

# NCNK

THE NATIONAL  
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NORTH KOREA



## ISSUE BRIEF

Private Litigation against the North Korean  
Government: Overview and Policy Implications

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## NCNK

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*Cover Image: Staged North Korean propaganda photo re-enacting the capture of American sailors from the U.S.S. Pueblo. Photo by KCNA via [usspueblo.org](http://usspueblo.org)*

## Introduction

In February 2021, a U.S. district court awarded the former crew of the *USS Pueblo* and their surviving family members with a \$2.3 billion default judgment against the government of North Korea. The judgment came more than five decades after North Korea's capture of the Navy reconnaissance vessel and the crew's 11 months of subsequent captivity in the country. The U.S. designation of North Korea as a state sponsor of terrorism (SST) allowed the action to proceed in federal court, overriding the claim of foreign sovereign immunity that independent states customarily enjoy under international law. The district court awarded 61 crew members and 110 of their family members with \$1.15 billion in compensation for the pain and suffering arising from North Korea's acts of torture and hostage-taking, as well as an equal amount in punitive damages.

The judgment came in the wake of other recent court cases involving U.S. citizens' claims against North Korea for acts of torture, kidnapping, and support for terrorism, including a \$501 million dollar default judgment in a case brought by the family of Otto Warmbier, an American tourist who died as a result of his detention in North Korea. Past cases also include claims brought on behalf of U.S. citizens killed or injured in Hezbollah rocket attacks against Israel in 2006, and on behalf of those killed or injured in a 1972 attack at Israel's Lod Airport by members of the Japanese Red Army; the plaintiffs in both cases claimed that North Korea had provided material support to the groups that perpetrated these attacks. Additionally, four survivors of the *USS Pueblo* seizure had brought an earlier case against the North Korean government in 2008, marking the first successful case against Pyongyang in a U.S. court and establishing a precedent that other former crew members would follow.

Judgments awarded to U.S. citizens in their suits against North Korea now total over \$3.7 billion before interest, and it is possible that this sum will increase in coming years. For example, Kenneth Bae has filed a demand for \$250 million in compensation for his two years of imprisonment in the country, alleging acts of hostage-taking and torture; the matter is currently working its way through the federal court system. Other Americans who have been detained by North Korean authorities over the years could potentially bring claims of hostage-taking, as well.<sup>1</sup>

This Issue Brief examines the reasons for the growing number of private claims against North Korea in U.S. courts and options that claimants may have in trying to enforce these judgments. It will look at how these claims might factor into prospective negotiations to normalize relations between Washington and Pyongyang, given the near impossibility of establishing a normal economic relationship between the U.S. and North Korea if they are not addressed in some way. Finally, the report will review similar claims that have been made in South Korean and Japanese courts, litigation that also holds the potential to impact a prospective normalization of inter-Korean or Japan-DPRK relations.

## Terrorism Cases Brought Against the DPRK Government in U.S. Courts

<b>Case</b>	<b>Claims</b>	<b>Damages Awarded</b>
Bae v. DPRK (Filed in 2020 in the U.S. District Court, District of Columbia; ongoing matter)	Hostage taking, torture of Kenneth Bae	N/A (\$250 million in damages demanded)
Doe v. DPRK Ministry of Foreign Affairs (D. District of Columbia, 2021)	Kidnapping, imprisonment, and torture of U.S. servicemen aboard the <i>USS Pueblo</i>	\$2.3 billion
Warmbier v. DPRK (D. District of Columbia, 2018)	Torture, hostage taking, and extrajudicial killing of Otto Warmbier	\$501 million
Kaplan v. Hezbollah (D. District of Columbia, 2016; joint claim against Iran and North Korea)	Material support for terrorism (DPRK arms sales to Hezbollah)	\$169 million
Han Kim v. DPRK (D. District of Columbia, 2015)	Abduction and presumed torture and death of Rev. Kim Dong-shik	\$330 million
Calderon-Cardona v. DPRK (D. Puerto Rico, 2010)	Material support for terrorism (1972 Lod Airport attack)	\$378 million
Massie v. Gov't of the DPRK (D. District of Columbia, 2008)	Kidnapping, imprisonment, and torture of U.S. servicemen aboard the <i>USS Pueblo</i>	\$66 million

