

**REMEMBERING THE PERSECUTED: AN
ANALYSIS OF THE INTERNATIONAL
RELIGIOUS FREEDOM ACT**

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“Remember the prisoners, as though in prison with them, and those who are ill-treated, since you yourselves are also in the body.”—Hebrews 13:3.

I. INTRODUCTION

Religious persecution has never enjoyed the degree of attention paid to well-known forms of discrimination, such as that based on race or gender.¹ Americans do not march in the

1. For further analysis of the International Religious Freedom Act (“Act”) and the political and religious context in which it was created, consider the works of Allen D. Hertzke, professor of political science at the University of Oklahoma. See, e.g., Allen D. Hertzke, *The Political Sociology of the Crusade Against Religious Persecution*, in *THE INFLUENCE OF FAITH: RELIGIOUS GROUPS AND U.S. FOREIGN POLICY* 69 (Elliott Abrams ed., 2001) (analyzing various religious forces, from the secular elite to Catholics, Evangelicals, and Jews, and their influence on the Act); Allen D. Hertzke & Daniel Philpott, *Defending the Faiths*, *THE NATIONAL INTEREST*, Fall 2000, at 74, 78 (explaining the importance of religious freedom, because “its very practice entails other human rights as well: the right to assemble, to express oneself freely, to print literature, [and] to own property,” among others) [hereinafter Hertzke, *Defending the Faiths*]; Allen D. Hertzke, *The Faith Factor in Foreign Policy: Religious Constituencies and Congressional Initiative on Human Rights*, *EXTENSIONS* (The Carl Albert Res. and Stud. Center, Norman, Ok.), Spring 2001, at 15 (describing the efforts on Capitol Hill and reporting

streets over it. No one writes sit-coms about it. Television news magazines rarely dedicate articles to it. The number of water-cooler conversations about religious persecution is surely minimal. Perhaps religious persecution's step-child status is due to the lack of any widespread religious discrimination in the United States. One can always hope.

Nevertheless, recent years have seen an increase in the amount of religious discrimination and persecution in other countries.² By 1998 the international situation for the devout of all faiths had deteriorated to such an extent that the United States passed the International Religious Freedom Act ("Act") in an attempt to alleviate the suffering of the persecuted.³ Suddenly religious freedom became an integral part of America's foreign policy.⁴

The Act argues that religious freedom has always been a fundamental part of America's history.⁵ Now religious freedom is also a fundamental part of its foreign policy, a possible deal breaker in negotiations with other countries.⁶ This ambitious

the work of the movement following the passage of the Act) [hereinafter Hertzke, *Faith Factor*]; Allen D. Hertzke, *To Untie the Yoke: Global Religious Persecution, Human Rights, and American Foreign Policy* (forthcoming 2002).

2. Christy Cutbill McCormick, Comment, *Exporting the First Amendment: America's Response to Religious Persecution Abroad*, 4 J. INT'L LEGAL STUD. 283, 284 (1998) (noting public concern over religious persecution in nations like China, Vietnam, and Sudan).

3. International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (codified as 22 U.S.C. § 6401 (1998)).

4. Dean Alford, *How Free Are We?: One Year Later, Christian Leaders Examine the International Religious Freedom Act*, CHRISTIANITY TODAY, Mar. 6, 2000, <http://www.christianitytoday.com/ct/2000/003/24.31.html> (quoting one commentator who characterized the Act's goals as "immense").

5. § 6401(a)(1); see also T. Jeremy Gunn, *A Preliminary Response to Criticisms of the International Religious Freedom Act of 1998*, 2000 B.Y.U. L. REV. 841, 846 (arguing that, though the Act may have painted an idealized picture of a nation in which all believers were equal from the start, religious freedom is nevertheless an indisputable part of our nation's history, if only because so many people came here in search of such freedom; and whether it happened sooner or later, the United States now offers freedom of religion in great measure).

6. See § 6445(a)(1)-(15). Why all the fuss about religious freedom? Allen Hertzke provides some insight:

The case for religious freedom...extends beyond its intrinsic justice. Freedom of religion is a rich and potent human right, for its very practice entails

new law has altered the landscape of U.S. foreign policy.⁷ Such sweeping change merits close scrutiny.

The Act places the primary responsibility on the President for promoting religious freedom abroad.⁸ He is required to promote such freedom by negotiating with, withholding aid from, and levying sanctions against the worst offenders.⁹ Although the Act passed both the House and Senate by unanimous votes,¹⁰ it has received its share of criticism from the international community.¹¹ However, the greatest weakness of the Act was named here at home: it may not be enforced.¹² "I think it will sit on the shelf," said one commentator.¹³ But the Act did not sit on the shelf. It has in fact generated an amazing amount of activity, some of which this paper will explore. What remains to be seen is whether the Act and the activity it has generated will make a significant contribution to the religious freedom of persecuted people around the world.

Part II of this Comment provides insight into the purpose of

other human rights as well: the right to assemble, to express oneself freely, to print literature, to own property.... [A]llowing freedom for religious communities simultaneously opens space for political dissidents, labor organizers and other human rights advocates.

Hertzke, *Defending the Faiths*, *supra* note 1, at 78.

7. See Alford, *supra* note 4 (noting that incentives and sanctions have changed U.S. foreign policy).

8. §§ 6441-6445 (listing the President's specific powers and responsibilities).

9. *Id.* §§ 6443(b), 6445(a)(9), (11).

10. Gunn, *supra* note 5, at 843.

11. See *id.* at 845-60 (defending the Act in response to the six most significant criticisms from abroad. Those criticisms are often stated as follows: 1) the Act "promotes an American model of separation of church and state that does not conform to the histories, traditions, and cultures of other societies"; 2) it "reflects the political interests of the Christian Right in the United States and promotes missionary religions"; 3) it "improperly establishes a hierarchy of human rights and places religion at the zenith"; 4) the Act "is designed to punish countries by the unilateral imposition of sanctions by the United States"; 5) "[t]he United States acts hypocritically by arguing in favor of religious freedom abroad while it commits human rights abuses at home"; and 6) "[t]he United States acts inconsistently on human rights issues by advocating international standards while acting unilaterally.").

12. McCormick, *supra* note 2, at 331 (asking, "Will President Clinton allow exceptions for Saudi Arabia, China, and other nations he decides are valuable trading partners or allies we cannot afford to offend?").

13. *Id.*

the Act by describing the events that led to its passage. Part III explains how the Act functions and elaborates on specific provisions. Part IV discusses the 1999 Report on International Religious Freedom ("1999 Report"), and Part V notes the events and reactions that followed that report. Part VI discusses the 2000 Report, and Part VII notes the events and reactions that followed that report. Part VIII discusses the 2001 Report issued in the days following the World Trade Center disaster and reactions to that report in light of a new global war on terrorism. Part IX is a conclusion in which the author calls for several changes in the way the Act is administered, and in which Michael Horowitz, the force behind the Act, evaluates the activity that has followed its passage, and suggests ways in which its purposes can more effectively be achieved.

II. MICHAEL HOROWITZ TAKES THE INITIATIVE: EVENTS
LEADING
TO THE PASSAGE OF THE ACT¹⁴

Getanah Metafriah Getanah used to live in Ethiopia.¹⁵ Then he was beaten and imprisoned repeatedly because he refused to stop talking about Jesus.¹⁶ His Communist captors¹⁷ tortured him by hanging him upside down.¹⁸ They poured hot oil¹⁹ and boiling water on the soles of his feet.²⁰ They whipped him with metal cables.²¹ But after four arrests and excruciating torture, Getanah went into exile in Jibouti.²² After the Communists lost

14. One reporter described the actions of Horowitz as "one of the more remarkable instances of individual initiative taking Washington (and an important chunk of America) by storm." *Id.* at 285.

15. *Id.*

16. *Id.*

17. *Id.*

18. Michael Cromartie, *The Jew Who Is Saving Christians*, CHRISTIANITY TODAY, Mar. 1 1999, www.christianitytoday.com/ct/9t3050.html.

19. *Id.*

20. McCormick, *supra* note 2, at 285.

21. *Id.*

22. Telephone Interview with Michael J. Horowitz, Senior Fellow and Director, Project for Civil Justice Reform, Director, Project for International Religious Liberty, Hudson Institute, (Jan. 21, 2002).

control of Ethiopia, he returned,²³ but never made it out of the airport.²⁴ He was arrested there “at the behest of radical Muslim authorities”²⁵ and informed that he was to be tried in an Islamic court for converting Muslims to Christianity.²⁶ But, remarkably, he escaped a *fifth* time and fled to the United States.²⁷ Getanah soon told the story of his sufferings to Michael Horowitz, who had taken him in and sponsored him for citizenship.²⁸ Armed with Getanah’s story, and angered at the U.S. government’s indifference,²⁹ Horowitz, former general counsel for the Office of Management and Budget in the Reagan Administration,³⁰ “single-handedly transformed persecution of Christians into a major issue.”³¹

23. *Id.*

24. McCormick, *supra* note 2, at 286.

25. Interview with Michael J. Horowitz, *supra* note 22.

26. McCormick, *supra* note 2, at 286.

27. Interview with Michael J. Horowitz, *supra* note 22.

28. Jacob Heilbrunn, *Christian Rights: The Next Big Conservative Issue*, NEW REPUBLIC, July 7, 1997, at 19. Horowitz began his career teaching civil rights law at the University of Mississippi in the 1960s and is an “indefatigable, behind-the-scenes operator.” *Id.*

29. McCormick, *supra* note 2, at 285. Horowitz found that the U.S. government provides asylum for political refugees only. *Id.* “But when religious people, particularly Christians, say they are persecuted, the U.S. government says, in essence, ‘Prove it to me. I don’t believe you.’” *Id.* at 286.

