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The Political and Legal Dilemma of JASTA: Assessing Controversies and Future Challenges

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Abstract:

This article critically examines the 2016 Justice Against Sponsors of Terrorism Act (JASTA) passed by the U.S. Congress, focusing on its limitations and analyzing its impact on national security, international relations, and the delicate balance between justice and diplomacy. JASTA's broad application raises concerns about fairness and unintended consequences for allies, friendly countries, and terrorism victims. Furthermore, the intricate court procedures associated with JASTA present serious challenges to its effective enforcement. Even staunch allies like Saudi Arabia have voiced strong criticism of the act for its complex legal framework and prospective consequences. The American invasion of Iraq has raised the possibility of affected countries using JASTA against the U.S. in international courts. Through a comprehensive analysis of JASTA's domestic and international implications, this paper explores the legal complexities of the act, evaluates its impact on security and diplomacy, and highlights the ethical considerations in terrorism accountability. This paper contributes to a deeper understanding of the controversial Justice Against Sponsors of Terrorism Act regarding its failures, repercussions, and implications for national security and international relations.

Keywords. JASTA, National security, International relations, the USA, Justice.

Introduction:

The attacks of September 11, 2001, were a pivotal moment in U.S. history, leaving an enduring impact that transcended the tragic events of that fateful day. Beyond the immense human toll, this unprecedented assault reshaped the American nation and its global standing. In response to this tragedy, the nation swiftly united, galvanized to safeguard its future from similar acts of terror. The Bush Administration faced an unprecedented global challenge and initiated what came to be known as the "War on Terror". This response entailed significant initiatives to bolster intelligence and law enforcement resources, all aimed at enhancing national security. Central to this effort was the passage of the Patriot Act on October 26, 2001, by the U.S. Senate and House of Representatives, empowering law enforcement with effective investigative tools to deter and penalize terrorist acts within and beyond U.S. borders. This marked the outset of a comprehensive endeavor to secure the nation and hold those responsible for the attacks

accountable. The United States, at this critical juncture, embarked on a war against terrorism, profoundly impacting its policies, institutions, and global relationships

Motivated by relentless pressure from the victims of the 9/11 attacks and their bereaved families, Congress has actively pursued legal action to assist these individuals. Subsequent to the limitations of the Foreign Sovereign Immunities Act (FSIA) governing U.S. foreign relations, the U.S. Senate passed the Justice Against Sponsors of Terrorism Act (JASTA) in 2016. Yet, since its inception, the Act has faced significant criticism, leading to disagreements regarding its scope, functions, and implementation. These criticisms encompass its substantial encroachment upon presidential executive power and foreign policy initiatives, its threat to U.S. sovereign immunity, its violations of international law and comity principles, and its harm to future relations with key allies.

This paper offers an analysis of JASTA, encompassing its objectives, impact, and inconsistencies concerning the law itself, the U.S. doctrine of sovereign immunity, international comity principles, and presidential authority in foreign policy decision-making. Collectively, these aspects raise concerns regarding the rationality of the legislation in terms of implementation, suggesting a need for revision or reconsideration, and accordingly we suggest the research problem.

Research problem

To what extent JASTA is controversial and what are its future implications?

Hypotheses

- The US Sovereign Immunity Act of 1976 was not enough to protect the right of US citizens and state abroad.
- The increase of terrorist events especially 9/11 attacks pushed for a new beginning to terrorism exception.
- The legal framework of JASTA created a dilemma in US political and judicial system.
- The controversy of JASTA not only harm US government system, but also international politics for unintended consequences.

In order to address the problem, the study was divided into the following themes:

Introduction

Historical Origin and Evolution of Sovereign Immunity

Legislative Responses to Terrorism: The Anti-Terrorism and Effective Death Penalty Act (ATEDPA)

Post-9/11: Security and Legal Framework Reevaluation

JASTA Enactment and Purpose

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Historical Origin and Evolution of Sovereign Immunity

The doctrine of sovereign immunity, rooted in English common law, initially proclaimed the king's immunity from any wrongdoing due to divine right, establishing the supremacy of law [1]. This concept, popularly known as "the king can do no wrong," was subsequently embraced to extend this immunity to governments, forming the foundation for the U.S. government and the separation of powers system [2]. Foreign states, following customary international law principles, also enjoyed complete sovereign immunity [3]. Chief Justice Taney emphasized that the sovereign could not be sued without consent, underlining sovereign immunity as a globally recognized practice safeguarding citizens' and nations' rights.

The roots of foreign sovereign immunity trace back to the 1800s when it was primarily applied in commercial contexts. The case of Schooner Exchange vs. McFadden initially delineated four principles of foreign sovereign immunity, later expanded to grant absolute immunity to foreign sovereigns. Chief Justice John Marshall, in this context, argued for the principles of foreign sovereign immunity, founded on the perfect equality and independence of each state [4]. Nevertheless, since 1952, the "Tate Letter" from the U.S. State Department shifted this approach by advocating limitations on immunity to traditional acts of states [5]. This marked a significant evolution in international lawmaking, limiting the exercise of sovereign immunity by the judiciary, shaping both American and international legal frameworks. The "Tate Letter" influenced the U.S. judicial system, introducing restrictions on sovereign immunity and generating a distinct American sovereign immunity. This innovation, in compliance with the Constitution [6], transitioned from the absolute to the restrictive theory of sovereign immunity, leading to debates about granting immunity for domestic and foreign acts [7].

To address the ambiguities and inconsistencies of the "Tate Letter" system, Congress responded by enacting the Foreign Sovereign Immunities Act of 1976 (FSIA) [8]. The FSIA was signed into law by President Ford on October 21, 1976, and officially enacted on January 21, 1979. This Act codified the existing rule of sovereign immunity law and established the sole and exclusive standards for resolving sovereign immunity issues in both federal and state courts, aiming to depoliticize litigation against foreign states and minimize friction in foreign relations arising from such litigation [9]. FSIA has four primary goals: to codify the principle of sovereign immunity, ensure the application of the restrictive principle of immunity in U.S. court litigation, establish a statutory procedure for service of process and obtaining personal jurisdiction over a foreign state, and allow for post-judgment attachment of assets to aid in the enforcement of a judgment against a foreign state under specific circumstances [10].

FSIA marked a departure from the old doctrine of absolutism, prevailing since the 18th century, which posited that foreign states' sovereignty was not constrained by any specific law. The need to limit this theory arose due to the inadequacy of absolute foreign sovereignty in balancing sovereign immunity and the role of the courts, particularly highlighted by the

ambiguities in the "Tate Letter" [11]. In response to these ambiguities, from the 1950s through the 1970s, Congress made attempts to limit the concept of sovereign immunity by enacting legislation aimed at streamlining the litigation process and clarifying the roles of the courts and the executive branch regarding foreign sovereign immunity [12], FSIA established rules governing international business practices in the United States, determining when foreign nations and corporations are subject to litigation for violating the principles outlined in the Act [13].

