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Justice Against Sponsors Of Terrorism Act (Jasta) Under The Light Of Public International Law: Shifting From The Absolute Theory To The Restrictive Theory

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Abstract: *The immunity of foreign states from the influence of national courts is part of international law but with fundamentalpragmaticconsequences. State immunity for some scholars is absolute, for others,it is restricted.It is generally recognized that international terrorism is among the most serious intercontinental threats faced by the international community as a whole.For that reasons, states have already made efforts to counter international terrorism and consider this challenge as a national security priority. Some states have decided to use all necessary means to meet the above-mentioned threat, including using military force to destroy infrastructure used by international terrorists, and by the adoption of a new legal system arsenal. The American legislator has recently adopted on 27 September 2016 a new controversial Bill called Justice Against Sponsors of Terrorism Act, or what is commonly referred to as JASTA. The Billhas created important debate within and outside the USA.This new law marks a turning point in the position of the US towards the direction of its international policies.In this research, we will examine this bill in terms of its legal implications and the consequences on the international legal system.*

Key words: *JASTALaw, Tate Letter, The Foreign Sovereign Immunities Act (FSIA), Antiterrorism and Effective Death Penalty Act (AEDPA), Jurisdictional Immunity, Sovereign Immunity,International Law, Jus Cogens.*

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I. Introduction

This paper is organized and divided into three main sections: The first section gives a brief overview of the history of Jasta. The second section analyses the conflicting relation between JASTAand international law principles. In the third section, we will focus on the international reactions.

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1: Introduction and History of The Principle:

For centuries, nations granted full immunity from lawsuits to foreign sovereigns in all aspects of their relationships. This practice derives from an ancient and essential principle of the English constitutioncalled "*Rex non potestpeccare*" "the King can do no wrong".[1]Recently, in spite of thehostile

[1] Michael E. Jansen, FSIA Retroactivity Subsequent to the Issuance of the Tate Letter: A Proposed Solution to the Confusion, Northwestern Journal of International Law & Business, Volume 10 Issue 2 Fall 1989, p.333; But this maxim must not be understood to mean, that the king is above the laws. It only means, that the sovereign, individually and personally, and in his natural capacity, is independent of and is not amenable to any other earthly power or jurisdiction, and that whatever may be amiss in the condition of

reaction by the international community, the United States Congress has adopted a provocative and confrontational law called JASTAor The Justice Against Sponsors of Terrorism Act.This new law restricts the scope of the legal doctrine of foreign sovereign immunity.In this point, we will examine the background and historical context in which this Bill has been adopted.

1.1: *Tate Letter: The Beginning of a New Policy Against Foreign* Sovereign Immunity:

In 1952 the US State Department has adopted the famous instrument called "Tate Letter"[2]. In this Letter, the State Department publicly took the position that henceforth it would recommend to U.S. courts that as a matter of policy, a foreign state should be granted immunity only for its sovereign or public acts, and not for its private acts[3]. The Acting Legal Advisor for the State Department **Mr. Tate**, sent a Memorandum to the Attorney General explaining the Department's wish to limit immunity to traditional acts of states, what is generally called the restrictive theory of jurisdictional immunity[4]. Although this letter is not part of international law but however it explains the way of thinking at the American legal house.As per of some scholars[5], the said letter was a "*clear communication about what the United States understood to be the developing state of an international law doctrine*". And her we can say that this is the beginning of the American restrictive understanding of sovereign immunity which is aligned with the position of the US Constitution which states in article 3 section 2 that "*The judicial Power shall extend to all Cases…betweena State, or the Citizens thereof, and foreign States, Citizens or Subjects*"[6].

This evolutive American understanding of immunity is different from the one adopted a century ago in 1812 when the Supreme Court in a case called "*The Schooner Exchange v. McFadden*" has clearly mentioned that foreign sovereigns were immune from suits in U.S. courts.[7] So the absolute sovereign immunity was reversed in 1952 when the US State Department has adopted the said well-known "**Tate Letter**". No doubt that the criteria pointed out by the Tate Letter carries many unsolved interrogations. How would it be distinguished or determined if given acts of a foreign government considered public and private acts? To answer this question, Scholars have formulated several ways to distinguish between public and private acts. Some ways give weight to the "nature" of the act, while others preferred the "purpose" ways under which an act would be considered sovereign if performed for a public purpose[8].

1.2: *The Foreign Sovereign Immunities Act (FSIA): Determination to Follow the Restrictive Direction*

To face the unsolved enquiries with the Tate letter, the American Congress has adopted 24 years later another law called "*The Foreign Sovereign Immunities Act* or (FSIA) of 1976"[9] which entered into force on January 19, 1977. This new bill establishes the limitations as to whether a

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public affairs is not therefore to be imputed to the king, so as to render him answerable for it personally to his people. Broom, Herbert, A Selection of Legal Maxims Classified and Illustrated, 10th Ed., (London: Sweet & Maxwell Limited, 1939)

[2] For more details see: John M. Niehuss, International Law: Sovereign Immunity: The First Decade of the Tate Letter Policy, *Michigan Law Review* Vol. 60, No. 8 (Jun., 1962), pp. 1142-1153; William A. Dobrovir, A Gloss on the Tate Letter's Restrictive Theory of Sovereign Immunity, *Virginia Law Review* Vol. 54, No. 1 (Feb., 1968), pp. 1-19

[3] Letter from Jack B. Tate, Acting Legal Adviser of the U.S. Dep't of State, to Acting Attorney General Philip B. Perlman (May 19, 1952), reprinted in 26 DEP'T ST. BULL. 984 (1952).

