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North Korea: Terrorism List Removal?

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Summary

The issue of North Korea's inclusion on the U.S. list of terrorism-supporting countries has arisen twice in recent U.S.-North Korean diplomacy. In 2000, North Korea demanded that the Clinton Administration remove North Korea from the terrorism-support list before North Korea would send a high level envoy to Washington and accept the Clinton Administration's proposal to begin negotiations with the United States over the North Korean missile program. In 2003, multilateral negotiations involving six governments began over North Korea's nuclear programs in the wake of North Korea's actions to terminate its obligations under the Nuclear Non-Proliferation Treaty and the 1994 U.S.-North Korean Agreed Framework. In the six party talks, North Korea demanded that in return for a North Korean "freeze" of its plutonium nuclear program, the United States agree to a number of concessions, including removing North Korea from the U.S. terrorism-support list.

During the 2000 negotiation, the Clinton Administration heeded the urgings of Japan to keep North Korea on the terrorism-support list until North Korea satisfied Japan regarding North Korean terrorist acts against Japan, especially the kidnapping of Japanese citizens. In June 2004, the Bush Administration tabled a proposal to settle the North Korean nuclear issue through the complete dismantlement of North Korea's nuclear programs. Once North Korea had undertaken several specified actions leading toward dismantlement, the United States would negotiate over the terrorism-support list. The linkage of North Korea's inclusion on terrorism-support list with the six party talks raises a number of existing or potential linkages for the United States. In addition to linkage with settlement of the nuclear issue, there are potential linkages to U.S. concerns over North Korea's proliferation of weapons of mass destruction and the settlement of other non-nuclear issues. Moreover, Japan's important role in the six party talks and potential role in any nuclear settlement has increased the importance of the kidnapping issue. North Korea admitted to kidnappings of Japanese in September 2002 and agreed to the release of five victims and their families. However, key issues remain unsettled, especially the status of eight kidnapped Japanese whom North Korea has declared to be dead. In April 2004, the State Department designated the kidnapping of Japanese as an official reason for North Korea's inclusion on the U.S. list of terrorism-supporting states.

Assuming clearly announced and demonstrated changes in DPRK policies supportive of terrorism — a scenario which may occur within the next several years and possibly sooner — Administration policymakers would face a number of options which include (1) waiting, doing nothing, and retaining North Korea on both the "state sponsors" of terrorism list and the nations "not fully cooperating" list; (2) downgrading the DPRK to the "not fully cooperating" category; (3) easing sanctions subject to presidential waiver; and (4) removing the DPRK from both lists. Congress would have a direct role in a removal of North Korea from the terrorism list, since the executive branch must notify Congress before actual removal and Congress would have the option to initiate legislation to block removal.

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North Korea: Terrorism List Removal?

Background

U.S.-North Korean Negotiations

Two Stages in Diplomacy over the Terrorism List. The issue of North Korea's inclusion on the U.S. list of terrorism-supporting countries has arisen twice in U.S.-North Korean diplomacy, but the two stages are recent: the first in 2000 and the second in 2003-2004. Until 2000, the core element of U.S.-North Korean diplomacy was the Agreed Framework, which Washington and Pyongyang signed in October 1994. It dealt primarily with North Korea's nuclear program, but U.S. obligations specified in the Agreed Framework included economic and diplomatic measures. However, the issue of removal of North Korea from the U.S. terrorism list was omitted from the Agreement. The issue appears not to have been a major object of the negotiations in 1994.

In October 1999, the Clinton Administration unveiled the Perry Initiative toward North Korea. Formulated under the direction of William Perry, former Secretary of Defense, the Perry initiative primarily sought a new round of U.S.-North Korean negotiations over North Korea's missile program. The Perry Initiative report of October 1999 stated that if North Korea agreed to a "verifiable cessation" of its missile program, the United States would provide a series of economic and diplomatic benefits to North Korea leading to normalization of U.S.-North Korean relations.¹

The Clinton Administration sought an early visit of a high level North Korean official to Washington to obtain substantive negotiations.² North Korea, however, began to demand several pre-conditions for a high level visit. Beginning in February 2000, one of these was removal of North Korea from the U.S. list of terrorism-supporting countries. North Korea reportedly persisted in this demand well into the summer of 2000 before finally relenting. The high level envoy visited Washington in October 2000.

The terrorism list issue receded until 2003 when a new round of U.S.-North Korean diplomacy ensued. This round was precipitated by the Bush Administration's claim that North Korea admitted in October 2002 to U.S. diplomats that it was operating a secret uranium enrichment program. The Administration declared the

¹ *Review of United States Policy Toward North Korea.* Report by Dr. William J. Perry, Special Advisor to the President and the Secretary of State. October 12, 1999.