30. *Id.* at 285.

31. Heilbrunn, *supra* note 28, at 19. Neither the Act nor this paper is concerned only with the persecution of Christians. If the plight of persecuted Christians is discussed more than that of others, it is because the struggle of persecuted Christians led to the passage of the Act. Horowitz explains three reasons Christians are persecuted: First,

[t]he inherent message of Christianity is so clear a call for dignity and freedom and human autonomy as to make it necessarily subversive to tyrants. Our Judeo-Christian faith has taught the most radical political message of all times: the equality of all in the eyes of God. Thug regimes around the world know this and fear Christian communities for being powerful deliverers and exemplars of that divine heresy.

Cromartie, *supra* note 18. Second, Horowitz adds that churches are a direct threat to Communist regimes. *Id.* “Noting that churches played a central role in the collapse of East European communism, a leading Chinese Communist newspaper looked at China’s house church movement and said of it: ‘We must strangle this baby while it is still in the manger.’” *Id.* Third, persecutors are motivated by the knowledge that if they can persecute Christians without a complaint from the West, then no one else would dare to

Horowitz, who is Jewish, wrote an article for the Wall Street Journal in which he called on the U.S. Government to promote human rights for Christians.³² He noted that American Christians did not seem interested in protecting fellow Christians with the same zeal with which they defended Soviet Jews.³³ But he also called on his Jewish brothers. “[F]or American Jews who owe our very lives to the open door of ‘the blessed land,’ silence should not be an option in the face of persecutions eerily parallel to those committed by Adolf Hitler.”³⁴ However, “Horowitz says the response to his piece both from Jewish and Christian organizations was no response.”³⁵

Horowitz tried another approach. He wrote letters to 143 missionary organizations and sought help from various activists and clergy.³⁶ Next, he worked at the grass-roots level, building a church alliance that bombarded Congress with letters and phone calls.³⁷ Then, in January of 1996, a “Statement of Conscience” was written by Jewish, Catholic, and Protestant leaders who had gathered to discuss growing religious persecution, such as that experienced by Getanah.³⁸ That statement was later adopted by the National Association of Evangelicals³⁹ (“NAE”). Before the group adopted the statement, however, NAE President Don Argue⁴⁰ met with President Clinton and asked

make waves. *Id.* Tyrants can control entire nations by saying, “Look, the so-called Christian West doesn’t care that we pull the fingernails out of bishops. Who do you think will care if we turn on you?” *Id.*

32. McCormick, *supra* note 2, at 285 (citing Michael Horowitz, *New Intolerance Between Crescent and Cross*, WALL ST. J., July 5, 1995, at A8).

33. *Id.* at 288. See *infra* note 66 for a discussion of some of the reasons for such indifference.

34. McCormick, *supra* note 2, at 288.

35. Heilbrunn, *supra* note 28.

36. McCormick, *supra* note 2, at 286.

37. Heilbrunn, *supra* note 28; see also Cromartie, *supra* note 18 (noting that Horowitz “had an explosive impact in motivating the church to advocacy on behalf of its persecuted brothers and sisters around the world”).

38. McCormick, *supra* note 2, at 285-86.

39. *Id.* at 286.

40. Clinton later made Argue a member of the Secretary of State’s Advisory Committee on Religious Freedom Abroad. See Bureau for Democracy, Human Rights, and Labor, U.S. Dep’t of State, *Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States* app. 3

him to issue a policy speech, tying religious persecution to U.S. trade and foreign aid.⁴¹ The President “was sympathetic but declined to take on the issue.”⁴² Subsequently, the NAE released its Statement of Conscience and voiced dismay “that the United States government has been indifferent to its obligation to speak out against reigns of terror.”⁴³

Eventually news of worldwide religious persecution began to spread.⁴⁴ Reports surfaced: Christian children were being stolen and sold into slavery in Sudan and Libya, churches were being burned in Egypt and Pakistan, and the devout in Russia were again being forced underground after less than a decade of freedom.⁴⁵ In terms of numbers, China may have been the worst.⁴⁶ In 1996, the Chinese government began an intense crackdown on unregistered churches,⁴⁷ forcing as many as fifty

(May 17, 1999), http://www.state.gov/www/global/human_rights/990517_report/appendices.html (on file with author). This committee should not be confused with the Commission on International Religious Freedom. See *infra* text accompanying notes 78-80 and note 89. Horowitz described this committee as merely “another attempt by the Clinton [A]dministration to preempt the need for legislation.” Interview with Michael J. Horowitz, *supra* note 22.

41. McCormick, *supra* note 2, at 287.

42. *Id.* But see Tony Carnes, *Religious Persecution Bill Encounters Stiff Resistance*, CHRISTIANITY TODAY, Oct. 5, 1998, at 26 (“The White House has *strongly* opposed any type of bill against religious persecution,” (emphasis added)).

Like the liberal human rights lobby, the Clinton [A]dministration has shown a marked lack of concern over the persecution of Christians. While the [A]dministration is changing federal policy to create new categories of political asylum for victims of spousal abuse and for gays and lesbians, it has viewed religious persecution with indifference.

Heilbrunn, *supra* note 28. Horowitz confirmed that the Clinton Administration was absolutely opposed to the Act. Interview with Michael J. Horowitz, *supra* note 22.

43. McCormick, *supra* note 2, at 287.

44. See *id.* at 284.

45. *Id.* at 283.

46. See *id.* at 295; see also *infra* text accompanying note 210 (defining China as the world’s largest persecutor).

47. McCormick, *supra* note 2, at 295. Registration is something like a driver’s license. It is possible to function without it, but doing so can have dire consequences. In addition, registration in many countries requires any number of concessions to the government, from the more minor, such as having a minimum number of members and turning in their names, to the more severe, such as having to promise not to teach certain “inflammatory” doctrines. See 1999 Summary, *infra* note 119 (stating, for example, that Cuba “uses registration as a mechanism of control; by refusing to register

to one hundred million Christians to meet in private homes, caves, and fields illegally.⁴⁸ Today, some hold services in the dark of night, the members never seeing each other's face.⁴⁹ When Chinese house church leaders signed a document calling on the government to recognize house churches as part of the Christian church and not a cult, the government responded by arresting 140 house church leaders.⁵⁰ More than 300 house church leaders were in labor camps without so much as a trial, and over 1,000 believers had been detained.⁵¹ For example, Xu Yonze, a prominent leader of an eight million-member house church, was arrested in 1997 and sentenced to a labor camp for three to ten years because his church was considered a threat to the government.⁵²

With similar reports coming in from countries around the globe, the public outcry finally became too loud to ignore, and the U.S. government got involved.⁵³ In 1996 the movement publicizing religious persecution finally caught the attention of several members of Congress.⁵⁴ The International Operations and Human Rights Subcommittee of the House of Representatives held hearings on "the worldwide persecution of

new denominations, it makes them vulnerable to charges of illegal association").

48. McCormick, *supra* note 2, at 295. One element of the crackdown included a steep fine on any unregistered church caught holding services: up to \$7,000—several years of average wages. *Id.* at 296.

49. Tom White & Todd Nettleton, *China: "Jesus Is Good"* VOICE OF THE MARTYRS, Mar. 2000, at 5 (on file with author).

50. McCormick, *supra* note 2, at 296. A house church is simply a church that meets in a house or a network of houses. *See, e.g.*, A.M. Rosenthal, *On My Mind: A Tour of China*, N.Y. TIMES, Mar. 13, 1998, at A19.

51. McCormick, *supra* note 2, at 296.

52. *Id.* at 296-97.

53. *See* Gunn, *supra* note 5, at 842.

Behind the [growing] persecution lies one of the great surprises of the late twentieth century: a global resurgence of faith. Indeed, secularizing trends in Western Europe and among a thin, if influential, stratum of global intellectual elites now stand out as exceptions to more general trends.

Hertzke, *Defending the Faiths*, *supra* note 1, at 77. Horowitz agrees, arguing that religion is "going to explode" in the 21st century, and it is in the United States' best interest to become the chief defender of its free expression. Interview with Michael J. Horowitz, *supra* note 22.

