



## Memorandum

March 5, 2004

### **Background**

The "terrorism list" generally refers to the list of countries generated by Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) and currently includes North Korea, Iraq<sup>1</sup>, Iran, Sudan, Syria, Cuba, and Libya. There are two other pieces of legislation related to supporting international terrorism that authorize the Secretary of State to generate a list of countries: Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and Section 40 of the Arms Export Control Act (22 U.S.C. 2780). However, in lieu of drawing up a list, it is understood that the states listed for Section 6(j) also face the restrictions imposed in Section 620A and Section 40. The only slight variation from the original list of seven is another statute, Section 40A of the Arms Export and Control Act (22 U.S.C. 2781), which prohibits the licensing or selling of defense articles or defense services to any country that the President finds "is not cooperating fully with the U.S. antiterrorism efforts." Iraq was recently removed from the separate, annually-published Section 40A list.

Sanctions are imposed on North Korea for reasons other than those specifically relating to terrorism; Pyongyang also faces sanctions because it is a Marxist-Leninist state [Export-Import Bank Act of 1945(P.L. 79-173; 12 U.S.C. 635(b)(2))], is considered a threat to U.S. security [Trading with the Enemy Act (P.L. 65-91; 50 U.S.C. App. 1 *et seq.*) and National

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<sup>1</sup> For Iraq, statutes that authorize the imposition of sanctions because of its support of terrorism were made inapplicable by Section 1503 of P.L. 108-11 (117 Stat. 57g). Thus, the President waived the application of Section 6(j) and others on May 7, 2003; this authority expires on September 30, 2004.

Emergencies Act (P.L. 94-412; 50 U.S.C. 1601 *et seq.*)), and has engaged in the proliferation of weapons of mass destruction [Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2797b), Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2410b), and Iran Proliferation Act of 2000 (P.L. 106-178; 50 U.S.C. 1701 note).]<sup>2</sup>

### North Korea's Inclusion on Terrorism List

North Korea was added to the 6(j) list by then-Secretary of State George Shultz after the 1987 bombing of Korean Airlines flight 858 by two North Korean agents. According to the 2002 *Patterns of Global Terrorism*<sup>3</sup> report released by the State Department, North Korea remains on the list of state sponsors of terrorism because it:

- has failed to take substantial steps to combat terrorism and provided "uninformative and nonresponsive" reports to the U.N. Counterterrorism Committee on actions undertaken to combat terrorist financing;
- has sold weapons to terrorist groups;
- has provided safe haven to Japanese Red Army members who hijacked a Japan Airlines flight in 1970; and
- continued to sell ballistic missile technology to other state sponsors, including Syria and Libya.

The report states that North Korea is not known to have sponsored any terrorist acts since 1987. In 2000, the report specified that, according to statements by Philippine officials, North Korea had sold weapons to the Moro Islamic Liberation Front. The 1999 report stated that North Korea "maintained links to Usama Bin Ladin and his network," but there has been no mention of such a connection since.

North Korea has reportedly provided sanctuary to four remaining members of the Red Army, an ultra-leftist wing of Japan's radical student movement in the 1960's that was disbanded in 2001 after the arrest of its founder. Japanese authorities suspect that the hijackers have been used to train North Korean agents in language and culture, and may have helped to abduct Japanese nationals in the 1970's and 1980's. Three of the hijackers' spouses and several children have now returned to Japan, and the hijackers themselves announced their desire to return in September 2002. Negotiations for their release have not taken place. Some analysts viewed Pyongyang's decision in 2002 to allow the hijackers to return to Japan as an effort to get themselves removed from the terrorism list.

### Consequences for Listed States

According to State Department's 2002 *Patterns of Global Terrorism* report, being on the terrorism list imposes four main sets of U.S. government sanctions:

<sup>2</sup> See CRS Report RL31696, *North Korea: Economic Sanctions*, by Dianne E. Rennack. January 2003.

