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Middle East

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Middle East

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

Middle East

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This article discusses significant international legal development in Egypt, Israel, Lebanon, Saudi Arabia, and the United Arab Emirates.

I. Egypt

A. INVESTMENT LAW IN EGYPT

The Egyptian House of Representatives (the “Parliament”) passed a new Investment Law (the “New Investment Law”) on May 7, 2017, as a part of the ongoing efforts aimed at bringing back more Foreign Direct Investments (“FDI”) to the country. The New Investment Law will replace the existing Investment Law No. 8 of 1997.

The New Investment Law provides a number of key guarantees and incentives, including fair and equitable treatment to both foreign and Egyptian investors; but the Prime Minister will have the right, subject to the principle of reciprocity, to grant favorable treatment to foreign investors.² In addition, foreign investors may obtain a residence permit throughout the term of their investment projects³ and will have the right to repatriate profits and/or receive international financing without any restrictions.⁴ Egyptian authorities will not have the right to suspend or terminate any license and/or allocation of properties granted to any investor without satisfying certain conditions.⁵ Additionally, several other provisions, such as the right to directly import raw materials⁶ and application of unified custom duty,⁷ have

1. The Middle East Committee Editor of this Year In Review is Mohamed Hashish (Soliman, Hashish & Partners, Egypt) and he authored part I, section A. Judge Walid Nabil Taha authored part I, section B. Mr. Alon Kaplan and Ms. Meytal Liberman authored part II, sections A, B, and C. Mr. Daniel Cooper authored part II, sections D and E. Mr. David Pfeiffer and Ms. Ola Saab authored part III. Mr. Hassan Elkhilil authored part IV. Ms. Kelly Blount authored part V. Dr. Bashar Malkawi authored part VI. Judge Delissa A. Ridgway authored part VII and VIII.

2. Law No. 72 of 2017 (New Investment Law), *AL-JARIDAH AL-RASMIYAH*, 7 May 2017, art. 3 (Egypt).

3. *Id.*

4. *Id.* at Article 6.

5. *Id.*

6. *Id.*

7. *Id.* at Article 10.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

656 THE YEAR IN REVIEW

[VOL. 52]

been given to investors. A tax reduction provision also will be applied under certain conditions.⁸ In addition, for the first time in Egypt, the New Investment Law explicitly allows investors to allocate up to 10 percent of their net profits to social development systems in the areas of environmental protection, provision of healthcare, technical education support, and scientific research and training.⁹ Under the new law, investors can use foreign employees up to 20 percent of the total number of the investment project's personnel.¹⁰ Essentially, the New Investment Law offers several incentives for investors to both start and continue investing in Egypt.

B. THE FUTURE OF THE EGYPTIAN JUDICIARY

April 27, 2017 marked an important day for the Egyptian judiciary. For the first time in the judicial history of Egypt, the President will have the power to appoint heads of Court of Cassation,¹¹ the State Council,¹² the Administrative Prosecution Authority,¹³ and the State Lawsuits Authority.¹⁴ Prior to this amendment,¹⁵ judicial body councils had the power to appoint heads of the different branches of the justice system and the President would issue a decree confirming the appointment as a formality after receiving the names from each judicial body. Members of the judiciary raised questions about their independence and how vital the appointing authority is to the independence of the judicial branch. It is unclear exactly what procedural measures are required by the constitutional mandate for an independent judiciary.¹⁶

Contrary to Article 185 of the constitution,¹⁷ the judges were surprised by the parliament's approval of the law without taking into consideration their opinion on the new amendments. This Amendment marks the first time the

8. *Id.* at Article 11.

9. *Id.* at Article 15.

10. *Id.* at Article 8.

11. Law No. 46 of 1972 (The Judicial Authority Law), AL-JARIDAH AL-RASMIYAH, 1 Oct 1972 (Egypt).

12. Law No. 47 of 1972 (The Judicial Authority Law), AL-JARIDAH AL-RASMIYAH, 1 Oct. 1972 (Egypt).

13. Law No. 117 of 1958 (The Judicial Authority Law), AL-JARIDAH AL-RASMIYAH, (Egypt).

14. Law No. 75 of 1963 (The Judicial Authority Law), AL-JARIDAH AL-RASMIYAH, (Egypt).

15. Law No. 13 of 2017 (The Judicial Authority Law), AL-JARIDAH AL-RASMIYAH, 27 July 2017 (Egypt).

16. Article 94 of the Egypt Constitution of 2014 states: "The rule of law is the basis of governance in the state. The state is subject to the law, while the independence, immunity and impartiality of the judiciary are essential guarantees for the protection of rights and freedoms." CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 94.

17. "Each judicial body or organization shall manage its own affairs, and shall have an independent budget, the components of which shall be fully examined by the House of Representatives. Upon its approval, this budget shall be included in the State budget under one budget line. Each judicial body or organization shall be consulted with regards to the bills regulating its affairs." *Id.* at Art. 185.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018]

MIDDLE EAST 657

executive or legislative branch have interceded in the tradition and customs of the judiciary.

