ULUSLARARASI HUKUKTA DEVLET BAĞIŞIKLIĞI VE JASTA

Prof. Dr. İbrahim Kaya[1]

GİRİŞ

ABD Eylül 2016'da Justice Against Sponsors of Terrorism Act (JASTA) başlıklı bir kanunu kabul ederek yürürlüğe koymuştur. Uluslararası hukukun yerleşik bir ilkesi olan "devlet bağışıklığı" prensibi bağlamında bu kanun değerlendirilecektir. Burada sadece hukuki (*civil*) alanda bağışıklık konusu ile ilgilenilecek, cezai bağışıklık ele alınmayacaktır. Konunun siyasi yönlerine değil sadece hukuki veçhelerine değinilecektir. Öncelikle devlet bağışıklığının uluslararası hukuktaki yerine değinilecek ardından söz konusu kanun incelenecektir.

ULUSLARARASI HUKUKTA DEVLET BAĞIŞIKLIĞI

Uluslararası hukuk devletlerin egemenliği ve eşitliği prensipleri üzerine kurulmuştur. Egemenliğin bir sonucu olarak devlet kendi ülkesi üzerinde yetki kullanır. Bu yetki münhasır bir yetki olup, ülke üzerinde egemen olan devletin izni olmaksızın başka devletlerin buna müdahale etmemesi gerekir. Kimi zaman iç işlerine müdahale yasağı olarak da bu formülüze edilmiştir.

Bununla birlikte hukukun her alanında olduğu gibi devletin kendi ülkesi üzerinde egemenlik yetkisi kullanmasının da istisnaları bulunmaktadır. Bunun en bilinen örnekleri diplomatik dokunulmazlıklar ve devlet bağışıklığı yada egemen bağışıklığı olarak adlandırılabilecek olanlardır.

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[1] İstanbul Üniversitesi Hukuk Fakültesi Öğretim Üyesi ve İstanbul Üniversitesi İnsan Hakları Hukuku Merkezi Müdürü. **Bu bilgi notu taslak aşamada olup yazarından izinsiz olarak referans/kaynak gösterilemez, alıntı yapılamaz.** kayai@hotmail.com

Uluslararası hukukun öngörmüş olduğu gibi devletler eşit egemenler olarak birbirlerini kendi iç mahkemelerinde yargılamama yükümlülüğüne altındadır.

Ülkesel yetki ile devlet bağışıklığı arasındaki ilişkiyi 1812 yılında ABD Yüksek Mahkemesinin *The Schooner Exchange* v. *McFaddon* davasında vermiş olduğu karar göstermektedir. Buna göre:

> "perfect equality and absolute independence of sovereigns . . . have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be the attribute of every nation."[2]

Bu bağışıklık hem ceza hem de hukuk davalarını kapsamaktadır.[3] Devletlerin egemen eşitliği ilkesinin bir sonucu olan devlet bağışıklığı uluslararası teamül hukuku kuralıdır.[4]

18. ve 19. yüzyıllarda devlet yada egemen bağışıklığı kuralı mutlak olarak uygulanmaktaydı. Ancak özellikle 20. yüzyılın başından itibaren artan ekonomik ilişkiler ve devletin ekonomi ve ticaret alanında artan bir rol oynaması sonucunda bağışıklığın mutlak olmaması gerektiğine dair görüşler ortaya atıldı.

Devletler klasik devlet fonksiyonlarının yanında artık ticari şirketler ve kuruluşlar da oluşturarak devlet aktivitesi sayılmayan fonksiyonlar da icra etmekteydiler. Dolayısıyla devlet faaliyeti ile ticari faaliyetler arasında bir ayrım yapılması ve ticari faaliyetlere ilişkin bağışıklık tanınmaması görüşü hakimiyet kazandı. Bağışıklık tanınan devlet aktiviteleri j*ure imperii,* ticari mahiyette olan ve bağışıklıktan istifade edemeyen devlet aktiviteleri ise j*ure gestionis* olarak

[2] 7 Cranch 116 (1812).
[3] 2000] 1 AC 147, 201; 119 ILR, p. 152.
[4] 2000] 1 WLR 1573, 1588; 119 ILR, p. 367.

