



Suing Saudi Arabia: Overturning Sovereign Immunity in US Courts

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It was momentous on one fundamental level. Here was the President of the United States, Barack Obama, holding the torch for a wretched ally the politicians on the Hill and others have had reservations over for many years. Saudi Arabia, ever the thorn and asset of US interests, facing the grief of families who lost members on September 11, 2001. This, the same ally whose theocratic bent remains the most bruising of obstacles in any claims that the US is open to a global democratic experiment.

In the end, it came down to a very American formula, one born in the court room and litigation process. It also left a good deal of mud on the Presidential power of veto. "I would venture to say," ventured press secretary Josh Earnest, not without some hyperbole, "that this is the single most embarrassing thing that the United States has done, possibly since 1983."

The Justice Against Sponsors of Terrorism Act permits US courts to waive an assertion of foreign sovereign immunity, one of the treasured features of a State's legal armoury, regarding acts of terrorism that occur on US soil. While Saudi Arabia claims no direct role in the 9/11 attacks, it cannot say the same about its zealous nationals, with fifteen of the 19 plane hijackers boasting that nationality.

True to form, its diplomats were heating the issue and reminding US lawmakers about the consequences of JASTA becoming law. In the cold, monetarily inclined words of Saudi Foreign Minister Adel Al-Jubeir, "everybody will begin to think twice before they invest in a place where their assets could be seized." [1]

Sen. Chuck Schumer, chief sponsor of the bill, explained with some solemnity that, "Overriding a presidential veto is something we don't take lightly, but it was important in this case that the families of the victims of 9/11 be allowed to pursue justice, even if that pursuit causes some diplomatic discomforts." [2]

Nerves through Washington duly frayed. Playing the 9/11 card is a rotten business, but it certainly worked to convince members on both side of the aisle that the President's veto had to be overturned. The façade was duly taken down; and the ugly, protective mask of the relationship with Riyadh ripped off. Admitting to an avenue of legal action, or at any rate permitting it, against an ally was tantamount to a confession.

One such individual was CIA director John Brennan, whose befuddled security mind has to juggle the plotting machinations of Riyadh with the dictates of US security. "It would be an

absolute shame if this legislation, in any way, influenced the Saudi willingness to continue to be among our best counterterrorism partners.”

President Obama was more forthright. The passage of the bill effectively meant that the various imperial efforts of the US would be compromised. Vast, gargantuan and spread over the earth, US engagements and actions would suddenly face the prospect of legal targeting.

His concern with such actions had to do with “not wanting a situation in which we’re suddenly exposed to liabilities for all the work that we’re doing all around the world, and suddenly finding ourselves subject to private lawsuits in courts where we don’t even know exactly where they’re on the up and up, in some cases.”[3]

Speculation was already being advanced by various legal authorities. JASTA, argued Theodore Karasik, would also permit Saudi citizens an avenue to sue the US government and its employees in foreign courts. That would well accompany additional moves to amend domestic laws “to allow their citizens to sue the US government and its employees in foreign courts, most likely state security courts.”[4]

Stephen I. Vladeck of the University of Texas School of Law goes further in suggesting that the law will do little to bring home the litigious bounty for victims of 9/11 while enlarging the scope for US plaintiffs to launch suits against states for international terrorism, whether Washington deems them sponsors of terrorism or otherwise.[5]

The punch against US power, however, would come in the form of taking Washington’s policies to task in very specific cases. Would, for instance, the Syrian regime be justified in suing the United States for its role in sponsoring Syrian rebel fighters who go on to commit acts of terrorism? Justice can be truly blind, though the legal authorities often fear it.

Much of this fuss may be unfounded. States continue to pursue claims against each other in the International Court of Justice, though they tend to do so with velvet gloves and utterances of mock decency. In some cases arbitral channels over matters of wrongful death can also be used. But States have continued over the years to cite a veil of sovereign immunity in the courts that has, at stages, begun to tear. The Nuremberg war crimes trials made a decent start of it.

Over time, the deaths of nationals has generated a basis to seek compensation, though a state might well be reluctant to part with money in the bargain. Granting an award is no guarantee of receiving it. But rarely has there been such an overt challenge to assumptions of sovereign immunity, a domestic effort to effectively overturn an internationally accepted rule.

Following that other accepted notion of reciprocity at international law, other countries may well see their nationals rush to the courts to seek redress for the actions of the US imperium, allies or otherwise. They should be mindful of the comments of Sen. Chuck Grassley, chairman of the Senate judiciary committee: “All they want is the opportunity to present their case in a court of law.”

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Notes

- [1] <http://english.alarabiya.net/en/views/news/middle-east/2016/09/29/Why-JASTA-has--major-implications-for-the-region.html>
- [2] <http://www.cbc.ca/news/world/911-saudi-veto-1.3783312>
- [3] <https://www.theguardian.com/us-news/2016/sep/28/senate-obama-veto-september-11-bill--saudi-arabia>
- [4] <http://english.alarabiya.net/en/views/news/middle-east/2016/09/29/Why-JASTA-has--major-implications-for-the-region.html>
- [5] <http://www.cfr.org/united-states/911-lawsuits-bill-do/p38350>

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