

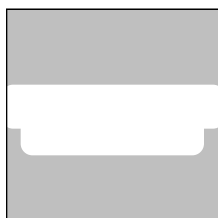
# Religious Persecution as a U.S. Policy Issue

Proceedings of a Consultation  
held at Trinity College, Hartford  
September 26-27, 1999

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# Introduction

Rosalind I. J. Hackett

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Religious persecution has been presumed to be in decline in the modern world, but at the turn of the 21st century we are witnessing significant growth in the repression of minority and nonconventional religions in many parts of the world. Despite the protections afforded to freedom of religion and belief in international human rights documents (which most countries have signed), many governments are seeking to control religious diversity within their borders. Proselytization, noticeably on the rise among some revivalist Christian and Muslim groups, has generated controversy and conflict in areas where particular religious traditions are privileged, or where cultural self-determination is guaranteed or sought. Interreligious tensions and conflicts at the local level frequently develop national and global ramifications.

Under the circumstances, it is not surprising that over the past few years the phenomenon of religious persecution has drawn increased attention in the United States. Global surveys of the persecution of Christians are bestsellers; Internet sites on the topic have proliferated. At the same time, how to address this complex and sensitive issue has generated considerable confusion and division. Widespread support for freedom of religion and belief is often accompanied by ambivalence when it comes to acting in specific cases. Politics, economics, culture, and religion itself all affect decisions about whether to intervene or steer clear of involvement when allegations of religious persecution arise.

Generally understood as serious and ongoing discrimination, “religious persecution” (like “religion” itself) remains an ambiguous term as well as one subject to manipulation. There exists a spectrum of religious intolerance (comprising attitudes as well as actions) that runs from simple prejudice through discrimination to situations of outright physical violence. Persecution can be considered no more than favoring one established religious group over others, or protecting the interests of citizens against perceived antisocial religious groups, as is currently occurring in some European countries. In government and intergovernmental circles, there is a preference for talking about state guarantees of “religious freedom”; however, this concept presents challenges of its own. Implying that such freedom is always a good thing, it tends to overlook, for example, the potential problems associated with aggressive proselytization. Likewise, focusing on the state as the principal actor in violating the rights of religious groups can obscure significant

interreligious and intra-religious cases of persecution.

On October 27, 1998, President Clinton put religious persecution at the forefront of the U.S. human rights agenda by signing the International Religious Freedom Act (IRFA). Although it passed 98 to 0 in the Senate and by a voice vote in the House of Representatives, IRFA was the product of intense debate and negotiation within Congress, and between Congress and the Administration. The result is an intricate new piece of foreign policy machinery designed to publicize religious persecution around the world and to enable the President to counteract it. Among its salient provisions, IRFA:

- creates an Ambassador at Large for International Religious Freedom, appointed by the President with Senate approval. The Ambassador heads a new Office on International Religious Freedom within the State Department and serves as an adviser to the President and the Secretary of State.
- establishes a bipartisan and independent Commission on International Religious Freedom with nine voting members appointed by the President and Congress, with the Ambassador serving *ex officio* as a nonvoting 10th member. The Commission monitors religious freedom and makes policy recommendations.
- requires the Commission to submit an annual report no later than May 1, setting forth recommendations for U.S. policy responses both to general violations of religious freedom and particularly severe violations.
- requires the State Department to prepare an Annual Report on International Religious Freedom, which makes an assessment of the status of religious freedom in each foreign country, and reports U.S. policies and actions in each country *vis-à-vis* religious freedom.
- requires the President to take one or more of a range of actions against countries that are found to violate religious freedom, and to try to negotiate binding agreements to cease the violations. The specified actions range from diplomatic measures to economic sanctions and withdrawal of security assistance.
- requires the President to make a separate annual determination no later than September 1 as to which countries have “particularly severe violations of religious freedom.” In these cases the President is required, after consulting with the foreign governments in question, humanitarian organizations, and interested parties in the United States, and after reporting to Congress, to choose from the shorter menu of economic sanctions. In lieu of these actions, the President can: negotiate, within a limited time period, a binding agreement; invoke a waiver that IRFA allows under certain conditions, e.g., cases where important national interests are at stake; or invoke an exception for cases where an ongoing sanctions regime is already in place for human rights violations.
- amends the Immigration and Nationality Act to deny visas and admission to any foreign government official who has engaged in particularly severe violations of religious freedom.

- requires training on religious persecution issues for Foreign Service officers, chiefs of mission, refugee officers, asylum officers, immigration judges, and consular officers.
- makes the promotion of free religious belief and practice a priority in allocating U.S. foreign assistance; in U.S. international broadcasting; and in international exchange programs. It also authorizes performance pay and Foreign Service Awards for meritorious service promoting freedom of religion.

On September 26-27, 1999, the Center for the Study of Religion in Public Life at Trinity College, Hartford, hosted a Consultation to enable selected government officials, human rights professionals, representatives of religious organizations, religion scholars, lawyers, and journalists to explore the phenomenon of religious persecution around the world as it relates to this new official U.S. engagement in the issue. Previous conferences on religious persecution had tended to be limited in orientation and/or scope. Some viewed the subject from the standpoint of different religious traditions. Others focused on the need for interreligious dialogue—while excluding nonconventional religious groups that are often the principal objects of discrimination. Still others restricted themselves to a particular geographic region, subordinated religion to notions like “ethnic conflict,” or looked solely at legal interpretations and implications. Rarely did participants try to look directly at the different understandings of the idea of religious persecution made in different parts of the world and in political, journalistic, academic, and religious circles.

To say that those who attended the Hartford consultation brought different perspectives to the table is an understatement. The congressional authors of the International Religious Freedom Act prided themselves on crafting a piece of legislation that balanced the bully pulpit of moral exhortation with the exigencies of conducting foreign policy in a complicated world. Their academic critics took aim at the very idea of singling out religion for protection. Human rights activists worried about the effect of the new U.S. initiative on multilateral approaches to human rights around the world. By the end of the two days, the veneer of politeness had rubbed away and, as the reader will see, the participants were mixing it up with considerable vehemence. The heated debate should not, however, be allowed to obscure the fact that they all occupy the same side of the larger divide between those who support a human rights agenda for U.S. foreign policy and those who see that agenda as at best a loose cannon on the deck of the ship of state. At the consultation, no one spoke out on behalf of the interests of American capitalism or Realpolitik. This was, as it were, a debate among friends.

What follows is an abridged and edited transcript; the aim has been to provide the substance and the feeling of the discussion, while at the same time compressing and clarifying what was said to make it readable and nonrepetitive. We are grateful to Dennis Hoover, Ph.D., resident fellow and program associate of the

Center, for coordinating the editing with the participants and otherwise preparing this booklet for publication. We also want to thank the Rockefeller Foundation and the David and Judith Rivkin Foundation for making both Consultation and publication possible.

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# The International Religious Freedom Act (IRFA): A View from Congress

John Hanford: One of the significant untold stories of our day is the problem of religious persecution. Each day brings new stories of persons imprisoned, tortured, raped, harassed, even murdered for their faith.

In the communist world it is fair to say, in a broad sense, that conditions are improving, though still serious in some countries. But in the Arab and Hindu worlds, circumstances seem to be getting worse, with many of the victims suffering in silence. In fact, it's interesting to pause and think that if our meeting were occurring tonight in China or Saudi Arabia, Laos or North Korea, we might well be interrupted, hauled off to the police station, arrested, interrogated, perhaps imprisoned for days or weeks. Perhaps Trinity College would be bulldozed to the ground. And we could expect the ringleaders of our gathering, Mark Silk and Rosalind Hackett, to be in for even worse treatment, I fear!

In the past several years the issue of religious persecution has received increased attention in the media. It is important for us, however, to have an accurate handle on the facts. I think it is fair to say that in this century there have been more persons martyred for their faith than in all the previous centuries combined. While that may be due in part to the fact that the population is greater today than in past centuries, it is also the grim result of horrors committed under Hitler, Stalin, Mao Zedong, the Armenian genocide, as well as in civil wars based at least in part on religion, such as the one that has raged for years in Sudan. But when it comes down to the question of how many are martyred this year or last year, the estimates vary so greatly that it is very difficult to come up with accurate figures, and it is here where I would urge some degree of caution.

Most importantly, though, as many as half of the world's people live under serious restriction of their ability to practice or to choose their faith freely, in accordance with the dictates of their own conscience. Therefore, the real story of religious persecution, when properly understood, can be seen to be as or more serious than the more sensationalized versions that are sometimes put forth.

Now, the question is sometimes asked, what business do we as a nation have caring about this problem and "imposing our values" upon the rest of the world? In our increasingly secular society, there would appear to be a growing aversion to church/state issues. In this regard, there are several preliminary points that may be worth touching on.

First, as I am sure many of you would agree, it is possible today to lose sight of the fact that this issue is at the very core of our nation's heritage. Our forefathers

viewed it as one of the most precious of freedoms, with many of our nation's early settlers coming to America for the very purpose of fleeing religious persecution. To quote just one of our founding fathers, George Washington stated, "I beg you will be persuaded, that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny and every species of religious persecution."

Second, the issues that we're talking about overseas in the way of religious persecution are almost always more serious than the ones we deal with here in the United States regarding church and state. That is not to take away from the importance of the church-state issues here, but the violations abroad can be so egregious that weighing in on such matters has long been a noncontroversial, bipartisan issue on which most Americans agree. In my years of working on this issue with Senator Lugar, we have never found it necessary to approach this matter from a partisan perspective. While it may not often be possible to say this, Ted Kennedy and Jesse Helms happily join together, along with a broad representation of their congressional colleagues, in protests to foreign governments over serious restrictions on religious freedom.

And finally, while many nations may not like it, America has long maintained as a part of its agenda to "meddle" in other nations' affairs, in order to assert its influence where justice and basic human rights are denied. This is reflected in the State Department's annual Country Reports on Human Rights which religious freedom is viewed as a central part of our nation's human rights policy, as well as in various United Nations documents to which the United States is a party.

Now, over the past 10 or 12 years, the issue of religious freedom as a human rights concern has gradually gained increased attention, as some of us can attest from the significant efforts that have emanated from Capitol Hill and from certain nongovernmental organizations that focus on this issue. Generally, this work has been approached on a country-by-country basis, and a great deal of significant intervention has been accomplished in this way.

Then, in 1996, Michael Horowitz, a man of Jewish heritage, became interested in this issue and helped the cause significantly by generating increased media attention. He also had as a specific objective that there should be legislation passed to address this issue. He was the primary author of The Freedom from Religious Persecution bill, or "Wolf-Specter bill," as it was commonly called, which was introduced in Congress in May of 1997.

Congressman Frank Wolf, a long-time champion of this issue, was interested in pushing ahead with this legislation, without making many changes, because he was concerned about the risk of losing momentum. The Wolf-Specter bill got bogged down for about 12 months in the House International Relations Committee, where a number of changes were necessitated. But eventually, in May 1998, the bill reached the House floor, where it passed overwhelmingly, by a vote of 375 to 41.

Despite this support, however, the bill, as it stood, was not going to be passed

by the Senate (where, after 12 months, only six Senators supported it) nor, according to certain Administration sources, was it likely to be signed by the President. Consequently, several of us who had worked for a number of years on cases of persecution decided that we would draft an alternative bill, which we did, with our bosses' blessings and guidance as well as with the counsel of a number of experts, including those on the ground overseas and others in human rights work and international law. We had learned through experience what we felt was most productive on this issue, and we sought to incorporate this experience into the bill. In March of 1998, the International Religious Freedom Act (IRFA) was introduced in the Senate.

To briefly sum up our goals, we sought to draft more effective and comprehensive legislation, which would result in regular, definite action being taken. We wanted to tailor such actions to problems on a country-by-country basis. We wished to employ a fuller array of actions from our foreign policy toolbox. And, again, we wanted a bill that would pass.

In essence, our objective was to put into place a permanent apparatus that would wisely and strategically leverage our government's influence on this central human right, constantly monitor this issue around the world, and respond to egregious problems with appropriate emphasis through an array of measures available through our nation's diplomatic relationships.

Steve Moffitt: The fact of the matter is that the Wolf-Specter bill was not going anywhere in the Senate. So in March of 1998, we introduced the International Religious Freedom Act, and that's when our lives completely turned upside down. We were immediately bombarded by every interest group that you can possibly imagine that has an office in Washington. Some religious groups said of the bill, "It's too harsh, it's going to absolutely, positively harm our missionary efforts overseas." Other religious groups said, "This bill's not strong enough, we've got to do more." Business groups came and said, "This bill's too harsh, a sanctions bill. This is exactly like the bill we were opposing, the Wolf-Specter bill. You can't have sanctions."

And we sat down with the Administration for hours and hours on end. Also at the hearing it came up that Republican senators were not pleased with the bill because of the sanctions provisions. It took us most of the summer to work through constant negotiation of those changes—up until probably a couple hours before the bill passed.

We got all kinds of abuse. I remember an article in the summer that appeared in a Jewish paper in New York that said that we were dawdling while Christians were dying. Fine, I guess, if that's what you want to say, but we were negotiating, and if negotiating was dawdling then I guess you have never been through negotiation. We also got criticized by conservatives. A lot of people would have thought that this is viewed as a Christian Right bill, but many in the Christian Right criticized us for negotiating with the Administration.

The reason why I raise this is that a 98-to-nothing vote in the Senate and a

voice vote in the House is not an accurate picture of what actually happened. This was a very contentious debate.

Laura Bryant: Our basic goal, given the magnitude of the problem and the fact that it had been so neglected in many ways up until this point, was to generate the greatest possible level of action by our government, but in the most effective and responsible way—and to bring religious freedom up to its rightful place at the foreign policy table.

In a sense, all we really can control is our own government's behavior or efforts, and even then we have a hard time controlling that. But we wanted to put in place a permanent mechanism, one that wouldn't just fall apart when the attention to religious persecution generated over the last few years wanes and another issue takes its place. We wanted something permanent, supported by enough accountability that the mechanisms would work.

We also wanted to create the greatest possible incentive for other governments to change their behavior. Levers of influence may differ from one country to another. And I want to emphasize that what's at stake here isn't just some abstract foreign policy concept. We are talking about the blood of men and women and children. We bear serious responsibility for any actions we take that impact their lives.

We sought to build IRFA on existing mechanisms and to use the whole foreign policy toolbox. For instance, we looked at the negotiation principles that help make sanctions effective in trade violations, and we sought to apply similar principles to this area of human rights.

Because we were building on current definitions, we also got away with a stronger bill. The Wolf-Specter definition constituted a much higher threshold of persecution. And in those furious, hectic last hours leading up to IRFA's passage, an interesting aspect of the legislative negotiations was that those who sought to weaken the bill were arguing for the higher threshold and definition to replace the definition that we have. But because the IRFA definition is consistent with other parts of U.S. law, like Section 116 of the Foreign Assistance Act, we could say, "No, this is consistent with stated and codified U.S. policy, and we're going to stick to it." We spent a long time on the definitions of religious persecution, as these are the starting points for policy. You have to include violations of religious freedom, both at the policy level and at the level of threat to life and limb, because you can't really divorce the two. One leads to the other.

