

CONTEMPORARY PRACTICE OF THE UNITED STATES RELATING TO INTERNATIONAL LAW

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STATE JURISDICTION AND IMMUNITY

Congress Overrides Obama's Veto to Pass Justice Against Sponsors of Terrorism Act
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On September 28, 2016, Congress enacted the Justice Against Sponsors of Terrorism Act (JASTA), overriding a presidential veto for the first and only time during Obama's presidency.¹ The Act allows Americans to sue foreign states for playing a role in terrorist attacks on U.S. soil. While JASTA was written in general terms, it was drafted specifically to allow families of the victims of the 9/11 attacks to sue Saudi Arabia for its suspected role in those attacks.² The Act received widespread bipartisan support despite the administration's consistent stance that the Act would harm U.S. economic, diplomatic, and national security interests.

JASTA amends two statutes—the Foreign Sovereign Immunities Act (FSIA)³ and the Anti-Terrorism Act (ATA)⁴—to effectively overrule judicial constructions of those statutes that had foreclosed lawsuits against Saudi Arabia for its alleged support of the 9/11 attacks.

The FSIA establishes that “a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States.”⁵ It also carves out a number of exceptions to such sovereign immunity, including an exception for noncommercial torts.⁶ This exception allows an American to sue a foreign state for damages if he or she is injured in the United States as the result of the tortious conduct of a foreign government, its officials, or its employees. In litigation against Saudi Arabia related to the 9/11 attacks, U.S. courts had interpreted this exception narrowly to apply only to tortious conduct occurring *entirely* within the United States.⁷ Under this interpretation, a foreign state that commits a tortious act resulting in injury or damage in the United States remains immune so long as part of the tortious conduct occurred outside the United States.⁸

JASTA expands what is known as the “terrorism exception” to the FSIA to implicitly overrule this judicial construction when it comes to acts of terrorism. Section 3 of the Act creates a cause of action for civil claims against foreign states (and their officials, employees, and agents)

¹ Justice Against Sponsors of Terrorism Act, Pub. L. No. 114–222, 130 Stat. 852 (2016) (codified at 18 U.S.C. A. § 2333, 28 U.S.C.A. § 1605B, amending the Anti-Terrorism Act and the Foreign Sovereign Immunities Act, respectively), at <https://www.congress.gov/114/plaws/publ222/PLAW-114publ222.pdf> [hereinafter JASTA].

² See, e.g., Steve Vladeck, *The 9/11 Civil Litigation and the Justice Against Sponsors of Terrorism Act (JASTA)*, JUST SECURITY (Apr. 18, 2016), at <https://www.justsecurity.org/30633/911-civil-litigation-justice-sponsors-terrorism-act-jasta>.

³ Foreign Sovereign Immunities Act, Pub. L. No. 94–583, 90 Stat. 2891 (1977) (codified at 28 U.S.C. §§ 1130, 1332(a)(4), 1391(f), 1441(d), 1602–1611(2012)) [hereinafter FSIA].

⁴ Anti-Terrorism Act, 18 U.S.C. § 2333 (2012) [hereinafter ATA].

⁵ FSIA, *supra* note 3, § 1604.

⁶ The noncommercial tort exception provides: “A foreign state shall not be immune . . . in any case . . . in which 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 or of any official or employee of that foreign state while acting within the scope of his office or employment . . .” *Id.* § 1605(a)(5). Additional exceptions include those based on waivers, commercial activities, and State Department designations of state-sponsored terrorism. See *id.* § 1605(a)–(d), § 1605A.

⁷ See, e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 109, 117 (2d. Cir. 2013).

⁸ *Id.*

for committing torts *anywhere in the world* that contribute to a terrorist attack carried out on U.S. soil.⁹ JASTA thus removes the geographic limitation on tort liability established by the courts, and allows Americans to sue foreign states for tortious conduct occurring abroad that causes injury or damage in the United States as the result of international terrorism. JASTA does not, however, authorize lawsuits against foreign states for acts of war or for torts based on omissions or negligence.¹⁰

Section 5 of JASTA establishes a mechanism by which the U.S. government can seek a stay of proceedings brought against a foreign state under Section 3, referenced above. “[I]f the Secretary of State certifies that the United States is engaged in good faith discussions with the foreign state defendant concerning the resolution of the claims against the foreign state,” the court may stay proceedings against that defendant for up to 180 days.¹¹ Once a stay is granted, the attorney general may request 180-day extensions, which the court must grant if the secretary of state recertifies the United States’ engagement in such “good faith discussions.”¹² JASTA does not limit the number of such extensions.

