed to blur that reality or become an excuse to ignore the international law rules requiring clear connection to the forum.

If the Internet were allowed to justify a huge expansion of extraterritorial jurisdiction against foreign parties for their operations abroad (as the Ninth Circuit has done in this case), then some unfortunate consequences would be likely to follow.

As the International Rail Transport Committee warned in their brief at the Petition stage, "faced with the potential for having to defend personal injury actions in American courts, foreign railways will alter their business and ticketing practices in ways that will undoubtedly inconvenience American travelers."[23]

And the European Commission has also reacted reciprocally to protect its member states, corporations and individuals against the effect of extraterritorial legislation adopted by the United States.[24]

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[23] *Amicus Curiae Brief of the International Rail Transport Committee ("CIT") in Support of ÖBB's Petition for Writ of Certiorari*, April 7, 2014, *ÖBB v. Sachs*, No. 13-1067, at 16.

[24] *See* European Commission, Council Reg. No. 2271/96 of 22 November 1996, 1996 O.J. (L 309) 1 (protecting against the effects of the extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996R2271:EN:HTML

E. This Case Illustrates The Kind Of Forum Shopping That Is Inconsistent With International Comity And The Practices Of Other Nations

It is a well-known fact that litigation rules vary considerably across national legal systems. Firstly, there is the so-called "American rule" on litigation costs, which requires each side to bear its own costs—rather than requiring the losing plaintiff to reimburse some or all of the successful defendant's litigation costs (and vice-versa).[25] Secondly, the U.S. legal system also makes relatively broad discovery available to plaintiffs that tend to drive up the non-reimbursable litigation costs that an ultimately successful defendant will still have to bear.[26] Thirdly, the right to a jury trial in a civil case, guaranteed by the Seventh Amendment to the U.S. Constitution, is generally not available elsewhere, and tends to generate higher settlements.[27] Fourthly, punitive damages

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[25] *See, e.g., Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 255 (1975).

[26] *See, e.g., Bell Atlantic v. Twombley*, 550 U.S. 544, 548 (2007) (where this Court cited the burdens of discovery as one of the reasons to impose enhanced standards of what a plaintiff had to be able to plead in order to survive a motion to dismiss under Fed. R. Civ. P.12(b)(6).)

[27] *See, e.g.*, William Glaberson, *NAFTA Invoked to Challenge Court Award, N.Y. Times*, Jan. 28, 1999, *available at* http://www.nytimes.com/1999/01/28/business/nafta-invoked-to-challenge-court-award.html?pagewanted=all&src=pm (two leading U.S. international trade experts "noted that business leaders in other countries have for years complained that America's large jury verdicts make investment here unpredictable").

are available in the United States, but generally not allowed elsewhere.[28]

In the Governments' view, plaintiffs should not be allowed to exploit these differences between national legal systems and choose the litigation rules that best suit their interests in a particular case. Forum shopping has the potential to seriously undermine the ability of States to regulate litigation between private parties within their national jurisdictions. It may lead to an international "race-to-the bottom" in which the forum offering the most convenient rules to plaintiffs for particular disputes prevails. In this sense, to allow forum shopping is a sword that cuts both ways. Not only would it permit a plaintiff to obtain the benefits of U.S. litigation rules for a tort committed entirely on foreign territory; it would also make it possible for plaintiffs to obtain remedies for wrongs allegedly committed within U.S. territory before any foreign court. Plaintiffs could freely choose their forum worldwide, taking into account legal but also practical and perhaps even opportunistic considerations. It is difficult to see how states could under such circumstances effectively exercise their sovereign right to regulate within their sovereign boundaries.

The well-established international rules on jurisdiction are so important because they regulate between states, on a sovereign and equal basis, under which circumstances the right of one state to exercise its jurisdiction prevails. They are not overly rigid and allow for exceptions from the principle of territorial jurisdiction in justified cases, for example in accordance with the active personality principle or the effects

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[28] John Y. Gotanda, *Punitive Damages: A Comparative Analysis*, 42 Colum. J. Transnat'l L. 391, 396 n.24 (2004).

principle discussed above. Ordinary tort claims do not justify such exceptions. On the contrary, the present case illustrates that it is in the interest of every sovereign state to uphold the existing international rules on jurisdiction because they are necessary to protect their spheres of regulatory competence. In the present case, the injury was sustained in Austria and there was a remedy available in Austrian courts.[29]

Here, the plaintiff seeks to obtain the benefit of litigation rules available in the United States that have not been accepted by other states.[30] Thus this case is simply the latest in the recent series of cases where this Court has had to review decisions dealing with jurisdiction over foreign acts or defendants—including the decisions in *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S.Ct. 2780 (2011) ("*McIntyre*"), *Goodyear* in 2013 and *Daimler* in 2014.

Any jurisdictional rule adopted here could also necessarily be applied to a U.S. class action, and the U.S. style class actions has become a growing source of concern to the Governments and foreign enterprises. The unique U.S. combination of (i) the "opt out" class action system provided for in the United States under Fed. R. Civ. P. 23 and its state law counterparts and (ii) the "American rule" on litigation costs, have been

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[29] As the court discussed in *Sosa*, it would consider international law's requirement of exhaustion of local remedies in an appropriate case. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 733 n.21 (2004).

