

Background

From discovering COVID-19, up until it became a pandemic, the Chinese government took a plethora of actions related to this new virus, which many argue failed to address it effectively. Lawsuits against the Chinese government for this handling have been filed across the U.S. Furthermore, a handful of legislators have drafted bills to allow private citizens to file a claim explicitly for this handling.

This research examines the current framework of Foreign Sovereign Immunity law to determine whether it allows for any pathways for successful suits and explores whether the legislative proposals are likely to become law.

Methodology

We explored Foreign Sovereign Immunity law and analyzed each legislative remedy that attempts to allow these claims to be filed explicitly.

Legal Framework

Foreign Sovereign Immunity law provisions, first passed in 1976, prevent lawsuits against foreign states in U.S. courts unless an exception applies to strip the state's immunity. The most common exceptions apply when a government waives its own immunity, engages in commercial activity, illegally seizes property, commits noncommercial torts, engages in arbitration, or engages in state-sponsored terrorism. Current cases filed against the Chinese government invoke the commercial activity, noncommercial tort, and state-sponsored terrorism exceptions. We explored whether these suits would be fruitful.^[3]



Fig. 1: Representative Dan Crenshaw^[1]



Fig. 2: Senator Martha McSally^[2]

Legislative Remedies

Civil Justice for Victims of Coronavirus Act – Sen. Joshua Hawley
Holding the Chinese Communist Party Accountable for Infecting Americans Act of 2020 – Rep. Dan Crenshaw and Sen. Tom Cotton

Stop China-Originated Viral Infectious Diseases Act of 2020 – Sen. Marsha Blackburn, Sen. Martha McSally, and Sen. Steve Daines

Results

Parties suing the Chinese government for its handling of COVID-19 using current exceptions to Foreign Sovereign Immunity are likely to face great challenges. Furthermore, legislation currently in the works to amend Foreign Sovereign Immunity would likely not become law.

Conclusion

Our aim was to explore legal and legislative pathways for lawsuits against the Chinese government for its handling of COVID-19 and determine whether either would be fruitful.

To answer the first question, we researched Foreign Sovereign Immunity law and analyzed the most litigated exceptions. Based on our research, we concluded that none of the current exceptions to Foreign Sovereign Immunity will likely allow for such a suit.

To answer the second question, we read three bills that seek to modify Foreign Sovereign Immunity law to explicitly allow for these lawsuits. We conclude that they are unlikely to pass the legislative process.

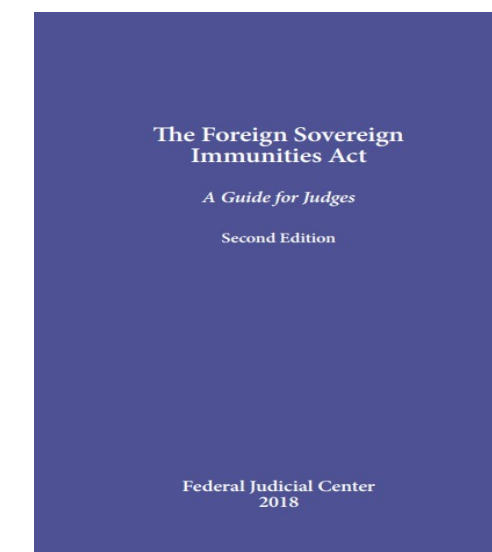


Fig. 3: The Foreign Sovereign Immunities Act; A Guide for Judges^[3]



Fig. 4: President Trump and President Jinping^[4]

References

- 1 "Dan Crenshaw" by Gage Skidmore is licensed under CC BY-SA 2.0
- 2 "Martha McSally" by Gage Skidmore is licensed under CC BY-SA 2.0
- 3 United States, Congress, Stewart, David P. The Foreign Sovereign Immunities Act: a Guide for Judges, Second Edition, Federal Judicial Center, 2018.
- 4 "President Trump at the G20" by The White House is marked with CC PDM 1.0

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