## U.S. Citizens' Legal Claims against North Korea

Under customary international law, sovereign nations are typically granted immunity in foreign courts for non-commercial activities. In 1996, however, the U.S. Congress amended the Foreign Sovereign Immunities Act (FSIA) to allow certain claims against foreign governments designated as state sponsors of terrorism to proceed in federal court. (The U.S. designated North Korea as an SST from 1988 through 2008 and re-applied this designation in 2017.) Subsequent acts of Congress have made it incrementally easier for American victims of state-sponsored terrorism to bring their claims forward, and for successful plaintiffs to recover court-awarded damages.<sup>2</sup> In total, U.S. courts have awarded plaintiffs with tens of billions of dollars in

compensatory and punitive damages against SSTs, of which judgments against North Korea represent a small (though growing) portion.<sup>3</sup>

The policy of allowing litigants to bring terrorism-related claims against foreign governments in U.S. courts has been controversial, particularly as the scope of the terrorism exception to the FSIA has expanded. Critics argue that these claims inject into the judicial system sensitive foreign policy questions that courts are ill-equipped to address.<sup>4</sup> Critics further point out that such private litigation may impede the President from using the seized funds and blocked assets of an antagonistic country as a bargaining chip in negotiations, and more generally may undermine the executive branch's ability to conduct foreign policy.<sup>5</sup> Some officials and scholars have also argued out that the erosion of international norms of sovereign immunity may ultimately subject the U.S. government to substantial litigation overseas, among other unintended consequences.<sup>6</sup> One federal court has concluded that the terrorism exception to the FSIA "represents a failed policy," stating that "these cases do not achieve justice for victims, are not sustainable, and threaten to undermine the President's foreign policy initiatives."<sup>7</sup> Nonetheless, Congress has repeatedly affirmed and broadened the terrorism exception to the FSIA, driven by the desire to punish foreign governments that have harmed American citizens and to allow victims of state-sponsored terrorism to win redress in court.

The government of North Korea, like the governments of most other nations subject to lawsuits under the terrorism exception to the FSIA, has not contested claims brought against it in U.S. courts. (North Korean state media has, however, criticized the testimony given in at least one of these cases.)<sup>8</sup> This failure to contest claims has resulted in courts granting default judgments to the plaintiffs, who must only clear a relatively low evidentiary bar in order to win their cases.<sup>9</sup> The family of Rev. Kim Dong-shik, for example, was awarded a \$330 million judgment against the North Korean government after Rev. Kim was abducted in China and – according to the family – presumptively imprisoned, tortured, and killed in North Korean custody. The trial court hearing this case dismissed it because of the plaintiffs' failure to provide any direct evidence of Rev. Kim's fate after his abduction by North Korean agents. However, an appellate court subsequently found in favor of the family, reasoning that the North Korean government's opacity should not allow it to avoid liability where its malign conduct could be circumstantially inferred.<sup>10</sup>

## **The Challenge of Enforcing Judgments**

It has generally been difficult for successful plaintiffs in these kinds of cases to enforce their judgments and collect damages, given the fact that the foreign governments that Washington has designated as state sponsors of terrorism are unlikely to have easily identifiable assets within the United States. Moreover, certain assets of SSTs, such as property used for diplomatic purposes, remain immune from court judgments. Nonetheless, there are a few avenues available for victims of state-sponsored terrorism to enforce their claims.

In 2015, Congress passed a law creating a "Victims of State Sponsored Terrorism Fund," which allows individuals who have won court judgments against state sponsors of terror to receive up to \$20 million in compensatory damages owed to them. The fund is financed through fines paid

pursuant to settlements or penalties for violations of U.S. sanctions as well as by the sale of property the U.S. government has seized in connection with sanctions enforcement. Approximately \$3 billion has been allocated or distributed through this fund, although that represents only a small fraction of the participants' total claims.<sup>11</sup> It is not clear how many of the individuals who have won court judgments against North Korea have applied to participate in this fund, though they presumably qualify.