adlandırılmaktadır.[5] Buradaki temel ayrım devletlerin egemenlikleri gereği yaptıkları fiiller ile (*sovereign activities*) ile diğer aktivitelerini (*non-sovereign acts*) ayırmakta yatmaktadır. Netice itibarıyla Uluslararası Adalet Divanı'nın da Almaya-İtalya davasında vermiş olduğu kararda ortaya konulduğu üzere artık mutlak bağışıklıktan uzaklaşılmış ve sadece egemenlik fiillerini içeren daha kısıtlı bir yaklaşım (*restrictive approach*) benimsenmiştir.[6]

Burada, netice olarak, j*ure gestionis* aktiviteler dışındaki alanlarda devlet bağışıklığının olduğunu söyleyebiliriz. Bunun bir sonucu olarak devletin mallarına el konamaz ve haczedilemez. Devlet yargılamadan muaf olduğu için yargılama öncesi dönemde de bu geçerlidir. Bu husus BM Bağışıklıklar Sözleşmesi tarafından şöyle ifade edilmiştir:

> No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:
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> (a) the State has expressly consented to the taking of such measures as indicated: (i) by international agreement; (ii) by an arbitration agreement or in a written contract; or (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
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> (b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.[7]

Devlet bağışıklığı ile ilgili bir husus da "devlet"in tanımlanmasıdır. Herhangi bir şekilde devlet aygıtının bir parçası olan entite devlet olarak tanımlanabilir ve bağışıklıktan istifade eder. İç hukukunda ayrı bir tüzel kişiliği bile olsa devletin kurumu/kuruluşu yine devlet olarak kabul edilir. Siyasi olarak alt bölmeleri (*subdivision*) yine devlet kabul

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[5] Shaw 509-510.
[6] ICJ Reports, 2012, pp. 99, 124–5.
[7] Madde 18.

edilir.

Burada dikkat çekilmesi gereken bir başka husus da yargıdan bağışık olmak (*immunity from jurisdiction*) ile yargı kararının uygulanmasından bağışık olmak (*immunity from execution*) arasındaki ayrımdır. Hukuk davaları bağlamında yargı kararının uygulanması yabancı bir devlete ait olan varlıkların haczedilmesini içerir. Yargı bağışıklığının kaldırılmasına rıza gösterilmesi otomatik olarak kararın uygulanmasına da rıza gösterilmesi anlamına gelmez.

Bu bağlamda BM Bağışıklıklar Sözleşmesi şöyle demektedir:

> No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that: (a) the State has expressly consented to the taking of such measures as indicated: (i) by international agreement;(ii) by an arbitration agreement or in a written contract; or (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
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> (b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or
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> (c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that postjudgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.[8]

JASTA VE ULUSLARARASI HUKUK

[8] Madde 19.

JASTA'nın ilk bölümü dibace mahiyetinde olup terörizmin ciddiyetine ve terörist eylemleri destekleyen devletlerin sorumluluğuna işaret etmektedir. Buna göre:

> "The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.[9]"

Bu madde ciddi terör eylemi işleme riski taşıyan kişi veya örgütlere bilerek veya ihmali şekilde doğrudan yada dolaylı maddi destek veya kaynak sağlayan devletlere karşı ABD federal mahkemelerine konu bazlı yetki (*subject-matter jurisdiction*) tanımaktadır.

Bir devlete karşı ABD mahkemelerinde açılan davalar devlet bağışıklığı sebebiyle reddedilmekteydi. Bu alandaki yasal düzenleme 1976 yılında kabul edilen Foreign Sovereign Immınuties Act (FISA) dır. Uluslararası hukuka uygun olarak FISA yabancı devletler üzerinde ABD mahkemelerinin yargı yetkisi olmadığını belirtmiş, yine uluslararası hukuka uygun olarak istisnalar bağlamında rıza ile bu bağışıklığın kaldırılması durumunda yahut devlet aktivitelerinin ticari mahiyette olması durumunda mahkemelere yargı yetkisi tanımıştır.

JASTA, FISA'da değişiklik yaparak terörle bağlantılı durumlarda mahkemelere yargı yetkisi vererek istisnaları genişletmektedir. Esasen FISA'ya daha önce yapılan bir ekleme ile terör bağlantılı devletlere karşı hukuk davası açma yolu getirilmişti. Şu durumlarda açılan davalarda devlet bağışıklığı söz konusu değildi:

> "personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act . . . by an official, employee, or agent of such foreign state while

[9] Madde 2(7).

> acting within the scope of his or her office, employment, or agency."[10]

Ancak bu istisna terörist devlet olarak nitelenen devletler (*states designated as sponsors of terrorim*) için geçerli olup diğer devletler için geçerli değildir. İlaveten muhatap devletin uluslararası hukukun kabul edilen kurallarına uygun olarak tahkim fırsatı verilmesi de bir gerekliliktir.