[4] Winston P. Nagan& Joshua L. Root, The Emerging Restrictions on Sovereign Immunity: Peremptory Norms of International Law, the U.N. Charter, and the Application of Modern Communications Theory, 38 N.C. J. Int'l L. & Com. Reg. 375 (2013), available at http://scholarship.law.ufl.edu/facultypub/589. P. 46

[5] Winston P. Nagan& Joshua L. Root, The Emerging Restrictions on Sovereign Immunity: Peremptory Norms of International Law, the U.N. Charter, and the Application of Modern Communications Theory, 38 N.C. J. Int'l L. & Com. Reg. 375 (2013), available at http://scholarship.law.ufl.edu/facultypub/589. P. 48

[6] https://www.archives.gov/founding-docs/constitution-transcript

[7] This case has been pointed out by Michael E. Jansen, FSIA Retroactivity Subsequent to the Issuance of the Tate Letter: A Proposed Solution to the Confusion, Northwestern Journal of International Law & Business, Volume 10 Issue 2 Fall 1989, p.345

[8] Et VeBalikKurumu v. B.N.S. Int'l Sales Corp., 25 Misc. 2d 299, 204 N.Y.S.2d 971 (Sup. Ct. 1960), aff'd, 17 A.D.2d 927, 233 N.Y.S.2d 1013 (App. Div. 1962). Mentioned by Michael E. Jansen, FSIA Retroactivity Subsequent to the Issuance of the Tate Letter: A Proposed Solution to the Confusion, Northwestern Journal of International Law & Business, Volume 10 Issue 2 Fall 1989, p.347

[9] Foreign Sovereign Immunities Act of l976, Pub. L. 94-583, 90 Stat. 289l, 28 U.S.C. Sec. l330, l332(a), l39l(f) and l60l-l6ll [hereinafter the FSIA],

foreign sovereign nation may be sued in U.S. courts. the US court in *Yessenin-Volpin v. Novosti Press Agency* concluded that "FSIA did not create new rights of immunity, but merely codified the restrictive principle of sovereign immunity"[10],

In his statement, the American President at that time, Mr. Ford said that: "*This statute will…make it easier for our citizens …. to turn to the courts to resolve ordinary legal disputes*"[11]. Since the adoption of the FSIA several legal problems have risen in regards to the interpretations of the said Act. FSIA limits the role of the Executive branch in suits against foreign governments and governmental entities by precluding the Department of State from making decisions on state immunity. The FSIA codifies the restrictive theory of immunity, incorporating criteria, which the courts had developed in applying the theory, while codifying and applying international law.[12] in other words, FSIA has determined numerus exceptions to the jurisdictional immunity of a foreign state as follows or in other words, foreign state shall not be immune from the jurisdiction of courts of the United States in any case in which:

1605(a) (1) - *explicit or implicit waiver of immunity by the foreign state;*

1605(a)(2) - *commercial activity carried on in the United States or an act performed in the United States in connection with a commercial activity elsewhere, or an act in connection with a commercial activity of a foreign state elsewhere that causes a direct effect in the United States;*

1605(a)(3) - *property taken in violation of international law is at issue*;

1605(a)(4) - *rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are at issue;*

1605(a)(5) - *money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state;*

1605(a)(6) - *action brought to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration*;

And the last point deserves more attention since its related to terrorism**: 1605(A)(a)(1)** - *money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act, if the foreign state is designated as a state sponsor of terrorism under section* 6(j) *of the Export Administration*.[13]However, under this statute, U.S. courts have the power to exercise personal jurisdiction over claims against foreign state sponsors of terrorism that cause personal injury or death to U.S. citizens[14].According to Hannelore Sklar, "*the Foreign Sovereign Immunities Act has given U.S. courts jurisdiction over certain claims against foreign governments and their instrumentalities. Nonetheless, neither the Supreme Court nor Congress has ever specified how federal courts ought to address the conflict of laws questions that arise in FSIA cases*"[15].Actually, Section 1606 of the FSIA barred punitive damages even if such damages might be permitted under the pertinent substantive law. As a result,

[10]Yessenin-Volpin v. Novosti Press Agcy., 443 F. Supp. 849 (S.D.N.Y. 1978) U.S. District Court for the Southern District of New York - 443 F. Supp. 849 (S.D.N.Y. 1978) January 23, 1978;

43 F. Supp. 849 (1978) Alexander S. Yessenin-Volpin, Plaintiff, V. Novosti Press Agency, Tass Agency and the Daily World, Defendants. No. 77 Civ. 639 (CHT). United States District Court, S. D. New York. January 23, 1978. http://law.justia.com/cases/federal/district-courts/FSupp/443/849/1953101/; Michael E. Jansen, FSIA Retroactivity Subsequent to the Issuance of the Tate Letter: A Proposed Solution to the Confusion, Northwestern Journal of International Law & Business, Volume 10 Issue 2 Fall 1989, p.357

[11] 12 Weekly Comp. Pres. Doc. 1554 (Oct. 22, 1976).

[12] See ch. 5, Restatement 3rd, Foreign Relations Law of the United States, sec. 451-463, pp. 390, 435, American Law Institute (1986).

[13]https://travel.state.gov/content/travel/en/legal-considerations/judicial/service-of-process/foreign-sovereign-immunities-act.html; John C. Balzano, Direct Effect Jurisdiction Under the Foreign Sovereign Immunities Act: Searching for an Integrated Approach, 24 Duke J. Comp.&Int'l L. 1, 6 (2013).

[14]Sivonnia L. Hunt, The Foreign Sovereign Immunities Act: The Roadblocks to Recovery, Seventh Circuit Review Volume 8, Issue 2 Spring 2013, p. 435

[15] Hannelore Sklar, choice of law under the foreign sovereign immunities act: Cassirer V. Thyssen-Bornemisza collection foundation and the unresolved disagreement among the circuits, Georgetown Journal Of International Law, Vol. 47, 2016, p. 1197

punitive damages were generally unavailable unless plaintiffs could identify an officer or agent responsible for coordinating or supporting the terrorist act[16].

The US Congress amended the FSIA as part of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")[17] to add a new exception for state sponsorship of certain acts of terrorism [18].One of the explicit purposes of AEDPA was to "*deter terrorism*" directed at United States citizens and supported by foreign sovereigns as well as to "*provide justice*" for victims of terrorist acts[19]. The exception eliminated sovereign immunity and permitted suit directly against a foreign state "*for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources . . . for such an act* . . . ." § 1605(a)(7).[20]Under this new law, very important case has been examined by US court called "*ShlomoLeibovitch, et al., against Islamic Republic of Iran*". Due to the importance of this case I believe more details deserve to be added.

