

# CRS Report for Congress

## North Korea: Terrorism List Removal?

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Larry Nicksch  
Specialist in Asian Affairs  
Foreign Affairs, Defense, and Trade Division

Raphael Perl  
Specialist in International Affairs  
Foreign Affairs, Defense, and Trade Division



Prepared for Members and  
Committees of Congress

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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 U.S. 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. In late 2006 and early 2007, the Bush Administration reportedly offered North Korea removal from the U.S. terrorism list if North Korea agreed to end its nuclear programs. U.S. and North Korean diplomats negotiated much of the Six Party Nuclear Agreement, which was signed on February 13, 2007. North Korea subsequently indicated that it would press the Bush Administration to remove North Korea as a condition for negotiation of implementation of the second phase of the Agreement, which was scheduled to begin in April 2007. The Bush Administration will have to consider two other factors in this negotiation. One, Japan, the United States' key ally in East Asia, strongly urges the United States to keep North Korea on the terrorism until Pyongyang resolves its kidnapping of Japanese citizens. Two, Congress has supported Japan on the kidnapping issue through a 2005 congressional resolution, and important elements of Congress have demanded a resolution of the case of a Korean clergyman — a legal U.S. resident — whom North Korea kidnapped in 2000.

Assuming clearly announced and demonstrated changes in DPRK policies supportive of terrorism — a scenario that may occur within the next several years and possibly sooner — Administration policymakers would face a number of options that 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, because 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

**Three Stages in Diplomacy over the Terrorism List.** The issue of North Korea's inclusion on the U.S. list of state sponsors of terrorism has been in U.S.-North Korean diplomacy since 2000, but three stages are of particular importance: the first in 2000 in Clinton Administration-North Korean negotiations; the second during the 2003-2004 Six Party negotiations over the North Korean nuclear issue; and the third in the diplomacy around the Six Party nuclear agreement of February 2007. 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.<sup>1</sup>

The Clinton Administration sought an early visit of a high level North Korean official to Washington to obtain substantive negotiations.<sup>2</sup> 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.

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

<sup>2</sup> Pomfret, John. North Korea Threatens To Skip Talks. *Washington Post.* Mar. 29, 2000. p. A20.

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 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 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 U.S. list of terrorism-supporting countries. 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.<sup>3</sup> North Korea reiterated its demand at the six party meetings in February and June 2004 in the context of its freeze proposal.

The third stage began after North Korea's test of an atomic bomb in October 2006. Bilateral meetings between Assistant Secretary of State Christopher and North Korean Vice Foreign Minister Kim Gye-gwan in November 2006 and January 2007 contained discussions of the terrorism list issue as the two diplomats laid the groundwork for the agreement that the six parties announced on February 13, 2007. That agreement created a "working group" on North Korea-U.S. normalization of relations. The agreement stated

The DPRK and the U.S. will start bilateral talks aimed at resolving bilateral issues and moving toward full diplomatic relations. The U.S. will begin the process of removing the designation of the DPRK as a state sponsor of terrorism, and advance the process of terminating the application of the Trading with the Enemy Act with respect to the DPRK.

**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 anti-terrorism agreements; and (4) address issues of past support of terrorism.<sup>4</sup> 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

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<sup>3</sup> North Korean Foreign Ministry statement on talks. Reuters News Agency, Dec. 9, 2003.

<sup>4</sup> *Agence France-Presse* (Hong Kong) report, Feb. 8, 2000. Yonhap News Agency (Seoul) report, Feb. 8, 2000.

from the U.S. list of terrorism-supporting countries.<sup>5</sup> 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.<sup>6</sup> 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."<sup>7</sup> Moreover, according to informed sources, U.S. officials began to raise the kidnapping issue with the North Korea 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.<sup>8</sup> 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."<sup>9</sup>

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 kidnapped 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 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."<sup>10</sup>

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.