The other statute amended by JASTA—the ATA—establishes a cause of action for U.S. nationals to obtain treble damages from those responsible for injuries arising out of an act of international terrorism.¹³ Section 4 of JASTA adds a new provision to the ATA that explicitly allows ATA suits against individuals and entities under theories of secondary liability.¹⁴ Specifically, it recognizes liability for aiding and abetting, or conspiring to commit, an act of international terrorism that is planned, authorized, or executed by a designated foreign terrorist organization.¹⁵ This provision in effect overrules previous judicial decisions holding that the ATA does not encompass secondary liability.¹⁶ JASTA applies retroactively to actions involving injuries dating back to September 11, 2001.¹⁷

Both Democratic and Republican lawmakers sponsored JASTA.¹⁸ The legislation reflects bipartisan sympathy for the families of 9/11 victims who want to try Saudi Arabia in U.S.

⁹ Section 3, in pertinent part, reads: “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 of where the tortious act or acts of the foreign state occurred.” See JASTA, *supra* note 1, § 3(b).

¹⁰ *Id.* § 3(d).

¹¹ *Id.* § 5(c).

¹² *Id.* § 5(c)(2)(B)(ii).

¹³ ATA, *supra* note 4. Section 2333(a) provides: “Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains . . .” *Id.*

¹⁴ See JASTA, *supra* note 1, § 4. JASTA does not expand the secondary-liability cause of action to foreign states. See *id.* § 4(d)(1) (limiting secondary liability to “persons” as defined in 1 U.S.C. § 1 (2012)).

¹⁵ *Id.* § 4.

¹⁶ See, e.g., *Rothstein v. UBS AG*, 708 F.3d 82, 98 (2d Cir. 2013); *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685 (7th Cir. 2008).

¹⁷ JASTA, *supra* note 1, § 7.

¹⁸ The bill, S. 2040, was cosponsored by Sens. Chuck Schumer, D-New York, and John Cornyn, R-Tex. See JASTA, *supra* note 1.

courts—and who are unsatisfied by the conclusion of the 9/11 Commission, which found “no evidence that the Saudi government as an institution or senior Saudi officials individually funded [Al Qaeda].”¹⁹

Despite widespread sympathy for the 9/11 victims and their families, the Obama administration opposed the measure, expressing concern about the possibility of unintended consequences.

Prior to the passage of the bill, the White House consistently objected to JASTA due to its dilution of foreign sovereign immunity and its global implications for U.S. economic, diplomatic, and national security interests. “The whole notion of sovereign immunity is at stake,” said White House Press Secretary Josh Earnest.²⁰ “[S]overeign immunity is something that protects the ability of the United States to work closely with countries all around the world. And walking back that principle would put the United States, our taxpayers and our service members and diplomats at risk.”²¹

One of the administration’s main concerns was that other countries would enact reciprocal measures and open their courts to similar claims against the United States and U.S. officials.²² As noted by President Obama in a letter to Senate Minority Leader Harry Reid, such lawsuits could have far-reaching repercussions: they could implicate Americans based on mere accusations of conduct violating foreign laws; they could lead to time-consuming discovery demands for sensitive intelligence information; and they could result in the attachment of U.S. government assets abroad.²³ Moreover, given the United States’ large international presence, the administration warned that reciprocal legislation would likely have a larger impact on U.S. interests than those of any other country.²⁴

The administration also worried that JASTA would remove decisions about foreign states’ involvement in terrorism—weighty decisions with serious diplomatic consequences—from the purview of the executive branch and delegate them instead to private litigants and courts. President Obama cautioned that such privatization could invite decisions that are inconsistent or based on incomplete information.²⁵ Prior to JASTA, only the secretary of state had the authority to abrogate a foreign state’s immunity arising from potential involvement

¹⁹ NAT’L COMM’N ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT 171 (2004), at <http://www.9-11commission.gov/report/911Report.pdf>. See also FBI 9/11 REVIEW COMM’N, THE FBI: PROTECTING THE HOMELAND IN THE 21ST CENTURY 101 (2015) (finding that “there is no new information to date that would alter the original findings of the 9/11 Commission regarding the individuals responsible for the 9/11 attacks or for supporting those responsible for the attacks”).