JASTA'nın kabulüyle bunlar ortadan kaldırılmaktadır. Buna göre:

> 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 where the tortious act or acts of the foreign state occurred.

Açıkça terör eylemi durumunda JASTA uluslararası hukukta bir uyuşmazlık çözüm yolu olarak tahkimi ve ülkesellik ilkesini ortadan kaldırmaktadır.[11]

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[10] §1605A.

[11] Terör şöyle tanımlanmıştır:
"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
(B) appear to be intended—
(i) to intimidate or coerce a civilian population;
(ii) to influence the policy of a government by intimidation or coercion; or
(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

Buradan anlaşılmaktadır ki uluslararası hukukun yerleşik bir ilkesi olan devlet bağışıklığı JASTA ile çiğnenmektedir. Burada ABD'nin devlet sorumluluğuna da işaret etmek gerekir. Uluslararası hukukun ihlali halinde devletlerin sorumlu olacağı yerleşik bir ilkedir. Sorumluluk için zarar şartı da aranmamaktadır. Dolayısıyla henüz zarar ortaya çıkmamış olsa bile ABD'nin sorumluluğunu belirtmek yerinde olur. Uluslararası hukuku ihlal eden eylem veya işlemin JASTA örneğinde olduğu gibi yasama organı eliyle gerçekleşmiş olmasının da bir önemi bulunmamaktadır.

SONUÇ VE ÖNERİLER

JASTA açıkça uluslararası hukuka aykırıdır. Bu bağlamda tüm devletlerin bundan etkilenmesi potansiyeli mevcuttur. Siyasi alanda atılabilecek adımlara ilave olarak hukuki alanda şu öneriler dile getirilebilir:

- Öncelikle çalışmada zikredilen 2004 tarihli BM Convention on Jurisdictional Immunities of States and their Property henüz yürürlükte değildir. Yürürlüğe girebilmesi için 30 devletin taraf olmasına ihtiyaç vardır ve hâlihazırda 21 devlet taraftır. Acilen bu sözleşmeye taraf olunmalıdır.
- Sözleşmenin yürürlüğe girmemiş olması devlet bağışıklığının söz konusu olmadığını göstermez. Sözleşme mevcut bir teamül hukuku kuralını kodifiye etmektedir. Dolayısıyla kural her halukarda mevcuttur. Uluslararası ortamlarda bu dillendirilmelidir.
- Kuralın mevcudiyetinin bir kanıtı, devletlerin iç hukuklarında bunu uyguluyor olmalarıdır. Bundan sapan düzenlemeler asla yapılmamalıdır. Burada mütekabiliyet ilkesi akla gelse bile çok temkinli davranılmalıdır.
- Bu aşamada ABD'ye karşı yargı yoluna başvurma imkanı

(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum." (18 U.S. Code § 2331)

bulunmamaktadır. Doktrin oluşturmak bakımından bu alandaki bilimsel çalışma ve yayınlar teşvik edilebilir.

EK: JASTA (İLGİLİ MADDELER)

SECTION 1. SHORT TITLE.[12]

This Act may be cited as the “Justice Against Sponsors of Terrorism Act”.

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

…

(7) The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

(b) Purpose.—The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

SEC. 3. RESPONSIBILITY OF FOREIGN STATES FOR INTERNATIONAL TERRORISM AGAINST THE UNITED STATES.

(a) In General.—Chapter 97 of title 28, United States Code, is

[12] https://www.congress.gov/114/bills/s2040/BILLS-114s2040enr.xml

amended by inserting after section 1605A the following:

"§ 1605B. **Responsibility of foreign states for international terrorism against the United States**

"(a) Definition.—In this section, the term 'international terrorism'—

"(1) has the meaning given the term in section 2331 of title 18, United States Code; and

"(2) does not include any act of war (as defined in that section).

"(b) Responsibility Of Foreign States.—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 where the tortious act or acts of the foreign state occurred.

"(c) Claims By Nationals Of The United States.—Notwithstanding section 2337(2) of title 18, a national of the United States may bring a claim against a foreign state in accordance with section 2333 of that title if the foreign state would not be immune under subsection (b).

"(d) Rule Of Construction.—A foreign state shall not be subject to the jurisdiction of the courts of the United States under subsection (b) on the basis of an omission or a tortious act or acts that constitute mere negligence.".