There were a lot of complaints from some sectors that we were creating a hierarchy of human rights and that somehow this was special pleading for one group. We, in fact, carefully crafted provisions such as training, awards, and others to deal with human rights in general, including religious freedom. We do deal explicitly with religious freedom in a number of other areas. But I think all of us were working from the experience and belief that these were corrective measures in an area that's been neglected in our policy.

In addition to accurate definitions and a broad scope, we wanted permanent profile. As you may know, in the diplomatic world symbolism is a lot of what carries the day. And so we wanted to send the signal to the world that the United States cares so much about this issue that it has a permanent ambassador on religious freedom who's going to negotiate and represent this issue around the world.

Also, you have the Commission, which is really quite unique in terms of its foreign policy role, and probably in terms of the scrutiny it will receive from around the world. The Commission will likely be poking its fingers in the eyes of a lot of countries, and they won't like it.

Next, we have training. The front lines of U.S. foreign policy are the people who meet face to face with instances of persecution. We put in place a new requirement for the same training, across-the-board, for refugee officers as for asylum officers. Until now, refugee officers, who work on-site abroad, were not subject to the same level of training as asylum officers, who work in the United States. We also required training for Foreign Service officers and ambassadors. It used to be optional to train these folks in human rights. Now it's not optional anymore.

Really the cornerstone of our bill, however, is that action is required in response to violations of religious liberty. This goes back to the question of levers of influence. We wanted action to be mandatory, but also to be flexible, and for the United States to have the possibility of escalating its response.

One key part of this required action is the determination of whether a country has reached the higher threshold of violations, consistent with international and U.S. human rights standards. A determination, as an official up-or-down decision, generates immensely more activity from our government than does a simple policy statement.

We included in the sanctions process that follows such a determination a lot of input and consultation from various actors, including NGOs and the Commission. We built in several steps, with the primary goal of reaching an agreement to cease the violations. The goal, again, is changing behavior. It's not punishment.

We also wanted to increase the quality of the State Department's reporting. If you have poor facts, you have poor policy. Reporting has a sunshine effect, creating embarrassment for violator countries. It provides accountability for the United States, which will do more if it must report on its actions. But perhaps one of the most important factors is the advocacy implicit in reporting. The most effective action can be to keep asking the right questions, keeping at it and going back and going back and going back. There are times when the U.S. government has done a terrific job of this and times when it has not.

The yearly IRFA cycle starts with the annual Country Reports on Human Rights which already has been in place for decades and usually comes out in early February. The Commission is tasked with convening within 15 days of that time, and coming out with its own report by May 1, highlighting the worst situations and providing policy recommendations. IRFA next requires a State Department Annual Report on Religious Freedom, due September 1. Action then splits off into two areas. For vio-

lations falling under the general broad definition of religious freedom violations, the President is required during the following year to take action from a menu of 15 measures, which includes noneconomic measures. However, if the violations reach the more serious level, requiring a determination, that kicks off the whole negotiation and sanctions process. Within 90 days, a decision must be made regarding which action to take, from the stronger menu of options.

William Inboden: I wanted to highlight further some of the differences between the two bills, Wolf-Specter and IRFA. First, the two bills took a very different premise in terms of how they defined “persecution.” Wolf-Specter uses very explicitly, from its title, definitions, and language throughout the bill, the term “religious persecution.” And it defines “religious persecution” to include only the most severe and violent acts against people for their religious faith that occur, as the original draft of the bill said, “in a widespread, systematic and ongoing fashion.” Perhaps only one or two rogue nations might be guilty under this definition, so Wolf-Specter had a very narrow purview. There may perhaps be some merit to this approach of only highlighting the most severe persecution, or some demerit. But regardless, Wolf-Specter and its proponents made a tactical decision to target only those regimes guilty of the most widespread, barbaric persecution. Even a couple of proponents of this bill said it would perhaps only apply to North Korea and Sudan.

IRFA, on the other hand, rarely even uses the word “persecution.” The term “persecution,” while certainly a reality in the world, can be very problematic when it comes to precise legal definitions and distinctions. We decided to base IRFA on the more broadly encompassing terms, “violations of religious liberty” or “violations of religious freedom,” which obviously would include very severe persecution. IRFA, with its definition, as the mammoth State Department report on religious liberty worldwide would indicate, potentially will address a much broader array of countries.

Second, as far as the measures in response to these violations of religious liberty or persecution, Wolf-Specter employed what some of us described as a “one-size-fits-all” approach. Wolf-Specter applied the exact same response, which was the termination of all U.S. economic assistance as well as some targeted trade sanctions, to any and all countries found guilty of “religious persecution.” Again, it is debatable which countries those might be, but whatever countries came under that definition, the exact same punishments would be applied. Some of us were concerned that Wolf-Specter did not take account of the profoundly consequential variables, such as the nature of America’s relations with these countries, the reasons why persecution takes place, and what particular levers we may have with those countries.

To put it simply, Wolf-Specter would have treated countries like China, Egypt, Pakistan, Israel, Saudi Arabia, Iran, and North Korea all the same. And as you know, some of those countries are allies of the United States, and others are almost our mortal enemies. With some we have strong economic ties, while with others

we don't have any economic relationship. Some persecute just Christians; others persecute people of many different faiths. It seemed to us perhaps not as responsible or as effective an approach to use the same measures in response to "persecution" when so many different variables exist.

Wolf-Specter, likewise, employed an "all-or-nothing" approach in terms of measures that would be applied against a violating country. There was not, we believed, sufficient room for gradation or for scaling up or scaling down. The offending country would either be hit with everything—cut off all U.S. assistance and some targeted trade sanctions—or nothing.

For several of us involved in the issue of religious persecution—and I am convinced that proponents of all the bills obviously care very deeply about the issue—we feared that because of its rigidity, Wolf-Specter would have hardly ever, in fact, been implemented. It almost could be characterized as a "do-nothing" bill. If you have only the option, metaphorically speaking, of using a nuclear-scale weapon against a country or doing nothing, a lot of times you will do nothing.

IRFA, in contrast, sought to ensure that action would be taken while preserving flexibility to tailor the response to the particular conditions within the country.

I also wanted to offer a few of my own thoughts on some of the foreign policy implications of IRFA. IRFA stands squarely in the Wilsonian tradition of idealism and morality as components of U.S. foreign policy. However, as we all know, such an approach is not without its critics, including those who would embrace realism, or Realpolitik and who would believe that there should be little or no place in American foreign policy for loftier notions such as human rights. Some of these voices—we heard a lot of these arguments last year—would say that American foreign policy should be driven only by American national interests such as our security needs or our economic interests.

In response to those critics I want to make a couple of observations. While I am wary of emphasizing the social utility of religion—I, for example, am a Christian not because it does good things for me but because I am persuaded of the normative truth of the Christian faith—I do believe religious freedom can often be beneficial for civil society and culture. Simply put, it is our firm conviction that we should promote religious liberty overseas not only because it's the right thing to do—there's that Wilsonian idealism coming through—but also because it is in the American national interest.

One would be hard-pressed to find many, perhaps even any, countries that both respect religious freedom yet also commit serious human rights violations in other areas and/or pose a serious security threat to the United States. In a modification of the "democratic peace" theory, I also notice a correlation between religious freedom and peace and stability. Countries that respect religious liberty generally do not fight each other, and generally respect the rule of law and democratic values. Religious freedom, then, serves as one indicator of a country's health, and I believe it is in the vital national interest of the United States to promote it.

A related concern has been expressed that this particular measure, by prioritiz-

ing religious liberty, imposes a “hierarchy” of human rights. I would make two observations here. First, I believe the perception to be largely accurate that in recent years the U.S. foreign policy establishment has been relatively neglectful of religious liberty, in comparison with its attention to other human rights issues. IRFA stands as one attempt to remedy this neglect. Second, religious freedom does not exist in isolation, but rather encompasses many rights, including rights to freedom of speech (e.g., proselytism), assembly and association (worship), conscience, etc. Again, we would be hard-pressed to find a country that respects religious freedom while engaging in systematic and flagrant violations of other rights. A rising tide, then, lifts all boats.

Concerning some domestic implications of this bill, it may also serve as a helpful reminder of the relationship between foreign policy and the consent of the governed in a democracy. And while I would defend to some extent the historic pattern of elites in the United States determining and implementing American foreign policy, I do believe that this latest moment and this latest movement represent an important re-assertion of what you might call the populist impulse in a very healthy sense. Simply put, a significant number of the American people out at the grassroots seem to have decided they want their governments and their nation to reprioritize its foreign policy to reflect a value that they hold very dear—namely, religious freedom. And I do hope that IRFA gives a responsible expression to this impulse.

Likewise, I am hopeful that this law and the grassroots support behind it will help guard against a couple of somewhat unhealthy tendencies in American life at times. One would be isolationism. IRFA keeps the United States involved in the international community and even, to mention one particular demographic group, it will keep religious conservatives involved in international relations.

Hopefully this Act can also serve as a bulwark against hyper-nationalism. This Act is not trying to codify the First Amendment overseas, but rather to build on Article 18 of the Universal Declaration of Human Rights and other international accords. IRFA seeks to strengthen, rather than undermine, international institutions such as the United Nations and the Organization for Security and Cooperation in Europe.

I have two concluding thoughts. We need to beware of utopianism. This bill is not going to end religious persecution. But at the same time we need to be wary of cynicism as well. IRFA should not be caricatured as some sort of legislative pay-off to a particular constituency such as the Christian Right. I believe it represents a significant, substantive step in rendering America’s actions more consistent with America’s ideals, and invigorating American foreign policy on behalf of a profoundly worthy cause.

## Discussion

Berel Lang: There is clearly a considerable apparatus and organizational chart attached to the implementation of this bill, and I just ask the direct question—what’s the cost of implementing this bill?

Laura Bryant: The cost of the implementation in our initial bill was zero. And one of the reasons for that was agreement among fiscally conservative folks who did not want any more funding added to the bill. Late in the process, however, there was a \$3 million appropriation put in place for the Commission so that they could be more independent, hire staff, that sort of thing. In terms of the actual cost of implementing the rest of it, I don’t think it’s going to add significantly, although the reporting burden on the State Department is probably the largest impact in that sense. We created more work for the State Department. And if they come back and say, “We need more money for this Department,” we’re glad to think about providing that. But a lot of the problem is a matter of resource allocation within the State Department. The human rights bureau, you may know, is the least funded functional bureau within the State Department. And that says something about priorities. I think there’s a certain extent to which some of the existing resources need to be rerouted.

Ned Cabot: I have always found it useful to evaluate a piece of legislation based on its effect on the worst case. In this area, according to some groups like Christian Solidarity International, the worst case is Saudi Arabia. When I look at the actions that the President could take with respect to Saudi Arabia, some of them are slaps on the wrist. The President could delay or cancel science exchanges, cultural exchanges, official or state visits. But Section 405(a)11 has real teeth. The President could withdraw, limit, or suspend U.S. security assistance to Saudi Arabia. My question is whether Congressman Clement, Senator Lugar, or Senator Nickles would favor the withdrawal, limitation, or suspension of security assistance to Saudi Arabia. If not, why not? And if the answer is no, does this Act matter?

John Hanford: Well, I will take a stab at this. I would agree that Saudi Arabia is one of the most repressive nations on the issue of religious freedom. It can be heart-wrenching to hear of men or women receiving hundreds of lashes, given out over a period of time, or of persons beheaded for their faith. Clearly, one value of this Act is that it sends an important message. It puts a marker out there for the world that our nation cares so deeply about this basic human right that we’re willing to back up our principles with monitoring, with scrutiny, with vigilance, and with action. When it comes to official pressure or action under the Act, the State Department has the option of classifying measures taken. In the case of a country such as Saudi Arabia, there is certainly a greater likelihood that such actions, when necessitated, will be classified. We had to be realistic. We had to take into account that by giving the President and the State Department a greater degree of flexibil-

ity and options, the end result would likely be, in actuality, that more meaningful action would be taken against a friend or ally. I believe experience teaches us that the alternative of a simplistic, draconian, “one-size-fits-all” approach to a particular foreign policy concern such as this is likely to result in little to no action at all.

Laura Bryant: In the last few years, for the first time, Saudi Arabia stated that private worship is basically allowed in homes. That was not true before, and I think the change has something to do with the noise these religious freedom bills were making, internationally.

Ira Rifkin: In covering the creation of this bill in Washington, and during that process in those couple of years, I heard repeatedly from people who represented certain advocacy groups in Washington, that this was part of the United States’ policy to meddle in other countries’ affairs. And they considered it to be an attempt to foster American type religion in countries whose leaders had no desire to accept it. They saw this, for example, as an attempt by the evangelical community to force nations to accept mission work that they do not now accept. Saudi Arabia is a prime example.

William Inboden: I guess to exaggerate a little bit, with a bill like this, to get 98 votes and have the Senate pass it, there’s officially 98 different reasons for voting yes. Everyone had different reasons for getting behind it and so it could be easy to characterize it as an American bill or a First Amendment bill or a Christian Right bill or, for that matter, Christian Left bill. And all those things are true and none of them are true.

Laura Bryant: We felt all along we were on very solid ground in terms of international standards. We were using the Helsinki Accords, where you have very clear guarantees of religious freedom, as well as numerous other international instruments, including those of the United Nations.

Steve Moffitt: The point you made, “Isn’t this America trying to impose its interest on the rest of the world?” I am just going to point you quickly to the United Nations Charter, Article 1, paragraph 3. The purpose of the United Nations is to achieve international cooperation promoting human rights. One hundred and five nations are members of the United Nations. They all signed up to that, and to the Universal Declaration of Human Rights. So when other countries say it’s a United States bill, we say no, your government signed up to this and we’re simply asking you to adhere to something you signed onto. If you don’t mean it, then get your name off it, but your name is on there.

Jeremy Gunn: I first need to make it clear that the opinions I am offering today are personal and they do not necessarily represent the viewpoints of the U.S. Institute of Peace, the U.S. Department of State, nor the U.S. Commission on

International Religious Freedom. I would like to ask a friendly question, but one with a twist of lemon in it. I am thinking of IRFA from the point of view of its implementation. When Congress wants to defend the United States, it decides to give a great deal of money to the Pentagon so it will have a nice array of military devices that it can purchase. But when Congress decided to protect religious freedom, it allotted no additional funds to the State Department at all. The area within the State Department that needs to monitor religious freedom for 194 countries in the world is very poorly funded.

John Hanford: Well, Senator Lugar would agree with you, Jeremy, I think, but when we were drafting this bill we had to go for what was achievable, and so we put into place this process.