54. *Id.*

Christians and Jews.”⁵⁵ Following the hearings, Congress adopted resolutions on the persecution of Christians and of Baha’is in Iran.⁵⁶ However, concern for the persecuted continued to mount and some members of Congress came to believe that Congress should enact a law requiring the U.S. Government and the U.S. Department of State to get involved.⁵⁷

Horowitz was still at work.⁵⁸ Soon he persuaded Virginia Congressman Frank Wolf and Pennsylvania Senator Arlen Specter, both Republicans, to propose a bill called “The Freedom From Religious Persecution Act.”⁵⁹ On May 20, 1997, Wolf introduced the “Wolf-Specter” bill “to establish an Office of Religious Persecution Monitoring,” and “to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution. . . .”⁶⁰ The bill prompted intense debate,

55. *Id.* Horowitz argues that though both Judaism and Christianity teach the equality of man and are thus lightning rods for would-be dictators, Christians are the most persecuted people today, not because their message is more potent than that of Judaism, but—horribly—because so many Jews have been killed in the last century that Judaism is no longer a threat to anyone. Horowitz predicts that in the 21st century Christians will become “the canaries in the coal mine,” and the way they are treated a “litmus indicator” of a nation’s freedoms. Cromartie, *supra*, note 18. *See also Panel Commends Report on Global Religious Freedom*, (Sept. 14, 1999) at <http://www.mcjonline.com/news/news3410.htm> (“It is estimated more followers of Christ have died for their faith in the 20th century than in all the 19 previous centuries combined.”) [hereinafter *Panel Commends Report*].

56. Gunn, *supra* note 5, at 842.

57. *Id.*

58. *See* Heilbrunn, *supra* note 28 (reporting that New York Times columnist A. M. Rosenthal, now a leading advocate for persecuted Chinese Christians, says Horowitz, a wiry man who talks at a machine-gun pace, “screamed me awake” on the issue of growing religious persecution abroad).

59. Heilbrunn, *supra* note 28.

60. H.R. 1685, 105th Cong. (1997); *see* Gunn, *supra* note 5, at 843. Horowitz, it should be noted, *strongly opposes* talk of sanctions. Interview with Michael J. Horowitz, *supra* note 22.

As we crafted the statute, it is not about sanctions. It’s only about putting some conditions on the foreign aid the United States sends other nations. People like to talk about sanctions because they’ve gotten so used to the aid, they think it’s an entitlement. But the Act merely restores some conditions to foreign aid.

Id. Nevertheless, given the great weight of rhetoric on the issue (and the lack of alternative terms in the press), the term “sanction” will be used in this article. *See* § 6445(a)(9)-(15) (authorizing the President to cancel U.S. aid, loans, or credit to nations that violate the religious freedom of their people).

primarily over its requirement that the U.S. government automatically impose sanctions on countries found to be violators of religious freedom.⁶¹

The Clinton Administration strongly opposed such sanctions.⁶² Another opponent of the Wolf-Specter bill was Oklahoma Republican Senator, Don Nickles, who feared the required sanctions would lead to fruitless confrontations and negative fallout on indigenous Christians and missionaries.⁶³ Consequently, Nickles introduced his own bill, the International Religious Freedom Act.⁶⁴ Horowitz described the new bill as “softer on the so-called sanctions side, but infinitely tougher on the fact-finding side,” because it required an investigation and annual report on violations of religious freedom in each foreign country.⁶⁵

But this bill was no better received. Opponents of both religious persecution bills included USA Engage—a coalition of exporters who paid for lobbying against the two bills, the National Foreign Trade Council, and the National Council of Churches.⁶⁶ In addition, “free-trade Republican” Senators Rod Grams of Minnesota and Chuck Hagel of Nebraska blocked a

61. Gunn, *supra* note 5, at 842.

62. *Id.* at 843.

63. Carnes, *supra* note 42, at 26. Nickles also believed the Wolf-Specter bill would never pass the Senate. *Id.*

64. *Id.*

65. Cromartie, *supra* note 18.

66. Carnes, *supra* note 42, at 26. The discord between the National Council of Churches and all things evangelical is well-known. See Cromartie, *supra* note 18. Horowitz suggests that the only reason the National Council of Churches opposed the bills was that they were supported by evangelicals:

Ironically, many mainline Protestant denominations—almost all of whom had been active in the campaign against Soviet anti-Semitism—sat out the campaign against the even more vicious contemporary persecutions of Christians. In many cases, their antipathy to evangelicals was so strong that they literally couldn't bring themselves to participate in our coalition. I was puzzled and often angry that many mainline Protestant churches failed to show the moral passion on behalf of persecuted Christians displayed by the American Jewish community. I came to feel a special concern about the National Council of Churches for its steadfast opposition to the coalition's efforts.

Id. See also Heilbrunn, *supra* note 28.

vote on the Nickles bill.⁶⁷ Thus, the religious persecution issue divided conservatives. “Social conservatives” wanted to protect global religious freedom, while “economic conservatives” sought to protect global free trade.⁶⁸ Then the White House added to the dissention by opposing not only the automatic sanctions of the Wolf-Specter bill, but also the Nickles bill’s requirement of an annual report. “In discussions with Congress, administration officials . . . decried ‘naming names’ on ‘a bad boy list.’”⁶⁹

Facing such opposition, supporters of the two bills joined forces in July of 1998, afraid neither would come to a Senate vote before Congress’s early October adjournment.⁷⁰ Horowitz declared the truce, valuing a compromise over nothing at all.⁷¹ “The strategic objective has always been to make sure that religious persecution can’t be swept aside.”⁷² Remarkably, three months later the Nickles bill *unanimously* passed both Houses, and the International Religious Freedom Act was signed by the President on October 27, 1998.⁷³ President Clinton spoke warmly of the bill and of his Administration’s policy of “vigorously” protecting and promoting religious freedom.⁷⁴ But he was not

67. Carnes, *supra* note 42, at 26.

68. *Id.*

69. *Id.*; see also Memorandum from Michael Horowitz, to Interested Parties, *Our Efforts and the Prayers of Many Have Produced an Extraordinary Victory, Against All Seeming Odds* (Oct. 29, 1998) (on file with author) (noting that supporters of the Act faced not only a “massively funded business community lobbying campaign,” but also “what House International Relations Committee Counsel Steve Rademaker described as the Administration’s most intense opposition effort against any bill that came before the Committee during the 105th Congress”) [hereinafter Horowitz, *Extraordinary Victory*].

70. Carnes, *supra* note 42, at 26.

71. *See id.*

72. *Id.*

73. Gunn, *supra* note 5, at 843; see Carnes, *supra* note 42, at 26 (noting that, following opposition from both the White House and Republicans concerned with free trade, one explanation for the unanimous passage of the bill and the subsequent signing by the President is politics: no one wanted to be seen as an opponent of helping the persecuted).

74. President’s Statement on Signing the International Religious Freedom Act of 1998, 34 WKLY. COMPILATION PRESIDENTIAL DOCUMENTS 2149 (Oct. 27, 1998).

My Administration is committed to promoting religious freedom worldwide, and I commend the Congress for passing legislation that will provide the executive branch with the flexibility needed to advance this effort. . . . My Administration has made religious freedom a central element of U.S. foreign

entirely pleased. The President lauded discretionary passages in the Act, but strongly criticized passages requiring him to take various actions.⁷⁵ He said that he intended to interpret language requiring presidential action as “precatory” and would construe the statute as he saw fit.⁷⁶

Michael Horowitz, on the other hand, was not disappointed. When asked if he was pleased with the legislation, Horowitz answered, “Very much so. In fact, the final version passed by the Senate is considerably stronger than the original House bill. What we cared about was making the President accountable for appeasing systematic murder, torture, rape, enslavement, starvation, and crucifixion of Christian and other religious communities.”⁷⁷ Horowitz was particularly happy about the Commission on International Religious Freedom⁷⁸ (“Commission”). He described it as follows: a three-million-dollar annual budget, the power to hold public hearings, the duty to produce annual reports on worldwide persecution, and the power to make policy recommendations to the President, that he must consider before making decisions about foreign aid.⁷⁹ “[T]he

policy . . . We frequently raise religious freedom issues with other governments at the highest levels.

Id.

75. *See id.*

76. *See id.* “Precatory language” refers to “directions or commands that are not imperative.” WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 1415 (2d ed. 1983).

77. Cromartie, *supra* note 18. In an October 29th memo to “Interested Parties,” Horowitz lamented one failure—Sudan:

For all of our success, our coalition has failed in one major, tragic respect. Despite our efforts, we were unable to achieve statutory and policy parity between the practices taken against the apartheid regime of South Africa and the deliberately genocidal policies engaged in by the government of Sudan . . . We were told that this objective would complicate relations with the Muslim world, . . . that its “confrontational” approach would be counterproductive. Following the many lectures we received about our lack of “realism,” and the stripping from the House and Senate bills of any Sudan-specific provisions, the Administration took the ultimately confrontational position of launching a missile at Sudan.