However, FSIA has faced controversies and lacked clarity, especially concerning terrorism-related litigation. The Act did not clearly differentiate the handling of litigation involving foreign nations in commercial practices between the Supreme Court and federal courts [14]. FSIA's exceptions, including those related to terrorism, were subject to varying interpretations, contributing to this lack of clarity [15]. The enactment of the state sponsor of terrorism exception in 1996 was a response to acts of terrorism and related cases, further highlighting the need to address terrorism-related issues within the scope of foreign sovereign immunity [16].

The 1996 amendments during the Clinton administration aimed to restrict foreign sovereign immunity further, specifically addressing terrorism-related issues. These amendments were prompted by an increase in terrorist attacks against the United States during the 1980s and 1990s, making it necessary to extend the scope of FSIA beyond commercial practices to cover terrorism-related matters [17]. Notable incidents, such as the Iran hostage crisis, the bombing of Pan American Flight 103, and other acts of terrorism, underscored the urgency of these amendments and their importance in providing legal recourse for victims and their families [18].

2. Legislative Responses to Terrorism: The Anti-Terrorism and Effective Death Penalty Act (ATEDPA)

The escalating terrorist attacks prompted the U.S. Congress to enact the Anti-Terrorism and Effective Death Penalty Act (ATEDPA), also known as the Anti-Terrorism Act (ATA) [19]. This legislation ushered the U.S. into a new era of combating foreign terrorism. ATA's primary objective was to hold foreign governments financially accountable for actions of terrorists against American citizens, necessitating additional restrictions on FSIA to combat terrorism [20]. The United States acknowledged the need for a law that protected its citizens not only in terms of international trade and commerce but also in safeguarding their civil liberties and, crucially, the future security of the nation.

The bombing of Pan American Flight 103 held significant importance, given the high number of American citizens killed and Libya's proven responsibility for the terrorist attack in Lockerbie, Scotland [21], Libya's long-standing accusation of sponsoring international terrorism since the 1980s triggered a confrontation with the United States. In response, the U.S. imposed unilateral export controls and froze Libyan government assets in 1986, implementing a series of sanctions and trade restrictions following subsequent bombings [22]. As Libya was added to the U.S. blacklist, ATEDPA was amended in 1996 to legalize sanctions against foreign states [23].

FSIA amendments extended into the post-2001 era to comprehensively address terrorism; they enabled monetary damages in cases where a foreign state supported or sponsored terrorist activities. Consequently, a foreign state could no longer claim immunity for acts resulting in personal injury or death due to terrorism-related acts, provided these acts were committed or aided by an officer, employee, or agent of the foreign state within their official capacity [24].

In the context of terrorism, ATEDPA stipulates that "a terrorist state may not be sued if either the plaintiff or the victim is not a U.S. citizen." Therefore, both the defendant and the

victim of terrorism must be U.S. citizens, resulting in the exclusion of victims of the Pan Am Flight 103 Lockerbie bombing. The Act allows terrorist states, their agencies, and instrumentalities to be held liable for compensatory and punitive damages, and be subject to legal action if they have caused damage within the United States [25]. It further permits the attachment of commercial property of a foreign state in the United States to satisfy a judgment against that state, regardless of whether the property was directly involved in the incident giving rise to the claim.

Nonetheless, these legislative responses faced challenges. The Flatow Amendment, introduced in September 1996, addressed some issues concerning victim recovery by providing new avenues for recovery [26]. Cases involving state-sponsored terrorism, particularly concerning Cuba and Iran, demonstrated the effectiveness of FSIA and ATEDPA in holding those responsible for terrorist acts accountable and setting essential legal precedents [27]. Yet, challenges remained in enforcing judgments due to foreign assets and complex diplomatic relations, highlighting the need for further refinements in the legal framework. Notably, until 2001, FSIA's exceptions did not allow victims of terrorist attacks to bring cases against foreign countries, focusing more on restricting terrorism sponsorship and material support than providing compensation to victims [28].

3. Post-9/11: Security and Legal Framework Reevaluation

The terrorist attacks on September 11, 2001, were a pivotal moment in U.S. history, spurring the implementation of new security measures and laws to prevent future attacks. The immediate response was to combat terrorism and bring those responsible for the attacks to justice. The United States initiated wars in Afghanistan in 2002 and Iraq in 2003 with objectives including ending terrorism, reconstructing Afghanistan, and intervening in Iraq [29]. This war on terror sought to protect the country from further attacks and help victims and their families grappling with the aftermath.

Addressing civil remedies for American victims of international terrorism had long been a pressing issue, tracing back to the first instances of such attacks. Prior to 2001, victims of terrorist attacks found it challenging to pursue their cases, as foreign countries could defend themselves by asserting that they were not state sponsors of terrorism or that FSIA claims did not fully implicate them. Consequently, the Terrorism Risk Insurance Act (TRIA) of 2002 was enacted in response to the 9/11 attacks. Its purpose was to serve as a strong disincentive for any foreign government sponsoring terrorist attacks against Americans [30]. The TRIA amendment legalized lawsuits against foreign governments and provided financial relief for victims. However, litigation through TRIA faced limitations, as its scope was restricted to financial recovery tied to the foreign assets of the accused countries, falling under executive responsibility [31].

In 2008, FSIA was amended to clarify a previously ambiguous section of the 1996 Amendment, establishing a legal basis for suing foreign states for acts of terrorism. Section 1605 A stipulated that U.S. citizens and others had the right to sue a foreign state for personal injury or death, particularly when FSIA denied immunity under § 1605 A(a) (1) — an updated codification with modifications from the 1996 terrorism exception [32]. This revision aimed to overturn earlier court decisions that limited plaintiffs' ability to collect against foreign states [33] and expanded the justification for execution against assets of foreign states found liable [34]. This amendment resolved the ambiguity created by the 1996 Amendment. If a foreign state was found by the courts to have supported terrorism, its assets in the United States would be frozen.

In the aftermath of the 9/11 attacks, the 2008 Amendment was welcomed by families and victims who had struggled through the courts due to a lack of evidence and legal backing. Historically, families of 9/11 victims began seeking justice early on. In 2003, numerous lawsuits filed by survivors of the attacks and relatives of those killed were consolidated into a single case in the Southern District of New York titled "In Re-terrorist Attacks of September 11 I". The claims were dismissed and fell into four categories. However, the 9/11 case faced challenges in court as it did not meet the requirements of FSIA and its exceptions.

Despite serious loopholes in FSIA and ATA, plaintiffs' attorneys persisted in their search for evidence that could capture Congress' attention. Their efforts were successful, leading to the declassification of a 28-page report linking the 9/11 attacks to the Kingdom of Saudi Arabia [35]. This discovery heightened the pressure on the government to reveal the truth behind these findings, motivating the 9/11 plaintiffs to press their case in Congress and pass JASTA, which granted them the opportunity to sue Saudi Arabia.