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

<sup>6</sup> U.S. to question DPRK on kidnappings of Japanese nationals. Jiji News Agency (Tokyo) report, Feb. 16, 2000.

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

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

<sup>9</sup> Carter, Tom. Clinton Plans First-ever Presidential Trip to North Korea. *Washington Times*, Oct. 13, 2000. p. A1.

<sup>10</sup> Varied Aspects of Japan-North Korean Relations, *Mainichi Shimbun*, Oct. 28, 2000.

terrorism list. This, in effect, lowered the priority of South Korea's position in U.S. policy.

**U.S. Responses: The Bush Administration in 2003-2004.** There were at least three components to the Bush Administration's policy regarding North Korea's inclusion on the terrorism-supporting list after the Agreed Framework collapsed and the six party talks began in 2003. The first was the U.S. response to North Korea's demand at the six party talks for removal from the list. A second was 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 was 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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 8 had died and that 5 were

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<sup>11</sup> See CRS Report RL33590, *North Korea's Nuclear Weapons Development and Diplomacy*, by Larry A. Niksch.

<sup>12</sup> National Association for the Rescue of Japanese Kidnaped by North Korea. Report of Mission to the U.S. from Feb. 25 to Mar. 3, 2001.

<sup>13</sup> U.S. Department of State. *Patterns of Global Terrorism 2003*. p. 92.

alive. The five subsequently went to Japan. In May 2004, Koizumi again traveled to Pyongyang and secured the release of 6 children of the 5 Japanese. However, the issue quickly reached an impasse. Japan harbored doubts about the truthfulness of North Korea's claim that 8 of the 13 kidnapped Japanese were dead and that the remains of all 8 had been washed away by floods and were not available for identification. In 2006, the Japanese government added 3 other missing Japanese citizens to its list of Japanese kidnapped by North Korea. In Japan, publicized claims also emerged that North Korea had kidnapped up to several hundred 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 prior to each visit to press North Korea for policy changes on the nuclear issue.<sup>14</sup>

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 nuclear settlement. Japan was viewed as crucial in any settlement of the nuclear or missile issues that involved reciprocal economic or 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.<sup>15</sup> Japan promised North Korea billions of dollars in aid as part of a normalization of relations, but Japan specified that normalization depends on a settlement of the nuclear, missile, and kidnapping issues.<sup>16</sup>

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 discussed with Japan the imposition of economic sanctions on North Korea. Japan joined the Proliferation Security Initiative in 2003, which President Bush proposed to stifle the proliferation activities of states like North Korea. In 2006, Japan imposed strong economic sanctions on North Korea when the United Nations Security Council approved

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<sup>14</sup> 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, Sept. 12, 2002. Koizumi's N. Korea gamble. The Nelson Report, Sept. 3, 2002.

<sup>15</sup> Nicksch, Larry A., North Korea and Terrorism: The Yokita Megumi Factor. *The Korean Journal of Defense Analysis*. Spring 2002. pp. 14-16.

<sup>16</sup> 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.

sanctions in response to North Korea's missile tests of July 2006 and atomic bomb test of October 2006.

**U.S. Responses: The Bush Administration, October 2006-March 2007.** Although the Bush Administration sought and obtained U.N. Security Council sanctions after North Korea's atomic bomb test in October 2006, it changed its policy on the North Korean nuclear issue in more fundamental ways — one of which was to bring the terrorism list issue more directly into negotiations. There have been three fundamental changes in Bush Administration policy since the North Korean nuclear test that have implications for the terrorism list issue. Tactically, the Administration abandoned its opposition to bilateral talks with North Korea and actively sought bilateral meetings with Pyongyang. Moreover, Assistant Secretary of State Christopher Hill used these meetings, in late November 2006 and mid-January 2007, to negotiate actively the details of the Six Party Agreement that was announced on February 13, 2007.