²⁰ White House Press Release, Press Briefing by Press Secretary Josh Earnest (Apr. 18, 2016), at <https://www.whitehouse.gov/the-press-office/2016/04/18/press-briefing-press-secretary-josh-earnest-4182016> [hereinafter Apr. 18 Press Briefing].

²¹ *Id.*

²² See White House Press Release, Veto Message from the President – S.2040 (Sept. 23, 2016), at <https://www.whitehouse.gov/the-press-office/2016/09/23/veto-message-president-s2040> (“Indeed, reciprocity plays a substantial role in foreign relations, and numerous other countries already have laws that allow for the adjustment of a foreign state’s immunities based on the treatment their governments receive in the courts of the other state.”) [hereinafter Obama Veto Message].

²³ Letter from Barack Obama, President of the United States, to Harry Reid, Minority Leader, U.S. Senate, at <https://docs.google.com/viewerng/viewer?url=http://big.assets.huffingtonpost.com/POTUSReidJASTA.pdf> [hereinafter Obama Letter].

²⁴ *Id.*

²⁵ *Id.*

in terrorism; the secretary did so by designating a foreign state as a “state sponsor of terrorism.”²⁶ According to the White House, upsetting this “well codified” process could undermine the government’s ability to effectively confront governments that sponsor terrorism and could erode cooperation from diplomatic partners who would be vulnerable to private allegations of terrorist-related activity.²⁷

After both houses of Congress passed the bill, President Obama exercised his veto and released a message that reiterated his primary concerns:

First, JASTA threatens to reduce the effectiveness of our response to indications that a foreign government has taken steps outside our borders to provide support for terrorism, by taking such matters out of the hands of national security and foreign policy professionals and placing them in the hands of private litigants and courts.

...

Second, JASTA would upset longstanding international principles regarding sovereign immunity, putting in place rules that, if applied globally, . . . could lead to suits against the United States or U.S. officials for actions taken by members of an armed group that received U.S. assistance, misuse of U.S. military equipment by foreign forces, or abuses committed by police units that received U.S. training

...

Third, JASTA threatens to create complications in our relationships with even our closest partners. [By exposing them to potential litigation in U.S. courts,] JASTA threatens to limit their cooperation on key national security issues, including counterterrorism initiatives, at a crucial time when we are trying to build coalitions, not create divisions.²⁸

Obama also noted that a number of U.S. allies and partners had expressed “serious concerns” about the law.²⁹ After Congress first passed the bill, the European Union urged the president to veto the legislation, based on its view that “JASTA would be in conflict with fundamental principles of international law and in particular the principles of State sovereign immunity.”³⁰ Saudi Arabia exerted significant lobbying efforts to try to stop the legislation and reportedly threatened to sell up to \$750 billion in U.S. assets that it thought could be vulnerable to attachment under JASTA judgments.³¹ Former members of the Bush, Clinton, and Obama administrations also spoke up, warning lawmakers that if JASTA was enacted,

²⁶ JASTA, *supra* note 1, §§ 1605A(a)(2), (h)(6). Currently, only Iran, Sudan, and Syria are designated as “state sponsors of terrorism.” U.S. Dep’t of State, State Sponsors of Terrorism, at <http://www.state.gov/j/ct/list/c14151.htm> (last visited Oct. 30, 2016).

²⁷ See White House Press Release, Press Briefing by Press Secretary Josh Earnest (Sept. 23, 2016), at <https://www.whitehouse.gov/the-press-office/2016/09/23/press-briefing-press-secretary-josh-earnest-9232016> [hereinafter Sept. 23 Press Briefing]; Obama Letter, *supra* note 23.

²⁸ Obama Veto Message, *supra* note 22.

²⁹ *Id.*

³⁰ Letter from the EU Delegation to the U.S. Dep’t of State (Sept. 19, 2016), at <https://www.washingtonpost.com/news/powerpost/wp-content/uploads/sites/47/2016/09/EU-on-JASTA.pdf> [hereinafter EU Letter].

³¹ See, e.g., Julie Hirschfeld Davis, *Fight Between Saudis and 9/11 Families Escalates in Washington*, N.Y. TIMES (Sept. 21, 2016), at <http://www.nytimes.com/2016/09/22/us/politics/9-11-saudi-bill-veto-obama.html>; White House Press Release, Press Briefing by Press Secretary Josh Earnest (Sept. 26, 2016), at <https://www.whitehouse.gov/the-press-office/2016/09/26/press-briefing-press-secretary-josh-earnest-92616-0>; Mark Mazzetti, *Saudi Arabia Warns of Economic Fallout if Congress Passes 9/11 Bill*, N.Y. TIMES (Apr. 15, 2016), at <http://www.nytimes.com/2016/04/16/world/middleeast/saudi-arabia-warns-ofeconomic-fallout-if-congress-passes-9-11-bill.html>.