In response to the push for declassification of the 28 pages and legislation to address weaknesses in FSIA and ATA, the Obama administration released the "FBI Report of March 2015," authored by Bruce Hoffman, Edwin Meese, and Timothy J. Roemer. The report had three main findings, including the absence of specific individuals linked to the attacks and the debunking of allegations regarding the Saudi family in Sarasota sponsoring the hijackers [36]. Despite these findings, the pressure to declassify the 28 pages and the identified limitations of FSIA and ATA prompted members of Congress to take the matter seriously.

4. JASTA Enactment and Purpose

The enactment of JASTA posed a significant challenge to established principles of international law and comity. By allowing U.S. citizens to sue foreign states for alleged involvement in acts of terrorism, even when these states were not designated as sponsors of terrorism, JASTA effectively altered the landscape of sovereign immunity. The implications of this shift extended beyond domestic legal jurisdiction, as it risked undermining the traditional notion of sovereign equality among nations.

Sovereign immunity has been a foundational principle of international law, based on the understanding that each sovereign state should be immune from the jurisdiction of other states. This principle stems from the idea of sovereign equality and mutual respect among nations. Under international law, a state's immunity can only be waived under specific circumstances, often related to commercial activities or indemnification of assets. JASTA's amendments to FSIA and AEDPA, however, expanded exceptions to sovereign immunity, allowing U.S. courts to hear civil claims related to acts of terrorism committed by a foreign state or its agents within the U.S., regardless of where the act occurred.

In essence, JASTA bypassed the traditional requirement that a state must be a sponsor of terrorism to have its immunity waived. This marked a significant departure from established norms, and the consequences of this shift were a matter of international concern. The notion of sovereign immunity has long been a cornerstone of international relations, ensuring stability and respectful interaction among nations. By allowing private citizens to bring claims against foreign states for alleged involvement in terrorism, JASTA opened up the possibility of strained diplomatic relations and effective retaliatory legislation by other nations.

The controversy surrounding JASTA was further exacerbated by the violation of presidential veto. Despite President Obama's veto, Congress overwhelmingly voted to override it, demonstrating a direct challenge to the executive branch's authority and a breach of the

separation of powers. This override not only embarrassed the sitting president but also highlighted the deeply political nature of the legislation.

JASTA's purpose was to provide a constitutional basis for civil litigants to seek damages against foreign entities and nations that had assisted or supported acts of terrorism against the U.S. Its objective was to secure compensation for U.S. citizens who were victims of international terrorism and authorize the prosecution of states and individuals that finance terrorism, even if those states were not designated as sponsors of terrorism. However, the law's findings and objectives made no specific reference to the 9/11 victims or the attacks, suggesting that JASTA was designed to apply not only to past but also future terrorist attacks.

The passage of JASTA marked a serious shift in U.S. foreign policy and international legal practices. The implications of this legislation were broad and complex, impacting not only the legal framework within the U.S. but also straining relations with key allies and setting a precedent that might be emulated in other countries. JASTA's enactment, its implications for presidential power, and its strong effects on international relations raised important constitutional and international law questions, making it a highly controversial and widely debated piece of legislation.

In summary, JASTA's passage brought to light the tension between the pursuit of justice for victims of terrorism and the principles of international law and comity. It showcased the challenges in balancing the rights of victims with the need to maintain stable international relations and uphold established legal norms. The legacy and impact of JASTA continue to be a subject of scholarly debate and ongoing examination, shaping the broader discourse on sovereign immunity, international law, and the role of the judiciary in matters of foreign policy and national security.

5. Uncovering Controversies and Implications of JASTA

Section 5 of the Justice Against Sponsors of Terrorism Act (JASTA) provides for a stay of actions during government negotiations. It states that a U.S. court may suspend action against a foreign state if the Secretary of State certifies ongoing good faith discussions between the United States and the concerned foreign state or parties. This stay is initially granted for 180 days and can be renewed [37]. This provision grants the United States jurisdictional authority to oversee proceedings involving foreign states, parties, and individuals. Section 7 of JASTA stipulates the effective date, linked to events occurring after September 11, 2001 [38]. The legislation covers all acts of terrorism against the United States, commencing with the 9/11 attacks. JASTA broadened terrorism exceptions, refined and appended exceptions to the Foreign Sovereign Immunities Act (FSIA) and the Antiterrorism and Effective Death Penalty Act (AEDPA). It empowered federal courts to litigate against foreign governments, agencies, or individuals involved in aiding, abetting, or planning terrorist acts against the United States. It encompasses all terrorist attacks starting from 9/11 and notably includes the "tort exception," addressing foreign sovereign immunity and providing litigants with the broadest basis to seek relief against foreign states. This can be seen as a method to challenge sovereign immunity.

To substantiate the assumption that JASTA waives sovereign immunity and challenges international comity, one must acknowledge the Act's controversial nature, which has undermined its credibility in effectively combatting terrorism and providing relief to 9/11 victims. The primary objective of JASTA is to equip plaintiffs with an extensive range of options to initiate lawsuits against foreign governments, their agencies, and officials. Sovereign immunity, a fundamental principle of customary international law acknowledged with slight

variations across all nations, is outlined in Article 38(1) of the Statute of the International Court of Justice as a "general practice recognized as law." Customary international law encompasses customary norms, treaties, national and international court decisions, national legislation, recommendations of legal advisors, diplomatic exchanges, and international organizational practices [39]. The prevailing viewpoint within customary international law is that no state can waive another state's immunity without the latter's consent. All states are considered equal, meaning that no country holds higher status than others and possesses the right to sue another in national courts [40]. Scholars like Xiaodong Young affirm that "sovereign state immunity is exempt from the jurisdiction of foreign national courts" [41]. As per the doctrine of sovereign immunity, a state is not subject to the full force of rules applicable in another state, preventing national courts from adjudicating or enforcing specific claims against other foreign states [42]. Concurrently, jurisdictional state immunity prevents a state's courts from exercising jurisdiction over a claim involving another sovereign state [43]. These principles of customary international law are founded on the interdependence and equality of states, with state immunity being a core principle.

Not all aspects of state immunity should be categorized within the realm of international comity, as immunity spans from absolute to restrictive and has been refined over time due to evolving international circumstances. The United States is a prime example of a nation that has advocated for exceptions to state immunity concerning international law and comity. Advocates argue that the process of customary international law should not solely rest on opinio juris but should be understood within a framework that considers the perspectives of the global community, including states, courts, interest groups, scholars, legislatures, and individuals [44]. A notable case involves German state immunity from civil claims filed by Italian courts on behalf of victims of severe violations of international humanitarian law committed by Nazi Germany during World War II.

The court's decision in this case clarified the distinction between state immunity and jus cogens norms, which encompass human rights violations, torture, and slavery, and are recognized under customary international law [45]. In December 2008, Germany took Italy to the International Court of Justice (ICJ) for violating its immunity. The ICJ ruled that, under current customary international law, Germany is entitled to immunity from suit in the domestic courts of another state concerning its officials. However, the Italian perspective argued that the development of international law necessitates the abolition of state immunity as it contradicts fundamental values of the international community. The court acknowledged that states waive their immunity when their actions violate jus cogens norms (actions violating human rights) [46]. Customary international law still provides a degree of protection for the sovereign immunity of states.