II. Israel

A. NEW VOLUNTARY DISCLOSURE PROCEDURE

The Israeli Tax Authority announced on December 12, 2017, a new voluntary disclosure procedure.¹⁸ Under the new procedure, Israeli residents can disclose their unreported wealth and income, pay the taxes due, and thereby avoid penal proceeding. Application under the new procedure can be made anonymously until the end of 2018, while a name-based application can be made until the end of 2019, provided the unreported wealth does not exceed NIS 2,000,000 and the income derived therefrom does not exceed NIS 500,000.¹⁹

B. ISRAEL JOINS THE COMMON REPORTING STANDARD TREATY (CRS)

On May 22, 2017, the Head of the Israeli Tax Authority signed the OECD's Multilateral Treaty on Common Reporting Standard (CRS).²⁰ Under the CRS Treaty, Israel undertakes automatically to exchange information on financial accounts held by foreign residents in Israel. Similarly, Israel will receive such information on financial accounts held by Israeli residents in other member states. The automatic exchange of information shall begin in September 2018.²¹

C. ATTORNEY-CLIENT PRIVILEGE CONTINUES TO DIMINISH

Under the Prohibition on Money Laundering legislation, namely the Prohibition on Money Laundering ("PML") Law and the PML Order,²² attorneys and certified accountants in Israel (CPA) are required to perform a Know Your Customer ("KYC") procedure to a client when providing a "business service," which is generally defined in the legislation mentioned above as services required for the purpose of a disposition in an asset. Based

18. Israeli Tax Auth., Ministry of Finance, *Israeli Tax Authority publishes a new "voluntary disclosure procedure" allowing Israelis to disclose their unreported wealth and avoid penal proceedings* (2017).

19. *Id.*

20. Notice of the Israeli Tax Authority, *Preparation for The Gathering Of Information Under The Multilateral Treaty For Automatic Exchange Of Information CRS CBS*, (May 22, 2017) (Heb.), https://taxes.gov.il/About/SpokesmanAnnouncements/Pages/Ann_220517_5.aspx.

21. *Id.*

22. Prohibition of Money Laundering Law, 5760-2000, SH No. 1752 p. 293 (Isr.) [hereinafter "PML LAW"]; Prohibition on Money Laundering (The Banking Corporations' Requirement regarding Identification, Reporting, and Record-Keeping for the Prevention of Money Laundering and the Financing of Terrorism), 5761-2001, KT 7447 (Isr.) [hereinafter "PML ORDER"].

**PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

658 THE YEAR IN REVIEW

[VOL. 52]

on this procedure, the attorney or accountant should evaluate the risk of money laundering in the service, and if the risk is high, the attorney or accountant must refrain from providing the requested service. Furthermore, under the KYC procedure, upon the demand of the supervisor appointed by the Ministry of Justice, a form containing information about the client and the service should be submitted for review.²³

On December 7, 2017, the PML Law was amended²⁴ to allow the supervisor to provide certain information to the law enforcement authorities. A formal publication clarifying the position of the authorities as to the circumstances under which such information should be made available to the law enforcement authorities, and to what extent, has not been published.

D. NEW LEGISLATION ON INDUSTRIAL DESIGNS

On July 26, 2017, the Knesset (Israel's legislature) passed the Designs Law, a new law regulating designs that replaces the Patents and Designs Ordinance 1924, which was promulgated during the British Mandate over Palestine and governed protection for industrial designs for nearly a century.²⁵ The passage of the new law is intended to bring Israel into conformity with the international regime for the protection of industrial designs in advance of Israel joining the Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement).²⁶ The law is scheduled to take effect in August 2018.²⁷

Among the main changes in the protection scheme embodied in the new law is that it rolls back the patent law requirement of originality. Under the new regime, instead of requiring novelty and originality in the design for protection, the new law requires merely that the design be novel and have "unique character."²⁸ Further, the new design law provides for statutory damages for design infringement up to NIS 100,000 (about \$28,000) per instance of infringement and provides for criminal penalties for intentional copying of designs. The law also provides for a 12-month grace period for disclosures of the design by the owner or inventor of the design. Finally, the new law contemplates international applications for design registration,

23. *Id.*

24. Prohibition of Money Laundering Law, 5778-2017, SH No. 2672 p. 52 (Isr.).

25. Designs Law, 5777-2017, SH No. 2662 p. 1176 (Isr.); see also David Gilat & Sa'ar Alon, *ISRAEL: Newly Enacted Design Law Heralds a Modern Era for Design Protection*, 72 Int'l Trademark Assoc., no. 19, Nov. 2017, https://www.inta.org/INTABulletin/Pages/Israel_7219.aspx#.

26. Ruth Levush, *Israel: New Law Regulating Designs*, Law Library of Congress Global Legal Monitor (Oct. 5, 2017), available at: <http://www.loc.gov/law/foreign-news/article/israel-new-law-regulating-designs/> (last viewed Dec. 13, 2017).

27. *Id.*

28. David Gilat & Sa'ar Alon, *supra*, note 1; David Gilat, *New Designs Bill in Israel*, Lexology (Aug. 16, 2015), available at: <https://www.lexology.com/library/detail.aspx?g=43a3bae0-b6a1-44f8-9195-560350381725> (last viewed Dec. 13, 2017).

**PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018]

MIDDLE EAST 659

which is plainly intended to smooth the way for Israel to join the Hague Agreement.

E. REGULATIONS ON PRIVACY AND DATA SECURITY

After years of negotiations within the government and between the government and the private sector, in March 2017, Israel passed sweeping new regulations concerning the security and protection of personal data.²⁹ The regulations, officially named the Privacy Protection Regulations (Data Security), 5777-2017 (“the Regulations”),³⁰ attempt to codify the data security obligations required by Article One of the Privacy Protection Act for owners of databases containing personal information.³¹

In general, the Regulations require that all database security breaches must be documented and immediately reported to the government. The governmental authority (called the “Database Registrar”) would then, if appropriate, order the entity that suffered the breach to notify the individuals affected or potentially affected. Database owners must also formulate a remedial plan and may be required to perform periodic security audits. Finally, the Regulations require that database proprietors take steps to limit access to those needing to access the data, and to properly secure remote access from mobile phones, tablets, and the like.³²

III. Kuwait

A. KUWAIT LABOR LAW

The Labor Law has seen long-awaited changes this year. The Council of Ministers issued Law No. 85 of 2017 amending certain provisions of Law No. 6 of 2010 regarding Labor in the Private Sector. Annual leave for employees now is thirty working days³³ and employees now are entitled to take annual leave accrued during the first year of service after spending at least six months in service.³⁴

The Public Authority for Manpower has also issued two important ministerial resolutions this year. Ministerial Resolution No. 14 of 2017 regarding the Minimum Wage for Laborers in the Private and Oil Sector in Kuwait has set the minimum wage as KD75 per month as of 31 May 2017.³⁵ This resolution applies not only to employees in the private sector and oil

29. Omer Tene, *Israel enacts landmark data security notification regulations*, INTERNATIONAL ASSOCIATION OF PRIVACY PROFESSIONALS (Mar. 22, 2017), <https://iapp.org/news/a/israel-enacts-landmark-data-security-notification-regulations/>.

30. Privacy Protection Regulations (Data Security), 5777-2017, SH No. 7809 (Isr.).

31. See Protection of Privacy Law, 5741-1981, §§ 8-17B, 35 LSI 136 (1981). The specific obligation to protect personal information is contained in Section 17 of the Protection of Privacy Law.

32. See Privacy Protection Regulations, *supra* note 30.

33. The Law of Labor in the Private Sector, 6/2010, art. 70 (Kuwait), amended by 85/2017.

34. *Id.*

35. The Municipality Affairs Committee Resolution, No. 14 (2017), art. 1.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

660 THE YEAR IN REVIEW

[VOL. 52]

sector, but also to those working on government projects.³⁶ The other resolution is Ministerial Resolution No. 1280 of 2017 regarding the Organization of Labor in the Private and Oil Sectors. It provides that work permits will not be issued for employees recruited from outside Kuwait with educational qualifications of high school and above and who are under thirty years of age.³⁷ This provision will be enforced as of January 1, 2018.³⁸

B. AGENCY LAW

Ministerial Resolution No. 565 of 2017 was issued on October 15, 2017, and applies to the issuance of the Implementing Regulations of Law No. 13 of 2016 relating to the Organization of Commercial Agencies. The resolution addresses agency agreements of a definitive term that contain a provision that the agreement will be automatically renewed unless either party notifies the other party of their intention not to renew. The registration of such an agency with the Agency Register, Ministry of Commerce and Industry must be renewed based on a letter from the Undersecretary of the Ministry.³⁹

C. COMPANIES LAW

The Ministry of Commerce and Industry issued Ministerial Resolution No. 496 of 2017 amending Ministerial Resolution No. 287 of 2016 regarding the issuance of the Implementing Regulations of Law No. 1 of 2016 for the Companies Law No. 15 of 2017. The minimum share capital of a closed shareholding company regardless of its activities is now KD10,000, and the minimum capital of a public shareholding company regardless of its activities is now KD25,000.⁴⁰

D. PUBLIC TENDERS

The Implementing Regulations of Law No. 49 of 2016 regarding the Public Tenders was issued on February 5, 2017. Law No. 49 of 2016 applies to ministries, governmental administrations, public establishments and authorities with independent or attached financials, and 100 percent-owned subsidiaries of Kuwait Oil Company.⁴¹ Law No. 49 of 2016 provides in Article 4 that the Kuwait Oil Company Board must establish and organize a Purchase Department.⁴² The law further states in Article 40 that the public entity in supply tenders must award tenders to bidders using local products as long as such products comply with the qualifications and conditions of the

36. *Id.* art. 2.

37. The Municipality Affairs Committee Resolution No. 1280 (2017), art. 1.

38. *Id.* art. 2.