The second change has been in the U.S. policy objective toward North Korea's nuclear programs and weapons. Dismantlement of Pyongyang's nuclear programs and weapons remains as the official Bush Administration policy goal, but the February 2007 Six Party Agreement says little about dismantlement. The two phases outlined in the agreement focus on freezing North Korean nuclear facilities in the first phase, to be completed in 60 days, then "disablement of all existing nuclear facilities" and disclosure by North Korea of "all nuclear programs" in the second phase that has no time deadline." The Six Party Agreement thus signals an apparent policy objective of containment of North Korea's nuclear programs and nuclear weapons development, limiting their size and scope. In the approximately 18 months left of an actively functioning Bush Administration (prior to the U.S. presidential election campaign starting in September 2008), the most realistic prospect of success is negotiating and implementing the two phases of this Six Party Agreement or at least a partial implementation. The dismantlement issue likely will be left for the U.S. Administration that comes into office in January 2009.

As a third change, the Administration has linked a number of non-nuclear issues between the United States and North Korea to a successful implementation of the February 2007 Six Party Agreement. In announcing the Six Party Agreement, Assistant Secretary of State Hill pledged to settle with North Korea within 30 days the issue of U.S. financial sanctions against the Banco Delta bank in the Chinese territory of Macau and the freezing of North Korean accounts of \$25 million in Banco Delta. Prior to the negotiation of the Six Party Agreement, the Bush Administration had held that the U.S. financial sanctions against Banco Delta for collaboration with North Korean criminal activities was a separate issue from the nuclear negotiations. An agreement, announced in mid-March 2007, provided for the transfer of the North Korean money in Banco Delta to accounts in the Bank of China. The Bush Administration also has linked normalization of diplomatic relations with North Korea more directly to a settlement of the nuclear issue, although it previously had held that normalization depended on progress in settling other issues with North Korea in addition to the nuclear issue: human rights, missiles, and other weapons of mass destruction. Assistant Secretary of State Hill stated on March 8, 2007, that the

establishment of diplomatic relations depended on North Korea agreeing to “complete denuclearization.”<sup>17</sup>

Beginning with the Hill-Kim Kye-gwan meeting of November 28-29, 2006, Hill reportedly said that the Bush Administration would remove North Korea from the U.S. list of state sponsors of terrorism if North Korea dismantled its nuclear programs.<sup>18</sup> The inclusion of removal from the terrorism supporting list in the topics for U.S.-North Korean negotiations under the Six Party Agreement of February 2007 also indicates a closer linkage of the terrorism supporting list and the nuclear issue in Bush Administration policy.

North Korea also may have increased the incentive for the Bush Administration to strengthen this linkage. The South Korean newspaper, *JongAng Ilbo*, quoted “a diplomatic source knowledgeable on the New York talks” between Hill and Kim Kye-gwan on March 5-6, 2007, that Kim asserted that if the United States took steps to normalize relations, North Korea could disable the Yongbyon nuclear installations within a year (i.e., March 2008). Kim specifically mentioned as a key step the removal of North Korea from the list of state sponsors of terrorism.<sup>19</sup>

Media reports indicate that the South Korean Foreign Minister, Song Min-soon, has cited the general diplomatic practice of taking “interim steps” in pursuing diplomatic goals during his visit to Washington in March 2007. Such practices may possibly be considered as an option for the Bush Administration, should it seek to remove the DPRK from the list.<sup>20</sup> A precedent for such “interim steps” would be the Clinton Administration’s reported consideration in 1999 and 2000 of removing North Korea from the state sponsors of terrorism list and placing it on the other terrorism-related list of countries “not fully cooperating” with U.S. anti-terrorism efforts. (See section below on “North Korea Previously Cited for Possible Removal.”)

These developments indicate that when the Six Party Agreement moves into the second phase of disablement of North Korean nuclear facilities and disclosure of North Korean nuclear programs, North Korea will press the Bush Administration hard for removal from the list of state sponsors of terrorism as a condition for implementation of phase two. Thus, the second phase likely will involve a new round of negotiations rather than just an implementation of the stated provisions of the Six Party Agreement.