In theory, these individuals could also use certain provisions in the FSIA or the Terrorism Risk Insurance Act of 2002 in order to claim North Korean funds blocked by sanctions.<sup>12</sup> According to the Treasury Department, in 2019 there was approximately \$44 million in blocked funds related to North Korea in the United States. A May 2020 criminal indictment of over 30 alleged agents of North Korea's sanctioned Foreign Trade Bank also estimated that the U.S. government had seized \$63.5 million in North Korea-related funds from October 2015 through January 2020.<sup>13</sup> Most – if not all – of these blocked North Korean funds in the U.S. are likely connected to attempts by North Korean institutions to covertly conduct dollar-based payments to facilitate international business transactions with parties in third countries, with the funds frozen by U.S. banks as they detect this sanctions-busting activity.

In practice, however, rulings from federal appeals courts have made it challenging for victims of state-sponsored terrorism to seize funds blocked by sanctions. In a 2014 case, the Second Circuit Court of Appeals denied an attempt by survivors and relatives of victims of the 1972 Lod Airport attack to claim blocked funds tied to North Korea and held by U.S. banks.<sup>14</sup> The plaintiffs had previously won a \$378 million default judgment against North Korea, convincing a federal court that Pyongyang had provided material support for the Japanese Red Army and the Popular Front for the Liberation of Palestine, which had carried out the attack in the Israeli Airport.<sup>15</sup> However, the plaintiffs were ultimately unable to claim any blocked funds: the Second Circuit found that these funds were not actually the property of North Korea, but instead belonged only to the intermediary banks that had transferred them into the U.S. financial system, and thus could not be seized under the terms of the relevant laws.<sup>16</sup> Because North Korean state-owned financial institutions do not have correspondent accounts in U.S. banks, and must use intermediaries to indirectly access the U.S. financial system, this interpretation of the law severely limits attempts by judgment creditors to attach blocked North Korean assets.<sup>17</sup>

Judgment creditors have thus had to resort to more creative means of finding North Korean assets. The U.S. government's 2019 seizure of the *Wise Honest*, a North Korean cargo ship, presented a novel opportunity for certain plaintiffs to make good on their claims against North Korea. The vessel had been impounded the previous year by Indonesian authorities for smuggling North Korean coal in violation of UN sanctions, and was eventually transferred to U.S. control; the U.S. was able to claim custody of the ship on the grounds that payments for its operations and maintenance were unlawfully and unwittingly channeled through U.S. banks.<sup>18</sup> The families of Otto Warmbier and Rev. Kim Dong-shik both won court authorizations claiming an interest in the vessel, and received compensation when it was subsequently sold for scrap.<sup>19</sup>

## Implications for U.S. Diplomacy with North Korea

The promise of a normalized U.S. diplomatic and economic relationship with North Korea has been a key element of past negotiations between Washington and Pyongyang. North Korea's failure to agree to key steps toward denuclearization, as well as (from Pyongyang's perspective) U.S. inability to follow through with its commitments, have stymied these negotiations. However, the Biden administration has indicated that it remains committed to achieving the goals outlined at the 2018 U.S.-DPRK Singapore Summit, which include the establishment of new relations between the two countries and the complete denuclearization of the Korean Peninsula.<sup>20</sup>

The growing number of U.S. court judgments against North Korea represents one of many items that would presumably need to be resolved in some fashion prior to the normalization of relations between the two countries. These judgments represent something of a secondary consideration compared to the more pressing and intractable issue of North Korea's nuclear program, as well as other difficult issues that have been on the diplomatic agenda such as sanctions relief, human rights, and the U.S. military posture on the Peninsula. Nonetheless, if prospective U.S.-DPRK negotiations proceed to an advanced stage, American citizens' private legal claims against North Korea would likely prove to be a difficult and sensitive topic to address.

