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North Korea: Back on the State Sponsors of Terrorism List?

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Summary

From 1988 until 2008, the United States designated the government of North Korea, officially known as the Democratic People's Republic of Korea (DPRK), as a state sponsor of terrorism. The Reagan Administration designated the DPRK after it was implicated in the 1987 bombing of a South Korean airliner, in which more than 100 people died. The George W. Bush Administration removed the designation from the DPRK in 2008, one of the measures the United States took in exchange for North Korea's agreement to take steps to disable its nuclear program. As of early 2015, only the governments of Cuba, Iran, Sudan, and Syria remain on the lists.

The State Department can designate a government as a state sponsor of acts of international terrorism pursuant to three laws: the Export Administration Act of 1979; the Arms Export Control Act; and the Foreign Assistance Act of 1961. Thus, there effectively are three state sponsors of terrorism "lists." The State Department can use a variety of criteria when assessing whether a government should be added to and removed from the lists. In North Korea's case, policy considerations appear to have weighed heavily in the designation of the DPRK from 1988-2007, as well as in the decision to remove the designation in 2008. In the 114th Congress, H.R. 204 expresses the sense of Congress that the State Department should redesignate the DPRK as a state sponsor of terrorism.

According to the State Department, North Korea has not been conclusively linked to any terrorist acts since 1987. Some observers have questioned the Department's claim. These observers support their contention by citing seizures of cargo ships carrying North Korean missile parts and conventional weapons, apparently to Syria and Burma (Myanmar). U.S. government agencies have stated that North Korea helped Syria build a nuclear reactor, and that North Korea and Iran cooperate closely in missile development. According to press reports, North Korea has provided support to Hamas and Hezbollah, and has targeted North Korean refugees living overseas for kidnapping and assassination. The 2010 sinking of a South Korean naval vessel also triggered calls to redesignate the DPRK. To date, cyber-related incidents such as the late 2014 attack on Sony have not been used as justification for designation as a state sponsor of terrorism. The 2009 and 2013 seizures of chemical protection equipment bound for Syria appear to be the only DPRK actions since 2008 that both (1) were recognized by official U.S. or U.N. bodies, and (2) conceivably could have met the statutory criteria for designation.

Redesignating the DPRK as a terrorism sponsor appears unlikely to inflict significant direct economic punishment on North Korea, particularly in the short term. However, a decision to redesignate North Korea as a state sponsor of terrorism could have a significant impact on international diplomacy with North Korea. The Kim regime could perceive redesignation as a threat to its two-track policy of nuclear development and economic development, with the latter goal partially dependent upon influxes of foreign investment. Placing North Korea back on the lists could forestall future diplomatic initiatives between Washington and Pyongyang, particularly if North Korean leaders—as well as Chinese leaders—interpret it as a sign that the United States is not interested in dialogue. Given previous patterns of North Korean behavior, it is possible that Pyongyang would respond to a redesignation by taking additional provocative actions, such as more nuclear-weapon or long-range-missile tests. North Korea has not conducted such tests since early 2013. Returning Pyongyang to the terrorism sponsor lists also could complicate the South Korean government's initiatives to improve relations with North Korea. Assessing the merits of these implications depends heavily on whether or not one believes the United States should adopt a harsher stance toward Pyongyang.

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Introduction

From 1988 until 2008, the State Department designated the government of North Korea, officially known as the Democratic People's Republic of Korea (DPRK), as a state sponsor of terrorism. Since the Bush Administration's October 2008 removal of the DPRK from the three state sponsors of terrorism lists (see "Listing a Country as a State Sponsor of Terrorism," below), provocative actions by North Korea periodically have been followed by calls for the Obama Administration to redesignate Pyongyang as a terrorism sponsor. The state sponsors lists include governments that the Secretary of State determines have "repeatedly provided support for acts of international terrorism."[1] As of January 2015, the governments of Cuba, Iran, Sudan, and Syria are on the lists.

The calls to redesignate North Korea were particularly intense in 2010, following the sinking of a South Korean naval vessel, as well as in late 2014, following a cyberattack against Sony Pictures Entertainment and a threat against theater-goers to Sony's movie, *The Interview.* The film depicts the fictional assassination of North Korean leader, Kim Jong-un. U.S. and foreign government sources have implicated North Korea in all three incidents. Interdictions of North Korean missile and conventional arms shipments to Iran and Syria, and from Cuba—as well as reports of North Korean arms sales to and training of known terrorist actors such as Hezbollah and Hamas—also have fueled the calls to redesignate the DPRK government as a state sponsor of terrorism.

Since 2008, Members of Congress have made several legislative attempts to challenge the Bush Administration's decision to remove North Korea's state sponsor of terrorism designation. In the 114th Congress, H.R. 204 expresses the sense of Congress that the Secretary of State should redesignate North Korea as a state sponsor of terrorism. H.R. 1771, the North Korea Sanctions Enforcement Act from the 113th Congress, would have imposed many of the restrictions on the DPRK that would be triggered if it were redesignated as a state sponsor of terrorism. The House passed H.R. 1771 in July 2014, and many expect that a similar bill will be introduced in the 114th Congress.

Possible Implications of Redesignating North Korea

The Bush Administration's removal of the DPRK from the state sponsor of terrorism lists does not appear to have provided Pyongyang with significant tangible economic benefits. Two main reasons are North Korea's widely perceived lack of appeal as a trade and investment partner and the numerous U.S. legal restrictions on doing business with and in North Korea.[2] Commercial U.S.-DPRK trade has remained virtually at zero, as in the years before the delisting. The U.S. Department of Commerce continues to treat North Korea as a supporter of terrorism when it considers export license applications for dual-use and restricted goods and services; Commerce's Bureau of Industry and Security keeps North Korea in its most restricted trade categories. Annual foreign assistance appropriations laws continue to prohibit direct bilateral aid to North Korea; the United States withholds contributions to United Nations programs proportionate to U.N. spending in the DPRK. Although some U.S. companies, including DHL and the Associated Press, have opened offices in North Korea since 2008, the number and scope of these operations appear to be small in scale, and likely would require a special license from the Treasury Department's Office

[1] Sec 6(j)(1)(A) of the Export Administration Act of 1979 (P.L. 96-72; 50 U.S.C. App. 2405(j)(1)(A)); Section 40 of the Arms Export Control Act (P.L. 90-629; 22 U.S.C. 2780(d)); and Section 620A of the Foreign Assistance Act of 1961 (P.L. 87-195; (22 U.S.C. 2371)).