² Pomfret, John. North Korea Threatens To Skip Talks. *Washington Post.* March 29, 2000. p. A20.

secret program a violation of the Agreed Framework and began to end U.S. obligations under the Agreed Framework. North Korea retaliated by reopening nuclear facilities that had been frozen under the Agreed Framework, expelling monitors of the International Atomic Energy Agency, and withdrawing from the Nuclear Non-Proliferation Treaty. Multilateral negotiations began in April 2003 hosted by China and ultimately involving six governments (the United States, North Korea, South Korea, China, Russia, and Japan). At six party talks in August 2003, North Korea repeated its tactic of 2000, using U.S. concerns over North Korean weapons of mass destruction as leverage to demand that the United States remove North Korea from the terrorism-support list. This time, North Korea demanded that in return for North Korean concessions on the nuclear issue, the United States agree to a number of U.S. concessions, including removing North Korea from the list. North Korea made its demand more specific in December 2003 when it issued a revised proposal centered on a “freeze” of North Korea’s plutonium nuclear programs (but not the uranium enrichment program). This proposal restated North Korean demands for multiple concessions in return for a freeze. Removal from the terrorism support list was near the top of the list.³ North Korea reiterated its demand at the six party meetings in February and June 2004 in the context of its freeze proposal.

In both 2000 and 2003-2004, a chief North Korean motive in demanding removal from the terrorism-support list apparently has been to increase its prospects of securing financial aid from international financial agencies such as the World Bank and the International Monetary Fund. U.S. legislation mandates that the United States oppose such financial aid to any state on the terrorism-support list. (See section on State Sponsors/Supporters List, p. 7-8.) Since the deterioration of the North Korean economy in the mid-1990s, North Korea has consistently sought financial and economic subsidies in its dealings with numerous governments and private institutions.

North Korea probably calculated that it could secure a removal from the U.S. terrorism-support list in return for only modest concessions to the U.S. side: the high level envoy’s visit in 2002 and a limited freeze of North Korea’s plutonium program in 2004 that would not cover the entirety of the plutonium program (apparently omitting the 8,000 fuel rods that North Korea removed from monitored storage in early 2003) and completely omit its secret uranium enrichment program. However, Pyongyang failed to calculate the importance of the Japanese kidnapping issue in 2000; and in 2003-2004, its insertion of the terrorism issue into the six party talks gave the United States an opportunity to integrate the terrorism issue into the U.S. agenda regarding nuclear programs, missiles, and other weapons of mass destruction.

U.S. Responses: The Clinton Administration in 2000. The Clinton Administration reportedly presented to North Korea in February 2000 four steps that North Korea would have to take to be removed from the terrorism list: (1) issue a written guarantee that it no longer is engaged in terrorism; (2) provide evidence that it has not engaged in any terrorist act in the past six months; (3) join international

³ North Korean Foreign Ministry statement on talks. Reuters News Agency, December 9, 2003.

anti-terrorism agreements; and (4) address issues of past support of terrorism.⁴ In consulting U.S. allies, South Korea stated that the United States need not consider North Korean terrorism against South Korea in responding to North Korea's demand and that the Kim Dae-jung administration in Seoul favored removal of North Korea from the U.S. list of terrorism-supporting countries.⁵ The Kim Dae-jung administration voiced support for North Korea receiving assistance from international financial institutions. Japan, however, strongly urged the Clinton Administration to make a redress of North Korean terrorist acts against Japan conditions for removing North Korea from the list. Japan specifically cited North Korea's kidnapping of at least ten Japanese citizens and North Korea's harboring of Japanese Red Army terrorists since the 1970s.⁶ The U.S. State Department had cited North Korea's harboring of Japanese Red Army terrorists as a reason for North Korea's inclusion on the U.S. list of terrorism-supporting states. A State Department official stated on April 25, 2000, that the United States considers "resolving this issue as an important step in addressing [U.S.] concerns about North Korean support of terrorism."⁷ Moreover, according to informed sources, U.S. officials began to raise the kidnapping issue with the North Koreans in negotiations over the terrorism list.