Horowitz, *Extraordinary Victory*, *supra* note 69, at 5-6. This attack converted Sudan from a pariah to a martyr, particularly in the eyes of Muslim regimes driven to its defense. *Id.* at 6.

78. *See* Cromartie, *supra* note 18.

79. *Id.*

[C]ommission will speak truth to power. . . . I expect the [C]ommission to put the issue of religious persecution squarely before the American people every year, and to cause politicians to pay a political price if they fail to act on its findings.”⁸⁰

Finally, the Act was praised by many religious and human rights organizations. Some of these were: the Anti-Defamation League, the Union of American Hebrew Congregations, the Union of Orthodox Jewish Congregations, the Salvation Army, the U.S. Catholic Bishops’ Conference, the National Association of Evangelicals, the Southern Baptist Ethics and Religious Liberty Committee, the International Campaign for Tibet, the Christian Coalition, the Family Research Council, Evangelicals for Social Action, the Middle East Christian Committee, and Prison Fellowship.⁸¹ The National Jewish Coalition also supported the Act.⁸² Matthew Brooks, Executive Director, explained:

For far too long, our country has watched as people of faith, all faiths, have been persecuted for their beliefs. . . . Following the Holocaust, too many people claimed that they were simply unaware of what was taking place. With this bill’s strong fact-finding structure coupled with its requirement for action, we believe [the excuse of ignorance] will be eliminated. As

80. *Id.*; see also Carnes, *supra* note 42, at 26 (reporting speculation that similar political concerns may have gotten the Act passed). Horowitz concluded:

Henceforth, *provided only that religious and human rights groups maintain a serious level of interest about the fate of religiously persecuted victims*, no President, no Congress is likely to be able to duck the question of whether American taxpayer subsidies are merited to regimes engaged in the widespread persecution of Christian and other religious minorities.

Horowitz, *Extraordinary Victory*, *supra* note 69, at 2 (emphasis in original).

81. McCormick, *supra* note 2, at 330. Horowitz gave credit for the win on a “David-Goliath basis” to the following: Dick Armey, Trent Lott, Nancy Pelosi, Chris Smith, Sam Brownback, Tony Hall, Arlen Specter, Joe Biden, Don Nickles, Frank Wolf, Joe Lieberman, Dan Coats, Abe Rosenthal, Bill Armstrong, Nina Shea, John Hanford, Wei Jingsheng, Ravi Zacharias, Cardinal O’Connell, D. James Kennedy, James Dobson, Chuck Colson, Janet Parshall and many other individuals, as well as a host of organizations too numerous to name here, including the Christian Legal Society, the Anti-Defamation League, the National Conference of Catholic Bishops, the American Anti-Slavery Group, the Southern Baptist Convention, Voice of the Martyrs, and the Campaign for Tibet. Horowitz, *Extraordinary Victory*, *supra* note 69, at 2-5, addendum.

82. McCormick, *supra* note 2, at 331.

a result, lives will be saved.⁸³

III. THE ANATOMY OF THE LAW

A. Overview

The Act begins by asserting the findings of Congress:

(1) 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 religious persecution.

(2) Freedom of religious belief and practice is a universal human right and fundamental freedom. . . .

(3) . . . Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual . . . and should never be arbitrarily abridged by any government.⁸⁴

The activities ordained by the Act can be described briefly. The Act establishes an Office of International Religious Freedom ("IRF Office") within the Department of State, and that office is headed by an Ambassador-at-Large for International Religious Freedom.⁸⁵ The ambassador's primary duty is the preparation of an annual report describing the status of religious freedom in each foreign nation and what has been done or should be done to promote that freedom in places where it is lacking.⁸⁶ In addition, the Act calls for establishing a religious freedom internet site,⁸⁷

83. *Id.* (alteration in original).

84. § 6401(a)(1)-(3).

85. *Id.* § 6411(a).

86. *See id.* § 6411(c)(1).

87. *Id.* § 6413. The website was established "[i]n order to facilitate access by

training in religious freedom for foreign service officers,⁸⁸ establishing a nine-member Commission on International Religious Freedom,⁸⁹ and adding to the National Security Council a Special Adviser to the President on International Religious Freedom.⁹⁰ Finally, the Act recommends specific actions from which the President must choose in order to promote religious freedom abroad⁹¹ and ends by precluding judicial review.⁹²

B. Specific Actions from Which the President Must Choose

The Act requires the President to take action in response to violations of religious freedom.⁹³ In consultation with the Secretary of State, the Ambassador-at-Large, the Special Adviser, and the Commission, the President must act “as expeditiously as practicable” to address violations of religious freedom.⁹⁴ The Act gives the President some discretion based on the severity of the violations and the nature of the relationship between the violating nation and the United States.⁹⁵ However, the Act does not give the President the discretion *not* to act.⁹⁶

nongovernmental organizations (“NGOs”) and by the public around the world to international documents on the protection of religious freedom.” *Id.* The website can be accessed from <http://www.state.gov>.

88. § 4028(a).

89. *Id.* §§ 6431-6433. The primary duty of the Commission is the ongoing review of violations of religious freedom and the making of policy recommendations to the President, the Secretary of State, and Congress. *Id.* § 6432(a)(1)-(2). The Commission shall also submit a report to the President and Congress no later than May 1 of each year. *Id.* § 6433(a). The Commission is made up of three members appointed by the President, three appointed by the President pro tempore of the Senate (two of whom must be of a party that is other than the party of the President and the third from the same party as the President), and three members appointed by the Speaker of the House (again, one from the President’s party, two from the other party). *Id.* § 6431(b)(1)(B).

90. 50 U.S.C. § 402 (1998).

91. 22 U.S.C. §§ 6441-6449 (1998).

92. *Id.* § 6450 (“No court shall have jurisdiction to review any Presidential determination or agency action under this Act or any amendment made by this Act.”).

93. *Id.* § 6441(a)(1)(B).

94. *Id.* § 6441(b)(1).

95. Though the term “discretion” is not used, many clauses allow the President to make choices based on his own determinations. *See, e.g.*, §§ 6442(a)(2), 6442(c)(1), 6442(c)(2)(A), 6442(c)(3)-(4), 6443(b)(2)-(3).

96. *See id.* § 6441(a)(1)(B).

Section 6441(a)(1)(B), entitled “Requirement of Presidential Action,” reads, “For each foreign country the government of which engages in or tolerates violations of religious freedom, the President shall oppose such violations and promote the right to freedom of religion in that country through the actions described in subsection (b).”⁹⁷ Subsection (b) directs the President to take one or more of a list of fifteen actions, or “commensurate action in substitution thereto,” or to “negotiate . . . a binding agreement.”⁹⁸ Such action must be taken “[n]ot later than September 1 of each year.”⁹⁹

The actions the President may take are varied. First, he is to target his actions as narrowly as possible,¹⁰⁰ in order to minimize “any adverse impact on—(A) the population of the country whose government is targeted by the Presidential action or actions; and (B) the humanitarian activities of the United States and foreign nongovernmental organizations [(“NGOs”)] in such country.”¹⁰¹ Second, he is to designate each country that engages in or tolerates particularly severe violations of religious freedom as a “country of particular concern” (“CPC”).¹⁰² Third, he is to transmit to the appropriate congressional committees the designation of that CPC and the identification, if any, of the responsible parties within the CPC.¹⁰³ Fourth, the President must request a consultation with the government of each CPC.¹⁰⁴ In addition, the President “should consult” with appropriate humanitarian and religious organizations as well as interested

97. *Id.*

98. *Id.* § 6441(b)(1)(A)-(B).

99. *Id.* § 6441(b)(2). Section 6441(b)(2)(A)-(B) provides an exception when the requirements of sections 6443 and 6444 remain to be met. The presidential action may only be taken after those requirements have been met, and the September 1 deadline does not apply. In addition, § 6441(b)(3) allows the President to request a single, ninety-day extension. *Id.* § 6441(b)(3).

100. *Id.* § 6441(c)(1)(B).

101. *Id.* § 6441(c)(2)(A)-(B).

102. *See id.* § 6442(b)(1)(A).

103. *See id.* § 6443(b)(3).

104. *Id.* § 6443(b)(1)(A); *see also* § 6443(b)(1)(B) (adding that these consultations may be public or private and the President may elect not to disclose the consultations to the public if such disclosure would jeopardize the negotiations or the implementation of an agreement reached or of an agreement concluded pursuant to section 6443(b)(2)).