Similar claims have played an important role in shaping past U.S. diplomatic initiatives to normalize relations with countries previously designated as SSTs, including the re-establishment of diplomatic relations with Libya in the mid-2000s. In the wake of the Gaddafi regime's 2003 decision to abandon its nascent nuclear program, the issue of compensation for American victims of terrorist attacks supported by the Libyan government posed the greatest roadblock to its restoration of relations with the United States. In 2006, the U.S. removed Libya from the State Sponsors of Terrorism list, although this action did not restore Tripoli's immunity for prior acts including the 1986 bombing of a West Berlin discotheque or the 1988 Lockerbie bombing. In August 2008, the U.S. Congress passed legislation authorizing the President to settle these and other outstanding claims against the Libya government.<sup>21</sup> Shortly thereafter, the U.S. government entered into an agreement with Libya to fully restore Tripoli's sovereign immunity in exchange for the provision of a \$1.5 billion fund to compensate U.S. victims of Libyan-backed terrorism.<sup>22</sup>

A similar pattern played out during the process of U.S. normalization of relations with Sudan from 2017-2020. The U.S. lifted most sanctions against Sudan in 2017 in conjunction with action from Khartoum on a range of issues; however, Sudan's designation as a state sponsor of terrorism remained in place. Negotiations over the removal of this designation picked up amidst the 2019 political transition in Sudan and an ongoing economic crisis in the country.<sup>23</sup> In 2020, Washington and Khartoum reached a deal under which the designation would be removed in exchange for Sudan providing \$335 million in compensation for victims of the 1998 U.S. embassy bombings in Kenya and Tanzania and the 2000 attack on the *USS Cole*. In December 2020, the U.S. rescinded Sudan's SST designation, with Congress acting shortly afterward to pass legislation restoring Sudan's legal immunity for past support of terrorist attacks.<sup>24</sup>

In contrast, the U.S. lifted its SST designation against Cuba in 2015 in conjunction with the Obama administration's initiative to normalize diplomatic relations and relax certain sanctions, but it did not address the roughly \$4 billion in default judgments previously levied against Havana under the terrorism exception to the FSIA.<sup>25</sup> To the extent that U.S. economic ties with Cuba began to resume in 2015-16 – prior to the Trump administration reversing course on Cuba policy – these default judgments deterred the Cuban government from allowing any of its assets to enter U.S. jurisdiction. For example, as regular direct air travel between the U.S. and Cuba resumed in 2016, the Cuban government reportedly took measures to ensure that government-owned aircraft did not enter U.S. territory, where they could be subjected to attachment by a court order.<sup>26</sup> The Cuban government also declined to loan state-owned artwork to U.S. museums out of a similar concern.<sup>27</sup> If U.S.-Cuba relations had continued along the path of normalization, these outstanding judgments would likely have presented a significant impediment to Cuban business activities in the United States.

The resolution of outstanding legal claims related to acts of terrorism is not a prerequisite for the U.S. government to remove a country's SST designation. Nonetheless, as the Cuba example demonstrates, removal of this designation only restores a country's immunity in U.S. courts for future actions and does not grant retroactive immunity for its past actions. Therefore, so long as the judgments against it remain outstanding, North Korea could not have a fully functioning economic relationship with the United States because any state-owned assets within the jurisdiction of the U.S. would be subject to seizure. As was the case for Libya and Sudan, the DPRK government would need to negotiate a settlement for U.S. citizens' outstanding claims in order to restore its sovereign immunity in U.S. courts for past actions, absent a (highly unlikely) willingness by the U.S. Congress to provide retroactive immunity unconditionally. Any settlement reached between Washington and Pyongyang in this regard would likely need to be endorsed by the U.S. Congress to be fully effective.

