

THE  
**AMBASSADOR**  
PARTNERSHIP

---

24 November 2016



## **JASTA and the Threat to Sovereign Immunity**

**Sir William Patey KCMG**

In the run up to the recent US Presidential election, Congress overturned, for the first time during President Obama's term of office, a Presidential veto. Obama had vetoed the Justice Against Sponsors of Terrorism Act (JASTA) because he and all his national security team considered that this law threatened vital US national interests.

Whilst allowing US citizens to bring lawsuits in American courts against foreign governments whose state agencies they believe may have overlooked or aided sponsors of terror may seem superficially attractive, JASTA has serious implications for the US and its allies. It puts the United States and its military and intelligence personnel, diplomats and other officials working abroad at risk of being sued in terrorism lawsuits in foreign courts. JASTA strips foreign states sued in unprecedented class actions of critical sovereign immunities, which have underpinned relations between states for centuries. As a former British diplomat who has operated in many hostile environments, this is deeply troubling. A number of foreign states, including US allies, have made it clear they will enact similar legislation that will allow them to act against US personnel.

There is a danger that UK personnel serving overseas could be held individually accountable by foreign nations in instances where our intelligence has failed to prevent a terrorist attack or a terrorist has travelled to or from the UK.

A number of potential suits against the US spring to mind; a legal challenge by Turkey over US tolerance of the Gülen movement and support for the YPG in Syria; or action by Pakistan over drone strikes; or numerous claims stemming from US military action in Iraq, Afghanistan and elsewhere. The US has a larger international presence than any other country and has more to lose if important principles of sovereign immunity are eroded. Without the protection of sovereign immunity, no country, including the United Kingdom, will be able to conduct its foreign affairs effectively and without risk from interference from foreign courts.

This issue is of such importance that the US Administration even in its final months of office has not given up and continues to seek a swift remedy. In his veto, President Obama noted that the law would expose allies and partners in US courts and "threatens to limit their cooperation on key national security issues, including counter terrorism initiatives, at a crucial time when we are trying to build coalitions, not create divisions".

THE  
AMBASSADOR  
PARTNERSHIP

---

There is a remedy, which would be for Congress to amend JASTA to restore the discretionary function exception. Every version of JASTA for the past five years has repealed the entire tort rule but preserved the Foreign Sovereign Immunities Act's discretionary function exception. By going back to the original widely supported JASTA provisions, the most harmful consequences of JASTA would be mitigated.

The United States would benefit more than any other nation if Congress restores the principle that a sovereign nation's internal policy and planning should not be subject to challenge in foreign courts.

For further information please contact:

**Jemima Welsh**

Business Development Manager

[jemima.welsh@ambassadorllp.com](mailto:jemima.welsh@ambassadorllp.com)