U.S. parties concerning the potential impact of the intended Presidential actions.¹⁰⁵ Finally, before taking action, the President must submit a report to Congress, detailing among other things, the violations, the violators, and the actions to be taken.¹⁰⁶ The President's report must also affirm that all "noneconomic policy options designed to bring about cessation of the particularly severe violations of religious freedom have reasonably been exhausted."¹⁰⁷

The required actions from which the President must choose are listed in section 6445(a) as follows:

- (1) A private demarche.¹⁰⁸
- (2) An official public demarche.
- (3) A public condemnation.
- (4) A public condemnation within one or more multilateral fora.
- (5) The delay or cancellation of one or more scientific exchanges.
- (6) The delay or cancellation of one or more cultural exchanges.
- (7) The denial of one or more working, official, or state visits.
- (8) The delay or cancellation of one or more working, official, or state visits.

105. *Id.* § 6443(c)-(d).

106. *Id.* § 6444. The Act expressly provides that the President may withhold from public disclosure part or all of the portion of the report described as the "evaluation." *Id.* § 6444(a)(4)(B). The evaluation is the portion of the report in which the President, in consultation with the Secretary of State, the Ambassador-at-Large, the Commission, the Special Adviser and others, evaluates the impact of the proposed actions on (i) the foreign government, (ii) the population of the country, and (iii) the United States economy and other interested parties. *Id.* § 6444(a)(4)(A). By expressly providing the option of nondisclosure only for the evaluation portion of the report, Congress has effectively removed that option from all other portions of the report, as such additional options would render section 6444(a)(4)(B) superfluous. In other words, the President cannot claim to have taken action and then assert that the law allows him to keep that action a secret.

107. *Id.* § 6444(a)(5).

108. A "demarche" is a change in policy or a new course of action. WEBSTER'S NEW UNIVERSAL UNABRIDGED DICTIONARY 482 (2d ed. 1983).

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- (9) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 2151n of this title.¹⁰⁹
- (10) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, [or] extensions of credit . . . to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations. . . .
- (11) The withdrawal, limitation, or suspension of United States security assistance in accordance with section 2304 of this title.
- (12) Consistent with section 262d of this title, directing the United States executive directors of international financial institutions to oppose and vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442.
- (13) Ordering the heads of the appropriate . . . agencies not to issue any (or a specified number of) specific licenses, and not to grant . . . authority . . . to export any goods or technology to the specific foreign government, agency, instrumentality, or official . . . responsible for violations. . . .
- (14) Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period to the specific foreign government, agency, instrumentality, or official . . . responsible for violations. . . .
- (15) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from the

109. *But see id.* § 6442(d) (noting that the termination of such assistance shall not be required by the Act).

foreign government, entities, or officials . . .
responsible for violations. . . .¹¹⁰

The President has two final options. First, he may substitute any act if it is “commensurate in effect” to the action for which it was substituted and if the action furthers the policy of the United States as set forth in section 2(b) of the Act.¹¹¹ Second, the President may negotiate and enter into a binding agreement with a foreign government that “obligates such government to cease, or . . . to address and phase out, the act, policy, or practice constituting the violation of religious freedom.”¹¹²

IV. THE FIRST YEAR: THE 1999 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM

On May 5, 1999, Robert Seiple, former president of World Vision, was confirmed as the first Ambassador-at-Large for International Religious Freedom.¹¹³ Three months later he released the first Annual Report on International Religious Freedom¹¹⁴ (“1999 Report”). According to Seiple, the purpose of

110. *Id.* § 6445(a)(1)-(15). Note that the word “sanction” does not appear in this list. *See supra* note 60 (explaining Horowitz’s objection to the repeated use of the term “sanction”).

111. *Id.* § 6445(b). Section 6401(b) says it shall be U.S. policy to condemn violations; to promote freedom; to channel financial assistance to countries other than those engaged in violations; to consider both the nature of the violations and of the current diplomatic relations between the United States and the country involved; to work alongside governments who affirm religious freedom; and to “use and implement appropriate tools in the United States foreign policy apparatus, including diplomatic, political, commercial, charitable, educational, and cultural channels, to promote respect for religious freedom by all governments and peoples.” *Id.* § 6401(b)(1)-(5).

112. *Id.* § 6445(c) (noting that entering such an agreement “shall be a primary objective” for the President when dealing with particularly severe violations of religious freedom).

113. Biography of Robert A. Seiple, U.S. Ambassador-at-Large for International Religious Freedom, at http://www.state.gov/www/about_state/biography/seiple.html (last visited Mar. 23, 2002). During his eleven years as President of World Vision, Seiple increased the annual income base from \$145 million to over \$350 million while also expanding the organization’s involvement in the struggle against poverty and hunger. *Id.* In addition, he founded the Institute for Global Engagement, a “strategic think tank” within World Vision, and in 1994 he was named “Churchman of the Year.” *Id.* Horowitz later described Seiple as having made “absolutely no difference whatsoever.” Interview with Michael J. Horowitz, *supra* note 22.

114. U.S. Department of State, Office of the Spokesman, Press Statement,

the report is

[T]o let those people who this day are being discriminated against, marginalized, or persecuted because of their faith, know that . . . there is a report that's going to be discussed and debated in the Congress and in America. . . . To use the metaphor of a kite, we want to make sure that this new emphasis on this particular human right flies so high that everyone will see it, even those in jail and that this will bring them hope.¹¹⁵

The 1999 Report was released to the public on September 9 of that year, and was posted at the State Department's website the same day.¹¹⁶ The 1999 Report is over 1,000 pages long and covers 194 countries.¹¹⁷ Assistant Secretary of State for Democracy, Human Rights, and Labor, Harold Hongju Koh, introduced it as the "first-ever worldwide assessment of the

Release of the Annual Report on International Religious Freedom, at <http://www.state.gov/search.htm> (Mar. 23, 2002). See *Panel Commends Report*, *supra* note 55, in which David Saperstein, chairman of the Commission, is reported as saying that the Report was based on an eighteen-month data gathering process from early 1998 through June of 1999.

115. Ambassador Seiple Discusses U.S. Religious Freedom Report: Aim is to Work With Governments Toward Religious Freedom, at <http://www.usembassy-china.org.cn/press/release/1999/090399.html> (Sept. 3, 1999). At a press briefing Seiple told the story of Mary, a young Lebanese woman shot by a soldier when she would not renounce her faith. *Id.* The bullet severed her spinal cord. *Id.* Nevertheless, today she paints watercolors with a paintbrush in her teeth and a heart full of forgiveness. *Id.* Seiple explains:

She represents both the painful consequences of religious persecution and the best fruits of religion. Filled with physical suffering, Mary forgives. Forgiveness begets reconciliation, which is the real answer, the enduring answer, to religious persecution. So that we do not forget the face of suffering, and of forgiveness, I dedicate this first annual report to Mary.

Robert Seiple, Ambassador-at-Large for International Religious Freedom, Harold Hongju Koh, Assistant Secretary for Democracy, Human Rights and Labor: Briefing, Release of the 1999 Annual Report on International Religious Freedom at http://www.state.gov/www/policy_remarks/1999/990909_seiple_koh_irf.html (last visited Mar. 23, 2002) [hereinafter Briefing].

116. International Religious Freedom Report: Fact Sheet Released by the Office of the Spokesman, Bureau of Public Affairs: U.S. Department of State, (Sept. 9, 1999) available at http://www.state.gov/www/global/human_rights/irf/irf_rpt/fs_990909_irf.html [hereinafter 1999 Fact Sheet].

117. Briefing, *supra* note 115.

state of religious freedom throughout the world.”¹¹⁸

The 1999 Report's Executive Summary (“1999 Summary”) begins with an explanation of the five types of governmental systems and/or policies that create or permit persecution: 1) some nations are ruled by totalitarian or authoritarian regimes who seek to control religious belief and practice; 2) some nations are hostile to minority or non-approved religions; 3) some turn a blind eye, allowing their people to persecute and discriminate; 4) some governments have policies that favor one religion over another; and 5) even democratic nations may discriminate by identifying minority religions as “sects” or “cults.”¹¹⁹ In addition to the 1999 Report and the 1999 Summary, the State Department issued a fact sheet (“1999 Fact Sheet”) that highlights examples of each of these five types of persecuting systems.¹²⁰ These categories and examples illustrate the broad range of discrimination and persecution with which the Act is concerned.¹²¹

The first type of persecution described is found in nations ruled by totalitarian or authoritarian regimes that strictly control religious belief and practice.¹²² Examples of such regimes included the governments of Afghanistan,¹²³ Myanmar, China, Cuba, Iran, Iraq, and Vietnam.¹²⁴

According to the 1999 Fact Sheet, the Taliban movement in Afghanistan “[had] engaged in persecution and killing of Afghan

118. *Id.*

119. U.S. Department of State: Annual Report on International Religious Freedom for 1999: Executive Summary, *available at* http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_exec99.html (Sept. 9, 1999) [hereinafter 1999 Summary].