“[o]ur national security interests, our capacity to fight terrorism and our leadership role in the world would be put in serious jeopardy” as well as “our relationship with one of our most important allies, Saudi Arabia.”³²

Despite these warnings, more than two-thirds of both the Senate and House voted to override Obama’s veto.³³ President Obama called the override a “political vote” and a “mistake” based on lawmakers’ fears of being “perceived as voting against 9/11 families right before an election.”³⁴ The enactment of the law had immediate effects: within two days, a 9/11 widower filed a federal lawsuit against the Kingdom of Saudi Arabia based on JASTA.³⁵

After JASTA was enacted, foreign governments again protested that JASTA violates international law. The Saudi Foreign Ministry stated, it “is of great concern to the community of nations that object to the erosion of the principle of sovereign immunity, which has governed international relations for hundreds of years.”³⁶ Russia’s Foreign Ministry described the law as evincing a “complete disregard for international law” and a “policy of extending [U.S.] jurisdiction to the entire world and ignoring the concept of state sovereignty”³⁷ The United Arab Emirates’ Foreign Ministry declared that JASTA is “contrary to general liability rules,” “not equal with the foundations and principles of relations among states, and represents a clear violation given its negative repercussions and dangerous precedents.”³⁸

Some international law scholars have also voiced concerns that JASTA violates international law by exceeding recognized and accepted exceptions to sovereign immunity under customary international law.³⁹ Other commentators have been more cautious about that conclusion,

³² Open Letter from William S. Cohen et al. to the President of the United States and Members of Congress, at http://www.al-monitor.com/pulse/files/live/sites/almonitor/files/documents/2016/letter_obama_congress_jasta.pdf. The letter was signed by a number of former national security officers, including William S. Cohen (former Secretary of Defense to President Clinton), Michael Mukasey (former Attorney General to President George W. Bush), and Rand Beers (former Homeland Security Adviser to President Obama). *Id.*

³³ The Senate voted 97–1 to override, and the House voted 348–77. See JASTA, *supra* note 1.

³⁴ Daniella Diaz, *Exclusive: Obama Says Congress Made a “Political Vote” Overriding His Veto of Saudi Lawsuit Bill*, CNN (Sept. 28, 2016), at <http://www.cnn.com/2016/09/28/politics/obama-override-veto-911-bill-cnn-presidential-town-hall>.

³⁵ See Complaint, *Desimone v. Kingdom of Saudi Arabia*, No. 1:16-cv-01944-ABJ (D.D.C. Sept. 30, 2016).

³⁶ Kingdom of Saudi Arabia Ministry of Foreign Affairs Press Release, Official at Ministry of Foreign Affairs: JASTA Great Concern to Community of Nations Objecting to Erosion of Principle of Sovereign Immunity (Sept. 30, 2016), at <http://www.mofa.gov.sa/sites/mofaen/ServicesAndInformation/news/MinistryNews/Pages/ArticleID201693001814440.aspx>.

³⁷ Ministry of Foreign Affairs of the Russ. Fed’n Press Release, Comment by the Information and Press Department on the US Passing the Justice Against Sponsors of Terrorism Act with Extraterritorial Jurisdiction (Sept. 30, 2016), at http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2479122.

³⁸ U.A.E. Ministry of Foreign Affairs & Int’l Cooperation Press Release, UAE Voices Concerns Regarding US Congress Adoption of Justice Against Sponsors of Terrorism Act (Sept. 12, 2016), at <https://www.mofa.gov.ae/EN/MediaCenter/News/Pages/12916-UAE.aspx>.

