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Forum

Valuable Exception: Suits Against 'State Sponsors of Terrorism'

By Michael L. Martinez

Most people likely believe that the compensation system established by Congress for victims of the Sept. 11, 2001, terrorist attacks in New York and Washington, D.C., marked the first time Congress had established a mechanism for victims of terrorism to recover monetary compensation for those terrorist acts.

Although that program was unusual, it was not the first time Congress has acted in the interest of compensating victims of terrorism. Indeed, five years earlier, in 1996, Congress amended the Foreign Sovereign Immunities Act, 28 U.S.C. Section 1601, et seq., to provide for the first time that in certain instances victims of terrorism could sue foreign sovereign states that sponsor terrorism.

Why did Congress do that, effectively waiving the sovereign immunity of certain foreign countries to permit lawsuits against them by people who met the criteria of "victims of terrorism"? Understanding why requires reviewing the historic context.

Acts of terrorism against Americans were rare until the mid-1970s, when airline hijackings became all too common. In 1979, the Iranian revolution occurred, and radical students and others in Tehran overran the U.S. embassy, taking hostage dozens of U.S. citizens. Many of those hostages were held for 444 days before the Carter administration negotiated a release deal with Iran.

Once the radicals in Iran stabilized their hold on that country, they looked for places to export their revolution. They settled on Lebanon as a prime candidate, given the confluence of (1) a civil war that started in 1975, (2) the 1982 invasion of Lebanon by Israel and (3) a large Shiite Muslim population that was generally poor and traditionally at the bottom rung of the Lebanese power and social structures.

The Iranians began pumping money and other resources into Lebanon to fund the Hizbollah, which means "the party of God," and other groups. Iranian Revolutionary guards also were shipped to Lebanon to train local terrorist militias. With their goal of eradicating all Westerners and Western influence from Lebanon, and girded with Iranian financial backing, Hizbollah began a series of bombings, kidnappings, acts of torture, and murders that spanned most of the 1980s.

Iran sponsored numerous terrorist acts in Lebanon during the 1980s. Among them were the April 1983 bombing of the U.S. embassy in Beirut, the October 1983 bombing of the Marine barracks outside Beirut, and the murders of (1) Malcolm Kerr, president of the American University in Beirut, (2) Colonel William Higgins, a U.S. member of the U.N. peacekeeping force and (3) CIA station chief William Buckley.

Among the dozens kidnapped and held for years were Terry Anderson, head of the Associated Press office in Lebanon, the Rev. Benjamin Weir of Oakland, Thomas Sutherland, a professor at American University, and Navy Lt. Robert Stethem, who, in June 1985, was beaten and tortured on a highjacked airplane before being shot in the head and thrown to the tarmac of the Beirut Airport.

Another country actively engaged in sponsoring terrorism was Libya, particularly in the 1980s. Although Libya was, like Iran, behind various kidnappings and bombings, such as the March 1986 bombing of a nightclub in West Berlin, the two most notorious acts of terror sponsored by Libya were the December 1988 bombing of Pan Am 103 over Lockerbie, Scotland, and the bombing of the French flight UTA 772 over the African country Niger. Both bombings of aircraft in mid-flight killed hundreds of innocent people.

More recently, through the 1990s, numerous bombings in Israel and the West Bank by Hamas suicide bombers, again funded by Iran, led to the deaths of scores of people, including many Americans. One other event, and a catalyst for the 1996 legislation, was Cuba's shoot-down in the early 1990s of two "Brothers to the Rescue" aircraft that had been helping Cubans escape to the United States.

All of these acts of terrorism — sponsored, funded and executed by agents of a foreign sovereign state — were what Congress had in mind when it enacted the 1996 legislation permitting lawsuits by victims of terrorism. Indeed, the legislative history of the 1996 law describes how Congress wanted to create another tool to attack terrorism.

Congress believed that permitting individuals to sue foreign states was a useful way for aggrieved individuals to go after the state sponsors of terrorism where it hurts: in the pocketbook.

In carving out this new ability to sue, Congress was careful to limit who could sue and who could be sued. First, only United States citizen victims of terrorism can sue. 28 U.S.C. Section 1605(a)(7)(B)(2). As the case law has developed, it has become clear that the plaintiffs can be the victims of terrorism (including, where applicable, their estates), as well as "immediate" family members.