The **Leibovitch family** was attacked by terrorists while driving along a highway in Israel. One child, died in the attack while a second child, a United States citizen, was seriously injured. The family brought suit in federal district court against the Islamic Republic of Iran and the Iranian Ministry of Information and Security under the terrorism exception of the Foreign Sovereign Immunities Act28 U.S.C. § 1605A, for providing material support and resources to the Palestine Islamic Jihad "**PIJ**", Group that carried out the attacks.[21]Actually, the **familyLeibovitch** sought damages on behalf of the injured child and the family members who survived the attack before The United States District Court for the Northern District of Illinois which decided that Iran supplied the **PIJ** with "*material support and resources for its campaign of extrajudicial killings, and therefore found Iran was vicariously liable for PIJ's terrorist*

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[16] In the United States Court of Appeals for the Seventh Circuit No. 11-1564 ShlomoLeibovitch, et al., Plaintiffs-Appellants, v. Islamic Republic Of Iran, et al., Defendants-Appellees. Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:08-cv-01939—William T. Hart, Judge. Submitted September 12, 2011—Decided September 25, 2012.p 14, http://cases.justia.com/federal/appellate-courts/ca7/11-1564/11-1564-2012-09-25.pdf?ts=1411042253,

[17]The result after voting was as follows. (91-8 in the US Senate, 293-133 in the US House of Representatives). https://www.govtrack.us/congress/votes/104-1995/s242

[18] Pub. L. No. 104-132, § 221(a), 110 Stat. 1214; http://library.clerk.house.gov/reference-files/PPL_104_132_AntiterrorismandEffectiveDeathPenaltyAct_1996.pdf

[19] In the United States Court of Appeals for the Seventh Circuit No. 11-1564 ShlomoLeibovitch, et al., Plaintiffs-Appellants, v. Islamic Republic Of Iran, et al., Defendants-Appellees. Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:08-cv-01939—William T. Hart, Judge. submitted September 12, 2011—decided September 25, 2012. http://cases.justia.com/federal/appellate-courts/ca7/11-1564/11-1564-2012-09-25.pdf?ts=1411042253; To deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes https://www.gpo.gov/fdsys/pkg/PLAW-104publ132/html/PLAW-104publ132.htm; for more information about the history and cases examined by US courts please see: John H. Blumet, AEDPA: The "Hype" And The "Bite", Cornell Law Review, [Vol. 91:259, 2006]

[20]S. 735 (104th): Antiterrorism and Effective Death Penalty Act of 1996: https://www.govtrack.us/congress/bills/104/s735/text/is

[21] In the United States Court of Appeals for the Seventh Circuit No. 11-1564 ShlomoLeibovitch, et al., Plaintiffs-Appellants, v. Islamic Republic Of Iran, et al., Defendants-Appellees. Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. No. 1:08-cv-01939—William T. Hart, Judge. Submitted September 12, 2011—Decided September 25, 2012. http://cases.justia.com/federal/appellate-courts/ca7/11-1564/11-1564-2012-09-25.pdf?ts=1411042253.

Background of the case: according to the court's document" On June 17, 2003, several members of the Leibovitch family were traveling along the Trans-Israel highway near the town of Kalkilya through an area bordering the West Bank. Agents of the Palestine Islamic Jihad ("PIJ") crossed from the West Bank into Israel and fired upon the Leibovitchs' minivan using pistols and a Kalishnikov rifle. The Leibovitchs' seven-year-old child, N.L., an Israeli national, was killed by the gunshots. Her three-year-old sister, S.L., an American citizen, survived but was severely injured by bullets that shattered bones in her right wrist and pierced her torso. Two of the girls' grandparents and two siblings were also in the van during the attack. They survived but witnessed N.L.'s horrifying death as well as the grave injuries inflicted upon S.L.

attack[22]. and after extended proceedings that included an appeal to this court, the district court entered a default judgment of $67 million against the Iranian defendants[23].

II. : JASTAAnd Previous Similar Acts: Bombs Struck at the Heart of International Law:

Previously, USA has two related but different laws. The first, as we have discussed earlier, is The Foreign Sovereign Immunities Act (FSIA) of 1976 that establishes the limitations as to whether or not a foreign sovereign nation may be sued in U.S. courts.The second one called The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), which contained a number of provisions to deter terrorism and provide justice for victims. However, JASTAamends the previous two bills in terms of civil claims against a foreign state for injuries, death, or damages from an act of international terrorism.Previously, U.S. citizens were permitted to sue a foreign state if such state was designated as a state sponsor of terrorism by the United States Department of State and if they were harmed by that state's aid for one's international terrorism. In other words, pursuant to (FSIA) of 1976, once a state is designated by the concerned American department as sponsors of terrorism, then immunity could only be denied. However "*JASTAauthorizes federal courts to exercise personal jurisdiction over any foreign state's support for one's act of international terrorism against a U.S. national or property regardless if such state is designated as a state sponsor of terrorism or not*"[24].JASTAallows US courts to exercise jurisdiction over civil claims regarding injuries, death or damages that occur inside the USA as result of a tort, including an act of terrorism committed anywhere by a foreign state or official[25]. The main purpose of JASTA[26], is to decrease the difficultiesfor those affected by the terrorist actswhen they raise cases before national courts in America against state sponsors of terrorism demanding compensation for damages caused to them[27].The bill authorizes federal courts *to exercise personal jurisdiction over, and impose liability on, a person who commits, or aids, helps, or conspires to commit, an act of international terrorism against a US national*[28].

2.1: *JASTAConflicts with Fundamental Principles of International Law: Foreign Immunity ends where JASTAbegins.*

Sovereign immunityis a principle of customary international law, by which one independent state cannot take any legal action before it's national courts against another independent state. This idea that "*sovereigns are equal and have no authority to use their own courts to bring to trial other sovereigns without their consent*" has been confirmed by many scholars[29]. Contrary to the American position, Mr. Yang revealed that"*a sovereign state is exempt from the jurisdiction of foreign national courts*"[30].The customary international law principle of sovereign immunity has its origins in international treaties and state practice[31]. According to Gaukrodger, in his book, "*Foreign State Immunity*": "*Under the doctrine of*

[22]*Leibovitch, et al. v. Islamic Republic of Iran, et al.* , 697 F.3d 561 (7th Cir.2012) ; *Leibovitch v. Syrian Arab Republic* , 25 F.Supp.3d 1071(N.D.Ill.2014) ; *Leibovitch, et al. v. Syrian Arab Republic, et al.* , No. 08 C 1939, 2011 WL 444762(N.D.Ill. Feb. 1, 2011)

[23] R. 74, Judgment; R. 107, Am. Judgment, http://www.leagle.com/decision/In%20FCO%2020170329144; Palacios, Justine, Leibovitch v. Islamic Republic of Iran: A Seventh Circuit Decision Extends a Path to Recovery for Foreign Nationals Harmed by an Act of State-Sponsored Terrorism, Tulane Journal of International & Comparative Law;Spring2013, Vol. 21 Issue 2, April 2013, p597

[24] EPRS | European Parliamentary Research Service Author: Carmen-Cristina Cîrlig and Patryk Pawlak Members' Research Service PE 593.499;
http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593499/EPRS_BRI(2016)593499_EN.pdf

[25] Justice against sponsors of terrorism JASTAand its international impact, EPRS | European Parliamentary Research Service, Author: Carmen-Cristina Cîrlig and Patryk Pawlak, Members' Research Service,
http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593499/EPRS_BRI(2016)593499_EN.pdf

[26] The bill passed after Congress overrode the presidential veto on 27 September 2016

[27] See appendix at the end of this article

[28] See appendix at the end of this article

[29] Lee Caplan, State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory, 97 Am. J. Int'l. L. 741, 748 (2003); see also SvrineKnuchel, State Immunity and the Promise of Jus Cogens, 9 Nw. U. J. Int'l Hum. Rts. 149, 150 (2011).

