

THE UNITED STATES SETTLES CLAIMS AGAINST SUDAN

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On October 30, 2020, the United States and Sudan signed a Claims Settlement Agreement.¹ The Sudan Claims Settlement Agreement would settle death, injury and property claims arising out of the 1998 bombing of the U.S. embassies in Nairobi and Dar es Salaam and the 2000 attack on the U.S.S. Cole, and result in the removal of Sudan from the U.S. terrorism list² and the normalization of relations.³

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Resolution Act—to implement aspects of the Sudan Claims Settlement Agreement was enacted on December 27, 2020.⁴ The Sudan Claims Settlement Agreement between the United States and Sudan entered into force on February 9, 2021.⁵

This article discusses a number of issues that arise under the complex provisions of the Sudan Claims Settlement Agreement and the Sudan Claims Resolution Act. There do not appear to have been any hearings on the Agreement or Act, nor has any detailed explanation of the settlement been released by the State Department.

BACKGROUND

While Sudan consistently denied involvement in the Nairobi and Dar es Salaam embassy bombings and the attack on the U.S.S. Cole,⁶ both persons who were U.S. nationals at the time and other victims brought suit in U.S. courts claiming compensation from Sudan, arguing that Sudanese government support for Bin Laden and al Qaeda was important to the execution of the two 1998 embassy bombings.⁷ U.S. sanctions were imposed and made increasingly stringent,⁸ with U.S. legislation in effect removing Sudan's sovereign immunity and thus unblocking legal barriers to litigation. A total of approximately \$10.2 billion in damages was awarded against Sudan, including roughly \$4.3 billion in punitive damages. The U.S.

of the United States Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania and the attack on the U.S.S. Cole” and released when all the relevant conditions were met.¹⁵ The annex to this exchange of notes was amended on December 19, 2020.¹⁶

As noted, the Sudan Claims Settlement Agreement was signed on October 30, 2020. Article III (1) of the Agreement provides that upon entry into force the United States “confirms the enactment of legislation that Sudan may invoke, upon receipt by the United States of the funds”—the \$335 million—that would in effect restore Sudan’s sovereign immunity with respect to the claims covered by the Agreement. The Sudan Claims Resolution Act was enacted on December 27, 2020.

Section 1704 of the Sudan Claims Resolution Act provides for the removal of the exceptions to Sudan’s sovereign immunity when the

excludes from Sudan's restoration of sovereign immunity claims against Sudan involving victims and family members of the September 11, 2001, terrorist attacks. The Act specifically refers to the multidistrict proceeding 03-MDL

government of the other country will be referred by the latter government to the government of the national who presented the claim.²⁷ The Sudan Claims Settlement Agreement does so in Article IV. Previous U.S. claims settlement agreements did not explicitly require that recipients of compensation for espoused claims provide a waiver, as required under Article IV of the Claims Settlement Agreement, since espousal and settlement preclude further recourse under the U.S. and international law.²⁸

Claims settlement agreements also tend to be reciprocal. For example, the claims settlement agreement with Libya,²⁹ which to a certain extent served as a model for the Sudan Claims Settlement Agreement, was reciprocal. The Sudan Claims Settlement Agreement was not reciprocal, since its main objective was to fund compensation for the specific claimants identified in Article II and further specified in the Annex to the Agreement.³⁰

Article IV (1) of the Claims Settlement Agreement provides the United States “shall accept” the \$335 million specified in Article III (2).³¹ In paragraph 1 of the Annex to the Agreement, the U.S. government is charged with making distributions from those funds to claimants. The agreement of October 21, 2020, as amended on December 19, 2020,³² provided for the prepositioning of the \$335 million in an escrow account established by an escrow agreement among the Central Bank of Sudan, the Federal Reserve Bank of New York, and an escrow agent. Section 1702(3) -e5 -18.m(

of the Sudan Claims Resolution Act defines the escrow agreement as part of

Terrorism Fund (USVSSTF) from 2030 to 2039” and “[e]nsuring that claimants with judgments against Sudan are allowed to recover from the USVSSTF.”³⁷

Since the Treasury does not usually provide interest on accounts it

settled by espousal. They are not typically covered by U.S. lump sum claims settlement agreements. Thus, legislation—the Claims Resolution Act—was needed to definitively terminate the ability of this category of

up a novel system in paragraph 1(c) to cover eligible foreign nationals.⁴³ Sudan was required to establish a Commission in a mutually agreeable jurisdiction consisting of a sole commissioner to whom the United States does not object. The Commission was authorized to award \$800,000 per

TERMINATION OF LITIGATION

Article III (1) of the Sudan Claims Settlement Agreement and Section 1704 of the Sudan Claims Resolution Act provide for the restoration of Sudan's sovereign immunity in U.S. courts and seek to bar pending and future suits against Sudan on the grounds specified in Article II of the Agreement.

While barring future suits and attachments seems clear-cut, achieving termination of pending suits and existing judgments and nullification of existing attachments, particularly concerning non-espoused claims, would be more difficult. Thus, Article 9.2.7 (s) 8.6 (t)-4.61.6 (n) 9 (m)-4-4.7 (l) 6.xi) 63.6h

the Agreement and Act appeared to provide for a successful resolution of the covered claims and a path toward improvement of relations, there was a coup in Sudan on October 25, 2021.⁵³ In view of that, the United States has maintained a pause on certain assistance to Sudan⁵⁴ and the UN Integrated Transition Assistance Mission to Sudan (UNITAMS) is presently facilitating a political process aimed at renewing the transition to a civilian-led government.⁵⁵