120. 1999 Fact Sheet, *supra* note 116. The Fact Sheet “provides highlights but is not a summary” of the report. *Id.*

121. Only the summary and fact sheet are organized around these categories. The full report focuses primarily on alphabetically-arranged country reports. *See* U.S. Department of State Annual Report on International Religious Freedom, (Sept. 9, 1999) *available at* http://www.state.gov/www/global/human_rights/irf/irf_rpt/.

122. 1999 Fact Sheet, *supra* note 116.

123. *Id.* The term “government” here is used loosely; Afghanistan, at the time of the 1999 Report, was controlled by the unrecognized Taliban movement. *Id.*

124. *Id.* Other nations in this category included Laos and North Korea. 1999 Summary, *supra* note 119.

Shi'as . . . because of their religious beliefs.”¹²⁵ In Myanmar, Buddhist monks who promoted human and political rights were arrested and imprisoned.¹²⁶ In addition, churches, mosques, and Buddhist monasteries were destroyed and looted by government security forces.¹²⁷ In China, people were harassed, detained for prolonged periods, and imprisoned in labor camps.¹²⁸ Churches were closed.¹²⁹ Buddhist monks and nuns were tortured.¹³⁰ Buddhists, Muslims, Protestants, and Catholics who did not belong to the “official” churches were persecuted.¹³¹ In Cuba, the government monitored religious institutions and controlled the faithful through surveillance, infiltration, harassment, eviction from places of worship, and the imprisonment of activists.¹³² Iran implemented policies designed to eradicate the Baha'i faith and used no less a measure than execution to reach that goal.¹³³ The officially sanctioned religious discrimination also targeted Jews, Sunni Muslims, and Christians.¹³⁴

In Iraq, the government of Saddam Hussein had launched a campaign against the Shi'a Muslim population.¹³⁵ Many of the religious leaders were murdered.¹³⁶ Mosques and holy sites were desecrated, and tens of thousands were arrested.¹³⁷ In Vietnam, the government restricted religious practices by members of groups that were not officially sanctioned by the government.¹³⁸ Many clergy had been arrested without charges.¹³⁹

The second type of persecution involves nations hostile only

125. 1999 Fact Sheet, *supra* note 116.

126. *Id.*

127. *Id.* “Security forces” are what the free generally think of as police.

128. *Id.*

129. *See id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *See id.*

137. *Id.*

138. *See id.*

139. *Id.*

to minority or non-approved religions.¹⁴⁰ Four of the nations practicing this type of persecution were Pakistan, Saudi Arabia, Serbia, and Sudan.¹⁴¹

In Pakistan, an atmosphere of religious intolerance was encouraged by discriminatory legislation.¹⁴² Consequently, extremists perpetrated acts of violence against religious minorities, including Christians, Hindus, Ahmadis, and Zikris.¹⁴³ Saudi Arabia openly supported the Sunni Muslim majority against the Shi'a Muslim minority.¹⁴⁴ Shi'as suffered arbitrary detention, travel restrictions, and political and economic discrimination.¹⁴⁵ Non-Muslims were not allowed to worship publicly.¹⁴⁶

Serbia is predominantly an Orthodox country, and authorities there "employed the killing, torture, rape, and forced mass emigration of Kosovar Albanians, who are overwhelmingly Muslim, in an effort to drive them from the country."¹⁴⁷ In Sudan, Christians, Muslims who deviate from the official interpretation of Islam, and practitioners of indigenous religions were subject to threats, violence, forced conversion to Islam, arbitrary detention, imprisonment, and death.¹⁴⁸ "The Government's support of the practice of slavery and its bombing of villages in the Nuba mountains [were] due in significant part to the victims' religious beliefs."¹⁴⁹

The third type of persecution involves nations that tolerate

140. *See id.*; 1999 Summary, *supra* note 119. The 1999 Summary arranges the types of persecution into five categories, but they are not—as they may at first appear—ranked according to the severity of the suffering they cause. *See* 1999 Summary, *supra* note 119. Instead, the categories reflect only the reasons for the persecution. *See id.* In addition, the degree of hostility and violence created by the five often overlap. *See id.* For example, Serbia was in the second category, yet persecution there included torture, rape, and murder. *See id.*

141. 1999 Fact Sheet, *supra* note 116.

142. *Id.*

143. *Id.*

144. *See id.*

145. *Id.*

146. *See id.*

147. *Id.*

148. *Id.*

149. 1999 Summary, *supra* note 119.

discrimination or persecution against minority or non-approved religions.¹⁵⁰ Uzbekistan, Egypt, India, and Indonesia fell into this category.¹⁵¹ In Uzbekistan, there were “widespread, credible reports of authorities planting narcotics on clergy and members of unapproved religious organizations to create false criminal charges leading to prolonged imprisonment.”¹⁵² In Egypt, non-Muslims suffered some societal and governmental discrimination, but the approval process for church repairs had become less cumbersome.¹⁵³ In India, there was a sharp upswing in violence against religious minorities and their places of worship, but state governments initially downplayed it.¹⁵⁴ The response of prosecutors to these events was often inadequate.¹⁵⁵ Similarly, in Indonesia, incidents of violence between religious groups went unpunished.¹⁵⁶

The fourth type of persecution involves countries that pass discriminatory legislation and policies that disadvantage certain religions.¹⁵⁷ Two examples of nations practicing this type of religious discrimination were Russia and Turkey.¹⁵⁸ In Russia, a restrictive 1997 law created categories of religious communities, each having varying levels of status and privilege.¹⁵⁹ Religious groups who could not prove to have been established in Russia for fifteen years were placed at a disadvantage in status and rights.¹⁶⁰ This 1997 law replaced a 1990 law that had encouraged

150. See 1999 Fact Sheet, *supra* note 116.

151. See 1999 Summary, *supra* note 119. Others in this category included Bulgaria and the Maldives. See *id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. See *id.*

158. *Id.* Other nations in this category included: Armenia, Azerbaijan, Belarus, Eritrea, Kazakhstan, Nepal, Turkmenistan, and Ukraine. *Id.*

159. *Id.*

160. *Id.* Paradoxically, to have existed fifteen years ago, a religious group would have to have been in conformity with the very strict laws of Communist-atheist Russia. See Irina G. Basova, Comment, 14 TEMP. INT'L & COMP. L.J. 181, 184-89 (2000) (describing the history of strict Soviet-era laws that limited religious practices). Therefore, the new law effectively places each religion or denomination in a position much like that which it occupied in Soviet Russia. If the religion was legal then, it is

religious freedom in the formerly atheist nation.¹⁶¹

In Turkey, the Muslim practice of wearing head scarves had been banned from government offices and state-run facilities for fifty years.¹⁶² In June of 1999, seventy-five defendants faced trial for trying to change the policy at a public university—and fifty-one faced the *death penalty*.¹⁶³ However, the new government introduced legislation to provide amnesty in August.¹⁶⁴

The fifth type of persecution involves countries that stigmatize religions by labeling them dangerous “cults” or “sects.”¹⁶⁵ Countries doing this included Belgium, France and Germany.¹⁶⁶ Belgium and France published lists of “sects” or “cults,” even while the French noted that the words had a negative connotation.¹⁶⁷ Germany’s report was “more balanced,” but encouraged continuing surveillance of the Church of Scientology.¹⁶⁸

Next, the 1999 Report describes U.S. actions to promote religious freedom abroad.¹⁶⁹ It began by stating a clear preference for quiet diplomacy rather than public rebuke.¹⁷⁰ Then followed a description of the U.S. parties involved and the

legal now. If illegal then, today it is “at a disadvantage in status and rights,” according to the 1997 law. *Id.* at 190; 1999 Summary, *supra* note 119. The 1999 Summary explains that in nations formerly under Communist rule “skepticism or even fear of certain religions or all religions lingers within segments of society.” 1999 Summary, *supra* note 119.

161. 1999 Summary, *supra* note 119. The Russians have an influence. The 1999 Summary explains Russia’s contradictory system of regulations, ambiguous enough to allow discrimination at the local level, and then notes that other nations in central Asia and Eastern Europe “have looked carefully at, and some appear to be adopting, [the] Russian model of handling religious minorities.” *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. 1999 Fact Sheet, *supra* note 116. Other nations that stigmatized religions included Austria and Sweden. 1999 Summary, *supra* note 119.

167. 1999 Summary, *supra* note 119. Belgium claimed to be using “sect” in its original sense—a group of organized persons espousing the same religion.

168. *Id.*

169. *Id.* The 1999 Report covered 1998 and the first six months of 1999. *Id.*

170. *Id.* Horowitz considers quiet diplomacy ineffective and one of the biggest problems with the State Department and its Reports. Interview with Michael J. Horowitz, *supra* note 22.

actions of each.¹⁷¹ The parties listed include virtually every level of U.S. government, from the President and Secretary of State, the Ambassador-at-Large for International Religious Freedom and the Commission, to congressmen and senators, Chiefs of Foreign Missions, ambassadors, consular and embassy officials, asylum officials, and immigration judges—and the entire staffs of each.¹⁷² These parties had done an enormous amount of work promoting religious freedom around the world.¹⁷³ Much of this work involved talking.¹⁷⁴ Less clear in the 1999 Report were measurable results.