[2] See CRS Report R41438, *North Korea: Legislative Basis for U.S. Economic Sanctions*, by Dianne E. Rennack.

of Foreign Assets Control if the North Korean government is redesignated. Thus, redesignating the DPRK as a terrorism sponsor appears unlikely to inflict significant direct economic punishment on North Korea, particularly in the short term. However, even if redesignation directly causes only a small practical effect, North Korea-watchers who want to increase pressure on North Korea may favor such a move because the Kim regime likely would perceive it as a sign of a tougher U.S. approach.

For a number of reasons, a decision to redesignate the DPRK as a state sponsor of terrorism could have a significant impact on diplomacy with North Korea. The Kim regime has been promoting a two-track policy (the so-called *byungjin* line) of nuclear development and economic development, with the latter goal partially dependent upon influxes of foreign investment. Some analysts of North Korea have pointed to signs that the Kim regime is pursuing economic reforms more earnestly than commonly is thought and is poised to accelerate the reforms in 2015.[3] The DPRK could be particularly sensitive to a redesignation, which could be perceived as a threat to the potential economic gains the North Korean government expects from its *byungjin* policy.[4] Therefore, those who wish to encourage North Korea's economic reforms, in the belief that they eventually would lead to changes in the government and/or the government's behavior, may oppose redesignating the DPRK. In contrast, those who wish to increase economic pressure on North Korea by undercutting the *byungjin* line may favor redesignating the DPRK. For more on U.S.-North Korea relations, see CRS Report R41259, *North Korea: U.S. Relations, Nuclear Diplomacy, and Internal Situation*, by Emma Chanlett-Avery and Ian E. Rinehart.

Placing North Korea back on the lists could forestall any future diplomatic initiatives between the United States and North Korea.[5] One of North Korea's long-standing foreign policy goals is improving relations with the United States, particularly if this can be accomplished on Pyongyang's terms and can be paired with economic benefits. Many analysts interpreted Pyongyang's decision in the fall of 2014 to release three U.S. detainees as a sign that North Korea is seeking a new diplomatic breakthrough with Washington, part of a broad outreach that also included overtures to South Korea, Japan, and Russia. Redesignation could be interpreted by North Korean leaders, as well as officials in other countries, as a sign that the Obama Administration is not interested in dialogue. Additionally, given previous patterns of North Korean behavior, it is possible that Pyongyang would respond to a redesignation by taking additional provocative actions, such as more nuclear-weapon or long-range-missile tests. North Korea has not conducted such tests since early 2013.

Additionally, North Korean leaders might try to use a redesignation to convince other countries, particularly China, that the United States is to blame if tensions between Pyongyang and Washington increase. Even without encouragement from North Korea, China may be inclined to use redesignation as a pretext for opposing U.S. and South Korean efforts to increase pressure on North Korea through other means. Although the South Korean government of Park Geun-hye has maintained a relatively hard line towards North Korea, she has made improved relations with

[3] See, for instance, "Change Is in the Air in North Korea," *NK News.com,* December 9, 2014.

[4] One proponent of redesignating the DPRK goes further, arguing that it would "send a powerful signal" to current and prospective lenders, investors, and businesses people that doing business with North Korea is "politically and financially risky." "What Re-Listing N. Korea as a State Sponsor of Terrorism Would Mean," *Free Korea* blog, December 22, 2014, http://freekorea.us/2014/12/22/what-re-listing-n-korea-as-a-state-sponsor-of-terrorism-would-mean/#sthash.3qX3NlVj.dpuf.

[5] "What Re-Listing N. Korea as a State Sponsor of Terrorism Would Mean," *Free Korea* blog, December 22, 2014, http://freekorea.us/2014/12/22/what-re-listing-n-korea-as-a-state-sponsor-of-terrorism-would-mean/#sthash.3qX3NlVj.dpuf.

Pyongyang a signature goal for her term and has pressed North Korea to improve relations and open negotiations over various issues. Returning Pyongyang to the terrorism sponsor list could complicate these initiatives, particularly her desire to encourage multinational companies to invest in the inter-Korean Kaesong Industrial Complex, which operates in North Korea. Nonetheless, many people in South Korea—as well as in Japan—who favor adopting a tougher approach to North Korea likely would welcome the DPRK's redesignation as a terrorism sponsor.

One proponent of redesignating the DPRK argues that if the U.S. government explicitly links the North Korean government to terrorism, it would give encouragement to North Korean refugees, helping them to resist intimidation.[6] North Korean refugees have become an important source of information about and insights into North Korean politics, economics and society. Additionally, some see these defectors as a means to spread news about the outside world into North Korea, such as through operating radio stations in Seoul, some of which have received U.S. democracy assistance funds. There have been reports that North Korean agents have targeted some refugees for harassment, kidnapping, and assassination.

If redesignated, North Korea might make removal from the list a precondition for cooperation in any future talks over its nuclear, missile, chemical, biological, or cyber weapons programs. Redesignation could create both an obstacle to future talks and a possible bargaining lever for the United States if negotiations restart.

Nuts and Bolts of the Sponsors of Terrorism Lists

CRS Report R43835, *State Sponsors of Acts of International Terrorism—Legislative Parameters: In Brief*, by Dianne E. Rennack, provides more information and analysis about the state sponsors of terrorism lists.