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<sup>17</sup> Lee, Brian. Pyongyang raises the uranium issue in talks with U.S. *JoongAng Ilbo* (internet version), Mar. 8, 2007.

<sup>18</sup> What ‘new ideas’ did Washington offer Pyongyang? *Chosun Ilbo* (Seoul, internet version), Dec. 4, 2006. U.S. offered to remove N Korea from terror list — South Korea. *Dow Jones International News*, Dec. 26, 2006.

<sup>19</sup> Yi Sang-il and Chin Se-ku. Yongbyon nuclear facility can be disabled within a year. *JongAng Ilbo* (internet version), Mar. 13, 2007.

<sup>20</sup> FM Song: U.S. may take interim steps to remove N.K. from terrorism list. *Yonhap News Agency*, Mar. 3, 2007.

In judging the measures and timing of carrying out “the process of removing the designation of the DPRK as a state sponsor of terrorism” in the second phase of the Six Party Agreement, the Bush Administration will have two other factors to consider. One is Japan. Japan continues to urge the Administration to keep North Korea on the list until Pyongyang resolves the Japanese kidnapping issue. The first meeting of the Japan-North Korea working group under the Six Party Agreement collapsed when the North Koreans walked out in response to the Japanese negotiators’ call for progress on the kidnapping issue. President Bush reportedly telephoned Prime Minister Abe the day after the announcement of the Six Party Agreement and assured Abe that Japan would not be isolated on the kidnapping issue. On the same day, U.S. Ambassador to Japan Thomas Schieffer stated that “it is going to take a long time before the designation [of North Korea on the terrorism list] is removed.”<sup>21</sup> On his visit to Japan a few days later, Vice President Cheney met with parents of kidnapping victims.

The second factor is Congress. In July 2005, the House and Senate passed H.Con.Res. 168, expressing support for Japan on the North Korean kidnappings. The resolution also mentioned the case of the Reverend Kim Dong-shik. Kim, a U.S. legal resident who lived in Chicago, was kidnapped by North Korean agents in China near the Chinese-North Korean border in 2000. He was taken to North Korea, and his status is unknown. In January 2005, the entire Illinois delegation in Congress (all Members of the House of Representatives and two Senators) sent a letter to North Korea’s United Nations Ambassador demanding information on the Reverend Kim and stating that the delegation would oppose removing North Korea from the U.S. list of state sponsors of terrorism until his fate is resolved. On March 8, 2007, three Republican members of the House Foreign Affairs Committee wrote Secretary of State Condoleezza Rice a letter warning against concessions to North Korea on the terrorism list issue. The Members raised several issues of North Korean terrorism including the kidnapping of the Japanese and the kidnapping of the Reverend Kim Dong-shik. The Members reminded Secretary Rice of the Illinois delegation’s letter and the lack of response by the North Korean government.<sup>22</sup>

## **Terrorist State Activity Designations**

In March 2006, the Department of State sent to Congress its annual global terrorism report, *Country Reports on Terrorism, 2005* [*Country Reports, 2005*].<sup>23</sup> North Korea is prominently mentioned in the yearly report, which include data on

<sup>21</sup> Nishioka Tsutomu. Six-Party talks: was Japan left behind? Seiron, Mar. 12, 2007.

<sup>22</sup> Letter to Secretary of State Condoleezza Rice from Representatives Ileana Ros-Lehtinen, Edward Royce, and Donald Manzullo, Mar. 8, 2007.

<sup>23</sup> *Country Reports* (formerly *Patterns of Global Terrorism* ; hereinafter: “*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/crt/c17689.htm>]. See also: testimony of John Scott Redd, Director, National Counterterrorism Center, and testimony of Henry A. Crumpton, Coordinator for Counterterrorism before the Senate Foreign Relations Committee in a hearing on “Counterterrorism: The Changing Face of Terror,” June 13, 2006, available at [<http://www.state.gov/s/ct/rls/pgtrpt/2003/>].

terrorist trends and activity worldwide and serves as the basis for the U.S. list of state sponsors of terrorism that are subject to U.S. sanctions. Emerging, or ongoing, problem areas “areas of concern” are identified as well.