Nevertheless, the executive branch may have some degree of unilateral authority to suspend or restructure legal claims against the North Korean government. In 1981, for example, the Supreme Court upheld the President's authority to nullify all creditor claims against the government of Iran and refer them to international arbitration, an action the Reagan administration had taken as part of the resolution to the Iranian hostage crisis.<sup>28</sup> Additionally, the executive branch could potentially sidestep Congress on this issue by seeking the adoption of a UN Security Council Resolution applying Chapter VII sanction authorities to temporarily or permanently immunize certain North Korean assets from legal proceedings, similarly to how the Security Council in 2003 temporarily immunized Iraqi assets against creditor claims under Resolution 1483.<sup>29</sup> Such actions could conceivably be tied to the lifting of sanctions in exchange for North Korean denuclearization, though they would likely prove controversial.

As an alternative (or in addition) to a prospective settlement of outstanding claims by U.S. citizens, North Korea could potentially seek to re-open or overturn default judgments on substantive or procedural grounds. In 2019, for example, the government of Sudan successfully reversed a default judgment in a case brought by the survivors of the attack on the *USS Cole* on

the grounds that notice was improperly served to the Sudanese Embassy in Washington, instead of to the Sudanese Foreign Ministry in Khartoum as required by the FSIA.<sup>30</sup> Additionally, North Korea might raise its own legal claims against the U.S. – perhaps seeking compensation for sanctions or other losses incurred by Washington’s “hostile policy” – which could hypothetically factor into a prospective settlement agreement.<sup>31</sup>

Nevertheless, even if Washington and Pyongyang re-enter negotiations to build on the Singapore Summit, addressing the legal claims of U.S. citizens would be a far-off goal. The prospect of the North Korean government willingly paying recompense to the family of Otto Warmbier, the survivors of the *USS Pueblo*, or other claimants (or even going to a U.S. court to overturn the default judgments won by these claimants) seems remote, at best. The outstanding legal claims against North Korea will therefore likely serve as a significant barrier to the normalization of economic relations with the United States, even if the countries are able to improve relations on other fronts.

## Japanese and South Korean Legal Claims against North Korea

The U.S. has been something of an international outlier in the extent to which its legal system does not grant sovereign immunity to foreign governments accused of sponsoring terrorism.<sup>32</sup> However, recent court cases in South Korea and Japan have raised the question of Pyongyang’s immunity in these countries’ legal systems, as well.

Claims concerning North Korea hold an ambiguous place in South Korea’s legal system, and South Korean courts have only recently begun to address questions of North Korean responsibility for crimes committed against South Korean citizens. In July 2020, a South Korean court held North Korean leader Kim Jong Un personally liable for about \$35,000 in damages against two South Korean citizens who had been captured as prisoners of war during the Korean War. The two former POWs, like an estimated 50,000 or more other South Korean prisoners of war in the North, were not repatriated following the cessation of hostilities; the plaintiffs were among a group of about 80 former prisoners who were able to escape to South Korea in the 1990s and 2000s, as famine weakened social controls in the North.<sup>33</sup> In a separate case decided in March 2021, a Seoul court ordered Kim Jong Un to pay about \$44,000 in damages to a third former prisoner of war.<sup>34</sup> In June 2020, a South Korean civil society organization representing family members of civilians abducted by North Korea during the Korean War also filed a suit against the North Korean government and Kim Jong Un, seeking about \$28 million in damages on behalf of 13 family members of abductees.<sup>35</sup>

Plaintiffs have also raised the question of North Korea’s legal immunity in Japan, although the country’s courts have yet to rule on this issue. In 2018, a group of five ethnic Korean citizens of Japan – all of whom had migrated to North Korea between 1960 and 1972, and returned to Japan decades later – filed a lawsuit against the North Korean government in a Tokyo court. The group claims that they had been deceived into migrating to North Korea by empty promises of a “paradise on earth” and that the North Korean government had subsequently committed human rights abuses against them.<sup>36</sup>