Listing a Country as a State Sponsor of Terrorism

The Secretary of State can designate a government of a country as a state sponsor of acts of international terrorism pursuant to three laws: Section 6(j) of the Export Administration Act of 1979;[7] Section 40 of the Arms Export Control Act;[8] and Section 620A of the Foreign Assistance Act of 1961.[9] Thus, there effectively are three state sponsors of terrorism "lists." None of the three Acts defines the overarching term "international terrorism." However, Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, in its requirement that the Secretary of State report annually to Congress on foreign governments supporting international terrorism, defines "terrorism" as "premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.... "[10] Criteria considered by the Secretary of State when assessing whether a foreign government should be added to the lists include, but are not limited to: supplying a terrorist organization with planning, training, logistics, and lethal material support; providing direct or indirect financial assistance; abetting the proliferation of weapons of mass destruction; or providing other types of assistance that could provide material support for the terrorist organization's activities. Supplying weapons or weapons

[6] "What Re-Listing N. Korea as a State Sponsor of Terrorism Would Mean," *Free Korea* blog, December 22, 2014, http://freekorea.us/2014/12/22/what-re-listing-n-korea-as-a-state-sponsor-of-terrorism-would-mean/#sthash.3qX3NlVj.dpuf.

[7] P.L. 96-72 (50 U.S.C. App. 2405(j)).

[8] P.L. 90-629 (22 U.S.C. 2780(d)).

[9] P.L. 87-195 (22 U.S.C. 2371).

[10] P.L. 100-204 (22 U.S.C. 2656f).

technology to governments designated as state sponsors of terrorism generally has not been considered justification for designating the supplier government as a state sponsor of terrorism. Laws that seek to deter weapons proliferation, however, might come into play.

The enumerated criteria do not specify the type of incidents or the level or duration of terrorism related activities that might be considered by the Secretary of State when deciding whether or not the United States should designate a foreign government as a state sponsor of terrorism. Some analysts suggest that the ambiguity of the criteria may be purposeful insomuch as it would give the Secretary of State and the President a great deal of discretion when weighing competing policy and political implications associated with placing a government on the list.

In North Korea's case, diplomatic and policy considerations appear to have weighed heavily in the designation of the DPRK from 2000 to 2007, as well as in the decision to remove the designation in 2008. Originally, the government of North Korea was added to the lists because it was implicated in the in-flight bombing of Korean Air flight 858 on November 29, 1987, which killed all 115 passengers and crew on board. For years before 2008 the State Department's annual reports on global terrorist activities stated that North Korea was not known to have sponsored any terrorist acts since the Korean Air attack. However, the Department's reports listed a number of other factors that merited North Korea's continuation on the state sponsors lists, including:

- the abductions of Japanese citizens in the 1970s and 1980s;
- the harboring of several Japanese Red Army terrorists who participated in a jet hijacking in 1970;
- the failure to take "substantial steps" to cooperate in efforts to combat international terrorism;
- the maintenance of ties to terrorist groups; and
- developing a capability to manufacture weapons of mass destruction that could be acquired by other terrorist states or non-state entities.

In 2008, the Secretary of State removed North Korea from the lists despite little change in most of the above conditions. Instead, the decision appears to have been made primarily for diplomatic reasons: removing the government of North Korea from the terrorism lists was part of the 2007 deal that the Bush Administration made with Pyongyang as part of the Six-Party Talks seeking to disable North Korea's nuclear program.[11] Under the 2007 deal, North Korea agreed to disable its nuclear installations at the Yongbyon site and provide the other five countries with a "complete and correct" declaration of its nuclear programs. Some analysts have argued that the subsequent collapse of the Six-Party process, along with North Korea's advances in its nuclear programs, have erased the original diplomatic justification for removing North Korea from the state sponsor of terrorism lists.[12]

During a January 13, 2015, House Foreign Affairs Committee hearing on North Korea, the State Department's Special Representative for North Korea Policy, Sung Kim, said that the Department

[11] The Six-Party Talks involved China, Japan, North Korea, Russia, South Korea, and the United States. They began in 2003 and were last held in 2008.

[12] "What Re-Listing N. Korea as a State Sponsor of Terrorism Would Mean," *Free Korea* blog, December 22, 2014, http://freekorea.us/2014/12/22/what-re-listing-n-korea-as-a-state-sponsor-of-terrorism-would-mean/#sthash.3qX3NlVj.dpuf.

has an "ongoing process" to assess whether North Korea meets the criteria for being designated as a state sponsor of terrorism.[13]

North Korean Agents' Abductions of Japanese Citizens

From 2000 to 2008, both the Clinton and George W. Bush Administrations made progress on settling the Japanese abduction issue a condition for North Korea's removal from the state sponsors of terrorism lists. A key reason for adding and then keeping the emphasis on the abductions issue appears to have been maintaining Japan's support for U.S. policy toward North Korea. Japan has made resolving the abductions issue a priority since the late 1990s, and it is widely presumed that normalizing Japan-North Korean ties would be accompanied by Japan providing North Korea with billions of dollars in aid, in recognition of the damage and suffering Imperial Japan inflicted during its rule of Korea from 1910 to 1945. In various rounds of talks with North Korea, U.S. policy makers often have presumed that Japanese aid would help fund any final settlement package.[14] Linking the abductions issue to the state sponsors of terrorism lists was one way to maintain Japanese support for U.S. negotiations with Pyongyang. At the same time, when Tokyo has negotiated with Pyongyang over the abductions issue, keeping a firm linkage between the abductions and the terrorism lists was a way U.S. officials sought to make sure that Japanese officials did not make compromises on WMD issues in discussions with their North Korean counterparts.