39. The Municipality Affairs Committee Resolution No. 565 (2017), art. 13.

40. The Municipality Affairs Committee Resolution No. 49 (2017).

41. Implementing Regulations of Law, No. 49 (2016), Definitions.

42. *Id.* art. 4.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018]

MIDDLE EAST 661

tender, and the prices that are bid do not exceed the minimum prices for similar imported products that comply with the qualifications by 15 percent or more.⁴³

IV. Lebanon

Hosting over 1,835,840 Syrian refugees, 295,000 Palestinian refugees, and 17,000 Iraqi refugees,⁴⁴ Lebanon, as of 2015, was the third largest host country for refugees in the world.⁴⁵

Although Lebanon is an active Member State of the UN and plays an avid role in the UNHCR, Lebanon is not a party to the 1951 United Nations Convention Relating to the Status of Refugees or to the 1967 Protocol Relating to the Status of Refugees. This means while Lebanon does not have domestic refugee laws and is not bound to provide legal protection to refugees. Lebanon, however, does indirectly incorporate the rights of refugees within its own constitution.⁴⁶ Those who enter without proper legal status are considered illegal immigrants and are subject to arrest, imprisonment, fines, and deportation, even if they enter on refugee basis.⁴⁷

Until the safe return of refugees becomes possible, in January 2017, Lebanon and its National and International Partners prepared a new plan aimed at providing consistent assistance to refugees.⁴⁸

V. Saudi Arabia

It has been an eventful year in Saudi Arabian policy and law. As a part of the Saudi Council of Economic and Development Affairs' *Vision 2030* plan, the Kingdom has begun the process of enacting measures toward "a tolerant country with Islam as its constitution and moderation as its method."⁴⁹ While the reforms appear to be a hybrid of cultural and economic, it is clear that the push toward a production economy is largely intended to have the effect of lessening dependence on oil revenue.⁵⁰ In September 2017, the Kingdom granted women the right to drive,⁵¹ ending its position as the only

43. *Id.* art. 13.

44. Library of Congress, *Refugee Law and Policy: Lebanon*, (June 6, 2016), <https://www.loc.gov/law/help/refugee-law/lebanon.php>.

45. World Atlas, *Countries hosting the largest number of refugees in the world*, <http://www.worldatlas.com/articles/countries-hosting-the-largest-number-of-refugees-in-the-world.html>.

46. LEBANESE CONSTITUTION May 23, 1926, as amended to 1995.

47. Human Rights Watch, *Rot Here or Die There*, (Dec. 3, 2007), <https://www.hrw.org/report/2007/12/03/rot-here-or-die-there/bleak-choices-iraqi-refugees-lebanon>.

48. United Nations, Gov't of Lebanon, *Lebanon Crises Response Plan (2017-2020)* (January 2017).

49. Saudi Arabia, Council of Economic and Development Affairs, *Vision 2030* (Dec. 2017).

50. Hilal Khashan, *Saudi Arabia's Flawed "Vision 2030"*, MIDDLE EAST QUARTERLY, (Winter 2017), <http://guides.libraries.uc.edu/c.php?g=222561&p=1472886>.

51. Al Jazeera News, *Saudi Arabia to allow women to drive*, (September 27, 2017), <http://www.aljazeera.com/news/2017/09/saudi-arabia-women-drive-170926190857109.html>.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

662 THE YEAR IN REVIEW

[VOL. 52]

country in the world to totally restrict female driving. Later in the year the government announced that cinemas would re-open in 2018, after a thirty-five year total ban.⁵² The news is a welcome economic expansion to the film industry, and projected to contribute more than twenty four billion dollars to the economy by 2030. But, despite positive economic projections, critics, ranging from religious conservatives concerned with cultural reform to economists generally wary of the plan's success, have raised a myriad of concerns over facets of the government's enormous undertaking.

VI. United Arab Emirates

For the first time in the UAE and Arab countries in general, third-party funding was addressed directly by a court-issued directive. The Dubai International Financial Centre (“DIFC”) Courts, issued “Practice Direction 2 of 2017 – Third Party Funding in the DIFC Courts.”⁵³ It mandates that a funded party give notice to the other party in the dispute of any third party funding that it receives.⁵⁴ In other words, the new Practice Direction is basically a disclosure provision to ensure greater transparency and fairness. But, it does not provide further details — such as conflict of interests, eligibility requirements for funders, independence, and security of costs — that would provide providing guidance to parties, counsel, arbitrators and courts when facing third-party funding issues arising in different contexts. Currently, there are no laws regulating third party funding in mainland Dubai and UAE courts and arbitration institutions. Until this legal gap is filled, third-party funding is addressed through general provisions of UAE law.

VII. Justice Against Sponsors of Terrorism Act (“JASTA”)

Enactment of the Justice Against Sponsors of Terrorism Act (“JASTA”)⁵⁵ was one of Congress’ most controversial actions in 2016, involving an override of a Presidential veto (the only such override of the Obama Administration).⁵⁶ JASTA amended the United States’ Foreign Sovereign Immunities Act and the Anti-Terrorism and Effective Death Penalty Act (1

52. Katie Paul, *Saudi Arabia lifts cinema ban, directors and movie chains rejoice*, REUTERS (December 11, 2017), <https://www.reuters.com/article/us-saudi-film/saudi-arabia-lifts-cinema-ban-directors-and-movie-chains-rejoice-idUSKBN1E50N1>.

53. Dubai International Financial Centre Courts (DIFC), *Practice Direction 2 of 2017 – Third Party Funding in the DIFC Courts* (March 14, 2017), <https://www.difccourts.ae/2017/03/14/practice-direction-no-2-2017-third-party-funding-difc-courts/>>.