Japan intensified diplomacy on the terrorism issue in September and October 2000 as the United States prepared to receive the high ranking North Korean official and as Japan prepared for bilateral normalization talks with North Korea. Japan urged the Clinton Administration to raise Japan's concerns over terrorism in the high level U.S.-North Korean exchanges of October 2000 and not to remove North Korea from the terrorism list.⁸ The visit to Washington of North Korean military leader, Jo Myong-rok on October 9-12, 2000, produced two general U.S.-North Korean statements opposing terrorism. However, the State Department's North Korea policy coordinator, Wendy Sherman, said on October 12 that Secretary Albright's planned visit to Pyongyang did not mean that the Clinton Administration would remove North Korea from the terrorism list. North Korea, she said, "knows what it needs to do."⁹

The impact of Japan's entreaties were demonstrated during Albright's visit to North Korea. In the first ever meeting between an American official and North Korean leader, Kim Jong-il, Albright raised the issue of the kidnaped Japanese. She reported to Japanese Foreign Minister Kono Yohei that in her meetings with Kim Jong-il, "I brought up the [abduction] issue time and again. I told him that this issue

⁴ Agence France Presse (Hong Kong) report, February 8, 2000. Yonhap News Agency (Seoul) report, February 8, 2000.

⁵ ROK to press US to remove DPRK from terrorism list. *Korea Herald*, internet version, June 21, 2000.

⁶ U.S. to question DPRK on kidnappings of Japanese nationals. Jiji News Agency (Tokyo) report, February 16, 2000.

⁷ U.S. Department of State Daily Press Briefing [by James P. Rubin], Apr. 25, 2000. p. 8.

⁸ Varied Aspects of Japan-North Korean Relations. *Mainichi Shimbun* (Nikkei Telecom Database version), October 28, 2000. Jiji Kokkoku Column. *Asahi Shimbun* (internet version), October 8, 2000.

⁹ Carter, Tom. Clinton Plans First-ever Presidential Trip to North Korea. *Washington Times*, October 13, 2000. P. A1.

was important not only to Japan but also to the United States as well.” Kono reportedly expressed satisfaction, saying “She seems to have thought about Japan.”¹⁰

The Clinton Administration thus decided in late 2000 to give Japan’s concerns over terrorism a higher priority in U.S. negotiations with North Korea over the U.S. terrorism list. This, in effect, lowered the priority of South Korea’s position in U.S. policy.

U.S. Responses: The Bush Administration. There have been at least three components to the Bush Administration’s policy regarding North Korea’s inclusion on the terrorism-supporting list. The first has been the U.S. response to North Korea’s demand at the six party talks for removal from the list. A second has been the raising by U.S. officials of the danger that North Korea would provide nuclear, biological, or chemical weapons to terrorist groups like Al Qaeda. The third has been the designation of the Japanese kidnapping issue as an official reason for North Korea’s inclusion on the list of terrorism-supporting countries.

Until June 2004, the Bush Administration took the position that it would not discuss issues in U.S.-North Korean relations, including the terrorism-support list, until North Korea agreed to and took concrete steps to dismantle its nuclear programs. In line with this stance, the Administration refused to submit any comprehensive U.S. proposal at the six party talks. The Administration’s position changed in June 2004, apparently because of pressure from U.S. allies, Japan and South Korea, and heightened criticism of the Administration’s position from China. At the six party meeting in June 2004, the Administration proposed a detailed plan in which North Korea would freeze its nuclear programs and submit to international verification during a three-month preparatory period followed by a full dismantlement of all nuclear programs. Once North Korea had met the requirements of the preparatory period, the United States would begin negotiations with North Korea on other issues, including the terrorism-support list.¹¹

Neither the Administration’s proposal nor statements by U.S. officials set forth specific conditions under which the United States would remove North Korea from the U.S. list of terrorism-supporting countries. There are four sets of issues that could come into play in any U.S.-North Korean negotiation. One, of course, is the nuclear issue. If U.S.-North Korean negotiations began in the preparatory period specified in the Administration’s proposal, the issue then likely would be the degree of progress toward physical dismantlement of North Korea’s nuclear programs before the United States actually would remove North Korea from the terrorism support list.

A second issue likely would be the Administration’s concern over the danger of North Korean proliferation of weapons of mass destruction to terrorist groups.¹²

¹⁰ Varied Aspects of Japan-North Korean Relations, *Mainichi Shimbun*, October 28, 2000.

¹¹ U.S. Congressional Research Service. North Korea’s Nuclear Program. CRS Issue Brief IB91141. Regularly updated.

¹² Gertz, Bill. Korea, al Qaeda union a threat. *Washington Times*, April 1, 2004. p. A5.
(continued...)

If the Administration raised this in connection with the terrorism-support list, it would have to decide the scope of its requirements in at least three areas. One would be the overall nature of guarantees that North Korea would not proliferate. A second would be a verification mechanism that probably would contain elements different from a verification mechanism related to North Korea's internal nuclear programs. A third would be whether a North Korea guarantee against non-proliferation would apply to other states that reportedly have received North Korean missile and/or nuclear technology. These states include Pakistan, Iran, and Syria, all of which have ties to terrorist groups.