Laura Bryant: We want to revisit the issue of funds, and have had some discussion about that. Part of the problem, though, is allocation. Other bureaus have much greater budgets. I happen to think human rights are more important than many of these other current priorities.

## Religious Persecution in China and India

Mickey Spiegel (China): The concern of the Chinese authorities is not so much with cracking down on religious expression as it is making certain that none of these groups becomes a political force. That's the bottom line. Still, the state is, by its own admission, an atheist state and it makes no bones about the fact that in the short term the Chinese leadership will tolerate religious belief, but that the end product will be a totally atheist society.

Falun Gong is a form of practice that combines meditation and exercise. The number of adherents in China runs conservatively to two million. Those are the government figures; there are almost 60 or 70 million by other counts. The whole issue may have changed the party's perception of where the danger to stability and to the preeminence of the Chinese communist party is coming from.

Indeed, there are major concerns with stability in China today. There's a significant unemployment problem. There's a huge problem in the countryside because of excessive taxes, corruption, and fees. And all of that plays into some of this policy. And in fact, one of the disturbing things for the Chinese leadership with this Falun Gong problem is the fact that this is an urban, as opposed to a rural, phenomenon. Religion in China is thought of as primarily a rural-area phenomenon—primarily women, and primarily older folks. But what they're seeing now is taking place in the cities. I think what is alarming to the government is the realization that the attraction of some kind of belief system for Chinese people is coming not from Western religions but from traditional sources: from Buddhism, which is certainly growing in China, and from popular religion—from all of the traditional religious practices.

There has been a major push to control sects and cults that are outside of the five major religions. I think we're going to see new regulations. One of the things that the Chinese government and Communist party have been very clear about in the last few years is not to use the methods of control that have brought international condemnation. They are not putting people in jail for long periods of time. They are not beating up on people in the ways that they had been before. They are doing this crackdown by what is called "rule by law." They have regulations in place on what religions can and cannot do. They have regulations in place on associations. Even when registered, these groups must remain small, local, discreet, and scattered.

Another issue—and I think it's an issue that is very important for this bill—is the whole issue of the impossibility of taking religion out—of making a hierarchy of human rights concerns. There is almost no way of dealing with issues of religious freedom without dealing with issues of association, assembly, and free press. And I think that's one of the major concerns of Human Rights Watch.

If a monk or a nun in Tibet gets up and holds a sign up that says, “Freedom for Tibet” and the Chinese decide to arrest that person, that is not an issue of religious persecution, that is an issue of freedom of expression, and freedom of association. And I think we have been very, very careful to separate out the independent issues from the issues of religious freedom.

And this is not, by the way, to suggest that there aren’t enormous issues pertaining to religious freedom in Tibet and in Xinjiang both. Those issues are in many respects very, very similar. But nevertheless, we have to make that distinction.

Smita Narula (India): I am sure many of you are aware of increasing attacks on Christians in India. Probably the most highlighted example in the media has been the attack on missionary Graham Staines and his two sons in the state of Orissa. They were burned to death while sleeping in their car by local Hindu extremists.

There has been a lot of international scrutiny of the increasing violence against Christians in the country. From what I see in the India chapter of the State Department religion report, the U.S. government has also made its interventions. There is generally a lot more attention to communal violence in the country now than there was before when the victims of attacks were Muslims or other minorities.

For the last 52 years, India has entirely escaped any kind of international scrutiny of what’s been called India’s “hidden apartheid”—abuses stemming from the caste system. The international community has not paid any attention to the abuses because there are plenty of constitutional provisions and plenty of legislation to suggest that the country is actually doing something about the problem.

Many convert to Christianity to escape abuses under the caste system. They find that the church’s focus on education, equality, literacy, and health services has a real pull for them. It draws them away from their poverty, from their state of bondage, or from the economic exploitation that they are facing in their rural communities.

These converts are indeed at risk. For example, in a 10-day spate of violence in the state of Gujarat between December 1998 and January 1999, churches were burned or razed, and people were forced to convert to Hinduism or robbed and assaulted in over 22 villages in the state. We went there in April to take a look at some of what was going on because we felt as though it was very indicative of patterns that are representative of attacks against Christians across the country.

These patterns include the role of local Hindu groups as allied with the national groups in increasing anti-Christian propaganda, and the role of the media in promoting that propaganda. For example, the idea that the church has a conspiracy to convert 51 percent of humanity to Christianity by the dawn of the 21st century. And that after making inroads in Africa, India has now become their prime target.

I was quite impressed at the focus on Muslims and Dalits [untouchables] as well as Christians in the State Department report, and with the accuracy with which a lot of the much more localized attacks were brought out—in a way that the media have not brought them out. But I think the final link of actually addressing the

underlying problems is probably what's missing in the United States and in the international community more generally.

Furthermore, it's very easy for India to use intervention on Christianity or on religion and to turn it around to suit its purposes, by saying that there is a larger Western conspiracy operating to promote Christianity throughout the country. I should add that Christians form only about 2.3 percent of the population in the country. So the fact that such charges are actually making inroads and having an effect has a lot more to do with those fears than any real belief that Hindus are going to be chased out of their own country.

But it's these greater issues of the caste system, of not implementing domestic legislation, and the issue of state complicity in allowing the attacks to continue, that really need to be addressed.

It's a very complicated situation. And the fact that India is not like China in that it does have a lot of constitutional protections and domestic legislation protecting minorities makes it a much trickier issue to deal with. In the recommendations in our caste violence report as well as the Christians report, we have tried to focus as much as possible on infrastructure and implementation of domestic legislation and not foreign legislation or even international law.

One of the nice things about working on India is that the NGO community and the secular community are incredibly vibrant. If there is a role that the international community can play, it is probably in pressing on improving and maybe even giving assistance to improving the type of infrastructure that is already in place in India, so as to facilitate honest and rigorous implementation of domestic legislation and constitutional provisions.

There really has to be a much more holistic focus on what's going on. I think that just addressing the issue of attacks on Christians, or on isolated incidents that are heinous and awful, without allowing those attacks to be illustrative of much more deep-rooted problems in the country and without taking advantage of the domestic tools that India itself provides, would be a real lost opportunity.

## Response

Jay Demerath: I am made very uncomfortable in countries around the world when I get complaints from well-meaning citizens about the U.S.'s moral meddling in their affairs. And I get these complaints even from people who you would think would gain from the U.S.'s role as a kind of policeman and vigilant monitor of rights. It makes me uneasy, especially when they call to mind instances such as Waco or our policies towards Native Americans, our racial tensions and so on.

I was struck when the bill, the IRFA bill, was justified as an extension of America's longstanding concern for the free exercise of religion. That is true, it is a longstanding concern, but there is also a longstanding concern, as you know, lest religion be established. And I am struck by the way in which one could interpret the IRFA bill both ways, as an expression of free exercise, but also an establishment of religion, especially if religion is yanked out of a list of priorities and given special pride of place.

In some ways both China and India represent secular states, but very different kinds of secular states. In the case of China, the state is not only secular, but devoted to a national culture of secularism—indeed, atheism. And it's hard to know quite where our rights begin and theirs end in pursuing their own ideological line. It is hard to know quite how to make a judgment about what the Chinese government sees in its national interest.

It is quite clear that there are religious persecutions in China. Nobody really disputes that. But I sometimes wonder if we don't need to hear more of the Chinese point of view in, for example, Tibet. I would want to know why the Chinese moved into Tibet against the Buddhist community as they did. What is the position of the Chinese government? Clearly there was a struggle for power and hegemony. But there was also talk about the land held by Buddhist monasteries in Tibet—land that could be distributed to the peasants.

We need to understand any political or religious system from the standpoint of both victims and victimizers, both winners and losers.

Clearly, there is a very different kind of problem in India. Where does one begin and end in meddling with Hinduism? Reforming Hinduism is like saying that the cosmos is going to be stopped and frozen at this point and we're going to get rid of some aspect of it that offends us at the moment. To say that the untouchables of today are not going to suffer because of what happened in their previous lives is to tamper with a critical theodicy of the faith. On the other hand, we certainly know how this system can be abusive, both from our point of view and from the viewpoint of others.

None of this is easy, even in a globalizing world. In fact we often talk about the new "global village" in glib terms, when to many around the world it is a code word for a subtle form of Western imperialism. This is especially true when we are suspected of being most concerned about constraints upon our own proselytizing faiths in other lands.

## Discussion

Lee Boothby: The underlying question—is this a form of neo-imperialism? How does one distinguish general progress toward societal improvement from imposition of alien values? I think the point was made very clearly by some of the panelists that the International Religious Freedom Act is expressly not geared to American standards but rather to international standards.

Mickey Spiegel: I guess the question then becomes, if these are international standards, why then are we not part of an international effort to make changes within some of the countries that we are concerned about? China, for example, has done an incredible job of bilateralizing the multilateral push within the United Nations Human Rights Commission by establishing a human rights dialogue with the United States, Australia, Japan, the UK, and the European Union. It would behoove the United States and other countries to work within the United Nations

system to try to implement some of those recommendations by the Special Rapporteur on Religious Intolerance.

Abdullahi An-Na'im: As can be seen from the language of the Act and State Department report, this U.S. initiative is premised on an American understanding of religious freedom and practice, including notions of "disestablishment" or separation of church and state. This is problematic as a basis for the protection of freedom of religion at a global level because of fundamental differences about what "freedom of religion" means. For example, to those Muslims who believe that unity of Islam and the state or politics is an integral part of their faith, it is meaningless to speak of separation of the two as a matter of freedom of religion. On the contrary, those Muslims would want to use their freedom of religion to establish an "Islamic state."

Smita Narula: On the idea of imperialism—thinking about this in the Indian context in particular as a cultural problem is very problematic because India's domestic structure, legislation, and the entire tradition of having a secular democracy in India are premised on the notion that all religions should be treated equally and should be equally free to exercise their belief or their faith, and to propagate it. It makes India pretty unique in that regard. That there are human rights and basic freedoms I think is something that's not just part of U.S. or Western values, but is also very much a part of Islamic tradition and Indian tradition.

Jeremy Gunn: I think the discussion that we have been hearing is a very interesting microcosm of the larger issues that surround this problem. On the one hand, the U.S. government needs to be very sensitive to the issues that have been expressed here about how the United States presents itself and the perception that it is imposing Western values, and Western ideas and notions, upon all parts of the world. On the other hand, virtually every international covenant prohibits discrimination on the basis of race, sex, religion, and language. They all say that. You do not hear, however, people saying "no discrimination on the basis of race" is a Western value, or "no discrimination on the basis of language" is a Western value, or "no discrimination on the basis of sex" is a Western value. The one place where the "Western value" comes up most strongly is in religion, although exactly the same language is used in the international covenants for race, sex, and language—but for religious freedom that somehow becomes a Western value. I would suggest that the reason that this happens is not because religious freedom really is a Western value, but because cultural prejudices and stereotypes are more strongly implanted in the area of religion than in any other area. This makes it very, very hard for people to see that what they think of as their values, their traditions, their histories, and their cultures may, in some instances, merely be prejudice against other religions—leading to scapegoating and demonizing of other religions. That is sometimes hard for people to see. The religious discrimination issue is frequently one of the blind spots in the human rights community.

Sam Ericsson: Now, one of my problems with blind spots in the human rights community and in Washington D.C. is that there is good news. I know. I've been doing fundraising and the last thing you ever want to do in sending out a fundraising letter is to report "good news." Fundraisers say you need to have 13 bad news stories a year to keep your books in balance. And sadly, the human rights community, Washington and the press in America—including the Christian press—want to demonize China. When baby steps of progress occur in China there is silence about it. We must report the truth. "You shall know the truth and the truth will set you free." We must tell the truth, including the good things happening in China. For example, 10,000 churches have been built. The most memorable church service in my life was with 1,500 people in a church in China. It was a hell-fire and brimstone sermon. I haven't been to one of those in 25 years in the United States. So the bottom line is, we must tell the truth, the whole truth, and nothing but the truth about China. When it comes to the church of China, generalizations are hard to find. Everything is true somewhere; nothing is true everywhere. Is there freedom of religion in China? Are people worshipping? Yes.

Mickey Spiegel: I do not think that some of the things you are bringing up are manifestations of freedom of religion, and I think that's where we differ considerably. I don't see necessarily—and I have to be careful the way I say this—I don't see necessarily that growth in religious practice is proof that there is freedom of religion. What the concern here is, and not just with China, is with changing systems. And to change the system, as Smita said, you have to recognize why the system is in place and not attack just one piece of it.

Rosalind I. J. Hackett: I happen to be organizing a world congress in South Africa. I have been amazed at the number of submissions from India, and at the people who are doing work and research on tribal religions in those regions. So I would like to ask Smita whether the money that is obviously going into this research is tied to a sort of colonialist approach to this? That is, if you know more about them, then you can manipulate and control them?

Smita Narula: Christianity has been in India since 54 A.D., which is something that a lot of people don't realize. People think that it is something recent, that it has to do with evangelism in the last 20, 30, maybe 40 years. But it's actually had a very, very strong tradition of participation in health care, in education, in societies, particularly in the south and in the northeast of the country where three small states do, in fact, have Christian majorities. Where the money is coming from right now is a source of real contention because it's seen as possibly funding missionary activities in the country. So that's really where the tension is coming from. A lot of missionaries are denied visas or refused entry altogether. And a lot of the foreign funding by these groups is now under much greater attack from the government itself.

Lee Boothby: I would like briefly to revisit the suggestion that the U. S. government's concern and action with reference to religious freedom or religious persecution is a Western export. It may be, but it seems to me that it is the same export as the concept of democracy. If that is a Western export, that may be because perhaps some cultures have an anti-democratic viewpoint. It seems to me that this is a very important part of democracy, and if we miss that point what will happen is something like what concerns people in Russia today. People in Russia tell me that if religious freedom is circumscribed in Russia, the next freedom that will be circumscribed is the right of free speech and free press, and the right to criticize the politicians and the government in Russia. It always goes hand in hand. If you do not have freedom of religious speech, ultimately, you don't have freedom of political speech and free expression.

Tom Farr: On the issue of universality—that U.S. promotion of religious freedom is somehow an example of Western cultural imperialism—I, like others, really have to reject this idea. I think the universality of truth and of human nature is implicit in the Universal Declaration of Human Rights and in the United Nations Charter itself. We try to lay out in the introduction of the Report one argument—not the only argument, but a religious argument—for human dignity and universality. I don't consider this approach to be a Western invention. I think the case for universal human dignity is implicit in many of the world's religions. It's expressed in different ways, but I think it underpins not only all human rights but also the value of religious freedom itself.

William Inboden: I was really surprised the Chinese government did not react more violently to the Falun Gong. Do you think that by the Falun Gong's getting away with what they did, that it might have carved out more theoretical space for other religious groups to have more public, organized visibility? Or is it just the opposite? That they kind of really caught the Chinese government off guard?