54. *See id.* at art. 4.

55. Justice Against Sponsors of Terrorism Act, Pub. L. No. 114-222, 130 Stat. 851 (to be codified at 18 U.S.C. § 2333, 28 U.S.C § 1605B) [hereinafter JASTA].

56. *See* Office of the Press Sec’y, Office of the President, to the Senate of the United States (Sept. 23, 2016); Jennifer Steinhauer et al., *Congress Votes to Override Obama Veto on 9/11 Victims Bill*, N.Y. Times, Sept. 28, 2016; Mattie Wheeler, *Congress’ Mistake: How the 9/11 Bill Will Hurt U.S. Foreign Relations*, Foreign Affairs, Oct. 11, 2016; Mark Hensch, *Trump Slams Obama for ‘Shameful’ 9/11 Bill Veto*, The Hill, Sept. 23, 2016.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018]

MIDDLE EAST 663

to establish a cause of action against foreign states for injury to persons or property or death occurring in the U.S. caused by an act of international terrorism in the U.S. and by a “tortious act” of a foreign state (no matter where that act occurred) and (2) to establish a cause of action against individuals for aiding and abetting an act of international terrorism committed, planned, or organized by an organization officially designated as a foreign terrorist organization.⁵⁷

Basically, JASTA allows U.S. citizens to sue foreign states (and certain other entities) in federal court for damages resulting from acts of terrorism committed on U.S. soil on or after September 11, 2001. Before JASTA, U.S. nationals could sue a foreign state in such circumstances only if the U.S. Department of State had declared the foreign state to be a state sponsor of terrorism and only if the plaintiffs were harmed by the state’s aid for international terrorism. Under JASTA, federal courts have personal jurisdiction over any foreign state for acts of international terrorism against a U.S. national or property, whether or not the state has been designated a state sponsor of terrorism.⁵⁸

Although the legislation does not identify any country in particular, the primary impetus for JASTA was to allow 9/11-related lawsuits against Saudi Arabia to go forward.⁵⁹ JASTA breathed new life into multi-district litigation in the U.S. District Court for the Southern District of New York involving long-pending claims by 9/11 survivors, victims, and victims’ families, including allegations that the Saudi government backed the attacks.⁶⁰ Just days after Congress overrode President Obama’s veto of JASTA, the widow of a Navy officer killed at the Pentagon on 9/11 filed an action against Saudi Arabia in the U.S. District Court for D.C.⁶¹ The lawsuits continued to pile up in 2017,⁶² including an action filed in March on behalf of the families and estates of more than 800 of the nearly 3000 who perished on 9/11.⁶³ The Kingdom of Saudi Arabia, a longstanding ally of the

57. See JASTA *supra* note 55.

58. See, e.g., Daniel Wilson, *9/11 Victims Face Tough Path to Prove Saudi Claims*, LAW 360, <https://www.law360.com/articles/863207/9-11-victims-face-tough-path-to-prove-saudi-claims>.

59. See *id.*

60. Interview with Stephen I. Vladeck, *What the 9/11 Lawsuits Bill Will Do* (Sept. 26, 2016); *In re Terrorist Attacks on September 11, 2001*, 134 F. Supp. 3d 774 (S.D.N.Y. 2015) (dismissing action as to Saudi government and charity, citing foreign sovereign immunity), *vacated and remanded*, No. 15-3426 (2d Cir. Mar. 9, 2017) (for further proceeding pursuant to JASTA).

61. See Complaint, *DeSimone v. Kingdom of Saudi Arabia*, No. 16-cv-01944 (D.D.C. Sept. 30, 2016); Greg Clary, *9/11 Widow Files Lawsuit Against Saudi Arabia*, CNN (Oct. 1, 2016), <http://www.cnn.com/2016/10/01/politics/saudi-arabia-9-11-lawsuit/index.html>.

62. See, e.g., Amended Complaint Adding Defendant Kingdom of Saudi Arabia, *Burnett v. Saudi Arabia*, No. 03-cv-09849 (S.D.N.Y. Mar. 17, 2017); Alex Johnson, *9/11 Lawsuits Against Saudi Arabia Flow Into Federal Court Under 2016 Law*, NBC NEWS (March 20, 2017), <https://www.nbcnews.com/news/us-news/9-11-lawsuits-against-saudi-arabia-flow-federal-court-under-n736066>.

63. See Consolidated Complaint, *Ashton v. Kingdom of Saudi Arabia*, No. 17-cv-02003 (S.D.N.Y. Mar. 20, 2017).

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

664 THE YEAR IN REVIEW

[VOL. 52]

U.S., has denied any role in the attacks and continues to vigorously defend against the actions.⁶⁴

Controversy was sparked anew in May, when it emerged that the government of Saudi Arabia had mounted an intensive lobbying campaign shortly after JASTA's enactment, seeking to repeal or amend the law.⁶⁵ Part of that campaign involved paying for air fare, hotel rooms, and other travel expenses for U.S. military veterans to visit Capitol Hill to attempt to sway members of Congress.⁶⁶ In some instances, the veterans were not aware that the Saudi government was footing the bill.⁶⁷