A third issue could be a linkage between the settlement of other non-nuclear issues at the six party talks and settlement of the terrorism-support list issue. North Korea's missile program is of particular importance to the United States and Japan. The United States also is concerned over North Korea's chemical and biological weapons programs. The United States would have to decide how closely to link North Korean dismantlement of these programs to a settlement of the terrorism-support list issue.

Fourth, the Bush Administration has linked North Korea's kidnapping of Japanese citizens to the six party talks and to the terrorism-support list. When the Bush Administration took office in 2001, it assured Japan, including the families of suspected kidnapping victims, that the United States would continue to raise the kidnapping issue with North Korea and would not remove North Korea from the U.S. list of terrorism-supporting countries.¹³ In the six party talks, U.S. Assistant Secretary of State James Kelly stated several times to the North Korean delegates that North Korea should settle the kidnapping issue with Japan. In April 2004, the State Department designated the kidnapping of Japanese as an official reason for North Korea's inclusion on the U.S. list of terrorism-supporting countries.¹⁴

In mid-2002, Japan and North Korea went into secret negotiations regarding the kidnapping issue. In September 2002, Prime Minister Koizumi Junichiro flew to Pyongyang where North Korean leader Kim Jong-il admitted that North Korea had abducted 13 Japanese citizens; of these, he claimed that eight had died and that five were alive. The five subsequently went to Japan. In May 2004, Koizumi again traveled to Pyongyang and secured the release of six children of the five Japanese.

The Bush Administration supported Koizumi's efforts but reportedly cautioned him not to reciprocate with financial aid to North Korea before the nuclear and missile issues with North Korea were resolved. The Administration urged Koizumi

¹² (...continued)

Entous, Adam. Cheney asks China to help bring Nkorea talks to head. Reuters News Agency, April 14, 2004. Vice President Cheney stated in China that "We worry...that North Korea could well, for example provide this kind of technology to someone else or possibly to, say, a terrorist organization."

¹³ National Association for the Rescue of Japanese Kidnaped by North Korea. Report of Mission to the U.S. from February 25 to March 3, 2001.

¹⁴ U.S. Department of State. *Patterns of Global Terrorism 2003*. p. 92.

prior to each visit to press North Korea for policy changes on the nuclear issue.¹⁵ In return for the return of the children of kidnapping victims in May 2004, Koizumi offered North Korea 250,000 tons of food aid.

These urgings pointed up the overall importance of Japan to U.S. policy toward North Korea and thus the broader influence of the kidnapping issue. As far back as the Perry initiative in 1999-2000, U.S. officials acted on the assumption that any settlement of the nuclear and missile issues with North Korea would require a major Japanese financial contribution. As a participant in the six party talks, Japan is important to the United States in exerting influence and pressure on North Korea to agree to a complete dismantlement of its nuclear programs. Japan would be crucial in any settlement of the nuclear and/or missile issues that involved reciprocal economic/financial benefits to North Korea. As far back as the Perry initiative in 1999-2000, U.S. officials acted on the assumption that any settlement of the nuclear and missile issues with North Korea would require a major Japanese financial contribution.¹⁶ Japan has promised North Korea billions of dollars in aid as part of a normalization of relations; but Japan has specified that normalization depends on a settlement of the nuclear, missile, and kidnapping issues.¹⁷ At the six party talks in June 2004, the Bush Administration put forth a detailed settlement proposal under which North Korea would receive heavy oil in the initial stage of a settlement process, financed by Japan and South Korea. The United States also offered North Korea negotiations on resolving North Korea's broader energy and electricity needs, which also undoubtedly would require a substantial Japanese financial input. On the other hand, the Bush Administration has discussed with Japan the imposition of economic sanctions on North Korea. The Administration considers Japanese participation as crucial to the effectiveness of any future policy of applying economic sanctions on North Korea and interdicting North Korea's foreign arms and drug trade. Japan joined the Proliferation Security Initiative in 2003, which President Bush proposed to stifle the proliferation activities of states like North Korea.

Thus, the diplomatic moves since 2002 by Japan, North Korea, and the United States have been linked directly to the six party talks and the nuclear issue. Future developments regarding the kidnapping issue will continue to affect Japan-U.S. cooperation in dealing with North Korea. Now, given North Korea demand for removal from the terrorism-supporting list at the six party talks, the progress Koizumi has made on the kidnapping issue, and the U.S. designation of the kidnapping issue as an official reason for North Korea remaining on the terrorism-supporting list, the issue has emerged of the remaining requirements for a settlement of the kidnapping issue and how a settlement would affect overall Japanese policy. The most apparent requirement is a resolving of the status of the eight kidnapped

¹⁵ Japan, U.S. agree to put pressure on Pyongyang. Yonhap New Agency, May 1, 2004. Japan PM says Bush supportive on North Korea trip. Reuters News Agency, September 12, 2002. Koizumi's N. Korea gamble. The Nelson Report, September 3, 2002.