[30]Xiaodong Yang, Sovereign Immunity, 23 March 2012, DOI: 10.1093/OBO/9780199796953-0018

[31] In Roman law, the opinions of the jurisconsults weretreated as a source of law

foreign state immunity, one State is not subject to the full force of rules applicable in another State; the doctrine bars a national court from adjudicating or enforcing certain claims against foreign States"[32].Mr Hazel Fox confirms the same accurate and fair comprehension for"foreign state immunity" by saying that, "*Jurisdictional state immunity precludes the judiciary of one state from exercising jurisdiction in a legal claim to which another sovereign state is aparty*"[33].

Some scholars are daring to believe"*that international law should not be understood within the framework of state practice and opinion juris alone. It must be understood within a framework that considers what members of the global community … are communicating about their collective understanding on the limits, nature, and applicability of customary international law*.[34]Italy also emphasized in their "*Counter Memorial of Italy*" on 22 December 2009 before the International Court of Justice in their dispute against Germany, that "*the developments in international law… had given rise to an obligation to lift state immunity if the claimant had no alternative avenues of redress*". And "*granting immunity would be contrary to the fundamental values of the international community*[35].

Some states, primarily the United States, reached in the legal intrepidity to unparalleled level.They pretend that the immunity of states is part of *international comity*[36] and does not constitute binding law[37]. The U.S. Supreme Court, in some decisions such as *Verlinden B.V. v. Central Bank of Nigeria*,[38]said that granting immunity is "*a matter of grace and comity on the part of the United States*."[39] The same position has been adopted later in other case called *Altmann*, where the Supreme Court confirmed again that the practice of barring suits against foreign governments on jurisdictional grounds was "*a matter of comity*."[40] However we should not forget that this principle is reflected in Article 2(1) of the UN Charter which confirms that"*The Organization is based on the principle of the sovereign equality of all its Members*"[41].

2.2:*International Court of Justice and International Immunity: Principle never to be rooted out*

According to the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004, which is not yet entered force[42], "*the jurisdictional immunities of States and their*

[32] D. Gaukrodger, 'Foreign State Immunity and Foreign Government Controlled Investors', OECD Working Papers onInternational Investment, 2010/2, OECD Publishing. doi: 10.1787/5km91p0ksqs7-en

[33] Hazel Fox, The Law of State Immunity (2nd ed, Oxford University Press, Oxford, 2008) at 5.

[34]Winston P. Nagan& Joshua L. Root, The Emerging Restrictions on Sovereign Immunity: Peremptory Norms of International Law, the U.N. Charter, and the Application of Modern Communications Theory, 38 N.C. J. Int'l L. & Com. Reg. 375 (2013), available at http://scholarship.law.ufl.edu/facultypub/589.

[35] "Counter Memorial of Italy" (22 December 2009) International Court of Justice at 61–70 and 73–78; http://www.icj-cij.org/files/case-related/143/16017.pdf, Case Concerning Jurisdictional Immunities Of The State, Germanyv.Italy. for more information, please see Matthew McMenamin, state immunity before the international court of justice: jurisdictional immunities of the state (germany v italy), Submitted as part of the LLB(Hons) programme at Victoria University of Wellington, the Victoria University of Wellington Law Review, (2013) 44 VUWLR, pp: 189-220

[36] international comity means: A practice of showing courtesy among nations. The difference between Comity of Nations and international law is based on the legally binding element for international law

[37] Lee M. Caplan, State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory, 97 AM. J. INT'L L. 741, 751 (2003)

[38]https://supreme.justia.com/cases/federal/us/461/480/; Patricia E. Bergum, Verlinden B.V. v. Central Bank of Nigeria: Expanding Jurisdiction under the Foreign Sovereign Immunities Act, Northwestern Journal of International Law & Business, Volume 6 Issue 1 Spring, 1984, pp. 320-336

[39]Verlinden B.V. v. Cent. Bank of Nigeria, 461 U.S. 480, 486 (1983)

[40] John Dugard, International Law: A South African Perspective 151–59 (2d ed. 2003) (discussing generally the recognition of sovereign immunity in international law). see also https://www.supremecourt.gov/oral_arguments/argument_transcripts/2003/03-13.pdf; Shira T. Shapiro, How Republic of Austria v. Altmann and United States v. Portrait of Wally Relay the Past and Forecast the Future of Nazi Looted Art Restitution Litigation, William Mitchell Law Review, Volume 34 | Issue 3, 2008, pp. 1147- 1176

[41] https://treaties.un.org/doc/publication/ctc/uncharter.pdf

[42] Article 30 of the conventions says "The … Convention shall enter into force on the thirtieth day following the date of deposit of the thirtieth instrument of ratification, …". The convention has so far been signed by 28 states and ratified by 21. The last ratification comes from Iraq 2 DEC 2015.

property are generally accepted as a principle of customary international law".[43] The major explanation for this immunity is that they ensure the smooth conduct of international relations and for the maintenance of peaceful cooperation and co-existence between states.