By late 2007, in the context of negotiations over North Korea's nuclear program, the Bush Administration had dropped its linkage between the progress on the abductions and removal from the terrorism lists. The Bush Administration's 2008 decision to remove North Korea from the state sponsors of terrorism lists despite little change in the abductions issue created considerable tension in U.S.-Japan relations.[15] Since 2008, the Bush Administration and then the Obama Administration have continued to publicly support Japan's stance on the abductions issue.[16]

Restrictions as a Result of Terrorism Designation[17]

A foreign government on the state sponsors of terrorism lists is subject to restrictions on trade, investment, and assistance. (See **Table 1**.) A listed country is subject to U.S. export controls—particularly of dual-use technology—and trade in defense goods and services is prohibited. Placement on the list also may trigger denial of beneficial trade designation (such as normal trade relations (NTR) or inclusion in the Generalized System of Preferences (GSP) program),[18] unfavorable tax status for investors, and stricter licensing requirements for financing trade with the United States in agriculture, medicine, and medical supplies. Providing most foreign aid under the Foreign Assistance Act of 1961 and the Millennium Challenge Act is also prohibited. There

[13] U.S. Congress, House Committee on Foreign Affairs, *Briefing: The North Korean Threat: Nuclear, Missiles and Cyber*, 114th Cong., 1st sess., January 13, 2015.

[14] For more on the size of the economic package Japan is widely expected to offer if relations with North Korea are normalized, see CRS Report RL32161, *Japan-North Korea Relations: Selected Issues*, by Mark E. Manyin.

[15] On January 22, 2008, Dell Dailey, the State Department's coordinator for counterterrorism reportedly stated that "it appears that North Korea has complied with those criteria" for removal from the terrorism support list because North Korea had not committed an act of terrorism for the past six months. He reportedly added that despite the unresolved Japanese kidnapping issue, "we think that even with that on the table that they still comply with the ... delisting criteria." Arshad Mohammed, "N. Korea Seems to Meet US Criteria on Terror Listing," *Reuters*, January 22, 2008.

[16] For more information, see CRS Report RS22845, *North Korea's Abduction of Japanese Citizens and the Six-Party Talks*, by Emma Chanlett-Avery.

[17] For more details, see CRS Report R41438, *North Korea: Legislative Basis for U.S. Economic Sanctions*, by Dianne E. Rennack.

[18] Extending NTR status, also known as "most favored nation" treatment, to North Korea would significantly reduce U.S. tariffs on most imports from North Korea. The GSP program extends duty-free treatment to certain products that are imported from designated developing countries.

are exceptions to address unanticipated humanitarian disasters; the United States provided hundreds of millions of dollars in food, energy, and medical assistance to North Korea while Pyongyang was on the terrorism lists.[19] By law, the United States must oppose membership in and financial assistance from international financial institutions—such as the World Bank, Asian Development Bank, and the International Monetary Fund—for any foreign government on the U.S. terrorism lists. Additionally, U.S. citizens are prohibited from conducting transactions with designated governments without a license from the Office of Foreign Assets Control.

Table 1. Restrictions on U.S. Interaction with Any Foreign Government Designated as a State Sponsor of Terrorism

Restriction	Statutory Basis	Authority to Impose	Authority to Lift or Waive
Limits the export of goods or technology	§6(j), Export Administration Act of 1979 (50 U.S.C. App. 2405(j))	Secretary of State	Secretary of State, after the President notifies Congress
Prohibits transactions related to defense articles and defense services	§40, Arms Export Control Act (22 U.S.C. 2780)	Secretary of State	Secretary of State, after the President notifies Congress. President may also waive per each transaction. Congress may block a rescission by joint resolution
Prohibits most foreign aid, agricultural aid, Peace Corps programs, Export-Import Bank funding	§620A, Foreign Assistance Act of 1961 (22 U.S.C. 2371)	Secretary of State	Secretary of State, after the President notifies Congress. President may also waive if he finds "that national security interests of humanitarian reasons justify a waiver."
Denies Millennium Challenge Account funding	§607, Millennium Challenge Act of 2003 (22 U.S.C. 7707)	Millennium Challenge Corporation, though based on determination pursuant to §620A, Foreign Assistance Act of 1961 (above)	No waiver; assessed each fiscal year
Denies Export-Import Bank financing	§2(b)(1)(B), Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)(B))	President	President
Opposes loans or funding through international financial institutions	§1621, International Financial Institutions Act (22 U.S.C. 262p-4q)	Secretary of the Treasury, if a country is listed under §6(j), EAA, or §620A, FAA	Secretary of the Treasury (no waiver authority)
Prohibits lethal military equipment exports, bilateral assistance	§7021, Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (128 Stat. 2611)	President	President, if he finds it in the national security interest, or for humanitarian reasons

[19] For more information, see CRS Report R40095, *Foreign Assistance to North Korea*, by Mark E. Manyin and Mary Beth D. Nikitin. The assistance was channeled through United Nations agencies and non-governmental organizations operating in North Korea.

Restriction	Statutory Basis	Authority to Impose	Authority to Lift or Waive
Prohibits financial transactions with the foreign government	18 U.S.C. 2332d	Secretary of State	Secretary of the Treasury (can license activities)

Removing the State Sponsor of Terrorism Designation

There are two possible paths for removing a foreign government from designation as a state sponsor of terrorism. The first procedure requires the President to provide a written certification to Congress stating that there has been a fundamental change in the leadership and policies of the designated government, that it is not supporting acts of international terrorism, and that the current government leaders have given assurances to the United States that the country will not support terrorism in the future. The second procedure, which the Bush Administration used in North Korea's case, requires the President to submit, 45 days prior to removing the designated foreign government from the list, a written report to Congress certifying that it has not provided support to terrorism-related activities during the preceding six months and that current government leaders have provided assurances that it will not support terrorism-related activities in the future.[20] Congress may pass a joint resolution blocking a government's removal from the list, though such legislation would require the President's signature to become law. In the 110th Congress (2007-2008), Members introduced at least three measures objecting to the Bush Administration's delisting of the DPRK. None was enacted.[21]

Brief History of the Diplomacy over North Korea's Removal

The issue of removing North Korea from the U.S. lists of state sponsors of terrorism appears to have first become a significant issue in U.S.-North Korean diplomacy in 2000. In U.S.-DPRK negotiations that year over North Korea's long-range missile program, Pyongyang demanded that it be removed from the list of terrorism-sponsoring governments as well as from the restrictions required under the Trading with the Enemy Act (TWEA). 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 lists: (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.[22] Although the two countries issued a joint statement on September 27, 2000, in which North Korea restated its opposition to terrorism, the issue largely lapsed in this phase of U.S.-North Korean diplomacy, as the Clinton Administration rejected North Korean demands that it be delisted.