VIII. Designation of Jerusalem as Capital of Israel and Relocation of U.S. Embassy

As the world marked the centennial of the Balfour Declaration of 1917,⁶⁸ President Trump simultaneously fulfilled a campaign promise and broke with nearly seven decades of U.S. foreign policy, announcing in early December that the U.S. officially recognized Jerusalem as the capital of Israel and setting in motion plans to relocate the U.S. Embassy from Tel Aviv.⁶⁹ In the past, the U.S. (like most of the rest of the world) had taken the position that the status of Jerusalem was an issue to be settled by direct

64. See, e.g., Memorandum of Law in Support of Renewed Motion to Dismiss of the Kingdom of Saudi Arabia, *In re Terrorist Attacks on September 11, 2001*, No. 03 MDL 1570 (S.D.N.Y. Aug. 1, 2017); see also Creede Newton, *Saudi Arabia Seeks to End US Lawsuits Over 9/11 Attacks*, AL JAZEERA NEWS (Aug. 1, 2017), <http://www.aljazeera.com/news/2017/08/saudi-arabia-seeks-lawsuits-911-attacks-170801225240870.html>; Larry Neumeister, *Saudi Arabia Asks US Federal Judge to Drop Lawsuit Over 9/11 Attacks*, THE INDEPENDENT (Aug. 2, 2017), <http://www.independent.co.uk/news/world/americas/saudi-arabia-us-federal-judge-9-11-attacks-world-trade-center-new-york-manchattan-district-court-a7872506.html>.

65. See, e.g., Jon Gambrell, *Saudis Paid for US Veteran Trips Against 9/11 Lawsuit Law*, ASSOCIATED PRESS (May 11, 2017), <https://apnews.com/915af031fef34789918dd1d275fa8c30>.

66. See *id.*

67. See *id.*; Callum Paton, *Saudi Arabia Paid Veterans to Lobby Congress Against 9/11 Lawsuit Bill*, NEWSWEEK (May 11, 2017), <http://www.newsweek.com/saudi-arabia-paid-veterans-lobby-congress-against-911-lawsuit-law-607655>.

68. See *Balfour Declaration of 1917*, BBC News (Nov. 29, 2001), http://news.bbc.co.uk/2/hi/in_depth/middle_east/israel_and_the_palestinians/key_documents/1682961.stm; Bernard Avishai, *The Balfour Declaration Century*, NEW YORKER (Nov. 2, 2017), <https://www.newyorker.com/news/daily-comment/the-balfour-declaration-century>; NATIONAL ARCHIVES, U.S. Recognition of the State of Israel, <https://www.archives.gov/education/lessons/us-israel>.

69. See, e.g., Proclamation No. 9683, 82 Fed. Reg. 58331 (Dec. 11, 2017); *Transcript: Trump's Remarks on Jerusalem*, FOX NEWS (Dec. 6, 2017), http://www.foxnews.com/us/2017/12/06/transcript-trumps-remarks-on-jerusalem.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+foxnews%2Fmost-popular+%28Internal+-+Most+Popular+Content%29; Jonathan Lemire et al., *On Jerusalem, Trump's View Molded by Powerful Allies*, WASHINGTON TIMES (Dec. 6, 2017), <https://www.washingtontimes.com/news/2017/dec/6/on-jerusalem-trumps-view-molded-by-powerful-allies/>; Mark Landler, *Trump Recognizes Jerusalem as Israel's Capital and Orders U.S. Embassy to Move*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2AVtKJ4>; Matthew Lee et al., *Trump Declares Jerusalem Israeli Capital, Smashing US Policy*,

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018]

MIDDLE EAST 665

negotiations between the parties, as part of the peace process and a two-state solution, with an expectation that Israel's capital would be in West Jerusalem, and that East Jerusalem would be the capital of a future Palestinian state.⁷⁰ No other country has its embassy in Jerusalem.⁷¹

Under the Jerusalem Embassy Act of 1995, Congress had sought to have Jerusalem recognized as the capital of Israel and the U.S. Embassy moved by 1999, imposing significant funding restrictions on the U.S. Department of State if the opening of the new Embassy was delayed.⁷² But the Act allowed the President to waive the funding restriction for six-month periods by notifying Congress that suspending relocation of the Embassy was necessary to protect national security.⁷³ The Clinton, Bush, and Obama Administrations repeatedly invoked the waiver provision, semi-annually.⁷⁴ President Trump similarly renewed the waiver in June 2017, although he stated at the time that “the question is not if th[e] [Embassy] move happens, but only when.”⁷⁵ He signed another six-month waiver in December but down-played the action, making no mention of it in his announcement recognizing Jerusalem as Israel's capital.⁷⁶

The Administration characterized the December waiver as necessary, stating that it will take several years to move the Embassy,⁷⁷ contradicting analysts who believe that the move could be accomplished by hanging a new sign on the existing U.S. Consulate in Jerusalem.⁷⁸ In the meantime, the passports of Americans born in Jerusalem continue to identify their birthplace as Jerusalem, not Israel; and official U.S. government maps will not indicate that Jerusalem is within the borders of Israel.⁷⁹

ASSOCIATED PRESS NEWS (Dec. 6, 2017), <https://www.apnews.com/1d4e1824283f41eaa8422227fa8e6ea7>.