³⁹ See, e.g., S. 2040, Justice Against Sponsors of Terrorism Act: Hearing on S. 2040 Before the Subcomm. on the Constitution & Civil Justice, 114th Cong. (July 14, 2016) (statement of Paul B. Stephan), at <https://judiciary.house.gov/wp-content/uploads/2016/07/Stephan-Testimony-07142016.pdf> [hereinafter JASTA Testimony]; Curtis Bradley & Jack Goldsmith, Opinion, *Don’t Let Americans Sue Saudi Arabia*, N.Y. TIMES (Apr. 22, 2016), at <http://www.nytimes.com/2016/04/22/opinion/dont-let-americans-sue-saudi-arabia.html> (“A nation’s immunity from lawsuits in the courts of another nation is a fundamental tenet of international law. This tenet is based on the idea that equal sovereigns should not use their courts to sit in judgment of one another. Many nations have tacitly agreed to limit immunity in specified contexts, such as when they engage in certain commercial activities. But apart from those exceptions (or where a binding treaty or Security Council resolution otherwise dictates), international law continues to guarantee immunity, even for alleged egregious crimes.”).

noting that the imprecise boundaries of the recognized exception to sovereign immunity for some territorial torts could conceivably cover the circumstances contemplated by JASTA.⁴⁰

When asked directly whether JASTA violates international law, the White House press secretary sidestepped the question.⁴¹ He confirmed that, to his knowledge, it does not violate any international agreements, but he did not express an official opinion as to whether JASTA violates customary international law.⁴² He instead described sovereign immunity as a “legal concept . . . that countries around the world observe,” and said that “carving out exceptions” to it puts U.S. service members, diplomats, and companies at “legal risk.”⁴³ This response conforms with the administration’s other characterizations of sovereign immunity as a “foundational principle of international law” that JASTA threatens to “degrade” or “roll[] back.”⁴⁴

Immediately after the law’s passage, some members of Congress acknowledged potential downsides of the legislation.⁴⁵ Twenty-eight senators signed a letter asking JASTA’s sponsors to “mitigate th[e] unintended consequences” of the law.⁴⁶ The White House press secretary characterized this congressional response as “rapid-onset buyer’s remorse.”⁴⁷ In the weeks that followed, State Department representatives expressed their intention to engage with Congress in figuring out the best way to implement the new law.⁴⁸

⁴⁰ See William Dodge, *Does JASTA Violate International Law?*, JUST SECURITY (Sept. 30, 2016), at <https://www.justsecurity.org/33325/jasta-violate-international-law-2> (noting that Article 12 of the UN Convention on Jurisdictional Immunities of States and Their Properties—which informs customary international law insofar as it evidences state practice and *opinio juris*—excludes sovereign immunity for proceedings related to death, personal injury or property damage that is, *inter alia*, attributable to another state and caused by an “act or omission [of that state, which] occurred *in whole or in part* in the territory” of the forum state (emphasis added)). *But see* David P. Stewart, *The UN Convention on Jurisdictional Immunities of States and Their Property*, 99 AJIL 194, 206 (2005) (stating that “it would read far too much into the consensus adoption of the convention to assert that the adoption of such exceptions in the convention as adopted renders unlawful under customary international law existing statutory provisions such as those in the Foreign Sovereign Immunities Act. . . . The issues remain controversial.”).

⁴¹ See Sept. 23 Press Briefing, *supra* note 27.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See White House Press Release, Press Briefing by Press Secretary Josh Earnest (Sept. 27, 2016), at <https://www.whitehouse.gov/the-press-office/2016/09/27/press-briefing-press-secretary-josh-earnest-92716>; White House Press Release, Press Briefing by Press Secretary Josh Earnest (Oct. 4, 2016), at <https://www.whitehouse.gov/the-press-office/2016/10/04/press-briefing-press-secretary-josh-earnest-1042016>; Apr. 18 Press Briefing, *supra* note 20.

⁴⁵ According to media reports, Senate Majority Leader Mitch McConnell (R-Ky.) said that “[i]t appears as if there may be some unintended ramifications of [JASTA],” and Speaker Paul Ryan (R-Wis.) said “I would like to think there may be some work to be done to protect our service members overseas from any kind of legal ensnarement that [could] occur . . . while still protecting the rights of the 9/11 victims” Seung Min Kim & Burgess Everett, *McConnell: Saudi 9/11 Law Could Have “Unintended Ramifications,”* POLITICO (Sept. 29, 2016), at <http://www.politico.com/story/2016/09/mitch-mcconnell-saudi-9-11-bill-228903>.

⁴⁶ Letter from Twenty-Eight Senators to John Cornyn, U.S. Senate, and Charles E. Schumer, U.S. Senate (Sept. 28, 2016), at http://www.corker.senate.gov/public/_cache/files/d8eee900-5ffc-4204-a4f1-8072c104d9c2/Bipartisan%20Senate%20JASTA%20Letter%20092816.pdf. See also Dara Lind & Dylan Matthews, *97 Senators Overrode an Obama Veto. Then 28 Sent an “Oops” Letter*, VOX (Sept. 28, 2016), at <http://www.vox.com/2016/9/28/13100314/vox-sentences-congress-veto-obama>.