Mickey Spiegel: Well, I don't agree with you, first of all, that there hasn't been a violent response to it. And by "violent" I don't mean that they are torturing people or anything like that, but they certainly were burning some 1.5 million pieces of material.

William Inboden: I was surprised the tanks didn't come in.

Mickey Spiegel: They didn't need the tanks. They don't have a policy in place that says you can burn the books, but they burned the books. They had 15-day re-education sessions for most of the rank and file believers, which is what you can do by law before you charge somebody. They have arrested the leaders. I don't think it's going to, by any stretch of the imagination, offer space for any other religious expression.



## Religious Persecution in the Middle East and Sudan

Abdullahi An-Na'im (Middle East): I would like to start with a personal note for all participants to understand where I'm coming from. I am an advocate of human rights, all human rights from an Islamic point of view. To me, it is not a question of Western values and Eastern values. To the extent that we can achieve consensus on the definitions and the statement of what human rights are, these are universal rights due to every human being everywhere in the world. The issue is how to promote the necessary consensus. I will suggest in my remarks that this U.S. initiative is counter-productive for freedom of religion, globally, precisely because it undermines, rather than enhances, universal consensus on the meaning of religious freedom and how it can be protected around the world.

Because I am critical of this U.S. initiative, I also want to make it clear that I am grateful for the opportunity to speak freely in this country. The position I am presenting here has nothing to do with the Islamic fundamentalist views of the present government of Sudan to which I am totally opposed from an Islamic point of view. At this point, I am just acknowledging the fact that I am able to be so critical of this aspect of American foreign policy because this system and society grant me this privilege.

Now to my critical remarks: To begin with the title of the Act, "International" protection means multi-national action. You cannot do something alone and claim it to be international. You can say it's a U.S. foreign policy objective, or a domestic American political issue, but don't call it international, and invoke the name of the unity of human rights to make that claim.

Unless we go through the effort to define freedom of religion in a truly universal manner that includes other perspectives, we cannot be effective in promoting freedom of religion around the world. The difficulties of addressing freedom of religion in this manner include the question of how to isolate religion issues from other issues. Another difficulty relates to defining freedom of religion, even in the Christian and/or Islamic context, let alone profound differences between these "world religions" and traditional African or Native American religions where religious belief and practice are not seen as an independent aspect of the totality of the life of a community.

The irony is that if the United States joined other countries in efforts to protect and promote all human rights, instead of focusing so exclusively on this particular right while refusing to ratify other international human rights treaties, one need not attempt this impossible task of isolating freedom of religion from other aspects of the life of human societies around the world. It is curious that the United States is so protective of its own sovereignty that it refuses to ratify an almost uni-

versally ratified treaty like the Rights of the Child Convention, and yet it expects other countries to share its own particular concern with freedom of religion.

In page nine of the preface to the State Department report, we have this unidentified voice that tries to explain the American approach to freedom of religion, and yet to insist that the United States is applying only international standards in its assessment of the performance of foreign governments. This is a contradiction, because the U.S. approach, as such, is not universal or international. Moreover, the United States has consistently refused to be part of the process of developing and implementing international rights, whether on freedom of religion or any other human right, and yet here comes this “Lone Ranger” effort on this particular freedom.

In addition, proselytization is not only about freedom of religion. It is about politics. It's about power. It's about history. It's about identity. For many communities around the world, especially in Africa, Asia, and Latin America, the issue is not simply a right of a single person to believe or not to believe as he or she might want to, it's a question of what the implication of that belief will be for the community—past, present, and future. Proselytization has been the spearhead of colonization in Africa. Missionaries have had a very close alliance, at least in popular perception, with colonial expansion in various parts of Africa and elsewhere. So for people now to see freedom of religion as including the right to promulgate one's religion in isolation of the power relations issue in the present age of globalization is wrong. It should be noted here that globalization is not a “neutral” medium of interaction between societies and countries. It tends to enhance and facilitate existing power relations between these social and political entities.

Also, “free exercise” of religion cannot mean the same thing for Islamic fundamentalist activists as it means for Americans. I am personally totally opposed to Islamic fundamentalists, as I believe that the idea of an Islamic state to enforce Shari'a is a conceptual impossibility and a historic fallacy. The conceptual impossibility of this idea is that, as soon as Shari'a is enforced as positive law, it becomes the political will of the state and not the divine will of God. The idea of an Islamic state is a historical fallacy because it never happened in 15 centuries of Muslim history. But regardless of my personal views, the majority of Muslims believe in an Islamic state. For Muslims, freedom to practice their faith includes the right to seize control of the state in order to “enforce the will of God.” So unless one is able and willing to tell Muslims that, “You are going to practice religion as I say you should,” how will it be possible to protect the freedom of religion of those Muslims without encouraging tremendous political instability in countries like Egypt and Saudi Arabia, which are strategic allies of the United States? If you “exempt” those countries from the proposed sanctions under IRFA, then the credibility of the whole initiative will be seriously compromised.

Finally, I was surprised earlier in this meeting that when panelists were asked about “the costs” of implementing this Act, they all focused on “budgetary” calculations—on how much money the U.S. Congress or government is willing to spend.

In my view, the real cost of this initiative is the long term economic, political, security, and other consequences of what the United States will do or fail to do in accordance with the “mandate” of this legislation: will it penalize China or Saudi Arabia for their clear violations? If yes, what will be the consequences for U.S. international trade and security interests? If no, what are the implications for the credibility of what the United States is prepared to do in any other part of the world?

Jemera Rone (Sudan): Some facts about Sudan. It's 40/60 Arab/African. And 60/40 Muslim/Other. The “other” is sometimes referred to as Christianity and animism. Actually, it's traditional religion, it's not animism.

There is a war in Sudan. And 1.9 million people have been killed in this war that, so far, has lasted for 16 years. Part of the war is about economics, of course. Oil is in the south. And the waters of the Nile also. Those are two very important economic resources that the south has. It's not entirely a regional war but it does have regional elements in it.

Slavery exists in Sudan. There isn't much question about that. Even the government now acknowledges that it has a problem with what it calls “abduction and forced labor,” which are two of the main characteristics of slavery as it exists in the Sudan. It is a resurgence of slavery—there was also slavery in the 19th century—brought about by the war. Slavery is a form of war booty. Additional booty is cattle—sometimes more valued by the raiders. And it is extremely brutal in the way it's practiced.

I don't think that this is a case of genocide in Sudan. Also, I don't think slavery is caused by, or is the result of, religious persecution. I would argue that the war is not really about religion, though with some refinements that I am getting to. Also, it's not north/south, and it's not Arab/African, strictly speaking, because there are people who identify themselves as Arabs on both sides, and there are people who are Christian on both sides. That is partly a result of the government's attempt to divide the south.

Christianity has been particularly valuable for some people, such as southerners who are living in Khartoum, the capital, where they are treated as second- or third-class citizens. There is a lot of racial discrimination, a lot of notions that their culture has no value, that they're pagans. They are considered a “blank slate,” and therefore they are free to be proselytized by Muslims because they don't have anything of any value in terms of their own culture or religion or language.

So there has been conversion in the north and in Khartoum by southerners who look to Christianity as a means to defend themselves against an onslaught, as they see it, by a religion and political movement that is trying to destroy their culture. And they have looked in many cases to another world religion as a defense because their unwritten culture and religion have not been a very good defense.

The NIF [National Islamic Front] came to power, not through religion, but through a military coup. And they have as opponents not only unions but also

political parties that existed in Sudan that were—the two largest parties—based on Islamic sects. And they would always outvote the NIF in any election. So they could not hope to come to power through elections, certainly not in the 10- to 20-year range. But once in power they also wanted or needed to justify themselves because of the undemocratic way that they came to power. The ideology that they use to justify their continuing in power is that they are the bearers of the true Islam.

Now they will say that, unlike other countries in the Middle East, there is a great deal of tolerance in Sudan. But they harass the churches. They have an elaborate legal system to try to keep them penned in. And Christian churches will tell you that they feel they're constantly threatened, they are suffocated, they are persecuted. They can't breathe.

One of the most important developments in Sudan in the war in the south has come about from the new Sudan Council of Churches. This is based in Nairobi and represents the Protestant and Catholic churches that are in the liberated areas, as they say, of the south. They have sponsored a process of peace and reconciliation among southerners. That's enormously important, because the way that the government has of waging the war is to divide and conquer and to keep southerners fighting with each other. This Council threatens to undo it and for that reason the government hates this reconciliation process. The concept has really taken off in the south because there is a very deep desire for peace among southerners. Although the new Sudan Council of Churches is sponsoring it, the process incorporates a lot of elements of traditional religion, such as covenants and pact making, and recognizes that people are very much still following these elements of traditional religion in the south.

## Response

Rosalind I. J. Hackett: I particularly want to highlight the issue of terminology and the power of language. Language is not insignificant. I think that the U.S. actions in creating the bill and writing the report are certainly sending out a message about the power to define and eventually act upon this problem. And it's also sending out a message, as suggested, about what counts as religion and what doesn't. Terms such as "faith" and "faith tradition" have become very popular, yet are actually inapplicable and irrelevant. They are certainly not used by indigenous groups or, as far as I can tell, by new religious movements. I mean, these are terms that apply mainly to the world religions. We are not hearing enough about the collective or the communal definitions and understandings of religion.

I would also adhere to the distinction between religion and state rather than the terminology "church and state." I am not against the terminology of church and state where it is an issue of church and state, but I do object to the extension of its use when you are talking about it internationally. It is offensive to Muslims, for example. So again, this raises the whole issue of perception.

I have just a couple questions for Jemera. She hinted at this but I wanted to say more about this. The case of Sudan, as China, perhaps, has become utterly

emblematic of what constitutes religious persecution. Particularly at the popular level, in my studies of web sites or e-mail communications or popular Christian literature, it is quite obvious that for many U.S. Christians, particularly evangelical Christians, Sudan is really the bad guy.

What has been the response of the Sudanese government to being held up in this negative limelight, and to the intensive activity at local levels in the United States and in other parts of the world in trying to protect Sudanese Christians? Second, I want to know, is this counterproductive, as Abdu suggests?

## Discussion

Jemera Rone: On the counterproductive issue, I think that there are a lot of things that the United States does and a lot of rhetoric from the United States, as well, that are counterproductive. And a number of people—southerners and some in the SPLA [Sudan Peoples Liberation Army]—have said that it hurts them more than it helps them when a congressional resolution comes out, for instance, with wording that there will be no-fly zones. The government of Sudan takes that to the Middle East and markets it all over the place for additional support against the “imperialist power” that is going to impose a no-fly zone. It doesn’t matter if it doesn’t make it into the final language of the resolution and that the resolution is not mandatory. They are not getting those distinctions, or they are ignoring them. So I think there is a certain element in the cause of religious persecution that not only puts the government off, but also gives them a lot of ammunition to use in other parts of the world. Also, the effort for slave redemption is not without problems. And the problem that I hear southerners and even people in the SPLA—not just close to the SPLA but in the SPLA—say is that “it’s become a business.” And you will hear this phrase a lot if you’re in that region. And others are afraid that it might lead to more raids. As part of a much-publicized episode of the TV program *Touched by an Angel* they were saying that for \$50 you can buy freedom for a slave. But that isn’t actually right. The \$50 does not all go to the slave; as with most organizations, there is a certain amount of overhead and travel and so on and so forth. A part of that also gets donated to local authorities. So it actually costs more than \$50 to buy a slave. Now, the one group—Christian Solidarity International, which I think now has a monopoly on slave redemption in the south—experienced a split over a year ago worldwide and most of the national chapters broke away from the Swiss chapter, which is still doing slave redemptions. And the American group, Christian Freedom International, was the subject of an article in the *Atlantic Monthly* that came out in May or June that recounted how they became disillusioned with the redemption practice and why they offered to return people’s donations made to redeem slaves. They called on people to stop this business because it was just making a bad situation worse. And they also thought it was becoming a business and that it was becoming an incentive for people to take more slaves so they could rake in the \$50 a head. The other part of the business aspect is that unscrupulous people are taking advantage of well-meaning foreigners and fobbing

off children who were never abducted and were not slaves and padding the account, so to speak.

Steve Moffitt: I have two questions. One, why do you not apply the genocide label to what's going on in Sudan? And secondly, I think you also said that slavery is not a result of religious persecution. Why do you say that? Are there militias abducting Muslims as well?

Jemera Rone: They indiscriminately grab anybody in a particular area, regardless of their faith. The people who are raiding are marginalized people. They are co-opted by the government into being on their side rather than being in another political party that they used to be in by this system of war booty. The people who are doing it are not really motivated by religion and they don't claim to be. As to genocide, the Genocide Convention is very narrowly written, in my opinion, and it requires intent. The intent that is required is to "destroy in whole or in part a people as such." So they have to be going after a people "as such." All of those acts go on in the war, but I don't think the necessary element of intent is there because I don't think that they're trying to destroy the southerners or particularly the Dinka "as such." But I am not going to go and write a report about how it's not genocide because that's too useful to the Sudanese government.

Steve McFarland: You mentioned the motivation of the raiders, but do you view them as a function of the NIF? Do you believe the NIF has a goal of forced Islamization of the south and is therefore using various means to that end?

Jemera Rone: Yes, there are a lot of people that do want to convert everyone, but they don't have the capacity. There are people also in the NIF who are not interested in converting southerners and would like to just get rid of the south because it's too much of a problem. They'll never win the war, so these are people that favor separation. But then you have the oil interests that tip things the other way. So they have a mixed bag on it.

Tom Farr: When slaves are taken and forcibly converted to another religion, this is strong evidence of religious persecution—without respect to other explanatory elements that one can cite, such as economic or other factors.

Joseph Assad: We shy away from using the word "genocide" even though all the conditions are met, according to the United Nations Genocide Convention. Two million people have been killed and the world looks away. Yes, I think we also need to support initiatives such as the Sudan Council of Churches, but we also need to acknowledge that there is genocide. Two million people have died and the world looks away. Why aren't we using the "G word"? Why don't we say it is genocide? In Rwanda our excuse was that it happened too fast. In Sudan, it has been 16 years,

so maybe it happened too slow. Are we waiting for the right conflict? Are we waiting for the right speed of mass killings to call it genocide?

Abdullahi An-Na'im: My point is not to drive people away from calling it genocide. Recalling that the Genocide Convention requires member states to act to prevent and punish genocide, the question I am raising is what will happen when we do call what is happening in Sudan genocide? What is the point of classifying a situation as genocide if we are not willing to pressure our own government—your own government in this case—to do what is right by this classification?

Cole Durham: What I want to know is, I hear the criticisms that Abdullahi is leveling at IRFA, but what would he recommend as an alternative? I think part of our obligation is not to be a Lone Ranger, and we have got to be better at that. But there is a certain reality if you're the only super power. You are thrust into a Lone Ranger role whether you like it or not. Are there ways that we should be more effective in dealing with that reality? Moreover, we as Americans need to know a lot more about what colonial practice really was. Because in some senses we weren't a classical colonial power, we were a colony. The charge of colonialism imputes to us a lot of things that were done by colonial powers. I find myself wondering, is the charge of neocolonialism in some way a kind of passive/aggressive attack? That is, it is a charge saying "don't hassle us on this particular issue; wait until you have got a complete consensus in all the nations of the world and then, and only then, confront us on particular issues."