…

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action—

(1) pending on, or commenced on or after, the date of enactment of this Act; and

(2) arising out of an injury to a person, property, or business on or after September 11, 2001.

STATE IMMUNITY IN INTERNATIONAL LAW AND JASTA

Prof. Dr. Ibrahim Kaya[1]

INTRODUCTION

In september 2016, USA enacted and brought into force the Justice Aginst Sponsors of Terrorism Act (JASTA). This law makes provision for one of the main principles of international law which is "state immunity". In this work, only the legal side will be assesed without focus being paid on the criminal aspect. The main issue is not how to manage diplomatic relations but to cover the legal aspects of immunity. The Act will specially examine state immunity that would have been covered under international law.

STATE IMMUNITY UNDER INTERNATIONAL LAW

International law was developed basing on the principles of state sovereignity and equality. With regard to sovereignity, a state uses its own powers. This exclusive power deters one country from infronging on another country's sovereignty without permission.

Additionally as in all aspects of law, there are exceptions to the use of sovereignity. The commonest examples are diplomatic immunity and state immunity (sovereign immunity).

The 1812 USA Hign Court decision in the case of The Schooner Exchange v. McFadon shows the relationship between territorial authority and state sovereignity as follows;

> "perfect equality and absolute independence of sovereigns . . . have given rise to a class of cases in which every sovereign is understood to waive the exercise of a part of that complete exclusive territorial jurisdiction, which has been stated to be

[1] Istanbul University Law Faculty, Department of Internatonal Law. This draft work cannot be quoted. kayai@hotmail.com

the attribute of every nation."[2]

This sovereignty covers both criminal and legal cases.[3] The principle of state sovereignty derives from the equality of states and is a rule under international customary law.[4]

State and sovereign immunity was implemented during the 18th and 19th Centuries in absolute terms. However from the start of the 20th Century, immunity became a more restrictive one owing to its role in the boost of economic relations, state economy as well as trade.

In addition to the classic functions of a state, states have also taken up the duties of commercial companies and institutions which activities are not part of the functions of a state. Therefore, state activities and commercial activities must be differentiated. The activities of a state subject to immunity are known as *jure imperii*, while activities of a commercial nature as well as state activities that do not benefit from immunity are known as *jure gestonis*.[5] The basic difference that has been laid down is in the necessary sovereign state activities and the non-sovereign acts. In respect to the Internation Court of Justice's decision in the case of Germany v. Italy, immunity was to be restricted to only activities involving sovereignty (restrictive approach).[6]

In conclusion, it can be said that activities not jure gestonis are subject to state immunity. The result is that the state's property is untouchable and non-seizable. Since the state is exempt from trial in the courts of a foreign state, this also applies to the situation before trial. This is in effect to the UN Immunity Convention as stated below;

> No pre-judgment measures of constraint, such as attachment or arrest, against property of a State may be taken in

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[2] 7 Cranch 116 (1812).

[3] 2000] 1 AC 147, 201; 119 ILR, p. 152.

[4] 2000] 1 WLR 1573, 1588; 119 ILR, p. 367.

[5] Shaw 509-510.

[6] ICJ Reports, 2012, pp. 99, 124–5.

> connection with a proceeding before a court of another State unless and except to the extent that:
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> (a) the State has expressly consented to the taking of such measures as indicated: (i) by international agreement; (ii) by an arbitration agreement or in a written contract; or (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
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> (b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding.[7]

The subject matter under state immunity is the "state". In all cases, all state apparatus are taken as a state entity and are subject to state immunity. Under national law, a real person who is part of a state instution or corporation is considered as the state. Departmental or governmental subdivisions are also considered as the state.

Another point of importance here is the difference between immunity from jurisdiction and immunity from execution. The consent to waive judicial immunity does not automatically warranty execution of the decision.

In relation to this, the UN Immunity Conventions states as follows;

> No post-judgment measures of constraint, such as attachment, arrest or execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that: (a) the State has expressly consented to the taking of such measures as indicated: (i) by international agreement;(ii) by an arbitration agreement or in a written contract; or (iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen; or
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> (b) the State has allocated or earmarked property for the

[7] Madde 18.

> satisfaction of the claim which is the object of that proceeding; or
>
> (c) it has been established that the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum, provided that postjudgment measures of constraint may only be taken against property that has a connection with the entity against which the proceeding was directed.[8]

JASTA AND INTERNATIONAL LAW

According to JASTA's first chapter, states are responsible for supporting terrorism and terrorist activities.