The European Convention on State Immunity (ECSI), first adopted on May 16, 1972, in Basel, Switzerland, exclusively addressed state immunity from jurisdiction in its articles. Despite its limited scope, only eight states have ratified and currently enforce this convention: Austria, Belgium, the European Netherlands, Luxembourg, the Netherlands, Switzerland, and the United Kingdom [47]. On December 2, 2004, the United Nations Convention on Jurisdictional Immunities of States and Their Property (UNCSI) codified the recognized principle of customary international law concerning state and property immunity from jurisdiction and established the circumstances under which a foreign state is not immune from the jurisdiction of another state. This convention was adopted by the United Nations General Assembly, marking the first international endorsement of such principles [48]. The convention is not yet in effect as it has been

ratified by 21 nations and signed by 28. It will become effective upon ratification by 30 UN member states. The U.S. is not a signatory to the UNCSI, having implemented its own national sovereign immunity legislation. This holds true for the United Kingdom, Australia, Canada, and other nations [49]. Nations that ratified and signed the UNCSI accepted its articles and principles on sovereign immunity, leaving any unaddressed exceptions to customary international law. In the previously mentioned Germany and Italy case, the ICJ adhered to customary international law, accusing Italy of violating international immunity, a principle safeguarded by all international conventions and custom.

In contrast, the United States maintains sovereign immunity based on a distinct rule of state immunity that has evolved through numerous challenges and domestic and international circumstances, rather than relying on the aforementioned convention. The United States, as a permanent member of the United Nations, adheres to the principle of the sovereign equality of all its members according to the UN Charter's second article [50]. Consequently, all member nations possess equal sovereign immunity, and no country can abuse another's sovereignty. Simultaneously, all states, including the United States, are obliged to treat each other equally in matters of sovereign immunity. The U.S. has demonstrated an unprecedented level of legal audacity [51] without maintaining a consistent vision and practice in alignment with other nations. It has, at times, regarded state immunity as a facet of international comity, while at other times, it has treated it as binding law. Initially, international comity refers to the deference accorded to foreign state actors, which is not mandated by international law but is integrated into domestic law. The fundamental difference between international law and international comity is that international law is a binding legal body, whereas comity is at the discretion of individual states [52]. Noteworthy U.S. Supreme Court decisions, such as Verlinden B. V. vs. Central Bank of Nigeria (1984) and Republic of Austria vs. Altman (2004), have established that granting immunity to foreign governments is a component of U.S. comity. Additionally, the practice of prohibiting suits against foreign governments is also a matter of comity. These cases marked a turning point in U.S. international trade relations and FSIA immunities (Brower II), (Bergum). This outcome is anticipated to lead to a distinctive approach where grace and comity will be extended to certain nations but not others.

Concerning general norms of international law, a state forfeits its immunity when it breaches the limits of jus cogens. Many scholars, judges, and political scientists have engaged in debates regarding the status of jus cogens as an essential, practical, and superior standard to which all states must adhere. Professor Oppenheim of Cambridge University, in his book "Oppenheim International Law," which has seen nine editions, emphasizes the significance of jus cogens as a universally recognized customary rule of international law. In the 2007 case of Bosnia and Herzegovina vs. Serbia and Montenegro, Judge Lauterpach defined jus cogens as a concept that supersedes both customary and treaty law, being based on the fundamental principles of natural law and humanity. Professor Michel Byers adopted Oppenheim's definition of jus cogens and affirmed that the violation of obligations such as jus cogens norms places responsibility on states to justify their internationally "wrongful act." Similarly, Professor David Kennedy highlighted the superiority of jus cogens, which indeed constitutes the "super-custom" that formulates the existing sources of international law [53].

6. Understanding Sovereign Immunity and Jus Cogens: Key Concepts in the Context of JASTA

The concept of jus cogens pertains to preemptive norms within international law aimed at punishing states for violating human rights, committing international crimes, and related transgressions. Some state courts, concerned with individual rights, contemplate waiving state immunity for jus cogens violations. In contrast, other states uphold state immunity as a customary requirement of international law, even in cases involving severe human rights violations. Notably, both the European Court of Human Rights and the International Court of Justice have upheld state immunity over individual rights [54]. While international disagreement persists on whether terrorism should be considered a jus cogens norm, the Vienna Convention on the Law of Treaties acknowledges jus cogens in Article 53 for international codification. The convention states that a treaty is void if it conflicts with a peremptory norm of general international law, and no derogation is permitted unless a similar norm is adopted. Therefore, considering terrorism as an act of jus cogens without international recognition violates established international norms [55]. As a result, the U.S. cannot waive the immunity of other nations while disregarding international law norms.

JASTA, by implementing the "entire tort exception" to the Foreign Sovereign Immunities Act (FSIA), waived foreign sovereign immunity. This has added to the controversy surrounding the law. The United States has historically upheld principles of customary international law through treaties and statutes. The tort exception serves as an additional amendment to the Export Control Reform Act (ECSI) and the United Nations Participation Act (UNCSI), although it has not been formally added yet. Essentially, this means that if a nation commits a tortious act against another nation, its immunity would be removed. However, most member states have not added such an exception [56]. Any weakening of the sovereign immunity of foreign nations also weakens the sovereign immunity of the United States. This is because the International Criminal Court (ICC) has recently shown willingness to investigate allegations of crimes committed by U.S. personnel abroad. The ICC appears to be focusing more on CIA and Department of Defense operations, as well as investigating whether there was a policy of torture at high levels of the U.S. government [57]. The U.S. did not ratify the Rome Statute of 1998 because of threats to its sovereignty and jurisdiction posed by the ICC [58]. Therefore, the U.S. should avoid engaging in activities and passing laws that undermine international principles of sovereign immunity, as it weakens its own arguments about jurisdiction and immunity in foreign courts such as the ICC [59]. Indeed, the passage of JASTA harms the sovereign immunity of foreign states, and the United States should prioritize preserving its own immunity.

The third implication and controversy arising from JASTA is the fear of reciprocity. Allowing private litigants to sue foreign governments in U.S. courts would violate the principles of international sovereign immunity and have negative consequences. President Obama warned of these consequences and expected other states to take reciprocal action if the JASTA bill became law. If applied globally, JASTA could seriously impact U.S. national interests by violating the international principle of sovereign immunity and eventually leading to reciprocal actions by other countries [60]. The President’s fear and veto were based on the negative consequences that would result from the passage of JASTA. The President argued that the United States would surely be subject to foreign courts for similar exceptions created by JASTA.