The discussions were revisited in 2003-2004, during the first stages of the Six-Party Talks over the North Korean nuclear issue. Removal from the terrorism support list was near the top of North Korean demands for concessions that the United States provide in return for North Korean

[20] State Department Press Spokesman, "Fact Sheet: Presidential Action on State Sponsor of Terrorism (SST) and the Trading with the Enemy Act (TWEA)," June 26, 2008. The removal came the same day North Korea issued a declaration of elements of its plutonium nuclear program. The moves were part of a U.S.-North Korean agreement.

[21] The three measures were S.Res. 399 (Brownback), H.R. 3650 (Ros-Lehtinen), and H.R. 6420 (Sherman).

[22] *Agence France-Presse* (Hong Kong) report, February 8, 2000. *Yonhap News Agency* (Seoul) report, February 8, 2000.

concessions, such as a "freeze" of its plutonium nuclear programs. The Bush Administration resisted these demands, giving significant emphasis to the Japanese abduction issue.

The final phase of negotiations over North Korea's inclusion on the terrorism lists occurred in the 2006-2008 period, following North Korea's first nuclear test in October 2006. In February 2007, the six parties reached an agreement under which North Korea agreed to freeze and then disable its nuclear programs, and the United States agreed to take steps that included removing North Korea from the terrorism sponsor list. On January 22, 2008, Dell Dailey, the State Department's coordinator for counterterrorism, reportedly stated that it appeared that North Korea had complied with the criteria for removal from the terrorism support lists because North Korea had not committed an act of terrorism for the past six months. He added that despite the unresolved Japanese kidnapping issue, "we think that even with that on the table that they still comply with the ... delisting criteria."[23] Later that year, after considerable back-and-forth in the nuclear negotiations, the Bush Administration removed North Korea from the terrorism sponsorship lists, as well as from the TWEA strictures.

Actions Since 2008 Not Deemed Sufficient for Redesignating North Korea

Since the United States removed North Korea from the terrorist list, Pyongyang has taken or been linked to a number of actions that have led to calls to place the North Korean government back on the list of state sponsors of terrorism. These actions have included multiple nuclear and missile tests, in violation of United Nations Security Council resolutions, and the 2010 attacks against a South Korean naval vessel, the *Cheonan*, and Yeonpyeong Island.[24] Since 2008, the State Department has responded to questions about whether to re-list North Korea by answering that although North Korea's actions are being continually reviewed, they do not fit the criteria for inclusion on the list.[25]

For instance, in response to North Korea's April 2009 long-range missile test and May 2009 nuclear weapon test, Assistant Secretary of State for Public Affairs Philip Crowley said that North Korea's tests of a nuclear weapon and long-range missile (in April 2009) did not meet the legal definition of terrorism."[26] In June 2010, following the determination that a North Korean submarine had sunk the *Cheonan*, the State Department issued a press release indicating that North Korea had not been placed back on the terrorism lists because it had not "repeated[ly]

[23] Arshad Mohammed, "N. Korea Seems to Meet US Criteria on Terror Listing," *Reuters*, January 22, 2008.

[24] The *Cheonan* sank on March 26, 2010. All 46 South Korean sailors on the *Cheonan* died. A multinational team led by South Korea investigated the sinking and determined that the ship was sunk by a North Korean submarine. The cause of the *Cheonan's* sinking has become highly controversial in South Korea. While most conservatives believe that North Korea was responsible for explosion, many who lean to the left have criticized the investigation team as biased or argue that its methodology was flawed. On November 23, 2010, North Korea fired over 150 shells toward the South Korean island of Yeonpyeong-do, killing four South Koreans (two Marines and two civilians), wounded dozens, and destroyed or damaged scores of homes and other buildings.

[25] In May 2010, then-Secretary of State Hillary Rodham Clinton said that State Department "continually reviews North Korea's actions" to determine its actions meet the criteria for designation as a state sponsor of terrorism. A month later, State Department spokesman Philip Crowley said that there is a "never-ending" process of reviewing whether to re-list North Korea, and that the Administration "will not hesitate to take action" if the Department determines that North Korea has taken actions that "demonstrate a consistent support for international terrorism." State Department, "Hillary Rodham Clinton Briefing on the Republic of Korea for the Traveling Press Corps," Beijing, China, May 24, 2010. State Department, "Daily Press Briefing," June 28, 2010.

[26] State Department, "Press Briefing," June 3, 2009.

provide[d] support for acts of international terrorism," as required by statute.[27] Furthermore, Crowley said that the Department had determined that while the *Cheonan*'s sinking was a violation of the 1953 armistice agreement that brought an end to the major fighting of the Korean War, it was not an act of international terrorism because it was "taken by the military or the state against the military of another state." Therefore, Crowley said, the sinking "by itself would not trigger placing North Korea on the state sponsor of terrorism list."[28]

Does a Cyberattack Equate to an Act of "Terrorism?" The 2014 Hacking of Sony Pictures

Events in late 2014 again led to calls to redesignate the government of North Korea as a state sponsor of terrorism. In June 2014 North Korean officials reacted to Sony Pictures Entertainment's forthcoming film, *The Interview*, about the fictional assassination of North Korean leader Kim Jong-un. North Korea's Foreign Ministry said that "a movie of a plot to hurt our top-level leadership is the most blatant act of terrorism and war" and threatened a "merciless countermeasure" if *The Interview* was released.[29] On November 24, Sony Pictures Entertainment experienced a cyberattack that disabled its IT systems, destroyed data, and released to the public internal emails. North Korea denied involvement in the attack, but praised the hackers, who called themselves the "Guardians of Peace," as having done a "righteous deed." Weeks later, anonymous emails threatened "9/11-style" terrorist attacks on theaters showing the film, leading some theaters to cancel screenings and subsequently to Sony's cancelling the film's scheduled widespread Christmas Day release. In responding to the possibility of such attacks, Department of Homeland Security Secretary Jeh Johnson noted that the United States has "no specific, credible intelligence of a plot to launch attacks on movie theaters."[30] Sony later announced the film would be shown in a small number of theaters and available on some online streaming services.