Abdullahi An-Na'im: Yes. I completely agree that action must be taken on this and many other human rights violations. But the point I wish to emphasize is that such action should not undermine other efforts to protect and promote all human rights. The point is how to "invest" in the rule of law in international relations, and how to protect all human rights, rather than be opportunistic and selective. I am drawing attention to the far reaching negative consequences of the rest of the world watching the United States refusing to act on the existing global consensus, for example, over such matters as the rights of the child, while insisting to "invent" its own global consensus on religious freedom!

Tom Farr: You said that the United States is not willing to engage in a multilateral process. But in implementing the International Religious Freedom Act and issuing the Report, this is precisely what we are doing—engaging the international community, and drawing on international standards to which the nations of the world have committed themselves. We are invoking the concept of mutual accountability and saying, "this is a universal standard to which we should be held and to which the world should be held." This is the purpose that underlies the Report. It is not an act by a Lone Ranger; it is an act of participation in the international community, drawing on universal standards. These are standards that are

bolstered by the religious conception of the universality of human dignity, which is certainly not part of any one tradition but is owned by mankind. Secondly, if I could address briefly the issue of religious persecution and how one defines it. This obviously is a terrifically important question for scholars, as well as for policy makers. If we may attribute religious persecution only to those tormentors who are motivated solely by animus on the basis of religion, then I think we have adopted too narrow a standard by which to assess religious persecution. In the Report, we tried to deal with this definitional problem in the context of Kosovo. On the one hand there are many people who find what Milosevic did in his campaign in Kosovo utterly unexplainable without reference to religion. Others would say, well, wait a minute, if you dissect it you see that the campaign was primarily ethnic. It was primarily a case of nationalist ethnic cleansing that, in fact, spared certain Muslims who were not Albanian—Turkish Muslims, for example. You can go back and forth on this. My only point is that at the end of the day somebody's got to make a judgment. Somebody's got to conclude the analysis and say, okay, the fact of religion is either significant enough to include this as religious persecution, or it falls below the threshold. It is a difficult but terribly important question.

Laura Bryant: I do think that the United States has a right to regulate its own policy, including in the matter of foreign assistance. There are times when the United States has to make a decision. On the issue of double standards, I am not asserting that U.S. foreign policy has always been consistent. We obviously have strategic interests, including military alliances, that we must factor in. But I think it's confusing the issue somewhat to say, as Professor An-Na'im suggested, that if you don't impose sanctions on Saudi Arabia and Israel, you couldn't possibly impose sanctions on the Sudan. Violations may take place in other countries without reaching the massive, egregious level they do in the Sudan. So I think we have to be a little careful about talking about the types of violations that would constitute a double standard in terms of actions applied by the United States under IRFA.

Smita Narula: I don't think anybody is saying that religious freedom is not something universal. I think both of us have said it is a universal value and founded on traditions that are non-Western as well as those that are Western. But creating a credible and solid platform from which to start to engage in these issues—and thereby increasing the effectiveness of the intervention—has to be the first step. The message has to come from a place that itself respects international standards. The U.S. record in international human rights law does not indicate that it has made the type of commitment that it is now asking from other countries.

## IV

# Religious Persecution in Europe<sup>1</sup>

Willy Fautré: The European continent is multicultural, multilingual, and multireligious. However, in many cases, a specific religion has been closely linked to the creation of modern nation-states and pretends to enjoy or effectively enjoys some privileged status legally, politically, and socially. Consequently, most European countries have a two-tiered or multi-tiered system in which religions have different statuses and citizens are not treated in the same way.

The most obvious shift is undeniably between, on the one hand, religions that the state recognizes and therefore legitimizes with some sort of label, and on the other hand second-rank religions that are not recognized—“sects” or “cults.” The criteria for establishing various categories of religions are often disputable and sometimes nonexistent.

The categorization of religions leads to a categorization of state financing systems that are discriminatory. In the wide variety of financing systems in force in Western Europe, taxpayers may not be allowed to finance their own religion and may, to various degrees, have to finance religions and sometimes also secular humanist movements that they do not adhere to.

Mass homicides/suicides and crimes committed by a number of cults around the world in the 1990s have triggered an indiscriminate witch-hunt against hundreds of minority religions and against their adherents by anti-cult movements and the media all over Europe and by the parliaments of France, Belgium, Germany, and Austria.

In the two-tiered system currently in force in Belgium, for example, state recognition implies access to state financial support. This explains why most religions, whatever their historicity or their size, apply for state recognition. However, State subsidies are provided by all the taxpayers, including those who profess a nonrecognized religion or who do not profess any religion.

Such a system is no longer adapted to the globalization process, to an ever-extending Europe with increasingly fading internal frontiers, or to modern societies that are becoming more and more heterogeneous. It needs to be replaced by a new deal with new rules, but it must be realistic.

Europe has a long history as a welfare state in most sectors of society, including the religious sphere. It is, therefore, more pragmatic to plead for a reform of the system in a way that could awaken synergies among various segments of civil society rather than for a radical change, such as putting an end to the state financ-

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<sup>1</sup> A transcription was not available for the Europe session of the Consultation. This section contains edited versions of written remarks prepared by the presenters and respondent.

ing of religions. Such a change would trigger much opposition from the religious establishment and is unlikely to find any political support.

Norway, Germany, Austria, Italy, and Spain have introduced a system that partially allows taxpayers to allocate a part of their income taxes to the religion of their choice. However, there are big disparities among the systems of these countries. Consider, also, how different international religious freedom reports handle the issue of two-tiered systems. There exist very few reports about world-wide religious freedom. Until recently the only one published on an annual basis was the report of the United Nations Special Rapporteur on Religious Intolerance and Discrimination. However, his financial and human resources are very limited. With the passing of time, the number of pages has been drastically reduced on budgetary grounds. In the last issue that comprises only 27 pages, every country is very briefly and quite unsatisfactorily covered.

Following on from the International Religious Freedom Act signed into law by President Clinton on October 27, 1998, the U.S. State Department published a first report in September 1999. In covering 194 countries in about 1,000 pages, the American report is the first large-scale attempt to X-ray religious freedom around the world on the basis of a number of criteria. It is a tool and a reference work. In the future, it will certainly be seen as a landmark in the history of advocacy of religious freedom because it is the first time that an international human rights report echoes the concerns and complaints voiced by minority religions.

What do the United Nations and State Department reports say about two-tiered systems and states that use them? The U.N. report is silent about France and Austria although they have created a category of second-rank religions called sects or cults and have decided to combat them. Germany's profile is limited to a few lines on a controversial group, Scientology. The part devoted to Belgium comprises three paragraphs, the last of which is quite at odds with assessments made by academics, experts, and international organizations such as the OSCE [Organization for Security and Cooperation in Europe]. The contribution about Greece just focuses on minor incidents that are not representative of the situation in the country. In none of these country profiles is the two-tiered system highlighted as a structural source of institutionalized discrimination towards minority religions.

The U.S. State Department report, by contrast, deals with the discrimination and inequalities brought about by two-tiered systems. However, despite its qualities, the U.S. report is certainly perfectible. There are a number of factual mistakes, omissions, mischaracterizations, and over-emphases (especially regarding Scientology in Germany).

Such mistakes could have been avoided and could be noted in the next report if each embassy had had its report proofread by one or two local experts before sending it to Washington for a final review. In the future, the U.S. embassies should remain in contact with three categories of sources if they want to be seen as neutral and credibly reliable: first, lawyers, human rights organizations, and minor-

ity groups; second, governmental sources; and third, established religions and anti-sect movements, etc.

An assessment is a first step, but it is not sufficient. A policy aimed at improving religious freedom must also be implemented by the United States. Also, there is the question of whether it is up to the United States alone to draft a report on religious freedom around the world. No other country seems interested in replacing or collaborating with the United States in advocating religious freedom. But would it be unthinkable to have the assessment of religious freedom in almost all European states carried out under the auspices of the OSCE? An annual evaluation of the religious freedom policies carried out by its member states with regard to their commitments to the 1989 Vienna Concluding Document would fit perfectly into the mandate of the OSCE's Office for Democratic Institutions and Human Rights and its committee of experts on freedom of religion and belief.

Stephen A. Kent: In recent years, various officials of the U.S. government have been critical of European approaches to organizations variously called sects, cults, minority or alternative religions, and new religious movements. Several European countries—Belgium, France, Germany, Sweden, and Switzerland—have commissioned national studies of these groups. Scientology's battles in France, Greece, and especially Germany, have gained considerable American press, and additional battles are brewing between the Jehovah's Witnesses and several European states.

As an American who has lived and studied new religions for nearly two decades from my vantage point in Canada, I understand most of the Americans' concerns about European religious human rights issues. At the same time, however, I am in contact with European officials in Germany and France about their views of religious sects. I will present information that attempts to explain the Europeans' critical approaches to the new religions in ways that differ from what many other academics have conveyed to American policy-makers.

Nontraditional groups—groups that are out of the mainstream and that demonstrate various degrees of tension with society—have a long history in Europe. Various “established sects” from the United States—Jehovah's Witnesses, Seventh-Day Adventists, Christian Scientists, Mormons, Pentecostal organizations, and so on—have been recruiting in Europe long before the fall of the Berlin Wall. Consequently, they have well-developed infrastructures and histories in various countries.

Some European countries have constitutionally and legally unique obligations that their governments must fulfill when dealing with these groups. The German government, for example, must maintain a “militant” protection “of the free democratic basic order,” which thereby obligates officials to monitor, and if necessary take action against, anti-democratic organizations operating in the country. Also, while Europeans certainly are aware of the major sectarian tragedies that happen occasionally around the world (Jonestown, Aum Shinri Kyo, Heaven's Gate,

etc.), Europe has a few tragedies and “close-calls” of its own. Twenty-one of the 80 or so Branch Davidians who died at Mt. Carmel in 1993 were British citizens, and most of the 74 murder/suicide victims of the Order of the Solar Temple (who died at various times from late 1994 to early 1997) were Swiss and French. Authorities believe that they narrowly averted disaster in 1998 when Spanish police arrested a sect leader, 26 adults, and five children on the island of Tenerife. Allegedly, its members believed that “the end of the world was destined to occur” at 8 pm on January 8, and that “their souls would be picked up by spacecraft and transported to another planet.”

Several European countries are concerned about the excessive access that some controversial religions have to American policy-makers. Europeans believe that these controversial religions are providing American policy-makers with information that often is questionable in content and accuracy. They also believe that this questionable information overshadows the facts and interpretations that the Europeans themselves try to provide.

By far the most controversial religious human rights lobby that has impacted American foreign policy in Europe is comprised of Scientology’s Hollywood celebrities. Their access to political decision-makers has diminished the stature of American foreign relations officials in the eyes of their German counterparts, and also probably in the eyes of other informed Europeans. In 1996 and 1997, a Scientology affiliate in Los Angeles was paying \$725,000 to a Washington-based firm to lobby Congress on Scientology’s behalf. Working with three particular Scientology celebrities—John Travolta, Isaac Hayes, and Chick Corea—this lobby firm helped to arrange a number of high-profile meetings on Capitol Hill.

Probably through the efforts of the high-paid Scientology lobbyist, Travolta, Hayes, and Corea made presentations before the Commission on Security and Cooperation in Europe (the Helsinki Commission) in September 1997. And earlier in 1997, Bill Clinton happened to meet Travolta at a conference in Philadelphia, and the President told Travolta that he wanted to help him with Scientology’s problems in Germany. He followed up on that promise by arranging for the White House political affairs director to set up a briefing with Travolta and other Scientologists with national security advisor, Sandy Berger.

Perhaps the most incendiary event involving celebrities was the “open letter” to Chancellor Helmut Kohl in January 1997 that equated the German government’s handling of Scientology with Nazis’ persecution of Jews prior to World War II. Many of the 34 Hollywood celebrities who signed it had close ties to prominent Scientologists Travolta and Tom Cruise, and German officials were infuriated with the letter. Indeed, to their credit, the State Department and the Secretary of State denounced the Nazi comparison. Seen in context, however, with the Scientology celebrity lobby, all of these incidents indicated to the Germans that American foreign policy toward their country about religious human rights was being unduly influenced by what many critics cleverly call “Scientologywood.”

While the Scientology lobby has had a surprising impact inside the United

States, intense lobbying on the part of various interested parties also occurs on international levels. The Council of Europe became so concerned about the availability of biased information from this lobbying that it recommended that the governments of member states “where necessary, were to set up or support independent national or regional information centers on groups of a religious, esoteric, or spiritual nature.” To some American officials, it is unthinkable that governments would collect information on religion. From a European standpoint, however, these centers may be the best way to control the quality of information that government officials, law enforcement, and the general public receive.

The Council has learned from the American experience that privately run so-called “cult-information” organizations are extremely vulnerable both to infiltration by sect-planted spies and to destruction by the very groups that they attempt to monitor. Indeed, many of the controversial new religions are really multifaceted transnationals that have ready access to enormous resources—far more than any “cult-information” or “cult-monitoring” private agency ever could muster. The American example of the Cult Awareness Network provides Europeans with a negative model—a worst-case scenario—that occurred when a “cult-monitoring” agency lacked state protection. To simplify a complicated story, Scientology was involved in legal challenges and, finally, a court case, that bankrupted the Cult Awareness Network; Scientology even acquired its name, logo, phone number, and files in the course of bankruptcy proceedings. This kind of gross violation of privacy and confidentiality would not happen if the European nations have governmentally sponsored monitoring and information-sharing agencies, as has been recommended by the French, the Germans, the Belgians, and the Council of Europe.

Beyond these issues, European officials are troubled by the lack of awareness that State Department officials have about crimes and religious human rights abuses that occur on American soil and that they (the European officials) are trying to protect their citizens against. The most dramatic case in point involves Scientology’s operation of forced labor and re-indoctrination programs in California, Florida, England, and Denmark. These abusive programs, named the Rehabilitation Project Force or, simply, RPF, involve forcible confinement, physical coercion, social and psychological degradations, obligatory confessions, and hard labor, which the Scientology organization imposes upon its most committed but deviating or poorly performing members.

Especially because of Germany’s mid-century history, it will never grant Scientology religious status as long as it operates forced labor, RPF programs anywhere in the world. When, however, members of a German parliamentary commission on sects brought up the RPF in a 1998 meeting with the Assistant Secretary of the Bureau of Democracy, Human Rights, and Labor, this State Department official had no idea what the commission members were talking about.