¹⁶ Nicksch, Larry A. North Korea and Terrorism: The Yokita Megumi Factor. *The Korean Journal of Defense Analysis*. Spring 2002. p. 14-16.

¹⁷ For Prime Minister Koizumi's recent statement of these conditions, see Kim, Jack and Kitano, Masayuki. Japan, S. Korea urge N. Korea to move on crisis. Reuters News Agency, July 22, 2004.

Japanese whom Kim Jong-il declared to be dead in 2002. Japanese harbor doubts about the truthfulness of Kim's claim, and these doubts were enlarged by North Korea's subsequent claims that the remains of all eight had been washed away by floods and were not available for identification. A less certain requirement is the publicized claim in Japan that North Korea has kidnapped up to several hundred Japanese. The Japanese government's position on resolving this question is unclear.

Terrorist State Activity Designations

In April 2004, the Department of State sent to Congress its annual *Patterns of Global Terrorism* report [*Patterns 2003*].¹⁸ North Korea is prominently mentioned in the Department of State's yearly *Patterns* reports, which include data on terrorist trends and activity worldwide and serve as the basis for the U.S. list of state sponsors of terrorism which are subject to U.S. sanctions. Emerging, or ongoing, problem "areas of concern" are identified as well.

In addition to data on terrorist trends, groups, and activities worldwide, *Patterns* reports provide a description as to why countries are on the U.S. list of state sponsors of terrorism that are subject to U.S. sanctions. Thus, included in *Patterns* are detailed data on the seven countries currently on the "terrorism list": Cuba, Iran, Iraq,¹⁹ Libya, North Korea, Sudan and Syria.²⁰ U.S. Administration officials maintain that the practice of designating and reporting on the activities of the state sponsors of terrorism list and concomitant sanctions policy has contributed significantly to a reduction in the overt — and apparently overall — activity level of states supporting terrorism in the past decade. Libya and Sudan are frequently cited as examples of such success, but to date, not North Korea. North Korea is also included on a concomitant list of states "not fully cooperating" with U.S. anti-terrorism efforts. This list includes the seven state sponsors of terrorism and Afghanistan.

¹⁸ *Patterns* is an annual report to Congress required by Title 22 of the United States Code, Section 2656f(a). See [<http://www.state.gov/s/ct/rls/pgtrpt/2003/>].

¹⁹ Note that Iraq is expected to be removed from the terrorism list as soon as it has its own government in place that pledges not to support terrorist acts in the future.

²⁰ The degree of support for, or involvement in, terrorist activities typically varies dramatically from nation to nation. In 2003, of the seven on the U.S. terrorism list, Iran continued to be characterized on one extreme as an active supporter of terrorism: a nation that uses terrorism as an instrument of policy or warfare beyond its borders. Closer to the middle of the spectrum is Syria. Although not formally detected in an active role since 1986, *Patterns* reports that the Assad regime reportedly uses groups in Syria and Lebanon to export terror into Israel and allows groups to train in territory under its control. On the less active end of the spectrum, one might place countries such as Cuba or North Korea, which at the height of the Cold War were more active, but in recent years have seemed to settle for a more passive role of granting ongoing safe haven to previously admitted terrorists. Also at the less active end of the spectrum, and arguably falling off it, are Libya and notably Sudan, which reportedly has stepped up counterterrorism cooperation with the United States. An area of concern for some observers is the impact DPRK removal from the state sponsors list may have on prospects for Cuba's removal.

State Sponsors/Supporters List

North Korea remains one of seven countries currently on the list that the Secretary of State maintains have “repeatedly provided support for acts of international terrorism.” Data supporting this list are drawn from the intelligence community. Listed countries are subject to severe U.S. export controls — particularly of dual-use technology and selling them military equipment is prohibited. Providing foreign aid under the Foreign Assistance Act is also prohibited. Section 6(j) of the 1979 Export Administration Act stipulates that a validated license shall be required for export of controlled items and technology to any country on the list, and that the Secretaries of Commerce and State must notify the House Committee on Foreign Affairs, and the Senate Committees on Banking, Housing, and Urban Affairs, and Foreign Relations at least 30 days before issuing any validated license for goods and services that could significantly enhance a nation’s military capability or its ability to support terrorism as required by this act.²¹ In addition, Section 509(a) of the 1986 Omnibus Diplomatic Security and Antiterrorism Act (P.L. 99-399) bars export of munitions list items to countries on the terrorism list.