In 2008, the Federal Republic of Germany has decided to sue Italy before the International Court of Justice for not respecting Germany's immunity. For Italy, Germans have no right to hide behind the international immunity wall. However, Germany has raised three major points before the court,the first point: The Italian government has allowedits national courts to examine civil claims brought against it for war crimes committed during World War II by German forces against Italian nationals. The second point, Italy tookmeasures of constraintagainst *Villa Vigoni*,[44](a building in Italy owned by the German government) and third point, by declaring that judgments against Germany obtained in Greece for a massacre of Greek civilians by German forces during the German occupation of Greece in 1944 were enforceable in Italian courts[45].Before the ICJ, Germany emphasized that The Italian government has violated the international immunity, a principle protected by all international conventions and customs, and any decision issued by the court not in its favor will have negative impact not only on the aforementioned treaties but also will destabilize the international order[46].Four years later, on February 2012, the International Court of Justice delivereddecision against Italy declaringthat Italy has violated the sovereign immunity of Germany.The primary judicial branch of the United Nations, ICJ, has approved all the points mentioned by Germany as follows:

"…Italy had acted in violation of international law by contravening Germany's right to immunity both from jurisdiction and from enforcement".[47]

In the Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), the International Court of Justice held that international law requires immunity with respect to torts committed by armed forces during an armed conflict (para. 78)[48]. Inevitably, the previous judgmentthe Court as Tomuschatunderlines, *will serve as a precedent for similar configurations in the future*[49].

2.3: *Sovereign Immunity and Jus Cogens***:** *Between Equals No Power*

Manyscholars, international judgesand jurists have dealt with and studied the Latin expression Jus Cogens[50]. This later is a technical term given to those norms of general international law that are

[43] The above Convention was adopted during the 65th plenary meeting of the General Assembly by resolution A/59/38 of 2 December 2004.
https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=III-13&chapter=3&lang=en

[44]ICJ, Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), No. 2012/7 3 February 2012

[45] Jurisdictional Immunities of the State (Ger. v. Italy), Application Instituting Proceedings (Dec. 23, 2008), http://www.icj-cij.org/docket/files/143/14923.pdf. Chimène I. Keitner, Germany v. Italy: The International Court of Justice Affirms Principles of State Immunity, Published on ASIL (https://www.asil.org (https://www.asil.org), American Society of International Law, Volume 16. Issue 5,

[46] At [112]–[114].

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[48] Jurisdictional Immunities of the State (Ger. v. Italy), Judgment (Feb. 3, 2012), http://www.icj-cij.org/docket/files/143/16883.pdf

[49] Christian Tomuschat, The International Law of State Immunity and Its Development by National Institutions, Vanderbilt Journal of Transnational Law, Vol. 44:1105, p. 1106

[50] Evan J. Criddle and Evan Fox-Decent, ''A Fiduciary Theory of Jus Cogens'' (2009) Yale Journal of International Law 331 at 34627; A. Verdross, "Jus dispositivum and jus cogens in international law", American Journal of International Law, Vol. 60, 1966, pp. 55-63; M. Virally, "Réflexions sur le jus cogens", AFDI, Vol. XII, 1966, pp. 5-29; E. Suy, "The concept of jus cogens in public international law", in Lagonissi Conference on International Law, Geneva, 1967, pp. 17-77; L. Alexidze, "Legal nature of jus cogens in contemporary international law", pp. 223-268; G. Gaja "Jus cogens beyond the Vienna Convention", pp. 271-316 ; R. St. J. Macdonald, "Fundamental norms in contemporary international law", Canadian

argued as hierarchically superior[51]. This academic position is very closer from the position adopted by of international tribunals. The International Criminal Tribunal for the Former Yugoslavia (ICTY) explained in *Prosecutor v. Furundzija*that a *Jus Cognes* norm is "a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules[52]. Professor Oppenheim stated that there existed a number of "*universally recognized principles*" of international law that rendered any conflicting treaty void, and therefore, the peremptory effect of such principles was itself a "*unanimously recognized customary rule of International Law*[53].In other words, Jus Cognes are rules, which correspond to the fundamental norm of international public policy and in which cannot be altered unless a subsequent norm of the same standard is established[54].

The Vienna Convention on the Law of Treaties has given the recognition of the norms of Jus Cognes in Article 53, where it states:

"*A treaty is void, if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole, as a norm from which no derogation is permittedand which can be modified only by a subsequent norm of general international law having the same character*"[55].

From this provision, we can determine the main criteria for a norm to be considered as jus cogens,(1) not conflicting with a peremptory norm of international law; (2) recognized by the international community and not only the major powers; (3) no derogation is permitted; and (4) can be modified only by a later norm of general international law.in this matter, many categories are considered by the states as part of Jus Cognes such as the prohibition ofthe crimes listed by article 5 from the Rome Statute of the International Criminal Court (ICC)[56] or of the use of force in international relations except in self-defense, freedom of the seas and the protection of the civilians in time of war. The prohibition of torture and slavery[57] constitutes a *Jus Cognes* norm according to the international tribunals.

In my opinion breaching essential international obligation which is related to the protection of fundamental interests of the international community could be considered as international crime[58]. International Court of Justice, which contributes to the understanding of the fundamental values of the

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Yearbook of International Law, Vol. XXV, 1987, pp. 115-149; G.A. Christenson, "Jus cogens: Guarding interests fundamental to international society", Virginia Journal of International Law, Vol. 28, 1988, pp. 585-628; G.M. Danilenko, "International jus cogens: Issues of law-making", European Journal of International Law, Vol. 2, 1991, pp. 42-65;Lee Caplan, *State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory,* 97 Am. J. Int'l. L. 741, 748; *See also* SévrineKnuchel, *State Immunity and the Promise of Jus Cogens,* 9 Nw. U. J. Int'l Hum. Rts. 149

[51] Rebecca M.M. Wallace, International Law 33 (2d ed. 1994);

[52]Prosecutor v. Furundzija,Case No. IT-95-17/1-T, Judgment, at para. 153 (Dec. 10, 1998)

[53] Oppenheim Et Al., Oppenheim's International Law Vol. 1 Peace, Eim's International Law Vol. 1 Peace, introduction & part I (1992).

[54]Kamrul Hossain, The Concept of Jus Cogens and the Obligation Under The U.N. Charter, 3 Santa Clara J. Int'l L. p. 73, (2005).

[55] Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, U.N. Doc. A/Conf. 39/ 27, 1155 U.N.T.S. 331, available at http://www.un.org/law/ilc/texts/treaties.htm.

[56] Crimes within the jurisdiction of the Court: The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression. Rome Statute of the International Criminal Court, document A/CONF.183/9 of 17 July 1998 and corrected by process-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

[57] International criminal tribunal for ex-Yugoslavia has examined this point repeatedly and mentioned in Prosecutor v. Furundzija,Case No. IT-95-17/1-T, Judgment, at para. 153 ("Because of the importance of the values [the prohibition on torture] protects, this principle has evolved into a peremptory norm or jus cogens.").