Also remarkable to the Europeans is that American legislation specifically exempts children from necessary medical care on religious grounds. The 1996

Child Abuse Prevention and Treatment Act specifically states, "Nothing in this Act shall be construed as establishing a Federal requirement that a parent or legal guardian provide a child any medical service or treatment against the religious beliefs of the parent or legal guardian." By contrast, European nations have committed themselves to protecting children from medical neglect caused by parents, which partially explains the difficulties that some European Jehovah's Witnesses are facing.

In conclusion, let me emphasize that many European officials feel that some American policymakers have been unable to hear the concerns that various European nations have about the link between human rights defense and human rights violations. Many religions, after all, have long traditions of intolerance themselves, and they allow restrictions upon their members that seem antithetical to the free operation of democratic, tolerant states. I fully expect that, at some time in the future, European religious human rights officials will wax biblical when responding to American colleagues: "Judge not, lest you be judged."

## Response

Cole Durham: Religious freedom developments in Europe are extraordinarily important at this particular juncture in history for several reasons. The most obvious of these is that the rights of almost one-fifth of the world's population are at stake. The Council of Europe has 41 member states with over 800,000,000 people living within its boundaries. The streamlined jurisdiction of the European Court of Human Rights in Strasbourg now extends directly to this immense number of people. The indirect influence of Europe is even greater. The Strasbourg Court has emerged as the preeminent human rights court in the world, and its decisions constitute persuasive authority virtually everywhere. More generally, because of the great historical significance of Europe in the development of democratic forms of government and the framing of human rights, European experience and patterns of dealing with religious-freedom issues exert powerful indirect effects because of their influence as a model elsewhere. In this regard, church-state structures in Western Europe, especially, have a particularly powerful legitimating impact. Anything that Western countries do in the area of freedom of religion or belief is presumed to be legitimate as one moves further east.

It should also be noted that tensions between the United States and other Western nations on the nature of religious-freedom norms can be particularly unsettling. In a day when there are already influential voices challenging the universality of the rights identified in such key instruments as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, small disagreements between the United States and Europeans as to minimum standards can be magnified into claims that the entire regime of international human rights law is groundless, merely relative, and illegitimate. It is accordingly important to structure dialogue on these issues so that candid and constructive criticism can occur, while at the same time assuring that disagreements on issues of

implementation of religious freedom norms are not blown out of proportion.

Passage of the International Religious Freedom Act has created some frictions with Europeans. The Act is perceived in some quarters as an example of the United States assuming a “Lone Ranger” role, and manifesting an excess of zeal. Yet, in fact, the Act is only committed to strengthening the implementation of the international religious freedom norms that Europeans have accepted. If IRFA is to avoid becoming an irritant that could divide a common western approach to matters of freedom of religion or belief, it is vital that ways be found to use it as an impetus for shared constructive efforts, and not merely as an occasion for self-righteous finger-pointing.

As an American, let me emphasize in this context that international minimum standards do not and need not mirror the U.S. model of state-religion relationships. Neither the key U.N. documents nor the European Convention have clauses that ban the “establishment of religion.” Differing European countries take very different attitudes on the extent to which religion and state should be “separated.” The resulting institutional structures are deeply entrenched and at least in their main features are unlikely to be held to violate European human rights standards. A declaration attached to the final act of the Treaty of Amsterdam underscores the fact that church-state matters remain subjects of national law, and the European Court’s doctrine of a “margin of appreciation” is likely to further reinforce subsidiarity in this area.

I agree with Willy Fautré that the multi-tier European church-state arrangements that put different religions in different categories almost invariably generate equality problems. But in light of a variety of practical and historical considerations, a broad range of such institutions is unlikely to be challenged under national constitutions and the European Convention, and any challenges filed would be unlikely to prevail. Thus, while more blatant examples of unequal treatment may be subject to challenge under human rights norms, for the most part existing church-state systems will survive. Given this reality, the fundamental issue is to find ways to assure that protection of traditional religious structures is not allowed to restrict the rights of smaller religious groups to the full range of freedom assured by the international instruments—namely, the “freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Whatever arrangements are preserved by two-tier systems with respect to dominant or traditional religions, protections at the level of the lower tier must be sufficiently robust to assure that smaller groups can practice the full range of their religious beliefs and are free from discriminatory burdens vis-à-vis other citizens in exercising these rights. Limitations or burdens on these rights can be allowed only when they are strictly necessary and warranted by compelling or pressing social needs.

One of the difficulties in this area is that those developing church-state structures in Eastern Europe sometimes seek to replicate the privileges Western European systems accord to upper-tier religions without simultaneously adopting the sophisticat-

ed protections built into the Western systems for “lower tier” religious groups. For example, Germany’s “church tax”—which is available to upper tier “public corporations”—is cited in other countries to justify subsidization of churches from general tax revenues. What this overlooks is that, in fact, strong protections are in place in Germany to assure that the tax system is not used to coerce individuals to support a religion or belief other than their own. Thus, under the German system, church taxes withheld from a particular individual are paid only to the church to which that individual belongs, and individuals have the constitutionally protected right to leave their confession if they object to supporting it through the church tax. Moreover, to the extent that some countries do permit outright subsidies from general tax revenues, they are often justified on secular grounds. For example, even separationist France allows public funds to be used to support the operation and maintenance of church buildings, but this is justified in light of the secular interest in preserving structures of historical and cultural significance.

Even more problematic is the tendency for East European regimes to cite West European two-tier schemes in support of restrictive religious association laws. That is, restrictions on “lower tier” organizations are justified by loose references to the fact that similar restrictions are observable in Western Europe, without mentioning that the Western restrictions apply only to obtaining “upper tier” entitlements. For example, proponents of the 1997 Russian law that prevents groups from obtaining “organization” status if they have not been in Russia for 15 years (or are not tied to a centralized organization) contended that they were merely following European patterns, even though no European country imposes anything beyond short “processing time” limitations for access to base-level entity status.

What this suggests is that while the rich array of alternative church-state systems in Europe is likely to remain, religious freedom concerns require that certain minimum standards should be met. One of the better summaries of these minimum standards is provided by the 1989 Vienna Concluding Document in the Helsinki process. Briefly, it provides that participating states in the OSCE are committed to taking steps to eliminate discrimination against individuals or communities on the grounds of religion or belief; to fostering a climate of mutual tolerance and respect; to providing legal entities through which belief communities can carry out the full range of their beliefs; to respecting the right of belief communities to autonomy in their own affairs; to respecting rights of religious education and training in the home, in schools, in theological institutions, and through international contacts; to allowing believers to acquire books, publications, and other articles and materials related to the practice of religion or belief; and to permitting groups to disseminate their views within their community and to others.

This is an important summary of key minimum standards, although it is not a totally comprehensive list. Among the issues that might be added are some that touch on finance issues. Where a state elects to subsidize religious activity, care should be taken to do so in ways that do not coerce individuals to support religious beliefs other than their own or that there is a secular justification for the expendi-

ture. While economies of scale and reasonable constraints on use of public funds may set limits, state financial resources should not be distributed in discriminatory ways. The aim should be to provide equal access to public benefits to the greatest extent possible. Tax exemption schemes, for example, should not be structured in discriminatory ways. Limitations on freedom of religion or belief should be permitted only if they are prescribed by law, if they further one or more of the permissible state objectives listed in the limitation clauses of the international instruments, and if they are strictly necessary (in a democratic society).

It is with these principles in mind that the issues related to “sects” and “cults” raised by Professor Kent’s presentation should be addressed. At the outset of his presentation, Professor Kent indicated that he would attempt to “explain the Europeans’ critical approaches to the new religions” in ways that might help American policy makers better understand the European position. I applaud this effort, because I think there is much misunderstanding on both sides of the Atlantic that has been pushing Europeans and Americans apart instead of pulling them together in pursuit of a common concern to protect freedom of religion or belief. Unfortunately, while I think the paper does help explain European perceptions, it does more to highlight the problem than to help draw the two sides of the Atlantic toward a common solution.

Professor Kent’s basic point seems to be that Europeans are concerned that American policy makers fail to appreciate the gravity of the threat that new religious movements pose. In this connection he cites the litany of highly publicized tragedies that have occurred—Jonestown, Aum Shinri Kyo, Heaven’s Gate, Solar Temple, etc.—and supplements this with reports of forced labor and re-indoctrination programs allegedly carried out by Scientologists. But objections to such wrongdoing, at least to the extent that it can be objectively documented, are not a matter of dispute. American policy makers are just as convinced that criminal conduct should be punished as are Europeans. The difficulty comes in providing the documentation. One would be interested, for example, in hearing Scientology’s explanations of its “forced labor and re-indoctrination programs,” and would want to verify whether they are in fact qualitatively different from efforts to prescribe penance or to provide additional teaching to promote retention in other belief traditions. Those who run forced labor camps should obviously be prosecuted, but only by a prosecutor who can tell (and document) the difference between a forced labor camp and a monastery.

Professor Kent next points out that Europeans are worried about the “excessive access that some controversial religions have to American policy-makers.” Here the evidence is essentially what Professor Kent refers to as “Scientologywood”—i.e., lobbying by glitzy Hollywood stars who have ties to or are members of an unpopular religious movement. The European worry appears to be that American policy makers are duped by glamour. In fact, this European worry confuses a difference in political style with substance. The fact that American politicians may be more inclined than their European counterparts to play to the cameras that track movie

stars does not imply that their decisions will not ultimately turn on sound considerations about the substance of religious freedom.

Professor Kent contends that the “Scientologywood” charge is compounded in the European mind by the fact that American policy makers seem to be “unaware” of serious problems, such as forced labor programs allegedly carried out by Scientology, or other wrongful activities. The difficulty here, however, may not be American naiveté so much as excessive susceptibility of Europeans to stereotypical thinking about smaller religious groups. For example, when a U.S. State Department delegation last year went to Germany, Austria, Belgium, and France to discuss sect problems with appropriate officials in those countries, the U.S. delegates repeatedly asked for more information documenting genuine problems, but were not given credible substantiating evidence. This basic phenomenon was seen on a larger scale with the German Enquete Commission: After extensive information gathering by members of Parliament who for the most part seemed highly disposed to believe the worst about “sects,” the conclusion was that no genuine dangers had been found and only the Scientologists required continued observation. Even that recommendation has met differing responses in different parts of Germany, and particularly since the Social Democrats assumed power.

Professor Kent also notes that Europeans seem troubled by American willingness to exempt parents who conscientiously oppose certain types of medical care from criminal liability under neglect statutes. This may indeed be a reason why Jehovah’s Witness parents may be having difficulties in Europe, but it is in fact a disputed issue both as a matter of religious freedom law and criminal policy how much it helps children for the state to exacerbate a parental crisis of conscience by adding penal liability into the equation. While the balance of opinion may be different on the two continents, the issue is clearly a disputed one in both places, and the exact contours of a solution will continue to be worked out on a case-by-case basis that no legislation can address in adequate detail.

The final European perception adduced by Professor Kent has to do with the proliferation of official, state-operated “sect observatories” or “information centers”—a proliferation that has now been endorsed by the Council of Europe. He maintains that the need for such public centers has been accentuated for Europeans by the “negative model” provided by the demise of the Cult Awareness Network (“CAN”). This is cited as a “worst case scenario” in which a private monitoring agency was purportedly bankrupted by Scientology litigation. As Professor Kent acknowledges, his account simplifies a story that was more complex. But whatever one thinks of the merits of the CAN litigation or its aftermath, the fundamental question posed by the formation of “sect observatories” is the appropriate role government should play in the formation of opinions about religion. If one could be assured that government institutions would play a truly neutral role and would provide absolutely objective and unbiased information, one could feel much more comfortable about creating such institutions. In the highly polarized atmosphere that often surrounds new religious movements, however, such neutrality and objectivity is particularly unlikely.

If the experience with the observatories formed to date is any indication, there are grave risks that such institutions will be captured by anti-cult personnel, often aligned with dominant belief communities in a country. All too often the supposedly “objective” information highlights the dangers of religious cults, and very little is done to avoid reinforcing over-broad stereotypes that all or a large number of smaller religious groups typically exhibit the dangerous features. Even if those running an observatory or information center are fair minded, there remains a risk that they will provide information based on media coverage or one-sided sources. The mere fact that such information emanates from a state body is likely to give it greater credibility than it deserves.

In the long run, what is important is to move beyond highly polarized charges of “naiveté” or “stereotypical thinking” and to reach a calmer, more balanced perspective on the underlying phenomena. What Europeans often forget about Americans is that we have had extensive experience with new religious movements. There was a wave of deep concern about these issues in the 1970s and 1980s, taking virtually exactly the same forms of concern currently evident in Europe. For the most part, this wave of concern has subsided. There were pressures at the time to compromise religious freedom principles to address the “dangers.” But in the end, calmer minds prevailed. The dangers proved to be exaggerated; it turned out that serious problems could be dealt with adequately by existing criminal and civil laws; and the ideals of religious freedom vindicated themselves yet again.

It is difficult at present to assess what will ultimately happen in Europe. Possibly, Europe is experiencing a wave phenomenon like that experienced in the United States earlier, and one can anticipate that exaggerated concerns will subside in the not-so-distant future. The relatively calm outcome of the German Enquete Commission, which ultimately concluded that most groups posed no serious dangers, and parallel findings in the subsequent Swedish report, suggest that things may be moving in this direction. On the other hand, there are some reasons to think that the wave is less likely to subside in the European setting. In the United States, because of sharp separation-of-powers principles, there were never any state offices or institutions with special responsibility for working with and monitoring religious groups. The risk of capture by “anti-cult” groups was eliminated for the obvious reason that there were no institutions to capture. In Europe, in contrast, there is a risk that information centers could provide a base or point of public access through which anti-cult groups continue to spread disparaging and inflammatory information about unpopular groups. Even assuming that “information centers” will function fairly, as no doubt most Europeans would anticipate, there are still worries. Particularly as one moves further east, patterns of intolerant, stereotypical thinking may be reinforced in some quarters by tendencies to scapegoat unpopular and powerless groups, possibly in the process of trying to solidify new national identities. Greater skepticism within the European populace about organized religion may also lend support to negative reactions to new religious movements. Such factors could continue to sustain heightened anti-cult consciousness.

My own hope is that the current wave of overreaction to new religious movements in Europe will be short-lived. The International Religious Freedom Act can play a significant role in helping bring about that result. If its mechanisms are exercised with sensitivity, it will help stimulate meaningful dialogue on religious freedom issues. Europeans and Americans will differ on these issues in detail, but I am convinced that Europeans are just as committed to freedom of religion or belief as Americans, and in the end, the right to that freedom will be vindicated.



## Religious Persecution and U.S. Foreign Policy

Lee Boothby: The presentation that Willy Fautré made gives me some great concern. I have been pleased with what I believe to be the concern of the U.S. government with reference to certain countries in Western Europe establishing anti-cult or anti-sect organizations. What concerns me is the fact that some European countries seem to lump groups together under the terminology of “sect” without any empirical evidence.