[30] *See, e.g.*, the European Commission's discussion of efforts to achieve more balanced private litigation rules in its *White Paper on Damage Actions for Breach of EC Competition Rules*, COM (2008) 165 (April 2, 2008), *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008DC0165&from=EN.

rejected by other countries establishing collective remedies for consumers. This has led to the filing in the United States of large class action claims against foreign defendants that this Court has had to reject on jurisdictional grounds in *Empagran*, *Morrison*, and *Kiobel*.

Concerns about U.S. style class actions were clearly reflected in a 2013 recommendation by the European Commission that the E.U. Member States adopt some form of collective redress for victims. As it stated:

> For the Commission, any measures for judicial redress. . . . *must not attract abusive litigation or have effects detrimental to respondents* regardless of the results of the proceedings. Examples of such adverse effects can be seen in particular in 'class actions' as known in the United States.[31]

As a result of these various U.S. rules and practices, this Court must continue to play its traditional role of guardian of international law and comity to avoid forum shopping.

IV. THE GLOBAL NATURE OF INTERNET PARTICIPATION MAKES THE WELL-ACCEPTED LIMITATIONS ON NATIONAL JURISDICTION UNDER INTERNATIONAL LAW MORE IMPORTANT THAN EVER

Appellee Ms. Sachs, a California resident, was injured while travelling on a 4-day Eurail pass that she had bought a month earlier over the Internet from a

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[31] *Towards a European Horizontal Framework for Collective Redress*, at 8, COM (2013) 401 final (June 11, 2013), *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013DC0401&from=en (emphasis added).

Massachusetts-based travel agency (RPE) acting on behalf of a Netherlands-headquartered consortium of 30 European railroads (Eurail Group), which includes OBB. OBB did not have a controlling interest in Eurail Group and had had nothing to do in selecting or supervising RPE or its other agents.

The Ninth Circuit concluded that where and how the Plaintiff happened to purchase her Eurail pass was critical to its jurisdictional analysis of her claim for injury suffered in Austria.

> Where a ticket for travel on a foreign carrier is bought and paid for in the United States, we conclude that the substantial contact requirement is satisfied. The sale and marketing of Eurail passes within the United States is sufficient to meet the substantial-contact element and to show that OBB carried on commercial activity in the United States.

Pet. App. at 32. In the Governments' view, this analysis represents a significant expansion of jurisdiction even by pre-Internet standards, and becomes radical when seen in the Internet context in which consumers now operate.

But the District Judge in this case correctly found that Ms. Sachs' "unwieldy theory of subject matter jurisdiction would seem to ensnare all thirty members of the Eurail Group." Pet. App. at 109.

The "agency" claim is particularly extreme in the current case. Ms. Sachs purchased her right to travel in a one-off transaction from a specialized Internet agent which might not have even been doing enough

business in California to be subject to suit in California under constitutional due process principles. And Ms. Sachs' license to travel in Austria was not Austria-specific and was not issued or sold by the Defendant OBB.

Suppose as an alternative, Ms. Sachs had turned to a major U.S-based Internet seller of travel services such as Expedia and obtained her Innsbruck-to-Prague ticket from them. Such a firm, doing thousands of transactions a day, would clearly be subject to specific personal jurisdiction in California. But Expedia handles reservations for thousands (if not more) travel providers and hotels abroad—and it would not make sense that all such entities could be sued in the United States for injuries suffered abroad solely because reservations could be booked online in the United States. In responding to today's electronic reality, it makes sense to look back to the legal analysis that this Court would have applied in the pre-Internet world. In 1985, Ms. Sachs would have probably bought her Eurail pass or OBB ticket from a local brick-and-mortar travel agent. That this agent was present in California and subject to general personal jurisdiction there did not somehow make the foreign railway or airline suddenly subject to jurisdiction in California, either.

V. INTERNET SALES OF A FOREIGN SERVICE TO U.S. RESIDENTS SHOULD NOT TRIGGER U.S. CIVIL JURISDICTION FOR A CLAIM BASED ON AN INJURY OR LOSS SUFFERED OUTSIDE THE UNITED STATES

This case involves a domestic plaintiff suing a foreign defendant for an injury that was suffered abroad, where the only connection to the California forum is that the purchaser was in California when she bought her ticket on the Internet from a travel agent over 2,000 miles away. Given this very limited factual connection, the Ninth Circuit's decision generates serious concern among foreign enterprises and foreign governments about how U.S. litigants and courts may compel foreign entities, who sell foreign services on the Internet, to defend themselves in a faraway nation for a claim with which they have no connection. Fortunately, this case offers this Court a chance to reassure an international audience that the Internet has not turned international law and constitutional "due process" on their heads in the 21st Century.