A restriction potentially related to North Korea is found in Section 1621 of the International Financial Institutions Act (P.L. 95-118). Entitled “Opposition to Assistance by International Financial Institutions to Terrorist States,” Section 1621 states: “The Secretary of the Treasury shall instruct the United States executive director of each international financial institution to use the voice and vote of the United States to oppose any loan or other use of the funds of the respective institution to or for a country for which the Secretary of State has made a determination under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961.” In short, the United States must oppose financial assistance from institutions like the World Bank and the International Monetary Fund to any state on the U.S. terrorism list. Given the influence of the United States in these institutions, U.S. opposition would constitute in effect a veto against any proposals for financial aid to North Korea. Section 1621, however, does not require the United States to oppose North Korean membership in the IMF and World Bank. North Korean membership is the near term goal of the South Korean government, which views this as an initial step toward financial aid.

Nations Not Fully Cooperating Category

The DPRK also remains on a list (required by P.L. 104-132), which prohibits, absent a presidential waiver, the sale of arms to nations not fully cooperating with U.S. anti-terrorism efforts.²²

²¹ The interpretation of these “significant dual use items”, especially when items such as aircraft parts are involved, is often the subject of considerable discussion within the executive branch as well as the subject of informal consultations with Congress.

²² Periodically, discussions have been held under differing administrations to provide for graduated sanctions within this category to make it a more effective tool, but no substantive action, to date, has been taken on this issue. Note that P.L. 104-132 also requires the withholding of foreign assistance to nations providing lethal military aid to countries on the
(continued...)

Adding and Removing Countries on the List

In late January each year, under the provisions of Section 6(j) of the Export Administration Act of 1979, as amended, the Secretary of Commerce, in consultation with the Secretary of State, provides Congress with a list of countries supporting terrorism. Compilation of the list is the result of an ongoing process. Throughout the year the Department of State gathers data on terrorist activity worldwide, and then beginning about November, the list is formally reviewed. Each new determination under Section 6(j) of the act must also be published in the *Federal Register*.

Congressional report language provides guidelines for designation. A House Foreign Affairs Committee report approving the Anti-Terrorism and Arms Export Amendments Act of 1989 (H.Rept. 101-296) included as criteria (1) allowing territory to be used as a sanctuary; (2) furnishing lethal substances to individuals/groups with the likelihood that they will be used for terrorism; (3) providing logistical support to terrorists/groups; (4) providing safe haven or headquarters for terrorists/organizations; (5) planning, directing, training or assisting in the execution of terrorist activities; (6) providing direct or indirect financial support for terrorist activities; and (7) providing diplomatic facilities such as support or documentation to aid or abet terrorist activities. A Senate report had similar criteria (S.Rept. 101-173).

Paragraph 6(j)(4) of the Export Administration Act prohibits removing a country from the list unless the President first submits a report to the House Committee on Foreign Affairs, and the Senate Committees on Banking, Housing, and Urban Affairs, and Foreign Relations. When a government changes (i.e., a government is significantly different from that in power at the time of the last determination), the President's report, submitted before the proposed rescission would take effect, must certify that (1) there has been a fundamental change in the leadership and policies of the government of the country concerned (an actual change of government as a result of an election, coup, or some other means); (2) the new government is not supporting acts of international terrorism; and (3) the new government has provided assurances that it will not support acts of international terrorism in the future.

When the same government is in power, the current situation with North Korea, the President's report — submitted at least 45 days before the proposed rescission would take effect — must justify the rescission and certify that (1) the government concerned has not provided support for international terrorism during the preceding six-month period; and (2) the government concerned has provided assurances that it will not support acts of international terrorism in the future. Congress can let the President's action take effect, or pass legislation to block it, the latter most likely over the President's veto. Since enactment of this procedure in 1989, no such removal has been proposed by an Administration, hence to date, Congress has not considered such blocking legislation or resolution.

²² (...continued)
list of state sponsors.

A complex challenge facing those charged with compiling and maintaining the list is the degree to which diminution of hard evidence of a government's active involvement indicates a real change in behavior, particularly when a past history of active support or use of terrorism as an instrument of foreign policy has been well established. For example, Iraq, which was removed in 1982, was again placed on the list in 1990. Some observers suggest that one reason that countries have not been dropped from the list is the reluctance of the executive branch to confront Congress on the issue.

Rationale and Background for DPRK Retention on the Two Lists

North Korea was added to the "official" list of countries supporting terrorism because of its implication in the bombing of a South Korean airliner on November 29, 1987, which killed 115 persons. According to the State Department, North Korea is not conclusively linked to any terrorist acts since 1987. A North Korean spokesman in 1993 condemned all forms of terrorism, and said his country resolutely opposed the encouragement and support of terrorism. A similar statement was made in November 1995.

