



US-Saudi Relations

Update: Senate Passes Justice Against Sponsors of Terrorism Act

By Roxanne Perugino
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On May 17, the Senate passed by voice vote **S2040 The Justice Against Sponsors of Terrorism Act**, referred to as the “JASTA,” after agreeing to a substitute amendment. The amendment, S.Amdt. 3945, was offered by Senator John Cornyn (R-Texas), a member of the Senate Judiciary Committee and a cosponsor of the legislation along with Senator Chuck Schumer (D-New York).

Current Action

The JASTA legislation would allow families of victims of terror attacks on US soil to sue the foreign states that fund terrorism and permit them to hold accountable those who aid and abet terrorism. The Administration opposes the bill and President Obama has said he will veto if it passed.

The bill is aimed specifically at Saudi Arabia and is supported by a number of actors including former Senate Intelligence Committee Chairman Bob Graham who believes Saudi Arabia was involved in the 9/11 attack. Several members of Congress support the legislation as well as a number of neocons who blame the Kingdom’s alleged export of extremist Islamic ideology and funding of violent extremist groups. The families of the 9/11 victims are a moving force behind the legislation. Senator Schumer, who lost a number of constituents in the 9/11 attack has been very supportive of the 9/11 families and vowed to bring to justice those responsible for the attack.

“The ‘Justice against Sponsors of Terrorism Act’ is very near and dear to my heart as a New Yorker, because it would allow the victims of 9-11 to pursue some small measure of justice by giving them a legal avenue to hold foreign sponsors of terrorism on US soil accountable for their actions... JASTA is a long-overdue fix—a responsible, balanced fix—to a law that has extended too large a shield to foreign actors who finance and enable terrorism on a massive scale. The victims of 9-11 and other terrorist attacks have suffered such pain and heartache, but they should not be denied justice and so, I will fight hard in Congress until the House passes this bill and it is signed into law.”

Despite his bravado, Schumer supported Cornyn’s amendment that tones down the text of the bill compared to the version that was reported out of the Senate Judiciary Committee in



February. However, the changes were not sufficient to satisfy the White House concerns about potential unintended consequences, such as opening up the United States to litigation. Following passage of the JASTA, White House press secretary Josh Earnest stood by Obama's position, arguing that the revisions made by the Cornyn amendment were not sufficient to resolve the Administration's concerns. Schumer, however insisted the Senate would obtain the required two-thirds majority to override a presidential veto.

Specifically, the Cornyn amendment:

-- Removes language stating that Congress has the authority to impose penalties on those providing material support for terrorist organizations;

-- Raises the legal threshold for holding a foreign state responsible for international terrorism against the US by:

- Removing language stipulating that states have an affirmative obligation to refrain from supporting terrorism and hold all terrorist supporters accountable.
- Removing language stating that no country has the discretion to support or finance terrorism through direct or indirect means.
- Making clear that JASTA does not cover acts of war.
- Removing language that would have allowed foreign states to be sued for supporting terrorism based on an act of omission or negligence, and adding new language explicitly making clear that foreign states cannot be sued on these grounds.
- Removing language on certain types of terrorist acts, for which a foreign state can be sued. One of these grounds was "aircraft sabotage," an apparent reference to 9/11. This can be read as making the legislation less directly targeted at Saudi Arabia.

-- Inserts a provision allowing the Secretary of State to pause civil action against a foreign state with a certification that it is engaging in good-faith negotiations with the US to resolve the claims. Though the pause would be temporary in nature, the attorney general could request to have it extended. As the legislation does not place a limit on the number of times an extension could be requested, this could allow the Administration to indefinitely suspend civil action.

-- Removes language explicitly exempting the US government and officials from being sued under the legal precedent set by this legislation.



Senators Cornyn and Schumer had been working to assuage concerns about the bill, specifically concerns from Senator Lindsey Graham (R-South Carolina), who had placed a hold on the bill. The changes ensuring that a nation-state, i.e., Saudi Arabia, would not be liable unless it was the “proximate cause” of the terrorist act, led Senator Graham to lift the hold.

The bill now heads to the House for further action. Cornyn and Schumer said they would be urging the House leadership to quickly pass the legislation. House Speaker Paul Ryan (R-Wisconsin) however, would like the bill to move through the committee process before he makes a decision on the legislation. The White House currently is holding discussions with Ryan and House Judiciary Committee Chairman Goodlatte.