That term has come to include only spouses, children, parents and siblings. See *Bettis v. Islamic Republic of Iran*, 315 F.3d 325 (D.C. Cir. 2003). Second, a foreign state is not subject to such suits unless it has been designated a state sponsor of terrorism by the secretary of state. 28 U.S.C. Section 1605(a)(7)(A). Seven countries are on that list and have been for most of the past 25 years: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

Third, the statute covers only acts of terrorism described as "an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources" for any of these acts. 28 U.S.C. Section 1605(a)(7). Fourth, Congress retroactively waived and tolled the statute of limitations on such actions for ten years, effectively permitting such lawsuits to be filed until April 24, 2006, for acts of terrorism that occurred as long ago as 1979. 28 U.S.C. Section 1605(f).

Once this legislation was enacted, there was little initial response to it. Eventually, however, lawsuits filed by several of the hostages held for years in the 1980s in Lebanon, resulted in multimillion-dollar judgments against Iran.

The most prominent of these cases was the one filed by Terry Anderson. His case garnered a great deal of media attention because he had been the hostage held longest — 61/2 years — and was a member of the media himself. The fact that he filed suit led other victims and their

families to file, as did his subsequent judgment against Iran that totaled $45 million. See *Anderson v. Islamic Republic of Iran*, 90 F. Supp. 2d 107 (D. D.C. 2000).

In 2000, Congress enacted additional legislation that provided for payment of the first 13 judgments against Iran, as well as separate judgments against Cuba. The Cuba judgments were paid in full out of Cuban assets in the United States that were frozen years ago. The early Iran judgments, by contrast, were paid by the United States Treasury as a credit against frozen Iranian assets, but only up to the amount still frozen under the U.S. Treasury's control ($400 million).

The United States, in other words, acted like an insurance company and "bought" the judgments for later enforcement, waiver, negotiation or whatever, at the discretion of the president.

Since the initial 13 judgments were paid, three dozen new judgments against Iran have been obtained by various parties. Various compensation and collection efforts have been tried, but there has been little success on this front, primarily because Iran is frozen out of regular commerce with the United States. Additional legislation, executive action by the president or events in foreign jurisdictions may be necessary to break the log jam on the many outstanding unpaid judgments.

One interesting aspect of these cases has been the way the defendant countries have reacted to them. Iran deliberately decided not to accept service of process or appear in any of the terrorism cases filed against it. Thus, the Iran judgments have all been defaults following an evidentiary presentation in court by the plaintiffs. Iran is clearly aware of the cases, though, as expert testimony has revealed at the trials in some of these cases.

Iran's reaction has ranged predictably from condemning the United States to enacting its own statute permitting suits in Iran's courts, by Iranians, against the United States for acts of terrorism.

By contrast to Iran's studied distance, Libya has hired a lawyer in Washington to handle all of the terrorism cases filed against it. Because Libya uses a strategy of delaying the case progression as much as possible, not until July 2005 was any civil judgment entered against Libya for an act of terrorism. See *Price v. Socialist People's Libyan Arab Jamahiriya*, 2005 WL 1744551 (D. D.C. July 26).

Instead, motivated by a desire to rejoin the family of nations and reinstitute regular world commerce, Libya has settled the Pan Am 103 case and at various times has engaged in discussions regarding resolution of the other cases against it.

These cases have not been without controversy. Some commentators, such as the Washington Post, regularly have criticized the cases as an unwarranted intrusion into the president's foreign policy powers. Likewise, the Clinton and Bush administrations have not always been pleased with some of the cases that have been filed.

On occasion, therefore, the United States has had to inject itself into litigation to ensure that the courts act in a particular way. But at other times, the Bush administration has been supportive.

For example, in the case arising from the UTA Flight 772 bombing, the plaintiffs recently filed a motion for summary judgment against Libya that relies heavily on the affidavit of a former ambassador. Because the testimony of current and former federal officials must be approved by the government, the plaintiffs needed the Bush administration to support their efforts by way of such an affidavit. The administration not only approved the affidavit but actively worked on and facilitated the completion of the document.

Despite these criticisms and the occasional bump in the road, the 1996 enactment was a good thing on many levels. Many victims have tried their cases, obtained judgments and collected. Although many others await a fruitful resolution of collection efforts in other cases, every victim or family member who has gone through the process has concluded in retrospect that the process was both a good and cathartic experience.

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