Patterns 1999 in its section on North Korea notes that

The Democratic People's Republic of Korea (DPRK) continued to provide safehaven to the Japanese Communist League-Red Army Faction members who participated in the hijacking of a Japanese Airlines flight to North Korea in 1970. P'yongyang allowed members of the Japanese Diet to visit some of the hijackers during the year. In 1999 the DPRK also attempted to kidnap in Thailand a North Korean diplomat who had defected the day before. The attempt led the North Korean Embassy to hold the former diplomat's son hostage for two weeks. Some evidence also suggests the DPRK in 1999 may have sold weapons directly or indirectly to terrorist groups.

Patterns 2000 adds a more specific reference to reports of North Korean support of overseas terrorists, particularly in the Philippines:

The DPRK, however, continued to provide safehaven to the Japanese Communist League-Red Army Faction members who participated in the hijacking of a Japanese Airlines flight to North Korea in 1970. Some evidence also suggests the DPRK may have sold weapons directly or indirectly to terrorist groups during the year; Philippine officials publicly declared that the Moro Islamic Liberation Front had purchased weapons from North Korea with funds provided by Middle East sources.

North Korea Cited for Possible Removal

In its "Introduction," the *Patterns 1999* report cites North Korea as a possible candidate for removal from the list of state sponsors of terrorism. The *Patterns 1999* report states:

The designation of state sponsors is not permanent, however. In fact, a primary focus of U.S. counterterrorist policy is to move state sponsors off the list by delineating clearly what steps these countries must take to end their support for terrorism and by urging them to take these steps ...There have been some encouraging signs recently suggesting that some countries are considering taking steps to distance themselves from terrorism. North Korea has made some positive statements condemning terrorism in all its forms. We have outlined clearly to the Government of North Korea the steps it must take to be removed from the list, all of which are consistent with its stated policies.

The report states that “if a state sponsor meets the criteria for being dropped from the terrorism list, it will be removed — notwithstanding other differences we may have with a country’s other policies and actions.”

In June 15, 2000 testimony before the Senate Foreign Relations Committee, Michael Sheehan, the State Department Coordinator for Counterterrorism, testified that

We need to take into account all relevant considerations in connection with moving states onto or off of the list, and we also need to explore whether it would be appropriate in any cases to identify states as “not fully cooperating” rather than as state sponsors of terrorism if doing so was warranted by the facts and would advance U.S. counterterrorism objectives ... I have been considering what intermediate steps could be taken to give state sponsors a clearer look at how they might “graduate” off the list. It may be possible that in appropriate cases state sponsors could step off the state sponsor list and be left only on the “not fully cooperating” list, with an eye towards stepping off of that list when they fully cooperate with U.S. antiterrorism efforts.

Similarly, in July 12th testimony before the House International Relations Committee, Ambassador Sheehan confirmed that his earlier statements were intended as a clear signal to terrorist supporting countries that the United States would consider taking them off the list if they take the necessary steps to cease their support for terrorism.

Prospects for Removal Are Set Back

Patterns 2000 changed the tone. It does state that “the Department of State is engaged in ongoing discussion with North Korea and Sudan with the object of getting those governments completely out of the terrorism business and off the terrorism list.” It cites the North Korean statement in the U.S.-North Korean joint statement of October 12, 2000, in which “the DPRK reiterated its opposition to terrorism and agreed to support international actions against such activity.” However, as stated previously, *Patterns 2000* was more specific in citing evidence of North Korean support of other terrorist groups, particularly in the Philippines. The report also asserts that “The US has a long memory and will not simply expunge a terrorist’s record because time has passed.”

Patterns 2001 and *Patterns 2002*, arguably, softened language designed to provide a rationale for retaining the DPRK on the terror list. For example, *Patterns*

2002, although noting that “Pyongyang continued to sell ballistic missile technology to countries designated by the United States as state sponsors of terrorism, including Syria and Libya,” concluded with the statement that “*North Korea is a party to six of the twelve international conventions and protocols relating to terrorism*” [italics provided].²³ Contrast such language to *Patterns 2003*: “*Although it is a party to six international conventions and protocols relating to terrorism, Pyongyang has not taken any substantial steps to cooperate in efforts to combat international terrorism.* [italics provided]”²⁴

Patterns 2003, which covers the year North Korea was designated a member of the “axis of evil” by President Bush in his 2003 State of the Union Address, appears to take a somewhat more confrontational position.²⁵ The 2003 report begins with text to the effect that the DPRK is not known to have sponsored any terrorist acts since 1987. The report notes, however, that North Korea continued to give sanctuary to hijackers affiliated with the Japanese Red Army. Although *Patterns 2003* arguably indicates that North Korea’s support for international terrorism appears limited at present, it offers no promising language to suggest that DPRK removal from the terrorism list may occur anytime soon.