As noted above, Speaker Ryan wants to move cautiously on the JASTA legislation. While several members of Congress understand the strategic importance of the US-Saudi relationship, the Kingdom has many critics. Because the Senate bill was passed by voice vote, it cannot be determined who opposed the bill, but the bill has only 24 co-sponsors; 12 Democrats and 12 Republicans, (who likely voted for the legislation), while the House bill currently has only 23 cosponsors. It is unclear at this point whether the House will consider the S2040 as amended, or use its bill, HR3815, as the legislative vehicle. Several sources believe the House will consider the amended Senate bill. Whether it will be further modified to meet Administration concerns is not yet known, but discussions in this regard are underway.

Also unclear is when the legislation will come to the House floor. The House will adjourn for the Memorial Day recess at the end of this week, so the earliest the bill could come to the House floor would be the end of May or early June. According to credible sources, there is “weariness” among some members over the theory that the Kingdom was somehow involved in the 9/11 attack. Many simply do not believe that the Kingdom, a longstanding US ally, would be involved or sanction such a heinous act of terrorism.

While it is true that the Kingdom has a history of allegedly supporting extremist movements, it uses them as military tools to achieve narrow political ends such as fighting the Soviets in Afghanistan and more recently, fighting Bashar al-Assad in Syria. Meanwhile, the US and the Kingdom have been close allies for decades, and the reasons are not just limited to oil. The US and the Kingdom have shared enemies in the Soviet Union, Iraq, and more significantly, in Iran. Taking into account these reasons, it is difficult to imagine any reason why the Kingdom would support a terrorist attack on the US, its most important ally in the West. Supporters of the legislation, however, ignore these facts and are determined to prove there is a link between the 9/11 attacks and the Kingdom. How successful these efforts are will remain questionable.



Impact on US-Saudi Relations

The Kingdom has undertaken an intensive lobbying effort to defeat the legislation. The Kingdom has an army of lobbyists, a total of eight American firms, to stop Congress from passing the legislation. In 2015, the Kingdom spent over \$9 million in lobbying fees. That's a lot of muscle power to defeat a bill which does not have overwhelming support.

If lobbying efforts fail, there is always room for diplomatic and economic pressure. In that vein, Foreign Minister Adel al-Jubeir visited Washington in April and told the Administration and members of Congress that Saudi Arabia will sell off \$750 billion in treasury securities and other assets in the US held by the Kingdom if Congress passes the legislation. Most observers view this as an idle threat but it is a sign of the existing tensions between the US and Saudi Arabia. Foreign Minister al-Jubeir later [denied](#) that the Kingdom would take such an action, noting that if the Kingdom were to carry out the threat, investor confidence in the US would shrink and could potentially cause global market disruption for which the Saudis would be blamed. The action could potentially destabilize the American dollar, and the Saudi riyal which is pegged to the dollar. More important, threats by the Kingdom will only increase the strains in the US-Saudi relationship. On May 16, the Treasury Department disclosed that Saudi holdings of US treasuries amounting to \$116.8 million, are less than expected, and account for about 20 percent of the Kingdom's total \$587 billion in foreign reserves.

Tensions between the two countries have been simmering since the 9/11 terrorist attacks when suspicion arose in certain circles about Saudi involvement. Strains also increased following the US invasion of Iraq in 2003.

Clearly, President Obama has not enjoyed the warm relationship relished by his predecessor former President George W. Bush. The recent interview in the *Atlantic* where President Obama referred to Saudi Arabia and other Gulf countries as "free riders" unwilling to secure chaotic zones like Libya, did little to ease the tensions. Moreover, the signing of the Iran nuclear deal unnerved the Kingdom, which has deep concerns about Iranian hegemony in the Gulf region, and was seen as yet another sign of distance in the US-Saudi relationship.

Passage of the legislation will only exacerbate existing tensions. The US and Saudi Arabia need each other. The bilateral relationship is a historical one based on mutual security interests and the free flow of oil. For these reasons, most observers believe the legislation will not be enacted, or possibly further modified in a form acceptable both to the Kingdom and the Obama Administration. If however, the House passes the legislation, a presidential veto is guaranteed.