As concerns about the violent threats and challenge to freedom of expression grew in U.S. media, the U.S. government more publicly weighed in on the incident. The Federal Bureau of Investigation (FBI), which had been investigating the cyberattacks, and the Director of National Intelligence (DNI) declared that North Korean government was responsible for the intrusions into Sony's systems.[31] During a December 19, 2014, press conference, President Obama pledged to "respond proportionally" against North Korea.[32] In an interview with CNN, Obama called the incident "cyber-vandalism," implying that it was not an act of war.[33] On December 20, cyber

[27] State Department, "Question Taken at the June 23, 2010 Daily Press Briefing, North Korea: State Sponsor of Terrorism?" June 28, 2010.

[28] State Department, "Daily Press Briefing," June 28, 2010.

[29] Korean Central News Agency of DPRK, "DPRK FM Spokesman Blasts U.S. Moves to Hurt Dignity of Supreme Leadership of DPRK," June 25, 2014. North Korean pronouncements frequently use bombastic and threatening language.

[30] Andrew Grossman, "U.S. Weighs Options to Respond to Sony Hack, Homeland Security Chief Says," *Wall Street Journal*, December 18, 2014, http://www.wsj.com/articles/u-s-weighs-options-to-respond-to-sony-hack-homeland-security-chief-says-1418926834.

[31] FBI National Press Office, "Update on Sony Investigation," December 19, 2014.

[32] The White House Office of the Press Secretary, "Remarks by the President in Year-End Press Conference," December 19, 2014, http://www.whitehouse.gov/the-press-office/2014/12/19/remarks-president-year-end-press-conference.

[33] Eric Bradner, "Obama: North Korea's Hack Not War, but 'Cybervandalism,'" *CNN*, December 24, 2014, http://www.cnn.com/2014/12/21/politics/obama-north-koreas-hack-not-war-but-cyber-vandalism.

analysts and news media reported that the North Korean network providing access to the Internet faltered and then eventually went offline for approximately 10 hours. Many cyber analysts said the disruption pointed to an attack on North Korea's network, although they could not rule out either an overload or a preventive shutdown by North Korea. Two groups linked to the hacker collective Anonymous claimed responsibility for shutting down North Korea's Internet connection using denial-of-service attacks.[34] U.S. officials would not comment on whether this constituted the "proportional response" promised by Obama. On January 2, 2015, the White House issued an Executive Order authorizing additional sanctions on North Korean individuals and entities, calling it a "first aspect" of its proportional response.

Pyongyang denied any responsibility for the cyberattack on Sony, and some cybersecurity experts expressed skepticism that the North Korean government executed the attack,[35] while others point to evidence of growing North Korean capabilities in cyber warfare. The FBI claimed that the Sony attack used the same malware as previous attacks attributed to North Koreans, but some cyber experts say that evidence is circumstantial and speculative. Administration officials have claimed that other intelligence used to make the determination is classified and unavailable for public consumption.[36] On January 7, 2015, at a cybersecurity conference in New York City, FBI Director James Comey, in discussing whether North Korea was behind the cyberattack, stated "There is not much in this life that I have high confidence about—I have very high confidence about this attribution, as does the entire intelligence community."[37] At this same event DNI James Clapper noted that this cyberattack was "the most serious ever against U.S. interests."[38]

As of January 2015, a cyber-related incident directed at the United States has never been used as justification for inclusion on the state sponsors of terrorism lists. It could be argued that current laws relating to the state sponsor of terrorism lists may be viewed as sufficiently broad and ambiguous to allow for the inclusion of cyber-based incidents as a designation criterion. Conversely, it might be argued that the laws supporting the state sponsor of terrorism designation were focused on physical acts of politically motivated violence and amendments to existing legislation would be required to include unauthorized cyber-based intrusions of networks owned by U.S. entities as a viable criterion. However, changing current legislation to include cyber-related incidents as acts of terrorism could lead to calls for designating other governments as state sponsors of terrorism. For instance, on May 19, 2014, the U.S. Department of Justice indicted five Chinese military hackers for computer hacking and economic espionage directed at six American victims in the U.S. nuclear power, metals, and solar products industries. In discussing the details related to this indictment, U.S. Department of Justice Attorney General Eric Holder stated "this is a case alleging economic espionage by members of the Chinese military and represents the first ever charges against a state actor for this type of hacking."[39] A suggestion to

[34] Cecilia Kang, Drew Harwell, and Brian Fung, "North Korean Web Goes Dark Days After Obama Pledges Response to Sony Hack," *Washington Post*, December 22, 2014.

[35] See, for instance, Kim Zetter, "The Evidence That North Korea Hacked Sony Is Flimsy," *Wired*, December 17, 2014.

[36] "U.S. Spies Say They Tracked 'Sony Hackers' for Years," *The Daily Beast*. January 2, 2015.

[37] Tal Kopan, "FBI: 'Sloppy' Sony Hackers Left Clues," *Politico*, January 7, 2015, http://www.politico.com/story/2015/01/james-comey-sony-hackers-114041.html.

[38] "FBI: Sony Hackers 'Sloppy,' Used North Korean Servers," *VOA News*, January 7, 2015, http://www.voanews.com/content/fbi-sony-hackers-sloppy-used-north-korean-servers/2589224.html.

[39] Attorney General Eric Holder, "U.S. Charges Five Chinese Military Hackers for Cyber Espionage Against U.S. Corporations and a Labor Organization for Commercial Advantage," Department of Justice, May 19, 2014, http://www.justice.gov/opa/pr/us-charges-five-chinese-military-hackers-cyber-espionage-against-us-corporations-and-labor.

add the government of China to the state sponsors of terrorism lists does not appear to have been voiced after this incident.