70. See, e.g., *Trump's Jerusalem Move Roundly Condemned at UN*, AL JAZEERA (Dec. 8, 2017), <http://www.aljazeera.com/news/2017/12/convenes-emergency-meeting-jerusalem-decision-171208162736190.html>.

71. See, e.g., Steve Holland, *In Break With Decades of U.S. Policy, Trump to Recognize Jerusalem as Israel's Capital*, REUTERS (Dec. 4, 2017), <https://www.reuters.com/article/us-usa-trump-israel/in-break-with-decades-of-u-s-policy-trump-to-recognize-jerusalem-as-israels-capital-idUSKBN1DZ04V>.

72. See Jerusalem Embassy Act of 1995, Pub. L. No. 104-45, 109 Stat. 398.

73. See *id.* at § 7.

74. See, e.g., Scott R. Anderson et al., *How to Move the U.S. Embassy to Jerusalem*, FOREIGN POLICY: LAWFARE BLOG (Nov. 30, 2017), <http://foreignpolicy.com/2017/11/30/how-to-move-the-u-s-embassy-to-jerusalem/>.

75. See WHITE HOUSE, *Statement on the American Embassy in Israel* (June 1, 2017), <https://www.whitehouse.gov/briefings-statements/statement-american-embassy-israel/>.

76. See, e.g., Mark Landler, *Trump Recognizes Jerusalem as Israel's Capital and Orders U.S. Embassy to Move*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2AVtKJ4>.

77. See, e.g., Mark Landler et al., *U.S. to Recognize Jerusalem as Israel's Capital, Trump Says, Alarming Middle East Leaders*, N.Y. TIMES (Dec. 5, 2017), <https://nyti.ms/2nv8zYI>.

78. See, e.g., Mark Landler et al., *Did Trump Kill Off a Two State Solution? He Says No, Palestinians Say Yes*, N.Y. TIMES (Dec. 7, 2017), <https://nyti.ms/2B0T7cw>.

79. See, e.g., Editorial Board, *Donald Trump Seems Confused About Jerusalem*, N.Y. TIMES (Dec. 15, 2017), <https://nyti.ms/2kxKZG9>; see also *Zivotofsky v. Kerry*, ___ U.S. ___, 135 S. Ct.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

666 THE YEAR IN REVIEW

[VOL. 52]

The President's announcement brought both celebrations and protests, some violent.⁸⁰ Apart from Israel, world leaders were almost universally highly critical.⁸¹ Even many Jewish leaders in the U.S. voiced reservations.⁸² At an emergency meeting of the U.N. Security Council on December 8, 2017, the U.S.'s actions were roundly condemned.⁸³ In addition, the fifty seven-member Organization of Islamic Cooperation convened an emergency summit on December 13, 2017, where President Trump's

2076 (2015) (where Embassy officials denied request of child born to U.S. citizens in Jerusalem to have "Israel" listed as birthplace in passport, holding that President has exclusive power to grant formal recognition to a foreign sovereign and noting President's consistent decision to withhold recognition as to Jerusalem).

80. See, e.g., Loveday Morris et al., *In Jerusalem, Trump's Speech Sparks Scenes of Joy, Outrage*, WASHINGTON POST (Dec.6, 2017), http://wapo.st/2BFIBnp?tid=ss_mail&utm_term=.750d8090ea33; Josef Federman, *Palestinians Protest Trump Move, More Unrest Feared*, WASHINGTON POST/Associated Press (Dec.7, 2017), http://wapo.st/2BHN5dq?tid=ss_mail&utm_term=.0064253fea03; Fares Akram, *4 Palestinians Killed in Latest Jerusalem Fallout Clashes*, WASHINGTON POST/Associated Press (Dec.15, 2017), http://wapo.st/2zf8HPX?tid=ss_mail&utm_term=.D93a8b55464e; Louisa Loveluck et al., *Hezbollah Rally Attracts Thousands as Trump's Jerusalem Fallout Continues*, WASHINGTON POST (Dec.11, 2017), http://wapo.st/2nODUFR?tid=ss_mail&utm_term=.58273faf5390; Rukmini Callimachi, *Terrorist Groups Vow Bloodshed Over Jerusalem Decision. ISIS? Less So*, N.Y. TIMES (Dec. 8, 2017), <https://nyti.ms/2kGSazm>; Loveday Morris, *Trump Plan to Move U.S. Embassy to Jerusalem Angers Middle East Christians*, WASHINGTON POST (Dec.13, 2017), http://wapo.st/2AC9jkZ?tid=ss_mail&utm_term=.79c4a30ba7c7.