⁴⁷ White House Press Release, Press Briefing by Press Secretary Josh Earnest and Secretary of Education King (Sept. 29, 2016), at <https://www.whitehouse.gov/the-press-office/2016/09/29/press-briefing-press-secretary-josh-earnest-and-secretary-education-king>.

⁴⁸ U.S. Dep’t of State, Daily Press Briefing (Oct. 21, 2016), at <http://www.state.gov/r/pa/prs/dpb/2016/10/263421.htm> (“Well, I think what the Secretary was referring to was that we’re going to continue to speak with members of Congress about our concerns over the law. Look, you’re right; it’s the law of the land, and we understand that and we

In late 2016, Senators John McCain and Lindsey Graham initiated an effort to amend JASTA.⁴⁹ They proposed a “modest” “caveat” to the law, such that

if you are suing based on a discretionary function of a government to form an alliance with somebody or to make a military decision or a political decision, the only time that government is liable is if they knowingly engage with a terrorist organization directly or indirectly, including financing.⁵⁰

According to Senator Graham, “[t]hat would send a signal to the world that we are not opening Pandora’s box.”⁵¹

Despite efforts by both the State Department and White House to work with Congress to mitigate potential negative consequences of the law,⁵² no amendment was passed during the lame-duck session. As Congress’ 2016 session neared its end, Secretary of State John Kerry said, “[w]e tried very hard to move on changing [JASTA] and we will continue to do that.”⁵³

As a candidate, President-elect Trump had expressed strong support for JASTA, reportedly describing President Obama’s veto as “one of the low points of his presidency” and saying that he would have approved the law if he were president.⁵⁴ While advocating for a JASTA amendment, Senators McCain and Graham acknowledged the possibility that the law might not be “fixed” prior to 2017 and insisted, “[w]e are not going to stop until we have this problem fixed because it is a real problem for people serving the United States in real time.”⁵⁵

INTERNATIONAL ORGANIZATIONS

U.S. Federal Court of Appeals Upholds United Nations’ Immunity in Case Related to Cholera in Haiti

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On October 9, 2013, a group of Haitian cholera victims and their survivors sued the United Nations, along with two UN officials and the United Nations Stabilization Mission in Haiti (MINUSTAH), in the U.S. District Court for the Southern District of New York.¹ The plaintiffs alleged that the United Nations had negligently and recklessly allowed peacekeepers from Nepal carrying cholera to enter Haiti in the wake of the 2010 earthquake without reasonable health screenings.² The suit further alleged that the United Nations had negligently maintained

obey the law and we will obey this law. There’s no dispute about that. But we still have concerns about it and many of our partners, some of whom are even in places like Europe, some of our closest allies, have lingering concerns about this. And so we’re going to continue to engage and discuss the law and its implementation going forward with members of Congress. But other than that, I don’t have any more specifics to offer.”)

⁴⁹ See 162 CONG. REC. S6611 (daily ed. Nov. 30, 2016).

⁵⁰ *Id.* (Statements of Sens. Graham and McCain).

⁵¹ *Id.* (Statement of Sen. Graham).

⁵² U.S. Dep’t of State, Daily Press Briefing (Dec. 1, 2016), at <http://www.state.gov/r/pa/prs/dpb/2016/12/264717.htm>; White House Press Release, Press Briefing by Press Secretary Josh Earnest (Dec. 1, 2016), at <http://www.whitehouse.gov/the-press-office/2016/12/01/press-briefing-press-secretary-josh-earnest-1212016>.

⁵³ U.S. Dep’t of State, Joint Press Availability with Saudi Arabian Foreign Minister Adel al-Jubeir (Dec. 18, 2016), at <http://www.state.gov/secretary/remarks/2016/12/265750.htm>.

⁵⁴ Mark Hensch, *Trump Slams Obama for ‘Shameful’ 9/11 Bill Veto*, THEHILL.COM (Sept. 23, 2016), at <http://thehill.com/blogs/ballot-box/presidential-races/297558-trump-rips-obama-for-shameful-9-11-veto>.

⁵⁵ See 162 CONG. REC. S6611, *supra* note 49 (Statements of Sens. Graham and McCain).

¹ Kristina Daugirdas & Julian Mortenson, *Contemporary Practice of the United States Relating*, 108 AJIL 819, 822 (2014).

² *Id.* at 822.