The consequence for foreign courts to challenge U.S. immunity is a consequence of the U.S. causing death and injury through its intervention in other countries, particularly third countries. It is not reasonable for foreign governments to stand by while the U.S. avoids accountability in its own courts while pursuing claims against others. Lawsuits can be brought against the United States or U.S. officials for various reasons, like actions by groups receiving U.S. aid, misuse of

U.S. military equipment by foreign forces, or abuses by U.S.-trained police units. Even if the allegations are unfounded, foreign governments might view them as an excuse to involve the U.S. in their courts, as the bill aims to achieve. The President's veto message on JASTA focused on the issue of sovereign immunity and the foreign assets of both foreign nations and the United States. In his conclusion, Obama acknowledged that "...If litigants were to win judgments based on foreign domestic law as applied by foreign courts, they would begin to look to U.S. government assets held abroad to satisfy those judgments, with potentially serious financial consequences for the United States" [61]. This means that the process of reciprocity would equally apply to U.S. assets held abroad.

After FSAIA enactment, Congress adopted the restrictive theory of sovereign immunity, which is an accepted practice in international law. USC §1609-11 reflects immunity from pre-judgment attachment of assets and post-judgment execution. The section states that because of the observed asymmetry between jurisdiction and enforcement immunity in FSIA, it reflects a deliberate choice by Congress [62]. Under FSIA, the property of a foreign nation is immune in the United States even if the nation is subject to jurisdiction, as reflected in the statutory presumption in favor of immunity from attachment and execution. Even if the nation is clearly subject to judgment in a U.S. court, its property is protected under Section 1609 of FSIA [63].The Vienna Convention on Diplomatic and Consular Relations also protects certain types of property, such as embassies, consulates, and their bank accounts [64]; if a court establishes a right, Section 1610 (c) of FSIA states that there shall be no attachment or execution of the property of a sovereign until "a reasonable time has elapsed after the entry of the judgment" [65]. This shows that FSIA seems to operate with absolute immunity rather than restrictive immunity in international and commercial relations with respect to the judgment of execution and attachment. The court at this level left it up to Congress to decide what to do with nations under writs of execution and attachment in order to avoid creating "a right without a remedy" in such circumstances [66].

In 2002, the Terrorism Risk Insurance Act (TRIA) was passed to ensure the continued financial ability of insurers to provide coverage for terrorism-related risks and protect U.S. assets. As the costs are high, the U.S. turns to the countries' assets in the U.S. to ensure payment of damages resulting from an act of terrorism. The President has limited authority to prevent seizure of assets through a presidential waiver and must determine on an asset-by-asset basis that a waiver is necessary for national security interests [67]. The TRIA has a similar purpose to ATA discussed above. Its main objective is to punish states that support terrorism, as outlined in §107 of TRIA, which specifically aims to "satisfy judgments for tort claims arising out of terrorism out of the assets of the liable state" [68]. Thus, the U.S. intent in amending legislation related to the compensation of victims of terrorism is to gain explicit control over foreign nations' assets.

In 2008, the United States added an additional exception to the FSIA to extend its authority over foreign assets located within its borders. This exception created a private right of action against a foreign state sponsor of terrorism as well as individual officers, employees, and agents of the foreign state. It recodified provisions for punitive damages and introduced new methods for the enforcement of judgments [69]. U.S. private litigants can obtain compensation from foreign state assets in the United States. In particular, Iran, a state allegedly known for sponsoring terrorism, has been accused of sponsoring terrorism during the hostage crisis, the 9/11 attacks, and supporting Hezbollah in 2009. U.S. courts have awarded more than $10 billion against Iran, which had assets of only $45 million in 2009. In 2016, the figure was increased to $56 billion by U.S. courts accusing Iran of additional terrorist activities. Other state sponsors of

terrorism include Cuba, Sudan, and Libya. Cuba has not been designated as a state sponsor of terrorism since 2015, but its unpaid court-ordered debts have hampered diplomatic relations with the United States, leading to a reduction in bilateral relations between the two nations [70].

Controlling and freezing the assets of foreign nations, especially sponsors of terrorism, could be seen as a logical measure to some extent, with countries complying with U.S. requests. The use of FSIA, TRIA, or ATA to compensate victims of terrorism could be considered reasonable because of its procedural rigor, offering plaintiffs a chance of receiving monetary damages. But what JASTA added to the existing exception is that a state's mere relationship with terrorists, regardless of whether it is a state sponsor of terrorism, would subject it to U.S. courts. In the case of Saudi Arabia, which had already promised to remove more than $750 billion in assets from the U.S. if Congress passed JASTA, the question is how victims would be compensated if the allegations against Saudi Arabia were proven [71]. In other words, some cases under the FSIA are eligible for compensation while others are not. The U.S. is responsible for ensuring payment through the assets of foreign nations within its reach. According to the Chief Judge of the District of Columbia Court, civil litigation under FSIA state sponsor of terrorism exception is considered a failed policy. These cases do not achieve justice for victims, are unsustainable, and pose a threat to the President's foreign policy initiatives [72]. JASTA will exacerbate well-established policy issues regarding the ability of litigants to seek Reparations from foreign nations. It acknowledges the failure of the terrorism exception policy under FSIA and its intrusion into the President's authority in foreign affairs [73].

Within the issue of reciprocity and foreign assets, the United States can expect other countries to enact their own version of JASTA. This could have a tremendous impact on American interests and assets that may be exposed to terrorist activities abroad. For example, the legislation could provoke retaliation from Turkey for U.S. support of the Kurds or Afghanistan due to deaths, injuries, or property destruction caused by drone strikes. Any country would be reluctant to establish relations with the United States. Their hesitation is strongly justified by considerable security risks and the interference of courts in matters of national security, which are not subject to international law. In addition, international firms may be reluctant to invest in the U.S. for fear of terrorism-related litigation [74]. Ultimately, we conclude that JASTA poses political challenges due to the principle of reciprocity and jeopardizes the future sovereign immunity of the United States.

The fourth controversy surrounding JASTA is its impact on America's relationship with its closest partners in the Middle East, primarily Saudi Arabia, which has been a key U.S. ally since the 1950s. It is important to note that Saudi Arabia is the second largest country in terms of oil reserves and the world's second largest exporter of crude oil and petroleum products [75]. For this reason, bilateral relations between the United States and the Kingdom have strengthened at all levels under successive U.S. presidents. In particular, with King Salman bin Abdul Aziz and Crown Prince Mohammed bin Salman, the relationship has deepened through various partnerships.

The United States is a major provider of foreign assistance to Saudi Arabia. For example, through military sales, the Kingdom received approximately $10,000 to $25,000 annually in International Military Education and Training (IMET) between 2002 and 2018 [76]. The Kingdom has relied on US arms sales, training, and maintenance assistance for many years, reaching a value of $110 billion in 2017. The U.S. has been a close supporter of Saudi policy in counterterrorism efforts and military operations in Yemen. Presidents Obama, Trump, and Biden have expressed support for the Saudi-led coalition's operations as a means of countering Iranian

regional interference [77]. Since 2008, the United States and Saudi Arabia have increased their cooperation on counterterrorism and homeland security. They have strengthened their trade and investment ties, with Saudi Arabia set to become the largest U.S. trading partner in the Middle East by 2020 in terms of total value [78]. According to the US International Trade Administration, imports from Saudi Arabia were valued at $13.4 billion in 2019 and $8.9 billion in 2020 (down from $24.1 billion in 2018). In 2019, U.S. exports to Saudi Arabia totaled $14.3 billion, up from $13.6 billion the previous year. In 2020, U.S. exports to Saudi Arabia totaled $11.1 billion [79]. These figures reflect the robust diplomatic, financial, and military ties that have been forged between the United States and Saudi Arabia over the years.