Damages sought by or awarded to the plaintiffs in these cases have been several orders of magnitude smaller than those awarded to litigants in U.S. courts. However, any parties who win their case against the North Korean government in a South Korean or Japanese court will, like American plaintiffs, still face the challenge of finding local North Korean assets to assert their claims against. Nonetheless, creative searches or legal strategies may allow litigants to find assets in unexpected places. For example, the South Korean citizens formerly held as prisoners of war have sought to collect damages from escrow accounts holding copyright fees paid by South Korean broadcasters for the use of North Korean state media footage.<sup>37</sup>

Furthermore, although damages awarded for individual cases in South Korea (and damages sought in the Japanese case) have been relatively small, the class of potential plaintiffs who could seek damages against North Korea in each country could expand considerably if courts allow lawsuits by family members of absent victims to proceed. If recent litigation opens the doors to a broader wave of private legal action in either country against the government of North Korea, it could complicate prospective future efforts to normalize relations with Pyongyang.

## Conclusion

For now, legal claims against North Korea remain tangential to the overall policy concerns of the U.S. and its allies in East Asia. These cases have provided a form of legal vindication to those individuals who have suffered due to the North Korean government's actions and, in some cases, given them the means to seek a small measure of economic redress. Even though the prospect of a negotiated settlement to these claims remains distant, the judgments entered against North Korea will remain valid and are unlikely to be forgotten. As circumstances change years or even decades in the future, the political impact of these claims could very well grow in magnitude.

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<sup>1</sup> See Patricia Goedde and Andrew Wolman, "North Korean Detention of U.S. Citizens: International Law Violations and Means for Recourse," *Cornell International Law Journal*, Vol. 51 (2018), 147-181.

<sup>2</sup> Relevant legislation includes the 1996 Flatow Amendment (creating a federal cause of action against SST officials and allowing courts to award punitive damages in these cases); the Terrorism Risk Insurance Act (TRIA) of 2002 (allowing for the attachment of blocked SST assets to pay compensatory damages to victims); the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (amending the FSIA to create a federal cause of action against SST-designated foreign states themselves, and creating an additional statutory basis through which victims of state sponsors of terrorism could attach their assets); the Justice for United States Victims of State Sponsored Terrorism Act, passed as part of the 2016 Consolidated Appropriations Act (establishing the United States Victims of State Sponsored Terrorism Fund); and the Justice against Sponsors of Terrorism Act (JASTA) (allowing suits in U.S. courts to proceed against foreign governments for acts of international terrorism regardless of whether these governments are designated SSTs).

<sup>3</sup> "[Justice for United States Victims of State Sponsored Terrorism Act: Eligibility and Funding](#)," Congressional Research Service, In Focus, February 9, 2021.

<sup>4</sup> Daveed Gartenstein-Ross, "A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act," *New York University Journal of International Law and Politics* 34, no. 4 (Summer 2002): 887-948; E. Perot Bissell V and Joseph R. Schottenfeld, "Exceptional Judgments: Revising the Terrorism Exception to the Foreign Sovereign Immunities Act," *The Yale Law Journal* 127, no. 7 (May 2018): 1890-1915.

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<sup>5</sup> Troy C. Homesley III, “Towards a Strategy of Peace’: Protecting the Iran Nuclear Accord Despite \$46 Billion in State-Sponsored Terror Judgments,” *North Carolina Law Review* 95, no. 3 (March 2017): 795-856. This concern applies both to the realization of far-reaching foreign policy goals – such as successful implementation of the Joint Comprehensive Plan of Action with Iran – and to smaller confidence-building initiatives such as cultural exchanges.

<sup>6</sup> See, for example, Barack Obama, “[Veto Message from the President – S.2040](#),” The White House, Office of the Press Secretary, September 23, 2016; and Curtis Bradley and Jack Goldsmith, “[How to Limit JASTA's Adverse Impact](#),” *Lawfare*, June 3, 2016.

<sup>7</sup> In re Islamic Republic of Iran Terrorism Litigation, 659 F. Supp. 2d 31 at 37 (D.D.C. 2009).

<sup>8</sup> See “[U.S. Distortion of Facts Censured](#),” *Korean Central News Agency*, October 27, 2018.