In addition to data on terrorist trends, groups, and activities worldwide, *Country 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 *Country Reports* are detailed data on the five countries currently on the “terrorism list”: Cuba, Iran, North Korea, Sudan, and Syria.<sup>24</sup> 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 five state sponsors of terrorism currently on the Department of State’s list and Afghanistan.

## State Sponsors/Supporters List

North Korea remains one of five countries currently on the list that the Secretary of State maintains have “repeatedly provided support for acts of international terrorism.”<sup>25</sup> Data supporting this list are drawn from the intelligence community. Listed countries are subject to severe U.S. export controls — particularly of dual-use

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<sup>24</sup> The degree of support for, or involvement in, terrorist activities typically varies dramatically from nation to nation. For 2005, of the five on the U.S. terrorism list, Iran continued to be characterized on one extreme of the spectrum of terrorist list states 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, *Country Reports* asserts 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, is Sudan, which reportedly has stepped up counter-terrorism 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.

Note that Libya was certified by the Secretary of State as being eligible for removal from the list on May 12, 2006. See Presidential Determination No. 2006-14, May 12, 2006, which went into effect June 28, 2006 [<http://www.whitehouse.gov/news/releases/2006/05/20060515-5.html>]. Sanctions against Iraq pursuant to its inclusion on the terrorism list were suspended on May 7, 2003 by Presidential Determination No. 2003-23 (Federal Register of May 16, 2003), Vol. 68, No. 95, p. 26459). Iraq was removed from the list by a rescission of determination on Oct. 7, 2004 (*Federal Register*, Oct. 20, 2004, Vol. 69, No. 202, p. 61702).

<sup>25</sup> See generally CRS Report RL33600, *International Terrorism, Threat, Policy, and Response*, by Raphael Perl.

technology and selling them military equipment is prohibited.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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<sup>26</sup> See CRS Report RL31696, *North Korea: Economic Sanctions*, by Dianne E. Rennack

<sup>27</sup> 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.

<sup>28</sup> 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 list of state sponsors.

## 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 6-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.

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, to be again removed in 2004. 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 has not been 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 and again in 2001, in the wake of the 9/11 attacks.

*Country Reports, 2005*, in a brief two paragraph section on North Korea states that

The Democratic People’s Republic of Korea (DPRK) is not known to have sponsored any terrorist acts since the bombing of a Korean Airlines flight in 1987.

Pyongyang in 2003 allowed the return to Japan of five surviving abductees, and in 2004 of eight family members, mostly children, of those abductees. Questions about the fate of other abductees remain the subject of ongoing negotiations between Japan and the DPRK. In November, the DPRK returned to Japan what it identified as the remains of two Japanese abductees, whom the North had reported as having died in North Korea. The issue remained contentious at year’s end. There are also credible reports that other nationals were abducted from locations abroad. The ROK government estimates that approximately 485 civilians were abducted or detained since the 1950-53 Korean War. Four Japanese Red Army members remain in the DPRK following their involvement in a jet hijacking in 1970; five of their family members returned to Japan in 2004.<sup>29</sup>

Perhaps most revealing of United States’ policy rationale for keeping nations such as North Korea on the terrorism list is text contained in the “State Sponsors Of Terror Overview” section of *Country Reports, 2005*. Prominently mentioned are two factors: (1) maintaining ties to terrorist groups and (2) “the capability to manufacture WMD and other destabilizing technologies that can get into the hands of terrorists.”

Libya and Sudan continued to take significant steps to cooperate in the global war on terror. Cuba, Iran, **North Korea**, and Syria, however, continued to maintain their ties to terrorist groups. Iran and Syria routinely provide unique safe haven, substantial resources and guidance to terrorist organizations.