The passage of JASTA will damage the strong relationship between the two countries. At the height of its passage, Saudi Foreign Minister Adel Al-Jubeir threatened that "if it passes, his country will sell all of its $750 billion in U.S. bonds and assets so that U.S. courts cannot order them frozen" [80]. The Saudi Foreign Ministry expressed deep concern about the negative impact of the bill and its looming threat to the principle of sovereign immunity and international relations. As published in the September 30, 2016 editorial of the official Al-Riyadh daily, "the passage of JASTA has ushered in a new phase in US-Saudi relations, from which the US will not emerge unscathed" [81]. Jamil Al-Dhiyabi, the newspaper editor, outlined the measures that the kingdom would take in response to JASTA, just like the US, as it would operate on the principle of "tit for tat" and should be prepared for similar lawsuits abroad for its wars in Afghanistan and Iraq, not to mention the Guantanamo prison and many other places.

On the other hand, the law has been described as a weapon against the Arab world, where the US blames Saudi Arabia for the 9/11 attacks, and as an ugly and cheap act of blackmail [82]. This means that after fifteen years of the attacks, no evidence justifies the Saudi connection to them, rather, it is not because fifteen of the nineteen hijackers were Saudis that Saudi Arabia must be blamed and sued in US courts. At the international level, JASTA has been sharply criticized, the fact that illustrates its controversy; in which Abdellatif Zayani, Secretary General of the Gulf Cooperation Council (GCC), stated that the law contradicts the foundations and principles of relations between states, in particular the principle of sovereign immunity [83].

7. International Backlash and Ineffectiveness of JASTA: A Flawed Pursuit of Justice

Russia criticized the measure, which indicates a total ignorance of international law, as quoted by *RIA Novost* the Foreign Ministry's Information and Press Representative U.S. politicians came to believe in their own "uniqueness" and persistently continued along the line of extending their jurisdiction to the entire world, without caring about the principles of sovereignty and "common sense". Pierre Lellouche, the French member of the National Assembly's Foreign Affairs Committee, was quoted in the *New York Times* article entitled "House Passes Bill Allowing 9/11 Lawsuits Against Saudi Arabia; White House Hints at Veto" as saying that JASTA would cause a "legal revolution in international law with major political consequences" and declared that he would push for legislation similar to JASTA to give French citizens the right to sue the United States. The Dutch parliament also sent a letter stating that the law was "a gross and unwanted violation of Dutch sovereignty" and that it supported U.S. concerns about terrorism [84]. The United Kingdom expressed its fear of JASTA because it can be used by U.S. citizens against the British government for Britain's past neglect of Islamic radicalism in previous decades. Specifically, British MP Tom Tugendhat argued in an op-ed for *The Daily Telegraph* newspaper in June 2016 expressing his fear from JASTA's reciprocal effects. The European Union expressed concern about the broad implications of the bill, which would allow

EU states to be sued in U.S. courts for similar actions. The EU Council's working group on transatlantic relations agreed on an initiative to the U.S. State Department, stating that the legislation conflicts with international law, in particular the principle of state immunity. The Council warned of the possible consequences of the legislation, particularly with regard to reciprocity, future relations with key allies, and, most importantly, the sunset clause of the legislation [85]. The international reactions to the JASTA legislation share the same scope, which is the violation of international customs and sovereign immunity, which are fundamental principles between states.

It is worth noting that alongside the four controversies highlighted above, as scholars and political scientists have pointed out, JASTA is not the solution for the 9/11 families. The "stay action" provision, included in Section Five of the Act, allows the U.S. government to "engage in good faith discussions with the foreign state defendant regarding the resolution of claims against the foreign state or other parties as to which a stay of claims is sought." The period is set at approximately 180 days, with the possibility of renewal. If a foreign state enters into negotiations with the U.S. executive branch, it means that the case will have 180 days, if not more, to be decided, and perhaps the case will end with diplomatic negotiations between the U.S. and the defendant state [86]. This makes it difficult for 9/11 victims to spend time and money waiting for the court to decide for them. JASTA is not the solution for obtaining easy financial compensation.

The law failed to address the seizure of assets from successful judgments, which is the biggest hurdle for litigants seeking compensation from a foreign state. Civil suits against foreign states frustrate victims because they rarely get paid while creating conflict with foreign states [87]. Besides the loopholes in JASTA such as the "stay action" provision and the threat of destroying relations with allies, and importantly, touching on the process of sovereign immunity then the risk of reciprocity, all these and others made JASTA "the worst of all worlds" [88]. JASTA left the families of 9/11 without any meaningful way to seek justice for their loved ones.

In essence, JASTA could not be the way to seek justice for the 9/11 families, because it will not end terrorism, perhaps the U.S. has experienced this with the war on Iraq, because it needs strong cooperation between states, not passing a law that threatens the immunity of nations. Fareed Zakaria (2022) once discussed in 2003 that Bush's war on terrorism was "so much against his policies. Wrong, because the debate is no longer about Saddam. It is about America and its role in the new world. The U.S. should pass laws that strengthen its position with key allies, not those that destroy it; terrorism is a key global phenomenon that requires cooperation among nations to fight" [89]. Then cooperation between states is an international norm, and JASTA will leave the U.S. alone, because the rule of law and international norms mean the importance of cooperation, not the dominance of powerful states over the weak. Among the means of using the rule of law and international norms is not through military intervention, but through soft power ways, which emphasize the importance of the nation's reputation and adherence to the rule of law and international norms [90]. The 9/11 family victims have the right to get their day in court and receive financial compensation, but what JASTA bought is a more complicated process with many negative ramifications in the future for both the U.S. and the victims as individuals, because it is not an accepted way to blackmail nations' sovereign immunity and testify them in U.S. national courts where the chance of winning could be impossible. Therefore, Congress needs to look for an alternative legislation that could preserve the silent feeling of justice of the 9/11 families.

Conclusion

JASTA stands out as one of the most controversial pieces of post-9/11 legislation enacted by the U.S. Congress to facilitate lawsuits by 9/11 victims against countries accused of supporting terrorism in U.S. courts. It was designed to fill gaps in FSIA and ATA, but its negative effects led to necessary changes. One major flaw of JASTA is its encroachment on presidential authority, as it permits courts, not the president, to determine foreign policy, thus violating the doctrine of separation of powers. Regarding international law and comity, JASTA violated the principles of equal sovereignty and mutual respect, challenging jus cogens norms by including terrorism. This violation of sovereign immunity contradicted international norms and damaged the U.S. reputation as a "law-abiding" country.