During 1998 and the first six months of 1999, U.S. officials, often working alongside officers of other nations and of the United Nations, held discussions concerning various levels of persecution in almost every nation and at every level of government.¹⁷⁵ Some of the work done both at home and abroad included the following: intense training in U.S. religious freedom policy for all foreign service officers; investigation of the disappearance of numerous clerics and ministers around the world; “delicate” discussions of domestic legislation hurtful to religious freedom in various nations; persuading local governments to allow particular minority religions to become registered; meetings with local press, media officials, scholars, and business leaders; funding of NGOs promoting religious tolerance abroad; observation of lengthy trials involving religious charges; public criticism and both private and public demarches aimed at violating nations; calls for the release of specific religious prisoners; Voice of America broadcasts disseminating information about religious persecution and advocating the “inviolable dignity of the human person”; delivery to foreign officials of copies of the Act and its subsequent explanation; advocating the return of religious property confiscated by the Nazi and Communist regimes; meetings around the world with the leadership of various religions in order to hear their concerns; and meetings at home

171. 1999 Summary, *supra* note 119.

172. *Id.*

173. *See generally id.*

174. *See id.*

175. *Id.*

between the IRF Office and interested NGOs or individuals, in order to hear and act on concerns, and publish in the 1999 Report any evidence provided.¹⁷⁶

Because it is difficult to measure the effectiveness of such things as “the promotion of dialogue” or “campaigns to raise awareness,” a list of more concrete results followed, though the 1999 Summary contained no specific improvements section.¹⁷⁷ The U.S. Embassy in Egypt secured the release from temporary detention of two Muslim converts to Christianity.¹⁷⁸ In addition, the Embassy’s efforts resulted in “the lifting of outdated travel restrictions on these men and two other colleagues.”¹⁷⁹

In Vietnam, the U.S. Embassy gained some “improvements” in the religious freedoms of people and churches.¹⁸⁰ Eight religious prisoners were released because of long-term and direct advocacy, and embassy efforts for Christians in the northwest provinces of the country may have likewise been helpful in securing the release of prisoners.¹⁸¹

In March of 1999 a U.S. State Department spokesman publicly criticized the decision of a court in Laos that convicted thirteen people on charges that they were assembling to create social turmoil when they had merely attended a week-long Bible study.¹⁸² Three prisoners were released immediately.¹⁸³ By mid-1999 the other ten were also released on probation.¹⁸⁴

In November of 1998 Robert Seiple, the Ambassador-at-Large for International Religious Freedom, Senator Gordon Smith, a senior White House official, and the Ambassador for the Newly Independent States (“NIS”) chaired a roundtable discussion that “helped refine the policy that successfully urged

176. *Id.*

177. The 2000 Summary, on the other hand, added several pages of “[i]mprovements.” See discussion *infra* Parts VI, VII.

178. 1999 Summary, *supra* note 119.

179. *Id.*

180. *See id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

the Russian government to register Jehovah's Witnesses."¹⁸⁵

Finally, the IRF Office's meetings with interested NGOs obtained clear results.¹⁸⁶ Several organizations submitted program proposals seeking to promote interfaith dialogue and ethnic tolerance abroad, and two such proposals received approval for funding through the Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights, and Labor.¹⁸⁷ In addition, the meetings led to the initiation of programs reaching out to American religious communities, many of whom had "enormous—and in some cases untapped—potential for constructive engagement with their coreligionists abroad."¹⁸⁸ For example, the IRF Office initiated the Islamic Roundtable, "a periodic gathering of American Muslim leaders to discuss issues of mutual concern."¹⁸⁹

V. RESPONSES TO THE FIRST REPORT

Responses to the 1999 Report were mixed, both at home and abroad.¹⁹⁰ New Jersey Republican Christopher H. Smith, Chairman of the House International Relations Subcommittee on Human Rights, noted important omissions such as Indonesia's persecution of Catholics in East Timor, but said that the 1999 Report generally succeeded.¹⁹¹ "I am impressed with the extent to which the report states hard facts about governments with which the United States enjoys friendly

185. *Id.*

186. *See id.*

187. *Id.*

188. *Id.*

189. *Id.* Horowitz points out the folly of these meetings, as the Muslims in attendance were dangerous radicals, not moderates. Interview with Michael J. Horowitz, *supra* note 22.

190. A year later, Dr. Firuz Kazemzadeh described the making of the 1999 Report to the Senate Foreign Relations Committee as follows: "Our first annual report was produced under extremely unfavorable conditions. We thought at times that our staff might not even survive because of the amount of work that they had to do at the last moment." *Hearing of the Senate Foreign Relations Committee: Department of State Report on International Religious Freedom*, FEDERAL NEWS SERVICE, Sept. 7, 2000, LEXIS, FEDNEW File.

191. *State Department Lists 5 Nations as Violators of Religious Freedom*, WASH. TIMES, Oct. 7, 1999, at A15 [hereinafter *5 Nations*].

relations,” including Saudi Arabia, France, and Belgium.¹⁹²

Nina Shea, head of the Washington-based Freedom House’s Center for Religious Freedom and a member of the Commission, argued that the section of the 1999 Report on Sudan failed to mention that the Sudanese government supports the militant Islamic genocide of Christian and tribal religious groups, despite observance of the genocidal practice by a special U.N. rapporteur and members of Congress.¹⁹³ “It is regrettable that the State Department failed to seize an opportunity provided by the report to spotlight [the] catastrophic scale and magnitude of religious persecution in Sudan.”¹⁹⁴

Other complaints concerned the length of the Reports.¹⁹⁵ An editorial read, “[W]ith lengthy details on every country, it is difficult to determine how severe the human rights violations actually are in the individual cases.”¹⁹⁶ Laura Bryant, aide to Tennessee Democrat Bob Clement, accused the IRF Office of padding the 1999 Report.¹⁹⁷ “That way, when Egypt questions why the United States is pointing out their human rights violations, the State Department could also point to abuses committed by another major ally like Germany.”¹⁹⁸ Seiple denied that charge.¹⁹⁹ “The report would only have credibility if we used the same approach, the same methodology with every

192. *Id.*

193. *Panel Commends Report*, *supra* note 55; see also *Panel Targets Religious-Rights Abusers*, DESERET NEWS, Feb. 16, 2000, at A2 (reporting the Commission’s condemnation of abuses in Sudan: a military plane intentionally bombed a school, killing fourteen children, the latest carnage in a seventeen-year civil war that has claimed 2 million lives) [hereinafter *Panel Targets Abusers*]. The Commission also condemned China’s oil production in Sudan, a project China later financed through a listing on the New York Stock Exchange. *Id.* “PetroChina . . . is expected to proceed with an initial public offering in excess of \$5 billion in the next several weeks.” *Id.*

194. *Panel Commends Report*, *supra* note 55. For a list of Commission members, see Rick Marshall, The U.S. Commission on International Religious Freedom, Feb. 2000, available at http://www.state.gov/www/publications/statemag/statemag_feb2000/feature6.html (last visited Mar. 23, 2002).

195. See, e.g., *Religious Freedom by the Book*, WASH. TIMES, Sept. 20, 1999, at A20 [hereinafter *By the Book*].

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

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country.”²⁰⁰

A second charge was that the required assessment of countries of particular concern (“CPCs”) was overdue.²⁰¹ “[T]here will be no incentive for change if the required action the United States must take with the [CPCs] is left out.”²⁰² The editorial continued:

The initial 1,100 page document was never designed to stand on its own, but to be followed by important specifics. . . . [W]ithout [the designation of CPCs] the media can easily tout confusing headlines placing Germany, a country which respects the religious practices of countless religions[,] . . . on the same level with China, where religious groups are subjected to mass arrests, imprisonments and torture.²⁰³

Because the 1999 Report (without the designation of CPCs) places the countries “all on the same grid,” flagrant violators can be empowered to higher international status.²⁰⁴ “Pakistan, which prescribes death for ‘blasphemy,’ probably has no problem being lumped with Germany in a news story.”²⁰⁵

On October 6, 1999, the State Department finally designated five CPCs: China, Iran, Iraq, Myanmar, and Sudan.²⁰⁶ The government of Serbia and the Taliban movement in Afghanistan, though not sovereign states, were likewise listed as “particularly severe violators of religious freedom.”²⁰⁷ No sanctions were named.²⁰⁸

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *5 Nations, supra* note 191.

207. *Id.*

208. *Id.* Significantly, State Department Spokesman James P. Rubin noted the difficulty of applying meaningful sanctions to some nations. “The United States has no relations with Iran, Iraq or Serbia, and has poor relations with Burma [Myanmar] and Sudan. Therefore it might not be possible to find new sanctions that would have any effect on those governments. [But] [t]hat doesn’t mean we shouldn’t identify them” as violators of religious freedom. *Id.*; see also *infra* Part VIII.A (discussing the new approach of market sanctions to keep violators and those who invest in them off U.S. stock exchanges).