<sup>9</sup> Under 28 USC 1608(e), plaintiffs must produce only “evidence satisfactory to the court” to win a default judgment against a foreign state.

<sup>10</sup> Han Kim v. DPRK, 774 F.3d 1044 (D.C. Cir. 2014). See also Andrew Wolman and Andrea Lazarow, “Han Kim and North Korean Accountability for Torture and Unlawful Killing,” *Journal of East Asia and International Law*, Vol. 10, No. 1 (2017), 273-282.

<sup>11</sup> Since its first disbursement of payments in 2017, the fund has disbursed approximately \$1 billion to eligible claimants every two years. The current value of outstanding claims is not publicly available, but such claims amounted to over \$27 billion after the second round of distributions in 2019. Since that date, the number of eligible claimants in the fund more than doubled, presumably raising the value of outstanding claims significantly. See United States Victims of State Sponsored Terrorism Fund, “[Special Master Report Regarding the Third Distribution](#),” Department of Justice, June 2020.

<sup>12</sup> The Foreign Sovereign Immunity Act (28 USC 1610(g)) states that “the property of a foreign state against which a judgment is entered” is subject to attachment, even in circumstances where the foreign state does not exercise control over the property. Section 201 of the Terrorism Risk Insurance Act (reprinted in relevant part at 28 U.S.C. § 1610 note) states that “in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism... the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment.” While the two provisions broadly overlap, courts have found some differences in the circumstances of their applicability.

<sup>13</sup> Indictment, U.S.A. v. Ko Chol Man, Case 1:20-cr-00032-RC (D.D.C. May 3, 2018), Document 1.

<sup>14</sup> Calderon-Cardona v. Bank of New York Mellon, 770 F.3d 993 (2d Cir. 2014).

<sup>15</sup> See Calderon-Cardona v. DPRK, 723 F. Supp. 2d 441 (D.P.R. 2010).

<sup>16</sup> Calderon-Cardona v. Bank of New York Mellon, 770 F.3d at 1000-02.

<sup>17</sup> In Calderon-Cardona, the Second Circuit Court of Appeals only considered the ownership of blocked electronic fund transfers related to FSIA claims against North Korea; the court ruled that the plaintiffs could not bring a TRIA claim because of the DPRK’s removal from the state sponsors of terrorism list prior to the time of the award. (According to the court, the FSIA allows claims to proceed against countries formerly designated as state sponsors of terrorism, but claims brought under TRIA require an active designation at the time an initial judgment is awarded.) However, in Hausler v. JP Morgan Chase Bank, 770 F.3d 207 (2d Cir. 2014), the Second Circuit determined that a similar rule of determining ownership also applied to claims brought under TRIA.

<sup>18</sup> Hyung-jin Kim and Kim Tong-hyung, “[AP Explains: What’s Behind Rare US Seizure of N. Korea Ship](#),” *Associated Press*, May 10, 2019.

<sup>19</sup> In April 2021, the U.S. seized a second ship allegedly implicated in North Korea sanctions violations: the *M/T Courageous*, an oil tanker that had been impounded in Cambodia the previous month. However, because this ship was allegedly the property of a Singaporean national, rather than property of the North Korean government, it may be challenging for judgment creditors to claim an interest in it. See U.S. Attorney’s Office, Southern District of New York, “[U.S. Government Seizes Oil Tanker Used To Violate U.S. And U.N. Sanctions Against North Korea](#),” Department of Justice, Press Release, April 23, 2021.

<sup>20</sup> See “[U.S.-ROK Leaders’ Joint Statement](#),” The White House, May 21, 2021.

<sup>21</sup> Libyan Claims Resolution Act, Pub. L. No. 110-301, 122 Stat. 2999 (2008).

<sup>22</sup> Department of State, “[Claims Settlement Agreement Between the United States of America and Libya](#),” Treaties and Other International Acts Series 08-814, Signed at Tripoli, August 14, 2008.