For instance, in France, 173 groups have been listed as sects and in Belgium, 189 religious groups have been officially listed as sects. Once you are placed on that list, if you are a member of that organization, you many times lose your employment. It’s very difficult to function within the society. The churches themselves sometimes have great difficulty also.

One of the problems that I’ve observed is the fact that there is a domino effect that takes place. Once a Western government attempts to set up these kinds of organizations, they are emulated in Central Europe, in Eastern Europe, and in Russia. And when you attempt to criticize it, they point to the Western governments and say, “Well, they are doing it, so obviously it does not violate international human rights standards.” And in those countries of Eastern Europe and Central Europe, many times those individuals that would function in the capacity of investigating what sects or cults are doing have a communistic background or anti-religious background and, therefore, bring to their investigation an anti-religious attitude.

I was interested at the last meeting of the OSCE in Vienna as the French ambassador attempted to defend the position of the French government with reference to cults and sects operating within France. I was somewhat amused to have him explain that there shouldn’t be any problem at all because sects are those organizations that have “violated the law.” I’m wondering how many of the 173 religious groups that have been identified in France have ever been charged with violating the law.

One of the problems, of course, is that they take a look at a religious group such as Jehovah’s Witnesses and they decide that they are not an acceptable group, not because they have stolen from anyone, not because they have defrauded anyone, but simply because they are out of step. They do not salute the flag, they will not participate in military service and, therefore, the government views them as bringing an anti-national viewpoint to the table.

One of the things that I am somewhat concerned about, though, from the standpoint of the U.S. government’s involvement in religious freedom issues on an international basis, is the fact that we have to be very careful about making certain that our own linen is clean. For instance, when there was criticism with reference to

Turkey, the ambassador from Turkey pointed out that our own history was not great.

For another example, consider that a few months ago the Maryland legislature passed a resolution to set up an investigative body to determine cult activities on the campuses of Maryland colleges and universities. I'm just waiting for the countries of France and Belgium and Austria and Germany to point that out the next time that we have a conference criticizing what is going on in those countries.

Still, Europe could learn from past U.S. mistakes. For instance, European moves against cults raise the issue of "deprogramming" cult or sect members. In my legal experience, I've had an opportunity to represent several individuals who were kidnapped and subjected to religious deprogramming. To me this is a major concern because it is my view that the anti-sect attack in Western Europe may very well be a prelude to persecution of individuals within unpopular religious groups through the deprogramming process. This is already going on in Japan.

I think, in the United States in the last 20 years, we have learned our lesson that you cannot kidnap people for their religious faith. You cannot engage in that type of religious persecution, because that goes to the very heart of religious freedom. You are actually attempting to change their religious beliefs. Religious activity may be subject to some state control, but religious belief is an absolute right.

One final thought on the role of the media in affecting the policymaking environment. We've had many members of the media here and I think that is good. So many times we don't have members of the media present for this kind of conference. I think one of the problems with reference to new religions is the fact that the media gives special attention to an event if it involves individuals in new religions. If a member of the Jehovah's Witnesses organization were to commit suicide in Russia or Romania, the headline would be, "Jehovah's Witness Commits Suicide." If an individual is found to have abused a child it will say, "Pentecostal Abuses Children in Ukraine." But if a member of a majority religion commits suicide it will just say, "John Doe Committed Suicide."

Winnifred Fallers Sullivan: One of the first things that struck me about the State Department report is that there was no section on the United States. I think that's a very serious omission. We've been told here repeatedly that this Act, and the activities of the American government with respect to this Act, are intended to be actions in the international space, actions that see the United States as a partner with other international actors.

Right from the beginning this omission sets up an American exceptionalism. You will find the same kind of problem in the very introduction to the Act. Again, we have also been told repeatedly that the Act simply uses the language of international conventions and is not intended to impose an American style of religious freedom. Yet the first paragraph of the Act reads as follows: "The right to freedom of religion undergirds the very origin and existence of the United States. Many of our nation's founders fled religious persecution abroad, cherishing in their hearts

and minds the ideal of religious freedom. They established in law as a fundamental right and as a pillar of our nation the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering from religious persecution.”

In my view, these “findings,” as they are called, perpetuate myths about American religious freedom. They don’t describe American history. And they’re quite misleading myths. If you follow American history after the Revolution you have the establishment during the 19th century of a de facto Protestant establishment that was very damaging. The Mormon Church radically changed its theology in response to the persecution of the federal government. Native Americans were systematically converted to Christianity through the efforts of the U.S. government. African Americans in slavery were denied rights to practice their religion.

And you could go on like this. I don’t think that these are trivial examples. I don’t think they are marginal. One often hears that “Americans have always been dedicated to religious freedom. There’s never been a problem with religious persecution of any significance in this country.” I don’t think that’s true. And I think it’s important that we acknowledge this.

As to whether all of our efforts have made us the great success story, a country where religion is free and yet religion flourishes, I think that’s another question. I don’t know how you measure success. Some people who evaluate the American religious scene would say that it may look as if we have flourishing religion but what we have in fact is a secularized religion that doesn’t really have much bite left.

I was interested to hear that, in the expansion of coverage from the Wolf-Specter bill to the International Religious Freedom Act, one of the moves was from attention in the Wolf-Specter bill mainly to extreme cases of religious persecution to a very broadly based concern with religious freedom all over the world. I think that’s a tremendously significant move, and one I am going to have to think about more, but it does certainly put the United States in a very different position—not simply responding to emergency situations of extreme violence, but putting the United States more in a situation that seems to be promoting a certain version of religious freedom.

As far as how the Report privileges religion—and I talked to Tom Farr about this—in a way, I think it’s refreshingly candid. The introduction to the Report clearly privileges and honors a religious understanding of the human person and a religious understanding of the sources of human rights. These understandings are certainly valid and important, and motivate many people to do great things. But the Report puts the U.S. government in a position of suggesting that this is the best way to understand the human person and the rights around the human person.

The introduction to the Report also announces the following as a goal: to advocate religion as a “transnational vehicle of conflict prevention and post conflict reconciliation,” not as a “tool of division.” There you have a very clear statement of what kind of religion this Act is interested in promoting. It’s interested in promoting reli-

gion that is a vehicle for peace. There have been times in human history when religion was a tool of division. Separating the two kinds of religion is very difficult.

The Report and the Act tend to set up as protected a religion that is individual, chosen, private, and believed. This would be the classic, evangelical Protestant understanding of what religion is, an understanding that is in some ways a product of disestablishment. In many places in the world, and indeed, in parts of America—you don't have to go to other places to see this religion, as Abdullahi said—religion is communal. It's given, it's not chosen. It's public, it's not private. And it's enacted, embedded in the culture, not simply believed in a private way by an individual. Religion that is communal, given, public, and enacted is a much more unwieldy partner with a government than the other form. And it's much more difficult to advocate full religious freedom for that kind of religion. Perhaps religion is too unstable a category to be used effectively in legal contexts. Freedom from persecution should be advocated regardless of religious conviction or identity.

At several points in this conference, it's been mentioned in quoting international conventions that conventions include discrimination on the basis of religion with discrimination on the basis of race, ethnicity, and gender, but that religion has been neglected. Religion is different from the other items on this list. Race, ethnicity, and gender are, indeed, particularly given; they are not chosen. You cannot opt out of them. If religion is understood as chosen, it is in a different situation. Race, ethnicity, and gender have no ideological content. Religion does. The way in which religion is implicated in cultural and political histories suggests that maybe you cannot just plug religion in with other ways of dividing people.

## Response

Jeremy Gunn: I was sent by the United States Institute of Peace to the State Department to work for a year on issues related to religious freedom. So I was able to say that I was "in" the State Department but not "of" the State Department. I think it is important for people who are outside of the State Department to understand how difficult it is to work there. There are many people inside the State Department who are working on the issue of religious freedom and who are often fighting an uphill battle. It's important for people who are interested in advancing the issue to understand that there are people who are trying to do that from the inside against many obstacles.

I think Tom Farr should get a great deal of credit for the Report having come out as well as it has. That said, I nevertheless think there are many improvements that need to be made in the Report. I don't think there's anybody at the State Department who would disagree with that, although we might disagree about what improvements are needed.

I think Abdu has correctly identified many of the criticisms leveled against the United States from abroad. But I happen to disagree with the accuracy of almost all of the arguments that he made, and I would like to respond to some of those.

I would like to identify some of the criticisms that have been raised against the

United States on the question of the promotion of religious freedom. One of them is that the United States ranks religion as the most important right. Although the right is indeed the most important for some people, Congress may simply be enacting legislation because the issue has been neglected and that it is a problem that is not being advanced by anybody else. The appointment of a Special Ambassador for International Religious Freedom need not be perceived as exceptional or extraordinary. The United States also has a special ambassador who deals with war crimes. This does not mean that war crimes are the most important issue. There is also a special ambassador who deals with the Newly Independent States. That doesn't mean those are the only states in the world that matter.

The appointment of a Special Ambassador and the creation of a new office do not necessarily mean that there is a hierarchy of human rights. It simply reflects that there is important work to be done. It does not mean the United States necessarily places religion at the top of a human rights hierarchy, but it simply says that something is being neglected and needs to be addressed.

A second criticism is that the United States is focusing particularly on Christians and this reflects America's Christocentric cultural values and that Americans are inserting their cultural tradition into the international arena. Again, that is a criticism that is often heard from abroad. It is a criticism that I think is both fair and unfair. It is certainly fair to the extent that the Report reflects the issues and facts that come to the attention of the U.S. government. Persecution of Christians comes to the attention of the U.S. government more than other issues do. Thus, such persecution is emphasized in the Report. (If France were producing a report on abuses, they surely would have a disproportionate emphasis on the abuses of the French language abroad.) This is not to say that it is okay to have a disproportionate emphasis on Christians; it is to account for the emphasis. It was the information that was available at the time.

It is extremely important to understand that the United States, in its bilateral discussions with other countries and in its public statements on this issue, never says anything like, "Christians are particularly important." The State Department stresses that it is not one religion or another religion that is at issue. It is the equal treatment of all religions.

A third criticism that is heard is that the United States is acting as a moral crusader and as a Lone Ranger. I think that to some extent this criticism is unfair, although there is some merit to it. Other countries have not been taking up the issue with sufficient force. So it's not that the United States wants to be alone on this issue, it's that the United States happens to be somewhat alone on the issue. Perhaps, instead of criticizing the United States for being alone on this issue, it should be credited for trying to put this issue on the international agenda—an issue that has been, for the most part, neglected.

If the United States goes abroad and says, "Do it the way we would do it here because there are no problems in the United States," then that is a Lone Ranger approach. (I feel sorry for the Lone Ranger because he never even did that himself.)

A fourth criticism is that the United States is trying to impose Western standards on the world. Again, it is possible to understand why that is being said. The issue of religious freedom has been an issue of concern in the United States for a long time. For all practical purposes, I agree with almost everything that Winni said on there being sort of a myth about the freedom of religion in America. I am reminded of a statement Garry Wills made in his book, *Lincoln at Gettysburg*. He said it more eloquently than I, but he said something like “proclaiming the rights of man” is as much a part of the American tradition as it is to tar and feather somebody and run him out of town on the rails. Both of these are part of the American tradition: intolerance and tolerance. They are both there and it is good when the United States can self-consciously recognize it.

Nevertheless, I think there has been a dramatic change in the United States in the last 50 years on issues related to religion. Today there are relatively fewer attacks on minorities, and the United States should be very proud of that. But the important thing is that we acknowledge that we are promoting a universal standard, and that we be open to criticism by others.

A fifth criticism is that the United States has a double standard on different countries; that it will criticize Sudan but will not criticize Saudi Arabia and that it criticizes some countries more severely than others. There are different ways you can respond to this criticism, one of which is to say, “it’s true!” And in that way, the United States is not unlike any other country in the world. You show me the country in the world that is not hypocritical in its foreign policy and I’ll show you a country that no longer exists.

The other criticism of hypocrisy leveled at the United States is that it is not consistent on human rights issues. This is a pretty powerful argument that I hear all the time. I personally think that is true, and I think the United States makes a serious mistake in not taking its international obligations seriously enough. It should ratify the Children’s Convention and Women’s Convention. It does make the United States look like a hypocrite to argue loudly for some international standards and ignore others.

Nevertheless, I think it is important to recognize that the rights of women and children are reasonably well protected in the United States, whether the international conventions are ratified or not. So to some extent it’s a rhetorical criticism of the United States. But it’s a powerful rhetorical argument people use to dismiss what we’re trying to do on freedom of religion. Capitol Hill could really improve the situation by showing that the United States wants to be a full partner, a full player in the international human rights community. That would make advancing religious rights much easier.

Tom Farr: With respect to the introduction to the Report, it strikes me as a bit odd, frankly, to say that the U.S. government may not or ought not make the point that religion, while divisive, is also a human endeavor that can have a positive effect

on international affairs. If we are going to defend this very important freedom, surely we can make the argument that a religious conception of human dignity is a universal conception, and thus has a beneficial effect for everyone. This is why we went into the introductory discussion of what I characterize as a religious understanding of universality.

The Report is a product of the work of hundreds of people. It began with the law in October 1998, that mandated the Report. By November, we had preliminary instructions out to the field, out to 200 embassies and consulates. By January, we had final instruction cables out to all of our embassies and consulates, giving them a series of questions that they needed to begin to assimilate and answer.

Submissions in draft form began to come in May—drafts of what were to be 194 country reports. Throughout this past summer there was a process of reading these drafts by State Department officials in our offices and others. We worked back and forth, refining the drafts, and gathering input from NGOs—both at the embassy level and at the Washington level—and from religious rights groups. Out of this came, in some cases, arguments and heated discussions over a single word. I can tell you that even though the Report was delivered to Congress in the early hours of the morning of the 9th of September, it wasn't finished until late the previous evening.

I make these points to give you a sense of a process that we think was measured. Of course, it can be improved. Any such huge undertaking can be improved. But what I would like to leave you with is not a sense of American triumphalism, certainly not State Department triumphalism. We do have pride in this Report, but we understand the need for improvement. I like to think the Report is a product of hard work and passion about the subject. We have thick skins. So I ask each and every one of you, if you have criticisms of fact or analytical approach or anything else, for that matter, write a letter to me, articulated in as great detail as you can and I promise you that not only will I read it but I will get it to the appropriate people who need to read it in my office and other offices in the State Department.

## VI

# General Discussion

Abdullahi An-Na'im: Tom Farr reiterated the point that I made earlier about how religion is a foundation of human rights and human dignity. I would very much like that to be so. But I realize that this is the view of a tiny minority. For example, to the vast majority of Muslims around the world, Islamic conceptions of rights are inconsistent with the human rights of women and non-Muslim religious minorities. We must address those aspects of the relationship between religion and human rights, rather than focus on the positive side.