Disregard for the sovereign immunity of foreign states exposed the U.S. to abuse. Reciprocal practices threatened U.S. sovereign immunity and created a contradiction by affecting future relations with key allies. JASTA's violations of U.S. and international laws and principles raised concerns about its impact on international relations and sovereign immunity. It jeopardizes the USA's own sovereign immunity and could strain relations with key allies. Considering the implications, amending JASTA emerges as a prudent policy decision crucial for preventing future escalations and maintaining stable international relations.

Notes:

1- Ostrow and Lowe, 1979, p.1299
2- Pught, 1953, p. 487-490
3- qtd. in Watkins, 2018, p. 149
4- Hancock, 2018, p. 1296
5- Fakhoury, 2017, p. 30.
6- Article 3, Section 2, Clause 1
7- Fakhoury, 2017, p. 30.
8- Nagan and Root, 2013, p. 416.
9- Simmons, 1977, p. 544
10- Hammers, 2018, p. 103
11- 12-13- see Nagan and Root, 2013, p. 416
14- Hancock, 2018, p.1300
15- Fakhoury 31
16- Lamberth, 2013, p. 4
17- Farber, 2005, p. 1.
18- Conway, 2002, p. 739; Chapman 1991-199, p.2493; Weatherall, 2016, p. 540; Drescher, 2012, p. 792; Schnably, 1998, p.768.
19- 20- see Lamberth, 2013, p. 4
21- 22- see Libyan, 2003, p. 987.
23-24 Legislative Attorney, 2008, p. 4-9
25- Drescher, 2012, p. 803
26- Schnably, 1998n p. 769-770.
27- Conway, 2002, p. 742-781.
28- Dobbins, 2005, p. 15-18.
29- Drescher 2012, p. 804

30- Seitz 2021, p. 30537
31- Schnably, 2017, p. 359.
32- Drescher, 2012, p. 805
33- Schnably, 2017, p.359
34- What's on the 28 Pages? p. 3.
35- Cordesman, 2021.
36- 37Justice Against Sponsors of Terrorism Act 2016, p. 854-855
38- Greenwood, 2008, p. 1.
39- Caplan Lee, 2003, p. 757
40- Xiaodong, Yang. 2012, p. 459
41- Gaukrodger, 2010, p. 14
42- Fakhoury, 2017, p. 34.
43- Nagan and Root 2013, p.380.
44- McMenamin, 2013, p.189.
45- Keithner 2012, p. 1-3
46- European Convention on State Immunity 1974.
47- Vienna Convention, 1969
48- Cirlig and Pawlak 2016, p. 3
49- Charter of the United Nations, 1945.
50- Fakhoury, 2017, p. 34.
51- Dodge, 2015, p.2121-2122
52- Carg, 2020)
53- Cirlig and Pawlak, 2016, p. 3-4
54- Syed, 2016, p. 251.
55- Cirlig and Pawlak, 20, p. 3
56- Watkins, 2018, p. 171
57- Joseph, 2017
58- Watkins, 2018, p.171
59- 60- Veto Message of the President, 2016, p. 3
61- United States: Foreign Sovereign, 1976, p. 1391
62- Holcombe, 2017, p. 376-377.
63- Vienna Convention, 1969.
64- United States: Foreign Sovereign, 1976, p.1391
65- Holcombe 2017, p. 377.
66- 67- Terrorism Risk Insurance Act, 2002, p. 2337.
68- 69-70 Cirlig and Pawlak, 2016, p. 4, 5, 7.
71- Holcombe, 2017, p. 380.
72- Cirlig and Pawlak, 2016, p.7
73- 74-75- 76- 77 Saudi Arabia ..., 2016, p. 1, 25-30.
78- 79 qtd. in Fakhoury, 2017, p. 38.
80- 81 Saudi Media ..., 2016, p.24
82- 83 Cirlig and Pawlak, 2016, p. 9-10
84- 85 Watkins, 2018, p. 167.

86- Zakaria, Fareed, 2003.
87- Holcombe, 2017, p. 388-389.
88- qtd. in Watkins, 2018, p. 167
89- Zakaria, Fareed. 2003
90- Holcombe, 2017, p. 388-389

Bibliography:

Legal documents

Article II, Executive Branch. *Interactive Constitution*. National Constitution Center
Charter of the United Nations and Statute of the International Court Justice, San Francisco 1945

Constitution Annotated: Analysis and interpretation of the US Constitution. *Browse the Constitution Annotated*. Article III. Section 2. Library of Congress.
European Convention on State Immunity. European Treaty Series 16.74 (1974).
Justice Against Sponsors of Terrorism Act. Pub. L. 114-222. 130 Stat. 851-856. Sept. 28, 2016

Legal Information Institute. US Code. Title 28. Part IV. Chapter 97 § 1605. *Cornel Law School*.

---. US Code. Title 18. Crimes and Criminal Procedure. Part I. Crimes. Chapter 113B. Terrorism. Section 2333. Civil Remedies. *Cornell Law School.*

United States Court of Appeals for the Second Circuit: In Re Terrorist Attacks (2008). *International Legal Materials*. Cambridge University Press *47*(6), 841-857.

United States: Foreign Sovereign Immunities Act of 1976. Pub. L. 94-583. 190 Stat. (1976). *International Legal Materials*. Cambridge University Press *15*(6), 1388-1392.

Vienna Convention on the Law of Treaties 1969. United Nations.

Articles

Bosco, David. (2016, Oct. 31). Exclusive: International Criminal Court Poised to Open Investigations into War Crimes in Afghanistan. *Foreign Policy.com.*

---. (2017, Feb. 23) US Options for Responding to ICC Scrutiny in Afghanistan. *Lawfare*.

Cahill, Dan. (2017). The Justice Against Sponsors of Terrorism Act: An Infringement on Executive Power. *Boston College Law Review 58*(5), 1699-1733.

Caplan, M. Lee. (2003). State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory. *The American Journal of International Law*. *97*,741-781.

Chapman, Floyd Brantley. (1991-1992). Exclusivity and the Warsaw Convention: In Re Air

Disaster at Lockerbie, Scotland. *University of Miami Inter-American Law Review 23*(2), 493-513.

Carg, Muskaan. (2020, Feb.7). Doctrine of Jus Cogens under International Law. *I Pleaders*. 7 Feb. 2020.

Cirlig, Carmen-Cristina and Patryk Pawlak. (2016, Oct.) Justice against Sponsors of Terrorism JASTA and its International Impact. *European Parliamentary Research Service*.

Conway, Mona. (2002). Terrorism, the Law and Politics as Usual: A Comparison of Anti- Terrorism Legislation Before and After 9/11. *Tourou Law Review 18(*4), 735- 782

Congress Overrides Obama's Veto to Pass Justice Against Sponsors of Terrorism Act. (2017). *The American Journal of International Law*. Cambridge University Press *111*(1), 156-162.

Cordesman, H. Anthony. (2021). September). In retrospect, 9/11 did not foreshadow the major changes that now drive U.S. foreign policy and national security strategy. *The Foreign Service Journal.* America and 9/11: The Real-World Impact of Terrorism and Extremism.