A. This Court's Extensive Experience With Unjustified Jurisdictional Claims Under State Long Arm Statutes Should Provide It With the Tools for Resolving Extraterritorial Jurisdictional Disputes in Accordance With International Law

The international cases in which this Court has rejected U.S. plaintiffs' claims against absent defendants based on state long arm statutes cover a wide range of circumstances in which a reasonable connection with the forum was always at issue. These include claims for (a) domestic injuries from imports manufactured abroad, as in *McIntyre and Asahi Metal*

Industry Co. v. Superior Court of California, 480 U.S. 102 (1987); and (b) claims for foreign injuries caused by overseas affiliates of domestic defendants, as in *Goodyear* and *Helicopteros*. In most of these modern cases, the issue is not general jurisdiction over the defendant, but rather whether there is "specific jurisdiction 'in a suit arising out of or related to the defendant's contacts with the forum." *McIntyre* at 131 S.Ct at 2788 (quoting *Helicopteros*). As the Court further explained in *McIntyre*:

> Where a defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws, it submits to the judicial power of an otherwise foreign sovereign to the extent that power is exercised in connection with the defendant's activities touching on the State.[32]

Thus determination of "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis . . . [to determine] whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign." *Id.* at 2789. Moreover, where the "purposeful availment" inquiry concerns a foreign defendant, the relevant activities and contacts must be directed at the particular U.S. state where the case is brought. In *McIntyre*, "[t]hese facts may reveal an intent to serve the U.S. market, but they do not show that J.McIntyre purposefully availed itself of the New Jersey market." *Id.* at 2790.

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[32] *Id.* at 2787-8.

Also, the number and continuity of the transactions in the forum may be important in making this "purposeful availment" assessment. As Justice Breyer emphasized, concurring in *McIntyre*, "[n]one of our precedents finds that a single isolated sale, even if accompanied by the kinds of sales effort indicated here, is sufficient" to establish specific jurisdiction. *Id.* at 2792.

B. Offering Global Internet Users Information and Purchase Opportunities Does Not of Itself Constitute "Purposeful Availment" in Any Particular U.S. Forum

The Internet tends to generate communications and transactions among parties who have had no (or only limited) prior relationships and are quite distant from each other. "Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods." *Reno v. ACLU*, 521 U.S. 844, 851 (1997). "From the publishers' point of view, it constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers." *Id*. at 853.

The resulting communications may be unique, random or recurring. The resulting legal disputes may concern the content of the Internet communication itself; and, if so, then the jurisdictional inquiry must be whether there is sufficient connection to the forum to meet the "purposeful availment" standard there. Two different cases involving claims about domain names illustrate the point. *See e.g., Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006) (a passive

U.K. website's "acts were not aimed at California and, regardless of foreseeable effect, are insufficient to establish jurisdiction" there); and *Zippo Mfg. Co v. Zippo Dot Com.*, 952 F.Supp. 1119, 1125 (W.D. Pa. 1997) (communications to 3,000 individuals and seven Internet access providers in Pennsylvania allowing them to download the messages on which the suit was based constituted "purposeful availment" in Pennsylvania).

Alternatively, as the present case illustrates, the website may provide the consumer with the information about possible actions she could take, and this causes her to enter into a purchase transaction which leads to her ultimate injury (but does not cause it). In other words, the service provider (i.e., OBB) or specialist intermediary (i.e., RPE) may publish information on train schedules and prices in Austria—information that can be accessed in California but is not primarily directed to this or any other particular geographic area. This passive activity cannot constitute "purposeful availment" in California, and it does not then become "purposeful availment" by OBB just because Ms. Sachs or some other Californians happened to use RPE's website to buy a ticket.

As the Seventh Circuit has found, "[i]f the defendant merely operates a website, even a 'highly interactive' website, that is accessible from, but does not target, the forum state, then the defendant may not be haled into court in that state without offending the Constitution." *be2 LLC v. Ivanov*, 642 F.3d 555, 559 (7th Cir. 2011). *See also Dagesse v. Plant Hotel N.V.*, 113 F. Supp. 2d 211, 224 (D.N.H. 2000)(finding that a foreign hotel did not have sufficiently continuous or systematic contacts with New Hampshire to exercise

jurisdiction, despite the fact that the plaintiff booked reservations through a U.S. travel agent, and the hotel allowed reservations to be booked online).

Internet transactions can occur in a variety of circumstances. The present case only involves *services* to be performed by a foreign party in its home territory. It thus differs from the case where a foreign Internet seller has made online sales of *goods* to U.S. customers, which goods are then shipped to the United States and subsequently cause injury to a U.S. customer.

Today, the common law development of jurisdiction over Internet transactions by U.S. courts is generating a great diversity in analyses and resulting legal uncertainty. Given the openness and global scope of the Internet, this Court must take the lead in providing guidance to state and federal courts on how to apply international law in resolving the recurring jurisdictional questions which the Internet is generating for them.

CONCLUSION

The Ninth Circuit decision under review did not take into account international law concerning sovereign immunity and jurisdiction, while creating worldwide U.S. civil jurisdiction against foreign common carriers that sell tickets for foreign travel via U.S. agents or Internet suppliers. This case is thus an excellent vehicle to chart a clearer course and interpret the FSIA in conformity with international law. This Court can thereby provide important guidance on how well-established limitations on extraterritorial civil jurisdiction could be applied to Internet transactions involving foreign parties.

Respectfully submitted,

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