Questions About North Korea's Relationship with Terrorists, State Sponsors of Terrorism, and Terrorist Activities

Since 2003, the State Department's annual report on global terrorist activities has stated that North Korea has not been conclusively linked to any terrorist acts since the 1987 KAL bombing.[40] Some observers have questioned the basis for the State Department's claims.[41] They point to several pieces of evidence and reports, which generally fall in five categories. For more on North Korea's relationship with the Iranian, Syrian, and Libyan ballistic missile and nuclear programs, see CRS Report R43480, *Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation*, coordinated by Paul K. Kerr.

Proliferation of weapons of mass destruction, including:[42]

- U.S. government statements that North Korea helped Syria build the Al Kibar nuclear reactor, which Israel destroyed in 2007, and could have been used to produce plutonium for nuclear weapons.[43] Three seizures—in October 2009, November 2009, and April 2013—of shipments of North Korean chemical protective suits, gas indicator ampoules, and gas masks to Syria, which had an active chemical weapons program.[44]
- Press reports that North Korea and Iran are cooperating in developing nuclear capabilities or nuclear weapons. U.S. officials have stated publicly that there is no nuclear cooperation between Iran and North Korea.[45]
- U.S. government statements that North Korea provided nuclear materials to Libya in the early 2000s.[46]

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[40] State Department, *Country Reports on Terrorism 2013*, pp. 62-63, available at http://www.state.gov/j/ct/rls/crt/2013/index.htm.

[41] See, for instance, "North Korea and Terrorism, a Response to Micah Zenko," *Free Korea* blog, January 3, 2014, http://freekorea.us/category/terrorism/#sthash.IgPvtrSJ.dpuf.

[42] Criteria that could be used to justify designation as a state sponsor of terrorism include actions that "willfully aid or abet the international proliferation of nuclear explosive devices to individuals or groups, willfully aid or abet an individual or groups in acquiring unsafeguarded special nuclear material, or willfully aid or abet the efforts of an individual or group to use, develop, produce, stockpile, or otherwise acquire chemical, biological, or radiological weapons." Section 40 of the Arms Export Control Act, P.L. 90-629 (22 U.S.C. 2780(d)).

[43] For more on North Korea's relationship with Syria, see CRS Report R43480, *Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation*, coordinated by Paul K. Kerr.

[44] For more on Syria's chemical weapons program, see CRS Report R42848, *Syria's Chemical Weapons: Issues for Congress*, coordinated by Mary Beth D. Nikitin.

[45] For more on North Korea's relationship with Iran, see CRS Report R43480, *Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation*, coordinated by Paul K. Kerr.

[46] According to a February 2013 Defense Department report, "North Korea provided Libya with uranium hexafluoride," which is the material fed into the uranium enrichment process. Military and Security Developments Involving the Democratic People's Republic of North Korea, February 15, 2013. A September 2011 International Atomic Energy Agency report stated that "it is very likely that" natural uranium hexafluoride contained in a cylinder that Libya received in 2001 via the A.Q. Khan network "originated in" North Korea (*Application of Safeguards in the*

Missile sales to and co-development with other countries, including:[47]

- Long-standing statements by various U.S. government officials that North Korea and Iran maintain a close working relationship on various missile programs, including ballistic missile systems;[48]
- U.S. government accounts of North Korea missile sales and transfers to Syria, buttressed by the seizure by Japanese, South Korean, Thai and other government authorities of North Korean missile parts heading to Syria and Burma (Myanmar);[49]

Conventional arms sales and transfers, including:[50]

- The July 2013 interdiction in Panama of the *Chong Chon Gang*, a North Korean cargo ship carrying fighter aircraft parts and engines, surface-to-air missile parts, ammunition, and other military equipment from Cuba. The Cuban government claimed the materials were to be "repaired" in North Korea before being returned to Cuba, though some analysts have expressed skepticism that some of the weapons systems were meant to be returned;[51] and
- Reports of North Korean arms shipments to Iran, as well as to Syria via Iran and via Turkey.[52]

Ties to Hezbollah and Hamas, both of which the State Department has designated as foreign terrorist organizations.[53] See the text box below for more information.

Kidnapping, assassination, and other direct activities against civilians, including:

- Accounts of attempted and successful assassinations and kidnappings of North Korean refugees, critics of the DPRK, and foreigners attempting to help North Koreans defect.[54] Notable accounts include December 2014 news reports of North Korean agents attempting to murder a North Korean refugee in Denmark,

Democratic People's Republic of Korea, GOV/2011/53-GC(55)/24), September 2, 2011).

[47] Supplying weapons and/or weapons technology to governments designated as state sponsors of terrorism lists generally has not been considered justification for designating the supplier government as a state sponsor of terrorism. Laws that seek to deter weapons proliferation, however, might come into play.

[48] For a list of some of these statements, see CRS Report R43480, *Iran-North Korea-Syria Ballistic Missile and Nuclear Cooperation*, coordinated by Paul K. Kerr.

[49] See, for instance, United Nations Security Council, *Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)*, S/2014/147, New York, NY, March 6, 2014, pp. 18-21, 32-33.

[50] Supplying weapons or weapons technology to governments designated as state sponsors of terrorism lists generally has not been considered justification for designating the supplier government as a state sponsor of terrorism. For instance, other countries—including Russia, China, Ukraine, and Belarus—have supplied arms to Iran and have not been added to the state sponsors of terrorism lists. Laws that seek to deter weapons proliferation, however, might come into play. For more, see CRS Report RL32048, *Iran: U.S. Concerns and Policy Responses*, by Kenneth Katzman.

[51] For a summary of the Chong Chon Gang case, as well as of reports of other cases of arms transfers between North Korea and Cuba, see CRS Report R43024, *Cuba: U.S. Policy and Issues for the 113th Congress*, by Mark P. Sullivan. See also United Nations Security Council, *Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)*, S/2014/147, New York, NY, March 6, 2014, p. 26-9.

[52] See United Nations Security Council, *Report of the Panel of Experts Established Pursuant to Resolution 1874 (2009)*, S/2014/147, New York, NY, March 6, 2014, pp. 127-128.