Dobbins, J. (2005). Iraq: Winning the Unwinnable War. *Foreign Affairs*, *84*(1), 16–25.

Dodge, S. William. (2015). International Comity in American Law. *Columbia Law Review*, *115* (8), 2072-2140.

Drescher, Ilana Arnowitz. (2012). Seeking Justice for America's Forgotten Victims: Reforming the Foreign Sovereign Immunities Act Terrorism Exception. *Legislation and Public Policy* 15(791), 792-829.

Elsea, K. Jennifer. (2016 May). In Re Terrorist Attacks on September 11, 2001: Claims against Saudi Defendants under the Foreign Sovereign Immunities Act (FSIA). *CRS*.

Fakhoury, Amer Ghassan. (2017). Justice Against Sponsors of Terrorism Act (JASTA) under The Light of Public International Law: Shifting from Absolute Theory to the Restrictive Theory. *International Journal of Humanities and Social Science Invention*. *6*(10), 29-45.

Farber, David. (2005). *Taken Hostage: The Iran Hostage Crisis and America's First Encounter with Radical Islam.* Princeton University Press: New Jersey.

Jackson, V. Katharine, et al. (2012). International Litigation. American Bar Association. *The International Lawyer* 46(1),165-180.

Joseph, Abraham. (2017, Mar. 8). Trump's Presidency and International Criminal Justice: Should the World be Ready for a Showdown? *Modern Diplomacy*.

Hammers, Theodore. (2018). The Foreign Sovereign Immunities Act: Effects on the Victims and Families of 9/11. *Willamette Journal of International Law and Dispute Resolution.*

Hancock, A. Rachael. (July 2018). Mob-Legislating': JASTA's Addition to the Terrorism Exception to Foreign Sovereign Immunity." *Cornell Law Review 103*.5, 1298-1328.

Holcombe, Katherine. (2017). JASTA Straw Man? How the Justice Against Sponsors of Terrorism Act Undermines our Security n its Stated Purpose. *American University Journal of Gender, Social Policy and the Law*. *25*(3), 360-389.

Gaukrodger, David. (2010). Foreign State Immunity and Foreign Government Controlled Investors. *OECD Working Papers on International Investment*. OECD Publishing. France.

Gillman, Howard, Mark A. Graber, and Keith A. Whittington. (2013). *American Constitutionalism*. Vol.1. Oxford University Press.

Greenwood, Christopher. (2008). Sources of International Law: An Introduction. United Nations

Keitner, I. Chimène. (2012). Germany v. Italy: the International Court of Justice Affirms Principles of Sovereign Immunity. *American Society of International Law*. 16(05)

Kirtland, H. Matthew and James Andrew Lom. (2016. Dec.). Lay Person's Guide – Justice Against Sponsors of Terrorism Act. *Norton Rose Fulbright*.

Lamberth, C. Royce. (2013). The Role of Courts in Foreign Affairs. In John Morton Moore, ed. *Foreign Affairs Litigation in United States Courts.* Martinus Nijhoff Publishers. Leiden: Boston.

Legislative Attorney. (2008. Aug, 8). Suits against Terrorist States by Victims of Terrorism. *Congressional Research Service.*

Libyan Payment to Families of Pan Am Flight 103 Victims. (2003). *The American Journal of International Law*, American Society of International Law *97*. (4), 987– 91.

Marchall, P. William and Saikrishna B. Paracash. Article II, Section 3 Common Interpretation. Interactive Constitution. *National Constitution Center*.

McMenamin, Matthew. (2013). State Immunity Before the International Court of Justice: Jurisdictional Immunities of the State (Germany Italy). *VUWLR 44*, 189-220.

Nagan, P. Winston and Joshua L. Root. (2013). The Emerging Restrictions on Sovereign Immunity: Peremptory Norms of International Law, the UN Charter, and the Application of Modern Communication Theory. *UF Law Faculty Publications* 38, 375- 471.

Ostrow, B. John and Joseph H. Lowe. Sovereign Immunity. *University of Miami Law Review*. *33*(4), 1297-1299.

Perl, F. Raphael. (2011). Terrorism, the Future and U.S. Foreign Policy." *CRS Issue Brief for Congress. The Library of Congress*.

Pught, W. George. (1953). Historical Approach to the Doctrine of Sovereign Immunity. *Louisiana Law Review*. 13(3), 476-494.

Saudi Arabia: Background and US Relations. CRS Report. Updated 5 Oct. 2021.

Saudi Media Attacks Justice Against Sponsors of Terrorism Act (JASTA) Passed by U.S. Congress. (2016. Oct. 10) *MEMRI*.

Schnably, J. Stephen. (1998). Alejandre v. Republic of Cuba.996 F. Supp. 1239. *The American Journal of International Law:* Cambridge University Press *92*(4), 768-773.

---. The Transformation of Human Rights Litigation: the Alien Tort Statute, the Anti-Terrorism Act, and JASTA. (2017). *University of Miami International and Comparative Law Review 24*(02), 285-434.

Seitz, E. Steven. (2021). Terrorism Risk Insurance Program; Updated Regulations in Light of the Terrorism Risk Insurance Program Reauthorization Act of 2019, and for other Purposes." *Federal Register 86*(109), 30537-30541.

Simmons, P. Kevin. (1977). The Foreign Sovereign Immunity Act of 1976: Giving the Plaintiff his Day in Court. *Fodham Law Review*. *46*(3), 534-572.

Sovereign Immunity. *Family Guardian Fellowship*. Foreign Sovereign Immunities Act, 28 U.S.C. Part IV, Chapter 97.

Stewart, P. David. (2008). Introductory Note in Re-Terrorist Attacks on September 11, 2001.*International Legal Materials*. Cambridge University Press *47*(6), 839-840.

Syed, G. Sofie. (2016). Sovereign Immunity and Jus Cogens: Is there A Terrorism Exception for Conduct-Based Immunity? *Columbia Journal of Law and Social Problems* 49(2), 251- 293.

Terrorism Risk Insurance Act of 2002. Pub. L. 107-297. 116 Stat. 2321-2341. Authenticated US Government Information. 26 Nov. 2002.

United States. President (2009-2016: Obama). The Veto Message from the President S 2040. The White House Office of the Press Secretary. Sept. 23, 2016.

Vladeck, Steve. (2016. Apr. 18). The 9/11 Civil Litigation and the Justice Against Sponsors of Terrorism Act. *Just Security.org*.

Watkins, Drew. (2018). Justice Against Sponsors of Terrorism: Why Suing Terrorists May Not be the Most Effective Way to Advance United States Foreign Policy Objectives. *Kentucky Law Journal*. *106*(1), 145-177.

Weatherall, Thomas.(2016). Flatow vs. Iran. *The American Journal of International Law 11,* 540-547.

What's in the 28 Pages. Excecutive Summary. Center for Security Policy.

Xiaodong, Yang. (2012. Sep. 27). State Immunity in International Law. *Cambridge Studies in International and Comparative Law*. Cambridge University Press.