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<sup>29</sup> [<http://www.state.gov/s/ct/rls/crt/c17689.htm>], p. 175.

State sponsors of terrorism provide critical support to non-state terrorist groups. Without state sponsors, terrorist groups would have much more difficulty obtaining the funds, weapons, materials, and secure areas they require to plan and conduct operations. Most worrisome is that some of these countries also have the capability to manufacture WMD and other destabilizing technologies that can get into the hands of terrorists. The United States will continue to insist that these countries end the support they give to terrorist groups. [Emphasis added]<sup>30</sup>

## North Korea Previously 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 12 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

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<sup>30</sup> *Country Reports, 2005*, p. 171, at [<http://www.state.gov/s/ct/rls/crt/c17689.htm>].

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 to 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.”<sup>31</sup> 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]*”<sup>32</sup>

*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.<sup>33</sup> 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

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<sup>31</sup> *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.”

<sup>32</sup> *Patterns 2003*, p. 92.

<sup>33</sup> See text in preceding paragraph regarding lack of international cooperation. Note that arguably, a factor that may affect whether 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 that is less risk adverse to chancing removal of a third state. Conversely, removing the DPRK from the list prior to removing other nations would arguably 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.

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.

*Country Reports, 2004*, again offers no promising language to suggest that DPRK removal from the terrorism list may occur anytime soon, but notes what can be interpreted as progress in resolving the issue of kidnapped Japanese citizens. Again restated is language to the effect that the DPRK is "not known" to have sponsored any acts of terrorism since 1987. Pyongyang, however, is cited for lack of "substantial steps" in co-operating in efforts to combat international terrorism, although it has signed six international conventions and protocols relating to terrorism.

The Democratic People's Republic of Korea (DPRK) is not known to have sponsored any terrorist acts since the bombing of a Korean Airlines flight in 1987.

At a summit with Japanese Prime Minister Koizumi in Pyongyang in September 2002, National Defense Commission Chairman Kim Jong Il acknowledged the involvement of DPRK "special institutions" in the kidnapping of Japanese citizens and said that those responsible had already been punished. Pyongyang in 2003 allowed the return to Japan of five surviving abductees, and in 2004 of eight family members, mostly children, of those abductees. Questions about the fate of other abductees remain the subject of ongoing negotiations between Japan and the DPRK. In November, the DPRK returned to Japan what it identified as the remains of two Japanese abductees whom the North had reported as having died in North Korea. Subsequent DNA testing in Japan indicated that the remains were not those of Megumi Yokota or Kaoru Matsuki, as Pyongyang had claimed, and the issue remained contentious at year's end. Four Japanese Red Army members remain in the DPRK following their involvement in a jet hijacking in 1970; five of their family members returned to Japan in 2004.

Although it is a party to six international conventions and protocols relating to terrorism, Pyongyang has not taken substantial steps to cooperate in efforts to combat international terrorism.<sup>34</sup>

## Policy Options

Administration policymakers face a number of policy options, including (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.

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<sup>34</sup> See [<http://www.state.gov/s/ct/rls/crt/c14813.htm>], p. 90 of the full pdf file, or the "North Korea" section at the end of *Chapter 5 — Country Reports B*.

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 two questions related to anti-terrorism policy in weighing these policy options. First, is North Korea currently or has North Korea in the very recent past engaged in terrorist activities? Second, does North Korea's continued holding of kidnapped Japanese constitute a *current* act of terrorism? The chronologies of acts of terrorism in the annual *Patterns* reports shows that the United States defines kidnapping 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 kidnapped 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 condition to forward movement in the second phase of the February 2007 Six Party Nuclear Agreement, the Bush Administration would have to determine the policy priorities among anti-terrorism goals; relations with a key ally, Japan; and possible progress toward containment of North Korea's nuclear programs. Such a determination undoubtedly would influence how the Administration addressed the policy options regarding North Korea's status on the terrorism list.