[58] For more details about this point please see Gennady M. Danilenko, International Jus Cogens: Issues of Law-Making, 2 EUR. J. INT'L L. 42, 44 (1991), available at http://www.ejil.org/journal/Vol2/No1/art3.html.

international community[59],affirmedin the *Nicaragua Case*,thatJus Cognes as an accepted doctrine in international law[60]. However, Kamrul Hossain draw our attention to the fact that "*problems remain as to the application of the norm, in terms of which rules must necessarily be covered under the said norms. There was serious doubt concerning the fact that the norm could be misused in interpreting the rules to be covered under jus cogens*"[61]. For example, the legal status of the seabed if it's of common heritage of mankind or not.

III. Reaction Toward Jasta: Between Concern And Rejection

The new US bill represents, to a large extent,an isolated practice among other states of whichno other countries, until now, dared to follow the American approach. This is evident in the wide reaction by the international community against the American position, including that of Saudi Arabia.

3.1 *International Reaction: Total Rejection*:

Until the date of writing this paper, there has been no evidence of any country supporting the new US law.On the contrary, the international reaction toward JASTAwas immediate, widespread and generally negative.Even before it was passed by the US congress, the international community has largely condemned the bill. Under this point we will examine the position of international organizations in addition to the big five countries members of the United Nations Security Council.

The **European Union** (UE) issuing a strongly worded statement that raised concerns about "*possible reciprocity from others*".[62]The European Union clearly recognized that "*JASTAconflicts with fundamental principles of international law and in particular the principle of State sovereign immunity*"[63]. **The Arab League** (AL), for their part, followed up the previous position by denounced JASTAby confirming that: "*This law is contrary to principles of the UN charter and the established rules of international law … the bill was not based on international norms or principles of relations between states*".[64]The most well-known critic of JASTAcomes from **the Gulf Cooperation Council** (GCC) who argued that the bill contradicted "*the bases and principles of relations among countries, as well as the principle of sovereign immunity, … and …would inflict negative repercussion on relations between countries*".[65]This position concurs well with the one adopted by Hamad Al-Amer, foreign ministry undersecretary for the GCC, who confirms in his daily column in the paper *'Okaz*, that "*the Gulf states must change their mode of operation vis-à-vis the U.S*".[66]

Organization of Islamic Cooperation (OIC), expressed its deep concerns of US bill.The organization considered JASTAas a "*breach of the principle of international law and damages international relationsas well as the principle of immunity of sovereign state … opens the door to a wide range of chaos in international relations and affect the prestige of the entire international legal systems*".[67]

Three of the five big country members of the security council have condemned JASTApublicly in the strongest terms. **Russia**'s reaction goes in the same direction: The Foreign Ministry's Information and Press Department confirms in a statement that "*Washington has once again demonstrated total disregard for international law, legalizing the possibility of filing lawsuits in US courts against states suspected of supporting terrorism".*[68] Other big county member of security council, **China**, said that: "*Countries must not put their domestic laws above international law, nor link terrorism with specific countries, nations or*

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[59] Vincent Chetail, The contribution of the International Court of Justice to international humanitarian law, RICR Juin IRRC June 2003 Vol. 85 No 850, p. 235

[60] Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (Jun. 27).

[61]Kamrul Hossain, The Concept of Jus Cogens and the Obligation Under The U.N. Charter, 3 Santa Clara J. Int'l L. p. 83, (2005); ANTHONY AUST, MODERN TREATY LAW AND PRACTICE, (Cambridge University Press, 1st ed.) (2000), at 257-258;

[62] See appendix II at the end of this research

[63] See appendix II at the end of this research

[64] statement by Secretary- General Ahmed AboulGheit, http://www.thearabweekly.com/Opinion/6436/GCC,-Arab-League-blast-US-9/11-lawsuit-legislation

[65] GCC Secretary-General Abdul Latif al-Zayani, http://www.thearabweekly.com/Opinion/6436/GCC,-Arab-League-blast-US-9/11-lawsuit-legislation

[66]*Al-Yawm* (Saudi Arabia), September 30, 2016; https://www.memri.org/reports/saudi-media-attacks-justice-against-sponsors-terrorism-act-jasta-passed-us-congress

[67] http://en.el-balad.com/2307759

[68] https://www.rt.com/news/361172-jasta-reaction-saudis-russia/

religions"[69]. The **French** Foreign Ministry spokesman, reaches the conclusion that JASTAis"*contravening international law*"[70]. The **British**, for their part, did not criticize the Bill based on its merits as being contrary to the principles of public international law, rather they did so out of their concern that it "*could lead to the prosecution of British military and intelligence personnel in American courts*"[71].

In fact, condemnation of JASTAcomes even from US officials.CIA Director John Brennan describes the serious consequences that JASTAwill have for the national security of the United States by saying that: "*The principle of sovereign immunity protects US officials every day, and is rooted in reciprocity*," he maintains. "*If we fail to uphold this standard for other countries, we place our own nation's officials in danger*." He added: "*No country has more to lose from undermining that principle than the United States — and few institutions would be at greater risk than the CIA*."[72]

3.2: *Saudi Reaction: Deep Concern, Heavy Responsibility and Serious Perplexity*

Just to remind that "the US bill states that *"a U.S. national may file a civil action against a foreign state for physical injury, death, or damage as a result of an act of international terrorism committed by a designated terrorist organization*"[73]. While the law does not mention specific terrorist actions or countries, it will enable U.S. citizens' victims from the 9/11 attacks to file lawsuits in U.S. courts against Saudi Arabia. For that specific reason, the harshest reaction comes from Saudi Arabia. Even before the adoption of this bill, Saudi Foreign Minister Adel Al-Jubeir threatened that "*if it passed, his country would sell off U.S. bonds and assets worth $750 billion so that U.S. courts could not order them frozen*"[74].The Saudi Foreign Ministry and government expressed concern about the law's possible negative impact on international relations and on the concept of sovereign immunity "*which has dominated international relations for centuries*." [75]

On 2016, a senior Saudi Foreign Ministry source issued the following statement: "*The ratification of JASTAis a source of great concern in countries opposing the principle of weakening sovereign immunity, as it has been a guiding principle of international relations for centuries*[76].The official Saudi daily *Al-Riyadh*'s September 30, 2016 editorial stated that "*JASTA's passage had launched a new phase in U.S.-Saudi relations, from which the "U.S. will not emerge unscathed*"[77].Brief, Saudi Arabia considerJASTAas a flagrant "*violation of the bases and principles of international relations, particularly the principle of equality of sovereign immunity, which is to be enjoyed by all sovereign states of the world*"[78].

