

Statement for the Record  
Department of State  
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House Judiciary Committee  
Subcommittee on the Constitution and Civil Justice  
July 14, 2016

Thank you, Chairman Franks, Ranking Member Cohen, and Members of the Subcommittee. I appreciate the opportunity to appear before you with my colleague, Assistant Secretary Anne Patterson, to discuss the views of the Department of State on the Justice Against Sponsors of Terrorism Act.

At the outset, I would like to express my deep sympathy for the families whose loved ones perished in the attacks on September 11. I grew up in a bedroom community in New Jersey that was deeply affected by the World Trade Center attacks. For much of my career in government, at the Departments of State and Treasury and the National Security Council, I have worked on mechanisms that enable our government to confront terrorism, including financial sanctions and the use of military force where appropriate.

I will focus my comments today on the importance of the concept of sovereign immunity to the United States, and our concern that passage of JASTA will lead to harmful, reciprocal legislation and lawsuits against the United States overseas.

The principle of sovereign immunity, which restricts lawsuits against foreign governments, is well accepted in international law and was long recognized by U.S. courts as a matter of common law. The United States benefits greatly from the protection afforded by foreign sovereign immunity, and the Department of Justice regularly and vigorously defends our sovereign immunity overseas. Over the years, Congress and the Executive Branch have worked together to approach issues of foreign sovereign immunity and its exceptions with great caution.

The Foreign Sovereign Immunities Act, or FSIA, was enacted in 1976 following many years of study and consultation between Congress and the Executive Branch, academics, the American Bar Association, and private practitioners. The Act focuses on the narrow instances in which a foreign state's immunity is denied: for example, a foreign state's commercial activities in the United States or having direct effects here. The narrow non-commercial tort exception to immunity was aimed primarily at the problem of traffic accidents, and it provides jurisdiction for

torts committed by foreign governments *inside* the United States that result in injuries here. Later enacted provisions relating to terrorism prudently restrict the ability to sue foreign governments in U.S. courts for acts undertaken abroad to those States that have been designated by the Executive branch as state sponsors of terrorism – currently Iran, Sudan, and Syria.

JASTA would represent a significant departure from this carefully crafted framework. JASTA would strip any foreign government of its sovereign immunity and expose the relevant country to lawsuits in U.S. courts based on allegations in the lawsuit that the country's actions *abroad* made it responsible for an attack on U.S. soil. As Ambassador Patterson noted, a number of U.S. partners and allies have raised concerns about the potential consequences of this change.

The adoption of legislation like JASTA likely would have reciprocal consequences for the United States and increase our country's vulnerability to lawsuits overseas. Reciprocity plays a substantial role in foreign relations. JASTA could encourage foreign courts to exercise jurisdiction over the United States or U.S. officials for allegedly causing injuries overseas through groups we support as part of our counter-terrorism efforts – circumstances in which we properly would consider ourselves to be immune.

Notwithstanding the care with which the United States operates to ensure that its actions overseas are appropriately calibrated, exposing U.S. national security-related conduct and decision-making to scrutiny in foreign courts would present significant concerns. Such litigation would have the potential for intrusive requests for sensitive U.S. documents and witnesses that we would not be willing to provide. There is a risk of sizeable monetary damages awards in such cases, which could then lead to efforts to attach U.S. government property in far-flung places. Given the broad range of U.S. activities and presence around the world, the United States is a much larger target for such litigation than any other country.

We stand ready to work with this subcommittee and other members of Congress to consider these important issues further. I look forward to taking your questions.