<sup>3</sup> *Patterns of Global Terrorism* reports can be accessed at <http://www.state.gov/s/ct/rls/pgtrpt/>.

- A ban on arms-related exports and sales
- Controls over exports of dual-use items, requiring 30-day congressional notification for goods or services that could significantly enhance the terrorism list country's military capability or ability to support terrorism
- Prohibitions on economic assistance
- Imposition of miscellaneous financial and other restrictions, including:
  - requiring the United States representatives to oppose loans by the World Bank and other international financial institutions (IFIs);
  - lifting diplomatic immunity to allow families of terrorist victims to file civil lawsuits in U.S. courts;
  - denying companies and individuals tax credits for income earned in terrorism list countries;
  - denial of duty-free treatment for goods exported to the United States;
  - authority to prohibit any U.S. person from engaging in a financial transaction with a terrorism list government without a Treasury Department license; and
  - prohibiting Defense Department contracts above \$100,000 with companies controlled by terrorism list states.

Because of relatively little bilateral trade or commercial activity between the United States and North Korea, perhaps the most significant of these restrictions for Pyongyang is the obligation for Washington to oppose the authorization of loans by international financial institutions. President Clinton lifted most aspects of the economic embargo in 1999, but trade and investment have remained very low, due primarily to the negative investment environment and Pyongyang's failure to institute market-oriented reforms.<sup>4</sup>

### **Removal Procedures and Precedents**

The law specifies a procedure to remove a country from the list. The executive branch must notify Congress (by submitting a report to the House Committee on International Relations and the Senate Committees on Banking, Housing, and Urban Affairs, and Foreign Relations) before removal from a list, and Congress then has the option to initiate legislation to block removal. If the same government is in power in the country in question, the President's report must certify that the country has not supported international terrorism in the previous six months and that the government has provided assurances that it would not support terrorism in the future. The executive branch has not proposed a removal from the list since the establishment of the above procedure in 1989.

Precedents for removal from the 6(j) list are not clear. North Yemen was removed from the list when it united with South Yemen in 1990. Iraq was removed in 1982 while the United States was supporting it in a war against Iran, but then reinstated in 1990. Some observers have asserted that Administration authorities are concerned that North Korea's removal from the list would raise questions about removal of other controversial countries such as Cuba, while others suggest that the executive branch is disinclined to confront Congress over a potential removal.

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<sup>4</sup> See CRS Report RL31785, *U.S. Assistance to North Korea*, by Mark E. Manyin. March 2003.

In October 1999, the Clinton Administration announced a new effort, headed by former Secretary of Defense William Perry, to verify that North Korea was not pursuing a clandestine nuclear weapons program and to seek an end to North Korea's missile program. Benefits to Pyongyang would include normalization of United States-North Korea relations. In negotiations with Pyongyang in 2000, Administration officials outlined four steps that North Korea had to take in order to be removed from the terrorism list, a necessary step to pursue eventual normalization of relations:

1. Issue a written guarantee that it no longer engages in terrorism;
2. Provide evidence that it has not engaged in any terrorist act in the past six months;
3. Join international anti-terrorism agreements; and
4. Address issues of past support of terrorism.

### North Korea's Record Since 2000

North Korea appears to have satisfied some of the requirements demanded by U.S. officials in 2000. Pyongyang reiterated its policy of opposing and refusing to support terrorism. It also signed the U.N. Convention for the Suppression of the Financing of Terrorism and became a party to the U.N. Convention Against the Taking of Hostages in 2001. The State Department has acknowledged that North Korea is not known to have participated in a terrorist act since 1987. In testimony before the Senate Foreign Relations Committee on March 2, 2004, Assistant Secretary of State James Kelly stated, "...there is not recent evidence of which I'm aware of terrorist acts being directly supported by the DPRK."