Policy Options

Administration policymakers face a number of policy options which include (1) doing nothing and retaining North Korea on both the “state sponsors” list and “not fully cooperating” list; (2) downgrading the DPRK to the “not fully cooperating” category; (3) removing the DPRK from both lists, including it instead in an informal “countries of concern” warning category; and (4) relaxing further sanctions against North Korea that can be done by presidential waiver.

Under any of these first three scenarios, a major challenge facing Administration policymakers is whether any avowed prospective DPRK policy announcements/changes will pass the congressional credibility test, should North Korea give unequivocal assurances it will not support terrorism in the future. The Administration would appear to face three questions related to anti-terrorism policy

²³ *Patterns 2002*, p. 81. On the other hand, the section covering North Korea begins with text characterizing the DPRK’s response to international efforts to combat terrorism as “disappointing throughout 2002”.

²⁴ *Patterns 2003*, p. 92.

²⁵ See text in preceding paragraph regarding lack of international cooperation. Note that a factor which may impact on whether or not the DPRK is removed from the terrorism list is whether any other nations — notably Libya and possibly Sudan — are removed first. In the wake of one or two successful cases of removal, a political climate may well be created which is less risk adverse to chancing removal of a third state. Conversely, removing the DPRK from the list prior to removing other nations could create a climate more favorably disposed to removal of additional states as well. In the past, the list has been subject to criticism that it is governed by political criteria not necessarily connected to a nation’s level of support for terrorism. See CRS Report RL32417, *The Department of States Patterns of Global Terrorism Report: Trends, State Sponsors, and Related Issues*, by Raphael Perl.

in weighing these policy options. First, is North Korea currently or has North Korea in the very recent past engaged in terrorist activities? An especially important consideration would be the credibility of Filipino and other foreign intelligence reports that North Korea has supplied arms to Muslims groups in the Philippines that have practiced terrorism and to the Tamil Tigers in Sri Lanka, an insurgent group that has committed numerous terrorist acts in Sri Lanka and India.²⁶ Second, if North Korea continues to provide sanctuary to Japanese Red Army terrorists, should the Administration give priority to the long time period elapsed since the Japanese Red Army terrorists committed acts of terror, or should priority be given to the Japanese government's current intent to prosecute these people for these acts? Third, does North Korea's continued holding of kidnaped Japanese constitute a *current* act of terrorism? The chronologies of acts of terrorism in the annual *Patterns* reports shows that the United States defines kidnaping as a terrorist act. Moreover, the Administration faces the past analogous situations in which the Carter and Reagan Administrations viewed as a continuing act of terrorism the holding of kidnaped Americans for long periods in Iran and Lebanon in 1979-1980 and during the 1980s respectively.

Dealing with these three questions could well fall within the context of policy priority decisions. If North Korea makes its demand for removal from the terrorism list a continuing obstacle to forward movement on other issues in U.S.-North Korean relations, the Bush Administration likely would have to determine the policy priority between anti-terrorism goals and other policy goals. North Korea's demand at the six party talks for removal from the terrorism-support list and the Bush Administration's inclusion of the issue in its June 2004 proposal renders almost certain that North Korea's future status in relation to the list will be linked to the range of issues between the United States and North Korea over nuclear weapons and other weapons of mass destruction, including proliferation.

Another key factor is the Bush Administration's stated position that its policy in East Asia will give the highest priority to strengthening the U.S.-Japan alliance.²⁷ That kind of priority likely will increase even more the influence of Japan's position that the United States should not remove North Korea from the terrorism list until Japan and North Korea have resolved the Japanese Red Army and kidnaping issues. If so, it would weaken the influence of South Korea's position that the United States should remove North Korea from the terrorism list and thus open up the prospect that North Korea could receive financial aid from the World Bank and the International Monetary Fund.

²⁶ Minamoto, Kazuhide. Filipino Forces' Report on PI Terrorists' Arms Deal with DPRK. *Yomiuri Shimbun* (Tokyo), July 4, 2000. P. 6. Tigers Buy North Korean Arms. *Far Eastern Economic Review*, June 8, 2000. P. 12. There are other reports, unattributed, that North Korea supplied arms to the Abu Sayyaf Muslim terrorist group in the Philippines in 2000. That group kidnaped over 30 foreigners in 1999; and in May 2001, it kidnaped 20 people, including three Americans. The most recent reports are that Abu Sayyaf beheaded one of the American captives. See Mustafa, Noralyn. Oriental-Looking Men Sighted Attending Abu Sayyaf Celebration. *Philippine Daily Inquirer* (internet version), August 25, 2000.

²⁷ French, Howard W. Top Bush Aide Urges Japan to Form In-Depth Ties with U.S. *New York Times*, May 9, 2001. P. A10.