81. See, e.g., Jason Horowitz, *U.N., European Union and Pope Criticize Trump's Jerusalem Announcement*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2nvHioW>; *The Latest: Australia Concerned by US Shift to Jerusalem*, WASHINGTON POST/Associated Press (Dec.6, 2017), http://wapo.st/2jIsPW?tid=ss_mail&utm_term=.318005b2a4aa; Rick Noack, *U.S. Allies Reject Trump's Jerusalem Pronouncement as "Very Dangerous" and "Catastrophic"*, WASHINGTON POST (Dec.7, 2017), http://wapo.st/2BBXdV1?tid=ss_mail&utm_term=.cacc976a4b2a; Ishaan Tharoor, *For Trump, Jerusalem is an Extension of a Global Culture War*, WASHINGTON POST (Dec.7, 2017), http://wapo.st/2kltr4U?tid=ss_mail&utm_term=.277e982380b2; Edith M. Lederer, *14 Security Council Members Criticize US Action on Jerusalem*, WASHINGTON POST/Associated Press (Dec.8, 2017), http://wapo.st/2nHRfzH?tid=ss_mail&utm_term=.31c57965dd5d; Hamza Hendawi, *Arab Ministers Demand Reversal of Trump Jerusalem Decision*, WASHINGTON POST/Associated Press (Dec. 9, 2017), http://wapo.st/2nMTGRC?tid=ss_mail&utm_term=.682216565a99; Adam Taylor, *Who Supports Trump on Jerusalem? Europe's Anti-Islam Politicians*, WASHINGTON POST (Dec.11, 2017), http://wapo.st/2jxmjRJ?tid=ss_mail&utm_term=.b11cc27d1a8c; Sewell Chan, *Nearly Every Former U.S. Ambassador to Israel Disagrees With Trump's Jerusalem Decision*, N.Y. TIMES (Dec. 7, 2017), <https://nyti.ms/2AFy3W0>.

82. See, e.g., Laurie Goodstein, *Praise and Alarm From American Jews Over Trump's Jerusalem Move*, N.Y. TIMES (Dec. 6, 2017), <https://nyti.ms/2AUMp7P>.

83. See, e.g., Anne Gearan, *U.S. Allies, Partners Condemn Trump's Israel Stance at the United Nations*, WASHINGTON POST (Dec. 8, 2017), http://wapo.st/2ApBvaw?tid=ss_mail&utm_term=.998dd47bf590; Press Release, *United Nations Position on Jerusalem Unchanged, Special Coordinator Stresses, as Security Council Debates United States Recognition of City*, U.N. Press Release SC/13111 (Dec. 8, 2017); U.N. Security Council Meeting on U.S. Jerusalem Decision, C-SPAN (Dec. 8, 2017) (video and transcript), <https://www.c-span.org/video/?438368-1/un-security-council-meeting-us-jerusalem-decision>.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018]

MIDDLE EAST 667

declaration was denounced as “null and void,” and East Jerusalem was proclaimed the capital of Palestine.⁸⁴

Recognition of Jerusalem as the capital of Israel is difficult to square with roughly fifty years of U.N. Security Council resolutions intended in part to preclude Israel from asserting sovereignty over Jerusalem, all of which have been supported (or at least not vetoed) by the U.S.⁸⁵ At a December 18, 2017 session, the U.N. Security Council voted 14-1 on a resolution that would have required President Trump to rescind his decision on Jerusalem, with adoption stymied by the U.S.’s veto.⁸⁶ A similar resolution was presented at an emergency session of the 193-member U.N. General Assembly on December 21, 2017.⁸⁷ Although no vetoes are permitted, General Assembly resolutions are not binding, unlike those of the U.N. Security Council.⁸⁸ The global repercussions of President Trump’s decision on Jerusalem will continue to be felt into 2018 and beyond.

84. See, e.g., Carlotta Gall, *Muslim Leaders Declare East Jerusalem the Palestinian Capital*, N.Y. TIMES (Dec. 13, 2017), <https://nyti.ms/2ABUA9E>.

85. See, e.g., Rick Gladstone, *Trump’s Move Departs From U.N. Resolutions on Jerusalem*, N.Y. TIMES (Dec. 7, 2017) (listing and summarizing U.N. resolutions), <https://nyti.ms/2AYR7RQ>.

86. See, e.g., Press Release, *Permanent Member Vetoes Security Council Draft Calling upon States Not to Establish Diplomatic Missions in Jerusalem*, U.N. Press Release SC/13125 (Dec. 18, 2017), <https://www.un.org/press/en/2017/sc13125.doc.htm>; Michael Schwirtz et al., *U.S. Vetoes U.N. Resolution Condemning Move on Israel*, N.Y. TIMES (Dec. 18, 2017), <https://nyti.ms/2kHsW0b>.

87. See, e.g., Mark Landler, *Trump Threatens to End American Aid: “We’re Watching Those Votes” at the U.N.*, N.Y. TIMES (Dec. 20, 2017), <https://nyti.ms/2oXzLQJ>; Haley to UN Members: *US Will Be “Taking Names” on Jerusalem*, ASSOCIATED PRESS (Dec. 20, 2017), <https://nyti.ms/2oZbQQQ>; Edith M. Lederer, *US Vetoes UN Resolution Against Trump’s Jerusalem Decision*, WASHINGTON POST/ASSOCIATED PRESS (Dec. 18, 2017), http://wapo.st/2BcMdBC?tid=ss_mail&utm_term=.ab56362df0fe.

88. See, e.g., Edith M. Lederer, *US Vetoes UN Resolution Against Trump’s Jerusalem Decision*, WASHINGTON POST/Associated Press (Dec. 18, 2017), http://wapo.st/2BcMdBC?tid=ss_mail&utm_term=.ab56362df0fe.

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