[53] See http://www.state.gov/j/ct/rls/other/des/123085.htm for the State Department's list of foreign terrorist organizations.

[54] See, for instance, Joshua Stanton, "North Korea Sponsors Terrorism," *The Weekly Standard, The Blog*, August 13, 2013, http://www.weeklystandard.com/blogs/north-korea-sponsors-terrorism_748381.html.

2013 news reports of an attempt to kidnap a North Korean student in Paris, and accounts of the abduction and murder of the Reverend Kim Dong-shik, a Korean-American, in 2000.

North Korea's Ties to Hezbollah and Hamas

Analysts have reported several instances in the past decade of arms exports from North Korea to Iran and Syria, which reportedly transferred the arms to Hezbollah and Hamas.[55] It appears that Iran and Syria often served as intermediaries and financiers, but some analysts argue that North Korea was aware that non-state terrorist groups were the ultimate customer. Reportedly, the North Korean weapons largely consisted of 1980s-vintage conventional arms, especially rockets and munitions. American and Israeli press reported that North Koreans advised Hezbollah in the construction of tunnels in Southern Lebanon in 2003-2004.[56] A U.S. district court determined in 2014 that North Korea materially supported Hezbollah's terrorist attacks on Israel in 2006.[57]

A 2014 review of unclassified material notes, "During [the 2008-2009 period], there appear to have been four confirmed seizures of North Korean cargo en route to Iran or Syria, where Hamas or Hezbollah could have been the end-users."[58] In 2009, a large shipment of North Korean conventional weapons allegedly bound for Hamas (and possibly Hezbollah) was interdicted in Thailand. Three other seizures of North Korean arms bound for Iran or Syria in the 2008-2009 period consisted of materiel that analysts believe was likely ultimately heading for Hamas or Hezbollah. Analysts believe that the interdicted shipments constitute a minority of the actual arms exports from North Korea to militant groups in the Middle East and North Africa.

A report from Britain's *Telegraph* claimed that in the summer of 2014 Hamas sought to purchase rockets from North Korea to replenish its stocks, and cited Israeli military commanders who apparently believe that North Korean experts provided logistical advice on Hamas's tunnel network.[59] North Korea denied the report's validity.[60] Neither the United States nor Israel or other countries have made official allegations regarding this alleged arms deal, but the history of apparent Hamas-North Korea connections provides support for the claim's plausibility, and past North Korean dealings with Syria and Iran could have helped facilitate such connections. One open-source report from June 2014 has shown Hamas fighters using what appear to be North Korean anti-tank guided missiles.[61] North Korea may not have provided these arms directly, as Syria or Iran could have transferred the anti-tank missiles from their stockpiles of arms previously purchased from North Korea.

[55] Stijn Mitzer and Joost Oliemans, "North Korean Anti-Tank Missiles in the Middle East," *Arms Control Wonk* blog, June 25, 2014, http://lewis.armscontrolwonk.com/archive/7370/oryx-blog-on-dprk-arms-exports. Bruce E. Bechtol, *The Last Days of Kim Jong-il: The North Korean Threat in a Changing Era* (Washington, DC: Potomac Books, 2013), pp. 111-127.

[56] See Bechtol (2013), op. cit., pp. 119-120.

[57] The case of *Chaim Kaplan v. Hezbollah* was a civil action for damages pursuant to the Foreign Sovereign Immunities Act ("FSIA") 28 U.S.C. §1602 et seq., against North Korea and Iran, https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2010cv0483-54.

[58] Andrea Berger, "North Korea, Hamas, and Hezbollah: Arm in Arm?," *38North* blog, U.S.-Korea Institute at SAIS, August 5, 2014, http://38north.org/2014/08/aberger080514.

[59] Con Coughlin, "Hamas and North Korea in Secret Arms Deal," *Telegraph*, July 26, 2014. North Korea is renowned for its expertise in sophisticated tunneling projects.

[60] Emily Rauhala, "North Korea Denies Selling Missiles to Hamas," *Time.com*, July 29, 2014.

[61] Stijn Mitzer and Joost Oliemans, "North Korean Anti-Tank Missiles in the Middle East," *Arms Control Wonk* blog, June 25, 2014, http://lewis.armscontrolwonk.com/archive/7370/oryx-blog-on-dprk-arms-exports.

Conclusion

Since the DPRK was removed from the state sponsors of terrorism lists in 2008, actions that North Korea has taken and been accused of taking have fueled an ongoing discussion about whether it should be re-listed. To date, cyber-related incidents such as the late 2014 attack on Sony have not been used as justification for inclusion on the state sponsors of terrorism lists. The 2009 and 2013 seizures of chemical protection equipment bound for Syria appear to be the only DPRK actions since 2008 that both (1) were recognized by official U.S. or U.N. bodies, and (2) conceivably could have met the statutory criteria for relisting.

Official U.S. government and United Nations sources have concluded that the DPRK sold missile parts and conventional weapons to a variety of countries, including a number of state sponsors of terrorism. North Korea also has launched a conventional military attack against a South Korean island that killed civilians, and has been implicated in a torpedo attack against a South Korean naval vessel. However, none of these activities are included in the statutory criteria for adding a government to the state sponsors of terrorism lists. The same is true of cyberattacks, such as the 2014 attack on Sony that rekindled the debate over whether to re-list the DPRK.

The North Korean government has been linked to a number of other actions—such as helping designated terrorist organizations as well as conducting kidnappings and assassinations in foreign countries—that some have argued should be grounds for returning the DPRK to the state sponsors of terrorism lists. As of early 2015, the information to support these claims has not been presented by the U.S. government. Of these alleged activities, perhaps the most significant are North Korea's reported weapons sales to and training of Hezbollah and Hamas.

As discussed earlier, historically, diplomatic and policy considerations appear to have played a prominent role in the State Department's decisions about the DPRK's place on the state sponsors of terrorism lists. Thus, even if the North Korean government's actions are deemed to meet the re-listing criteria, the State Department is likely to weigh the prospective positive and negative consequences that re-listing would have on international diplomacy with North Korea.

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