> The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.[9]

This section provides for jurisdiction of the US federal courts where an individual or organisation is responsible for any risk resulting from serious terrorist activities. This jurisdiction also extends to persons who intentionally and non-intentionally support as well as states that provide resources for such activities. (subject-matter jurisdiction)

As a rule state immunity shall be rejected where complaints are lodged against states in the USA courts. This emanates from the 1976 Foerign Sovereign Immunities Act (FISA). As under international law, FISA states that USA courts do not have jurisdiction on foreign states. The exception under international law is that jurisdiction will

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[8] Madde 19.

[9] Madde 2(7).

be realised in cases where immunity has been uplifted with consent or instances involving a state's activities of a commercial nature.

JASTA makes changes in FISA by increasing the exceptions in which court jurisdiction is applicable regarding to terrorist-related situations. A fundamental addition that was made by FISA earlier on concerning terrorism provides for filing of legal complaints against states. In the following cases, state immunity is not of importance:

> "personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act . . . by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency."[10]

However, this exception is only applicable to states designated as sponsors of terrorism and not all states. In addition arbitration opportunities must also be provided.

With the assent of JASTA, the following are ruled out. That is:

> 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 where the tortious act or acts of the foreign state occurred.

In fact, JASTA removed arbitration clause and the principle of

[10] §1605A.

territoriality which are discrepancies when it comes to terrorist activities.[11]

What became appearent here is that JASTA broke down international law's very well established principle of state immunity. The USA's state responsibility must be noted here. The state's responsbility where international law has been violated. To claim responsibility the existence of harm is not reguired. Accordingly, despite harm not being realised at the moment, the USA's responsibility can be stated.

CONCLUSION AND SUGGESTIONS

JASTA is contrary to international law. This means that all states can be potentially affected. The following suggestions can be brought forth in addition to the steps that can be politically embarked on:

- First and foremost the aforementioned 2004 UN Convention on Jurisdictional Immunities of States and their Property is not yet into force. For it to come into force, it must be ratified by 30 states. So far only 21 states have become parties. This convention has to be ratified.
- The convention is an attempt to codifiy an existing custimary law rule. In any case the rules do exist. It has to be expressed in an international context.
- Proof of existence of the rule must be shown as applicable to

[11] Terör şöyle tanımlanmıştır:
"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
(B) appear to be intended—
(i) to intimidate or coerce a civilian population;
(ii) to influence the policy of a government by intimidation or coercion; or
(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum." (18 U.S. Code § 2331)

states' national law and unnecessary changes shall not be made. Here, the principle of reciprocity comes to mind which must be serious deliberated upon.

- There is no possibility to file complaints against the USA through this jurisdiction. To constitute a doctrine in this area, scientific studies and publications must be encourgaed.

EK: JASTA (Related Articles)

SECTION 1. SHORT TITLE.[12]

This Act may be cited as the "Justice Against Sponsors of Terrorism Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

…

(7) The United States has a vital interest in providing persons and entities injured as a result of terrorist attacks committed within the United States with full access to the court system in order to pursue civil claims against persons, entities, or countries that have knowingly or recklessly provided material support or resources, directly or indirectly, to the persons or organizations responsible for their injuries.

(b) Purpose.—The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

[12] https://www.congress.gov/114/bills/s2040/BILLS-114s2040enr.xml

SEC. 3. RESPONSIBILITY OF FOREIGN STATES FOR INTERNATIONAL TERRORISM AGAINST THE UNITED STATES.

(a) In General.—Chapter 97 of title 28, United States Code, is amended by inserting after section 1605A the following:

“§ 1605B. **Responsibility of foreign states for international terrorism against the United States**

“(a) Definition.—In this section, the term ‘international terrorism’—

“(1) has the meaning given the term in section 2331 of title 18, United States Code; and

“(2) does not include any act of war (as defined in that section).

“(b) Responsibility Of Foreign States.—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 where the tortious act or acts of the foreign state occurred.

“(c) Claims By Nationals Of The United States.—Notwithstanding section 2337(2) of title 18, a national of the United States may bring a claim against a foreign state in accordance with section 2333 of that title if the foreign state would not be immune under subsection (b).

“(d) Rule Of Construction.—A foreign state shall not be subject to the jurisdiction of the courts of the United States under subsection (b) on

the basis of an omission or a tortious act or acts that constitute mere negligence.".

…

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action—

(1) pending on, or commenced on or after, the date of enactment of this Act; and

(2) arising out of an injury to a person, property, or business on or after September 11, 2001.