

The Real Impact of JASTA

The Background

The Justice Against Sponsors of Terrorism Act (JASTA), vetoed by President Obama but overridden on September 28, 2016 by Congress, is now law. This legislation will likely open the door to more lawsuits against foreign countries, and ultimately, more foreign lawsuits against the U.S. and its military and diplomatic personnel.

Congress passed the legislation, despite widespread opposition from the country's top defense and national security leaders, the White House and Congressional leadership, national and international editorial boards and a growing number of foreign nations, including some of the U.S.'s closest allies. Now Congress is having second thoughts.

Unlimited Reach

- JASTA is not limited to 9/11 victims or to Saudi Arabia.
- It's reach is unlimited, as are its unintended consequences. The law, as it is currently written, dismantles the internationally accepted doctrine of sovereign immunity, which puts the U.S. and its allies at risk of facing lawsuits from private citizens in foreign courts for both policy decisions and for conduct occurring entirely within the United States.



U.S. Military At Risk

- Retaliatory foreign lawsuits inspired by JASTA pose a significant threat to U.S. military personnel, diplomats and officials abroad.
- The U.S. has approx. 150,000 military personnel stationed in over 150 countries that could construe our global use of drones and special operations as "state-sponsored terrorism."
- A foreign replication of JASTA-modeled legislation in a non-allied country could land officials in custody or hauled into a discovery process that exposes state-level secrets and undermines diplomatic communications.
- America's ability to secure immunity from local prosecution for its personnel is "mainly" based on offering reciprocal rights to foreign governments.



Endless Litigation

- Domestically, JASTA's broad scope subjects foreign governments to the discretion and whims of lawyers looking to cash out.
- A potentially endless amount of lawsuits could be filed by attorneys, which will require both U.S. and foreign governments to provide sensitive documents and testimonies.
- Regarding JASTA, The New York Times wrote, "The legal battle could last for years, and would be waged using thousands of pages of documents, deposition transcripts and official government investigations. It could end in millions – or billions – of dollars' worth of Saudi assets being seized in a court settlement, or a judgment that largely vindicates the Saudi government, which for years has insisted it had no role in the deadly plot."



Retaliatory Legislation

- Politicians in at least six foreign nations, representing more than one-fifth of the world's GDP, have threatened that their countries will retaliate against the United States' passage of JASTA by introducing their own versions of the legislation.
- Unlike here, those laws are unlikely to limit themselves to acts by foreign governments on domestic soil.
- Those laws are likely to permit private citizens to file lawsuits against the United States, its officials and its military personnel in their courts.



U.S. Assets in Jeopardy

- JASTA could have significant financial impacts in the United States and around the world, as countries find themselves potentially at risk of having their assets seized by the United States to satisfy court judgments.
- Foreign countries could decide to liquidate and diversify their U.S. investments in order to protect themselves, roiling world markets.
- Companies that supply the government or have business in overseas countries could find their own assets at risk from lawsuits abroad.