Most of North Korea's past involvement in terrorism involved South Korean victims: the assassination of South Korean cabinet members and other officials in Rangoon in 1983, the bombing of a Korean airliner in 1987, assassination of political figures in South Korea, and hundreds of abductions of South Korean citizens. South Korea has voiced its support for North Korea's removal from the terrorism list, taking the position that these past acts are inter-Korean issues to be resolved on a bilateral basis.<sup>5</sup>

Since the 2003 *Patterns of Global Terrorism* report was released, press reports have claimed that North Korean agents in Bangkok attempted to kidnap the son of a North Korean defector. The defector had smuggled out documents alleging the testing of chemical weapons on prisoners in North Korean camps.<sup>6</sup> This incident, if verified, could fall within the State Department's definition of a terrorist act.

### Abduction of Japanese Nationals

North Korea's presence on the terrorism list has become a fundamental issue in the United States-Japan alliance, specifically focused on the abduction of several Japanese by North Korea in the 1970's. In 2000, Japan insisted that the United States include the

<sup>5</sup> "Obstacles to DPRK Ties with US, Japan Said Being Removed," *Chungang Ilbo*, March 15, 2000.

<sup>6</sup> "North Korea Tested Poison Gas on Prisoners," *Dow Jones Newswires*, February 11, 2004.

abductions in considering whether to de-list Pyongyang; former Secretary of State Madeline Albright then raised the abductions issue with Kim Jong Il in their 2000 meeting in a major show of support for Japan.<sup>7</sup> In the ongoing six-party talks, Tokyo has stated that it will not participate in any aid plan to North Korea without "progress" on the abduction issue.

Although the abductions have not been cited in the *Patterns of Global Terrorism* reports, Richard Armitage, Deputy Secretary of State, called abductions a "terrorist-like act" and Cofer Black, Coordinator for Counterterrorism at the State Department, reportedly stated at a press conference that "We certainly stand by our designation of North Korea as a sponsor of terrorism, and our hearts go out to those that were abducted and their family members."<sup>8</sup> In addition, kidnapping incidents in other countries are mentioned in the chronology of terrorist events appended to each year's report, indicating that abduction falls within the category of a terrorist act.

### Linkage of Terrorism List with Other Issues

Although the Administration's language has thus far not made an explicit connection between the terrorism list and North Korea's nuclear weapons program, a political linkage has developed as a result of the ongoing negotiations. The North Koreans themselves have linked the two, offering a freeze of its plutonium program in exchange for, among other things, removal from the list. The Bush Administration has preconditioned its offer to discuss aid options, which would most likely include help from IFIs, to a settlement of the nuclear issue. In order for the United States support a plan providing aid to Pyongyang from the IFIs, North Korea would have to be removed from the list.

A host of other issues, including proliferation, drug trafficking, counterfeiting, and human rights might be approached in a similar way. If the Administration is expanding its definition of terrorism to include issues like these, the requirements for removal from the list may become significantly more stringent. On the other hand, the Administration would likely face pressure to revisit the status of many non-listed countries that are among the most flagrant proliferators, drug traffickers, and human rights violators. The 2003 *International Narcotics Control Strategy Report*, recently released by the State Department, postulates that evidence of official involvement in trafficking incidents makes it "highly likely, but not certain, that Pyongyang is trading narcotic drugs for profit as state policy."<sup>9</sup> The 2003 *Human Rights Practices* report from the State Department notes that North Korea's human rights record in 2003 continued to be very poor and characterizes the regime as "one of the world's most inhumane." Were the Administration to make the case that strong linkages exist between terrorism and other areas of concern, de-listing might require Pyongyang to address a much more expanded agenda of abuses by the regime.

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<sup>7</sup> See "North Korea and Terrorism: The Yokota Megumi Factor," by Larry Niksch in *The Korean Journal of Defense Analysis, Special Issue on Terrorism*. Vol. XIV, No. 1, Spring 2002.

<sup>8</sup> "US Shows Sympathy for Japan Abduction Victims," *Jiji Press*. April 30, 2003.

<sup>9</sup> 2004 International Narcotics Control Strategy Report, released by the Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State. March 2004.