IV. Conclusion

Nations should not use their national courts to blackmail other countries Sovereign immunity represents the principle of "*par in parem non habet imperium*" which means "*An equal has no power over an equal*". Pararalley, sovereigns are equal, an ancient Latin expression, prohibits the juridical bodies of any states to impose its authority over others and have no authority to use their own courts to sue other sovereigns without a clear consent[79],because sovereign ceased to be sovereign if it was subject to the

[69] Foreign Ministry Spokesperson's Remarks on JASTA, http://sa.china-embassy.org/eng/gdxw/t1404794.htm

[70] http://www.arabnews.com/node/992681/world

[71] http://www.homelandsecuritynewswire.com/dr20160929-jasta-exposes-british-soldiers-intelligence-operatives-to-prosecution-u-k

[72]http://www.arabnews.com/node/992681/world; http://www.reuters.com/article/us-usa-sept11-saudi-china-idUSKCN12A13B.

[73] See appendix I at the end of this research

[74]https://www.memri.org/reports/saudi-media-attacks-justice-against-sponsors-terrorism-act-jasta-passed-us-congress; http://english.alarabiya.net/en/views/news/middle-east/2016/09/29/Why-JASTA-has-major-implications-for-the-region.html

[75] *'Okaz* (Saudi Arabia), September 30, 2016; *Al-Hayat* (London), October 3, 2016.

[76] *Okaz* (Saudi Arabia), September 30, 2016.

[77] https://www.memri.org/reports/saudi-media-attacks-justice-against-sponsors-terrorism-act-jasta-passed-us-congress

[78] https://www.sharjah24.ae/en/arabic/174511-gcc-shura-representatives-and-national-councils-reject-us-jasta-bill

[79]Lee Caplan, *State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory,* 97 Am. J. Int'l. L. 741, 748; *See also* SévrineKnuchel, *State Immunity and the Promise of Jus Cogens,* 9 Nw. U. J. Int'l Hum. Rts. 149.

jurisdiction of the courts of a foreign sovereign[80]. Surely,this bill has been directed against one specific country but the concern is global.JASTAhas created an additional confusion in the new legal system of international law and especially foreign immunity.Unfortunately, the US Legislator has in recent years intensified its legal momentum to crack down foreign immunity. JASTAundoubtedly will undermine the rule of international law. It is believed that when national courts, in any country, intervene in the international law system, such intervention could inevitably leadsto a crossroad where the maintenance of international peace and security is negatively affected.

Giving national courts the authority to decide whether or not a state is a sponsor of terrorism without any consultation with the concerneddepartment or without being refereed to UN resolutions, is unprecedented in the history of international law. National courts should not touch any affairs that can lead to diminishing the importance of International principles embedded in the international community,especially if the intervention will negatively affect such principles. Is it reasonable that the decisions of national courts of one country have an such impact on international law in this way?I do not underestimate the importance of the contribution of national court's decision in terms of the creation of international law but my concern is when national courts Place itself in a higher position than international law. Again, I confirm that giving the possibility for national court of one State to determine whether another State had violated international law would be contrary to the principle of international law and would have gravesignificances for international relations and international peace and security and co-existence between states, principles enshrined in international law and agreed upon by the family of the international community. Is there anything that prevents other countries from adopting similar bills,speciallyother big country members of security council? No doubt, reciprocity measures in this matter will further destabilize the concept of sovereign immunity and shut the bullet of mercy on the most important principle of international law for that reason *Nations should not use their national courts to blackmail other countries.*

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[46] Al-Yawm (Saudi Arabia), September 30, 2016
[47] Okaz (Saudi Arabia), September 30, 2016

CONVENTIONS AND CHARTER

Charter of the United Nations, 26 June 1945, San Francisco
Vienna Convention on The Law of Treaties Signed at Vienna 23 May 1969, entry into Force: 27 January 1980
United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004

APPENDIX I
JUSTICE AGAINST SPONSORS OF TERRORISM ACT

PUBLIC LAW 114–222—SEPT. 28, 2016

Sept. 28, 2016

[S. 2040]

An Act

To deter terrorism, provide justice for victims, and for other purposes.

Justice Against
Sponsors of

Terrorism Act.
18 USC 1 note.

18 USC 2333
note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Justice Against Sponsors of Terrorism Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) International terrorism is a serious and deadly problem that threatens the vital interests of the United States.

(2) International terrorism affects the interstate and foreign commerce of the United States by harming international trade and market stability, and limiting international travel by United States citizens as well as foreign visitors to the United States.

(3) Some foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds outside of the United States for conduct directed and targeted at the United States.

(4) It is necessary to recognize the substantive causes of action for aiding and abetting and conspiracy liability under chapter 113B of title 18, United States Code.

(5) The decision of the United States Court of Appeals for the District of Columbia in Halberstam v. Welch, 705 F.2d 472 (D.C. Cir. 1983), which has been widely recognized as the leading case regarding Federal civil aiding and abetting and conspiracy liability, including by the Supreme Court of the United States, provides the proper legal framework for how such liability should function in the context of chapter 113B of title 18, United States Code.

(6) Persons, entities, or countries that knowingly or reck-lessly contribute material support or resources, directly or indirectly, to persons or organizations that pose a significant risk of committing acts of terrorism that threaten the security of nationals of the United States or the national security, foreign policy, or economy of the United States, necessarily direct their conduct at the United States, and should reasonably anticipate being brought to court in the United States to answer for such activities.

(7) The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the

court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

(b) PURPOSE.—The purpose of this Act is to provide civil liti-gants with the broadest possible basis, consistent with the Constitu-tion of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

SEC. 3. RESPONSIBILITY OF FOREIGN STATES FOR INTERNATIONAL TERRORISM AGAINST THE UNITED STATES.

(a) IN GENERAL.—Chapter 97 of title 28, United States Code, is amended by inserting after section 1605A the following:

''§ 1605B. Responsibility of foreign states for international terrorism against the United States

''(a) DEFINITION.—In this section, the term 'international ter-rorism'—

''(1) has the meaning given the term in section 2331 of title 18, United States Code; and

''(2) does not include any act of war (as defined in that section).

