

# Non-State Actors and Cyber Terrorism: Preparing for a Cyber 9/11

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# Cyber Incidents Involving Non-State Actors

- October 2016 Distributed Denial of Service (DDoS) attack of Dyn Inc. temporarily shuts down several popular websites.
  - New World Hackers claim responsibility
- Hack revealing personal information of President Barack Obama and First Lady Michelle Obama.
  - Claimed to have been inspired by ISIL
- ISIL attempts at penetrating U.S.'s electrical grid
  - ISIL further has shown interest in hacking airplanes mid flight and hacks of nuclear power plants
- Concerns of the use of a cyber attack corresponding with a physical terrorist attack

# U.S. Critical Infrastructure

- 16 areas deemed critical infrastructure in U.S. including:
  - Energy
  - Transportation Systems
  - Emergency Services
- Immense variations in number of cyber vulnerabilities among sectors and localities
- Vulnerabilities caused by numerous factors including:
  - Human error
  - Old software and devices

# The Proposal

- An extension of the Foreign Sovereign Immunities Act (FSIA) exceptions
- The extension would allow a foreign government to be held liable for negligently not policing non-state actors who conduct cyber attacks against the United States government, American companies, and American citizens within their borders
  - Similar to the doctrine of *respondeat superior* in the employment context

# Strengths of the Proposal

- Encourages foreign governments to better police those inside their borders
- Would create a judicial structure of publically admonishing states that negligently fail to prevent cyber attacks
- Could help lead to the development of cybersecurity norms among countries
- Would provide a measure of justice to victims of cyber attacks

# Weaknesses of the Proposal

- Attributing cyber attacks is difficult, proving where the attack was launched or who launched it would be expensive, time consuming, and possibly imprecise
  - Cost of attributing would further be bore by plaintiffs
- Implications on the President's Article II powers
- Enforceability would be difficult. Nations would likely not accept the U.S. court's jurisdiction, much less pay damages if found liable