William Inboden: A question that has really come out through the conference is this notion of a hierarchy of human rights—in particular, a concern about putting religious freedom at the top of the hierarchy. I would say maybe we need to expand our thinking a little bit and not just think about nonmaterial human rights, such as freedom of conscience, thought, assembly, speech, etc. We need to think about human needs as well. For example, I think we all agree that particularly in the developing world there is a human need for clean drinking water, health care, education, food. And a lot of people I have spoken with in the developing world are much more concerned with putting food on the table and getting their kids healed from an awful intestinal disease from contaminated water than with more ethereal notions like freedom of speech or human rights. Where am I going with this? I would not criticize Human Rights Watch for not caring about these other human needs. I don't think Human Rights Watch is imposing some sort of hierarchy where they only care about human rights and they don't care about the kids who don't have food or water or some of these material needs. Likewise, I don't think it would be fully accurate to say those people who want to focus on religious freedom as one particular human need or human right are doing this to the detriment of any other human needs or human rights. I think we all have our battles to fight, and we ought to give each other the benefit of the doubt in this regard.

Winnifred Fallers Sullivan: Religion is a deeply ambiguous, complicated aspect of human culture. I think we make a mistake if we try to wish that away, trying to look only at the good side of the story. You never get rid of the bad side. Religion is different and I think we have to acknowledge that.

Michael Lestz: If there had been a long, established record of the United States focusing and pushing for global human rights recognition, I don't think this Act would be interpreted in the fashion that it is being interpreted. However, we have, at best, a very spotty record in terms of supporting and pushing for global efforts in securing human rights, and therefore this Act is perceived as yet another sort of

American exceptionalism. And as to whether or not other countries are less hypocritical or more hypocritical than the United States, the comment of Mr. Gunn just took it out of my mouth. He said, well, you know we are doing pretty well on women's and children's rights, so it's not really important that we ratify those conventions. That's, in my mind, the definition of exceptionalist. We don't really need these things because we are already there. And I think that's a significant problem, a problem that really comes out in the American approach to human rights, generally speaking.

Jeremy Gunn: Just quickly, I didn't say that I think the United States shouldn't ratify the Women's Convention or the Children's Convention. I think it's important for the United States to do this.

Michael Lestz: But the reason for the importance that you mentioned seemed to be only so that other countries don't call us hypocrites. That seemed to be the implication that I got out of your comment. I think the conventions are important to sign, irrespective of any other country signing.

Jeremy Gunn: But the United States was involved in drafting those conventions; the United States ought to support them. I think that what you have done is singled out one of my arguments and assumed that was the only one, which wasn't the case.

Tom Farr: Back quickly to the issue of what we might call the source of human dignity—what I heard people saying is that the international commitment to universal human dignity ought to be seen as a product of current social practice, or perhaps of recent enlightenment. If that is so, it can be swept away tomorrow. The purpose of the introduction to the Report was not to say that religion provides the only understanding of human dignity. In fact, it notes that religion is historically a source of great conflict, and that there are nonreligious understandings of human dignity. But if the question is the source of the universality of human rights, one answer is a religious understanding—that each human has a spark of the divine and must, for that reason, be treated with respect. This is not simply a Western ideal, although it is in part that. It represents a willingness to root human dignity in metaphysical soil, to say that that is universal. If the notion of human dignity is merely the product of this era, then it seems to me that human rights can be dissolved. A religious understanding of human dignity makes it universal and timeless, less vulnerable to the whims of any era.

Jack Cullinan: I have to agree with the source of human dignity, and I can agree with using that as the substructure on which to build the argument. But it's possible for people to disagree about ultimate issues, yet agree on more proximate ones, as we might in this case.

Cole Durham: I am going to pick up on the comment that was made first I think by Jeremy, that religion should be on the list of things in the general nondiscrimination provisions. This argument was then questioned by Winni because she thinks religion is different, more problematic. It seems to me that religion may and probably is different from race and gender, which are absolutely given, in the sense that you have no control over them. But the question is, what should follow from that? Should that make religion a second-class consideration vis-à-vis the other categories? Or should that make it an elevated category, closer to the core of human dignity? Now, there is no doubt that religion is dangerous. It's dangerous because people care about it more than life. It's one of the few values that has that characteristic. That makes it such a dangerous value. But there is no question that, at a minimum, it should be on the list.

Winnifred Fallers Sullivan: I don't think it belongs on the list. And the reason it doesn't belong on the list is because, listening to you and Tom Farr, I feel like I am in church. I go to church, but I don't think a churchy sensibility belongs in American policy. It dishonors the many, many people in this country who have self-consciously walked out of religion for whatever reason. These are good, moral, sacrificing people for whom your description of what it means to be a human being would be deeply offensive. It would be to say, "You're really not a very important part of American history because American history is about a religious understanding of humans."

Cole Durham: The protection is for religion or belief.

Winnifred Fallers Sullivan: Well, you keep saying that, but nowhere here does it honor the real values that come out of nonbelief. I think that there are some. They are one reason for disestablishment.

Cole Durham: Well, the reference is to international standards, which, as Jeremy said, consistently talk about religion or belief. My point is that there is something really fundamental about conscience and human dignity that really does belong on the list. I think it's deeply troubling for you to suggest that religion does not belong on the list.

Winnifred Fallers Sullivan: You are using these words interchangeably. Conscience, to me, does not have the same problem as religion. Freedom of conscience is what every human being who lives has a right to.

Cole Durham: That is what I'm saying.

Winnifred Fallers Sullivan: That is different from saying that religion has rights. Religion is something that comes with a whole lot of baggage. Giving rights to religion is very different from saying you ought to be respectful...

Cole Durham: We agree that religion or belief has rights and that...

Winnifred Fallers Sullivan: Oh, no, let's just give conscience rights. Let's respect...

Cole Durham: You want to believe only in nonreligion?

Jeremy Gunn: By that she would mean to exclude religion.

Berel Lang: Just change the title of the act to IFCA—freedom of conscience, not freedom of religion. That would be an improvement.

John Hanford: Closely related to this discussion, but shifting the angle a bit, there is actually a simple, practical reason why this legislation deals with only one human right, and that is because it is typically the nature of legislation to deal with one issue at a time. Several here have cited U.N. conventions. You will notice that, in the same way, it is generally the nature of such conventions to address one area of human rights or one international issue. Or those of you who are academics—typically, when you write a book, you focus on one human problem, without feeling it necessary or practical to cover every aspect of the human predicament. In the same way, when we consider the pros and cons of this Act, I do not believe that it would be reasonable or even compassionate to refuse to address religious freedom legislatively unless the Act could focus on every area of human rights at the same time. This was an issue that had come before Congress. Some of us were trying to conscientiously refine this legislative process and write a better bill. And our concern was, simply, do we care about people who are tortured for their religious beliefs? Or about laws that outlaw certain religious practices and put people in such vulnerable positions? There may be some here who are uncomfortable with religion being focused upon, because you see it, as someone stated earlier, as too “complicated” a human right.

Winnifred Fallers Sullivan: I think it's a little unfair to suggest that I don't care about people being tortured...

John Hanford: You seem to think it's too complicated...

Winnifred Fallers Sullivan: No.

John Hanford: You seem to think that it's too complicated to raise as an issue and to address legislatively, but the fact of the matter is that this Act passed unanimously in the Senate, 98-0, and unanimously by voice vote in the House, suggesting, in a practical sense, that every member of Congress does not believe that religious freedom is too complicated an issue to act upon. And I think that this is a better reflection of where most of America is on an issue such as this.

Jemera Rone: I think the legislative history of this act will probably reflect that there was a great deal of interest in protecting the rights of Christians and so forth when the bill was conceived and also when people responded, constituents and so forth. So I think that the burden is probably on the U.S. government to show that in this Act they're not engaging in crusading or proselytization on behalf of the Christian religion and I think...

John Hanford: Where do you see that?

Jemera Rone: I think that is the impression that's going to be created. I see here that people are trying to be sensitive to that, and trying not to create that impression. But I think it's certainly an uphill battle in terms of world opinion.

John Hanford: We can't respond to an impression; but where do you see it? And for those of us who don't regard religion as something that carries so much "excess baggage," as one participant put it, that we simply can't address it and have to take it off the table, one must ask, "What's the alternative?" People are being hauled in daily around the world for torture and other forms of abuse on the basis of religion—arguably more than for any other issue, with the sole exception of political dissension. Our country has a history of standing up for people who are being tortured or unjustly imprisoned. What is the alternative?

Laura Bryant: I think it's accurate to say that awareness of Christian persecution was a significant part of the process. It's okay to have momentum that may come from that. But the question of where momentum came from is very secondary to what actually was put in place. And I don't think there's anything in the actual policy that specifically promotes or singles out Christianity or any other religion.

Jay Demerath: You seem to have an impression that people around the world are actually going to read this bill. Just as you did not hold hearings in New Delhi and you did not hold hearings in Africa, Latin America, and other places around the...

John Hanford: We sought their counsel.

Jay Demerath: You are not going to get the kind of reading or hearing that I think you're expecting to get. I think there is a risk that in asking for so much, you are going to get too little. In asking for a bill that is specifically labeled religious, that has concern for religious freedom, you're going to raise suspicions and hackles to such an extent that you're not going to get much at all as a result.

John Hanford: We haven't raised the sort of hackles you're talking about, except here.

Jay Demerath: No, no, not just here, don't kid yourself. I am not an old-fashioned cultural relativist. I have a lot of concerns about human rights and human abuse and human persecution, and I would like to address those. But let me suggest that this is not the way to do it.

John Hanford: Sir, if this isn't the right approach, what are you saying? Give us concrete suggestions.

Jay Demerath: Let me suggest that this is an internationalizing world. And if you can't handle it with international appeals to an internationally agreed upon consensus of rights...

John Hanford: We do, as required in the bill.

Jay Demerath: Just hold on. If you can't work with these people, then I submit you're not likely to get the job done. I know what your response is going to be. If you internationalize it, you won't get people to sign on. And even if they do sign on, it will either be disingenuous or cosmetic or they won't act on it. Fair enough. But the important place for the United States to concentrate its effort is precisely to get them to make real commitments to such an agreement and begin to act internationally. Because if the United States tries to do it on its own, we will incur more hostility and trouble than we have now.

Ira Rifkin: I want to say, for the record, that I was at the initial news conference in the Capitol building when Wolf-Spector was introduced. And it is my clear recollection that, despite what the final Act came to be, despite Saperstein<sup>1</sup> standing with everybody up there, despite the fact that Michael Horowitz was a driving force behind the writing of the bill, and despite the fact that Arlen Specter is Jewish, as are Saperstein and Horowitz, this Act was then perceived as a bill that came out of the religious right and was for the protection of Christians.

Jack Cullinan: The Catholic bishops initially refused to support Wolf-Spector and insisted on changes in exchange for our support. When that happened, then David Saperstein and the others got on board with us. Now, this happened at a time when no one knew the alternative bill was being drafted; the Wolf-Spector bill was the only game at that point in time. And our hope was to continue to press for changes and try to make a better bill.

Mark Hulsether: My perception also is that the broad constituency that backed this bill tends to be conservative Christian—conservative, at least, within a broad

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<sup>1</sup> David Saperstein, Director, Religious Action Center of Reform Judaism, and Chair, U.S. Commission on International Religious Freedom

spectrum of U.S. politics. Until quite recently we had a Protestant-dominant culture in the United States. And if you want to think about the context in which one thing or other might be pragmatically attainable in the U.S. Congress, we have to talk about what's happened in the last generation where there's been a loss of this presumption of power by conservative evangelicals. And then the larger mobilization of the religious right seems to me, in part, to be a response to that. I think you have to understand that as being part of the deep background context for the mobilization of this law, as well as for the other laws that are being promoted in the name of protecting the religious rights of evangelicals in the United States.

John Hanford: It has seemed from several comments, that some of you carry the suspicion that this Act was the work of the religious right. While it is undoubtedly true that there are many in the religious right who care deeply about this issue, this suspicion of their involvement with this bill is one that those of us who worked on the Act would view with a certain degree of irony, because we had such mixed experience and even some frustrations at times with the religious right. I do not want to get into naming names, but in one instance, for example, when Laura Bryant raised a couple of substantive questions about the Wolf-Specter bill, she was told by one leader that it was because of people like her that the Nazis succeeded in sending millions to the death camps, and she was standing in the way of large numbers of religious believers being saved from a similar fate. There was significant support amongst the religious right for the Wolf-Specter bill and at the same time, a certain degree of grumbling in other quarters about that support. There were some good things in the Wolf-Specter bill, and my goal is not to criticize that right now. The International Religious Freedom Act was supported by the Episcopal Church, the U.S. Catholic Conference, the American Jewish Committee, the Anti-Defamation League, the Southern Baptists, a United Methodist organization, Prison Fellowship, and a number of other organizations, as well as by the Christian Coalition, with many religious right groups remaining uninvolved. We actually thought there would be more significant support coming from the religious right when we stepped forward with this, and we were somewhat surprised at how tepid such support was. As a practical matter, this was a moment of opportunity. Something was going to be voted on in Congress on this issue. And so it was a question of whether we just let it be something that came out of a messy process, or whether we devoted a great deal of effort at trying to draft as effective and careful an approach to this complicated issue as possible. I will admit it's complicated. And so again, all of us are open to counsel on a better approach. That's what I have been asking for and that was a central question posed by our moderator for this session today. I can also point to our experience in receiving correspondence on Capitol Hill from constituents. We are not hearing back from Americans who are upset that we passed this Act to assist people who are arrested or persecuted for their faith. We gave IRFA a strong, conscientious effort in terms of seeking to serve a serious human rights problem overseas in a manner consistent

with sound foreign policy. Now we will have to see how it works out in implementation. We can all try to influence and assist in the implementation process in order to make sure the bill doesn't prove to be counterproductive, but instead works to benefit, in a lasting and meaningful way, those persons who are being treated unjustly on the basis of their beliefs.

Tom Farr: The proof will be in the pudding. If the new U.S. approach to religious freedom works, we'll all know it. Maybe we can meet again next year and measure its success. I look forward to receiving not only your contributions to the Report itself, but also to learning whether or not you think it's working or whether it's having the negative effects that some of you fear it will have. We should be able to say either, "Well, this was a mistake" or, "This was good."

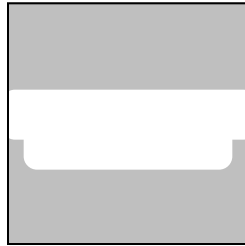
Rosalind Hackett: I am hopeful, as someone who does research on areas of religious conflict, who teaches human rights courses, and who is also an activist in a small way, that despite the problems associated with the bill and the reports, that you are contributing to enlarging the discourse of human rights and helping it spread into areas where it wouldn't normally go. And I am talking about churches and particular Christian groups, for example, or even non-Christian groups, in this country. I see it in my own students who are picking up on human rights talk in a way that they wouldn't have done five or 10 years ago. And it's how we build on that so that they won't just select rights that just match their own opinions. They need to understand that this is a very holistic issue.

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