''(b) RESPONSIBILITY OF FOREIGN STATES.—A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by—

''(1) an act of international terrorism in the United States;
and

''(2) a tortious act or acts of the foreign state, or of any official, employee, or agent of that foreign state while acting within the scope of his or her office, employment, or agency, regardless where the tortious act or acts of the foreign state occurred.

''(c) CLAIMS BY NATIONALS OF THE UNITED STATES.—Notwith-standing section 2337(2) of title 18, a national of the United States may bring a claim against a foreign state in accordance with section 2333 of that title if the foreign state would not be immune under subsection (b).

''(d) RULE OF CONSTRUCTION.—A foreign state shall not be subject to the jurisdiction of the courts of the United States under subsection (b) on the basis of an omission or a tortious act or acts that constitute mere negligence.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—
(1) The table of sections for chapter 97 of title 28, United States Code, is amended by inserting after the item relating to section 1605A the following:

''1605B. Responsibility of foreign states for international terrorism against the United States.''.

28 USC 1605B.
28USC 1602 prec.
(2) Subsection 1605(g)(1)(A) of title 28, United States Code, is amended by inserting ''or section 1605B'' after ''but for section 1605A''.

130 STAT. 854 PUBLIC LAW 114–222—SEPT. 28, 2016

18 USC 2333 note.
Claims.
Courts.
18 USC 1605B note.
Certification.

SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL ACTIONS REGARDING TERRORIST ACTS.

(a) IN GENERAL.—Section 2333 of title 18, United States Code, is amended by adding at the end the following:
''(d) LIABILITY.—
''(1) DEFINITION.—In this subsection, the term 'person' has the meaning given the term in section 1 of title 1.
''(2) LIABILITY.—In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been des-ignated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.''.

(b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES ACT.—Nothing in the amendment made by this section affects immunity of a foreign state, as that term is defined in section 1603 of title 28, United States Code, from jurisdiction under other law.

SEC. 5. STAY OF ACTIONS PENDING STATE NEGOTIATIONS.

(a) EXCLUSIVE JURISDICTION.—The courts of the United States shall have exclusive jurisdiction in any action in which a foreign state is subject to the jurisdiction of a court of the United States under section 1605B of title 28, United States Code, as added by section 3(a) of this Act.

(b) INTERVENTION.—The Attorney General may intervene in any action in which a foreign state is subject to the jurisdiction of a court of the United States under section 1605B of title 28, United States Code, as added by section 3(a) of this Act, for the purpose of seeking a stay of the civil action, in whole or in part.
(c) STAY.—
(1) IN GENERAL.—A court of the United States may stay a proceeding against a foreign state if the Secretary of State certifies that the United States is engaged in good faith discus-sions with the foreign state defendant concerning the resolution of the claims against the foreign state, or any other parties as to whom a stay of claims is sought.

(2) DURATION.—
(A) IN GENERAL.—A stay under this section may be granted for not more than 180 days.
(B) EXTENSION.—
(i) IN GENERAL.—The Attorney General may peti-tion the court for an extension of the stay for additional 180-day periods.
(ii) RECERTIFICATION.—A court shall grant an extension under clause (i) if the Secretary of State recertifies that the United States remains engaged in good faith discussions with the foreign state defendant concerning the resolution of the claims against the foreign state, or any other parties as to whom a stay of claims is sought.

SEC. 6. SEVERABILITY.
If any provision of this Act or any amendment made by this Act, or the application of a provision or amendment to any person or circumstance, is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of the provisions and amendments to any other person not similarly situated or to other circumstances, shall not be affected by the holding.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action—

(1) pending on, or commenced on or after, the date of enactment of this Act; and

(2) arising out of an injury to a person, property, or business on or after September 11, 2001.

Mac Thornberry

Speaker of the House of Representatives pro tempore.

John Cornyn

Acting President of the Senate pro tempore.
18 USC 2333
note.
Applicability.
18 USC 2333
note.

IN THE SENATE OF THE UNITED STATES,
September 28, 2016.

The Senate having proceeded to reconsider the bill (S. 2040) entitled ‘‘An Act to deter terrorism, provide justice for victims, and for other purposes.’’, returned by the President of the United States with his objections, to the Senate, in which it origi-nated, it was

Resolved, That the said bill pass, two-thirds of the Senators present having votedin the affirmative.

Julie E. Adams

Secretary.

I certify that this Act originated in Senate.

Julie E. Adams
Secretary.

Appendix II
Statement of the European Union

EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

The EU Delegation to the United States of America presents its compliments to the Department of State and has the honour to refer to the adoption of the Justice Against Sponsors of Terrorism Act (JASTA).

The European Union wishes to expresses its concerns regarding the implications of the Justice Against Sponsors of Terrorism Act (JASTA), which was adopted by the US Senate on 17 May 2016 and passed by the US House of Representatives on 9 September 2016.

The European Union reaffirms its full commitment to continue its work with the United States to combat every form and act of terrorism. Bearing in mind the suffering of the families, relatives and friends of those who lost their lives in terrorist attacks as well as of the surviving victims, the utmost should be done to ease their pain.

However the European Union is of the view that the possible adoption and implementation of the JASTA would be in conflict with fundamental principles of international law and in particular the principle of State sovereign immunity.

State immunity is a central pillar of the international legal order. Any derogation from the principle of immunity bears the inherent danger of causing reciprocal action by other states and an erosion of the principle as such. The latter would put a burden on bilateral relations between states as well as on the international order as a whole.

The European Union considers that the adoption of the bill and its subsequent implementation might also have unwanted consequences as other States may seek to adopt similar legislation, leading to a further weakening of the principles of State sovereignty immunity.

Therefore, the European Union calls upon the President of the United States to act in order to prevent the JASTA bill from becoming law.

Should the legislation come into force, the European Union would seek strong assurances from the United States that the US Administration would act to obtain the stay of proceedings as required in order to mitigate possible breaches of the principle of State sovereign immunity.

The EU Delegation avails itself of this opportunity to extend to the Department of State the assurance of its highest consideration.

Washington, 19 September 2016

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Dr. Amer Ghassan Fakhoury. "Justice Against Sponsors Of Terrorism Act (Jasta) Under The Light Of Public International Law: Shifting From The Absolute Theory To The Restrictive Theory." International Journal of Humanities and Social Science Invention(IJHSSI), vol. 6, no. 10, 2017, pp. 29–45.