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- <sup>23</sup> [“Sudan’s Uncertain Transition,”](#) Congressional Research Service, July 17, 2019. In addition to removing Sudan’s sovereign immunity in U.S. courts, the SST designation also meant that the U.S. government was obliged to oppose the provision of badly needed financial assistance to Sudan through international organizations such as the International Monetary Fund and World Bank; the voting structure in these institutions effectively meant that U.S. opposition to an aid package would veto it.
- <sup>24</sup> The Sudan Claims Resolution Act, passed as Title XVII of the 2021 Consolidated Appropriations Act, legislated a “legal peace” restoring Sudan’s immunity under the FSIA, but preserved the right of 9/11 victims and their survivors to make claims against Sudan related to those attacks.
- <sup>25</sup> Andrew Lyubarsky, “Clearing the Road to Havana: Settling Legally Questionable Terrorism Judgments to Ensure Normalization of Relations between the United States and Cuba,” *New York University Law Review* 91, no. 2 (May 2016): 458-495.
- <sup>26</sup> Bissell and Schottenfeld, “Exceptional Judgments,” 1902.
- <sup>27</sup> Randy Kennedy, [“Bronx Museum Won’t Get Loan of Art From Cuba,”](#) *New York Times*, January 23, 2017.
- <sup>28</sup> *Dames & Moore v. Regan*, 453 U.S. 654 (1981).
- <sup>29</sup> Concurrent with the adoption of this resolution, the Bush administration issued Executive Order 13303 immunizing certain Iraqi assets against judicial proceedings. The U.S. also removed Iraq’s SST designation in 2003 pursuant to its occupation of the country, while Congress passed legislation that year which effectively immunized Iraq from claims related to past support for terrorism, even after the temporary immunization under UNSCR 1483 expired. See *Republic of Iraq v. Beaty*, 556 U.S. 848 (2009).
- <sup>30</sup> *Republic of Sudan v. Harrison*, 139 S.Ct. 1048 (2019).
- <sup>31</sup> Cuban courts, for example, have claimed that the U.S. government is liable for hundreds of billions of dollars in damages stemming from its embargo and other actions. These judgments remain outstanding. See Gustavo Guerra, “Cuba,” in [“Laws Lifting Sovereign Immunity in Selected Countries: Cuba, Iran, Libya, Russian Federation, Sudan, Syria,”](#) The Law Library of Congress, Global Legal Research Center (May 2016).
- <sup>32</sup> For a review of select other countries that have limited sovereign immunity for non-commercial acts of foreign governments, see “Laws Lifting Sovereign Immunity in Selected Countries.”
- <sup>33</sup> Eun-Young Jeong, [“Former South Korean POWs Awarded Damages in Case Against North’s Kim Jong Un,”](#) *Wall Street Journal*, July 7, 2020; Choe Sang-Hun, [“For P.O.W., Landmark Verdict Against North Korea Is Long-Overdue Justice,”](#) *New York Times*, August 7, 2020.
- <sup>34</sup> [“Seoul Court Orders N. Korea, Leader Kim to Pay Damages to Family of Korean War Abductee,”](#) *Yonhap News Agency*, March 26, 2021.
- <sup>35</sup> [“Lawyers’ Group Sues North, Kim Jong-un for Abductions,”](#) *Korea JoongAng Daily*, June 25, 2020.
- <sup>36</sup> Yuri Kageyama, [“North Korean Defectors Sue in Japan, Alleging Rights Abuses,”](#) *Associated Press*, August 24, 2018.
- <sup>37</sup> Kim Kyong-yoon, [“北저작권료로 국군포로 손배금 줘야’... 경문협 항고 기각](#) [North Korean Copyright Fees Should be Paid to South Korean POWs; Foundation for Inter-Korean Cooperation’s Appeal Dismissed], *Yonhap News*, April 19, 2021. See also Chad O’Carroll, [“Foreign Media Asked to Pay North Korea Copyright by South Korean Organization,”](#) *NK News*, September 6, 2019.