Shea, representing the Commission, called the designations “a good first step by the Clinton [A]dministration.”²⁰⁹ “We believe that the issuance of this highly selective list that includes China, the world’s largest religious persecutor, and Sudan, the world’s most hideous persecutor, will send the strongest possible signal,” and will place “on notice” lesser persecutors, like Vietnam, Pakistan, Egypt, North Korea, and Saudi Arabia.²¹⁰

The leadership of Iran disputed its designation as a CPC.²¹¹ Iranian Foreign Ministry Spokesman Hamid Reza Assefi “categorically denied” accusations of religious persecution.²¹² He said that the followers of “divine religions” enjoy complete freedom in performing their rituals and actively participate in the country’s social activities.²¹³ He further accused the State Department and Washington of using a double standard.²¹⁴ Ayatollah Ebrahim Amini-Najafabadi agreed.²¹⁵ “If something happens in Iran the arrogant powers in [America and the West] raise a hue and cry over it. But all these acts of terror take place [in Pakistan] and all this blood is spilled in an unjust manner and yet they say nothing to condemn it.”²¹⁶

Responses to the 1999 Report varied by country.²¹⁷ In Israel, the government was considering more anti-Christian legislation.²¹⁸ Under the new law, Christians who invite non-Christians to a church service or prayer meeting would risk five

209. *5 Nations*, *supra* note 191.

210. *Id.*; see *Hearing on the First Annual Dept. of State Report on Int’l Religious Freedom Before the Subcomm. on Int’l Operations and Human Rights, House Comm. on Int’l Relations*, 106th Cong. (Oct. 6, 1999), available at http://www.state.gov/www/policy_remarks/1999/991006_seiple_irf.html (reporting Seiple’s explanation that the State Department lacked the data to properly assess North Korea for the 1999 Report).

211. *U.S. Claims of Religious Persecution Rejected*, MIDDLE EAST NEWS ITEMS, Info-Prod Research (Middle East) Ltd., Oct. 26, 1999 [hereinafter *Claims Rejected*].

212. *Id.* Independent sources confirmed the assertions of the Report, including the Colorado-based Iranian Christians International and Voice of the Martyrs. *See id.*

213. *Id.*

214. *Id.*

215. *See id.*

216. *Id.*

217. Alford, *supra* note 4.

218. *Id.*

years in prison.²¹⁹ “It would not appear that the International Religious Freedom Act has had any impact on life here,” said Lawyer Marvin Kramer of the Messianic Action Committee, which fights efforts to restrict freedom of religion.²²⁰

Egyptian Nagi Kheir, spokesman for the American Coptic Association and Director of Middle East Affairs for Advocates International, called the 1999 Report incomplete.²²¹ He was particularly concerned that the 1999 Report said an incident in which 1,200 Christians were tortured was not religious persecution.²²² “Anybody with any intelligence” would see that it was, he said.²²³ Kheir, nevertheless, praised the 1999 Report.²²⁴ “It’s an excellent first step.”²²⁵

Richard Howell, General Secretary of the Evangelical Fellowship of India, was also satisfied.²²⁶ “The very mention of atrocities—and that the U.S. is interested to see that they are stopped—in itself is encouraging to the minority Christian community in India.”²²⁷

Finally, Sam Eriksson, President of Advocates International, said that the Act is very ambitious and difficult to evaluate early on.²²⁸

My concern is that what [the Act is] trying to do is so immense that it’s going to be hard to deliver all the expectations. Getting the facts out is just the first step. How the U.S. government would be able to change the policies in a country—we’ll have to wait and see what happens.²²⁹

219. *Id.* Perhaps Israel does not have any serious fear of losing the unflinching support of the United States.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *See id.*

227. *Id.*

228. *Id.*

229. *Id.*

Finally, the Commission reviewed the 1999 Report.²³⁰ Rabbi David Saperstein, Chair of the Commission, began, “[t]he State Department and [the IRF Office] deserve high praise for the high quality and timely publication” of the 1999 Report.²³¹ He also credited the 1999 Report with making religious freedom “a higher priority for the work of every U.S. embassy and consulate.”²³² Saperstein then suggested strengthening the 1999 Report by “(a) prioritizing and evaluating information, (b) placing information in context, (c) referencing relevant law, (d) eliminating the potential for bias, (e) referencing international law incorporated into [the Act], and (f) improving the methodology for information-gathering.”²³³ Specifically, he called for future reports to identify the worst religious freedom problems in each country; explain the historical, religious, political, and legal context in which such violations take place; and define terms, such as “orthodox,” “fundamentalist,” “jihad,” and “cult.”²³⁴

VI. THE SECOND YEAR: THE 2000 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM

Before the second Report (“2000 Report”) was published, the Commission recommended that each country on the first list of CPCs remain on the list.²³⁵ The Foreign Ministry of Myanmar reacted with outrage.²³⁶ It argued that the “characterization of Myanmar as a land lacking in religious freedom is a misrepresentation of the highest degree. . . . The people and government of Myanmar attach great importance to promoting

230. *The U.S. Comm’n on Int’l Religious Freedom: First Annual Report: Before the House Comm. on Int’l Relations*, 106th Cong. 36 (2000) (prepared statement of Rabbi David Saperstein, Chair, U.S. Commission on International Religious Freedom) [hereinafter Saperstein].

231. *Id.*

232. *Id.* As even a cursory reading of the 1999 Summary makes clear, embassies and consulates are the front lines in this effort. *See generally* 1999 Summary, *supra* note 119.

233. Saperstein, *supra* note 230, at 36.

234. *See id.*

235. *See id.* at 37.

236. *Burma Outraged at Religious Intolerance Label*, UPI, Aug. 4, 2000, available at LEXIS, News Library, UPI File.

harmony among religions . . . and are proud of their achievement.”²³⁷

On September 5, 2000, the 2000 Report was published.²³⁸ It began by noting that the plight of the pious had actually declined in many nations.²³⁹ Myanmar, for example, “continue[d] to conscript Chin Christians into forced labor and require[d] them to desecrate their community’s churches and gravesites.”²⁴⁰ Religious persecution also increased in China, where local officials “routinely beat, jailed and harassed citizens who practiced their faith.”²⁴¹ Seiple described the situation: “A Falun Gong woman was arrested and she died in prison, and her daughter was asked to come and pick up the body. Her body was totally covered with bruises. She had dried blood in the ears, the eyes, the nose. She had all of her teeth broken.”²⁴²

The 2000 Report followed the structure of the 1999 Report and included many of the same features, but the 2000 Executive Summary (“2000 Summary”) had an added section detailing improvements in religious freedom that had occurred during the past year.²⁴³ Two countries were reported to have shown significant improvement, although they remained fundamentally poor in religious freedom: Azerbaijan and Laos.²⁴⁴

Azerbaijan was credited with overturning its own deportation orders against clerics, allowing various religious groups to register for the first time, returning jobs to workers,

237. *Id.*

238. Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *2000 Annual Report on International Religious Freedom* (Sept. 5, 2000), at http://www.state.gov/www/global/human_rights/irf/irf_rpt/.

239. Eli J. Lake, *Religious Persecutions Persist, Report Says*, UPI, Sept. 5, 2000, available at LEXIS, News Library, UPI File.

240. *Id.*

241. *See id.*

242. *CNN WorldView: State Department Report Condemns Increase of Religious Persecution in China* (CNN television broadcast, Sept. 5, 2000).

243. *See* Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, *Executive Summary, 2000 Annual Report on International Religious Freedom* (Sept. 5, 2000), at http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_exec.html [hereinafter 2000 Summary].

244. *See id.*

and punishing an official who abused religious minorities.²⁴⁵ In addition, Azerbaijan stopped using laws on religion to discriminate and persecute the religious.²⁴⁶

In mid-2000 Laos released many that were imprisoned for their faith.²⁴⁷ The 2000 Report said their release was a “significant improvement and demonstrate[d] a willingness on the part of the central Government to intervene with local . . . authorities when the latter abridge the religious liberties of minorities.”²⁴⁸

Some of the other improvements reported were as follows: Bulgaria approved registration of the Nazarene Church after five years of attempts; Chile gave all other faiths the legal status that only the Catholic Church previously enjoyed; Croatia added Bosnian Muslims to the list of recognized minorities; the Dominican Republic church leaders reported increased political freedom for religious minorities; Egypt improved its response to violence against Christians, and more Christians were present in public and political life; France recognized Jehovah’s Witnesses as a religion; Ghana outlawed religious slavery; Greece completed plans to eliminate references to religion on identification cards, eliminating a possible source of discrimination; Indonesia lifted the ban on the practice of Confucianism and allowed the Chinese minority to celebrate the Chinese New Year publicly; Iran allowed couples to register their marriages without declaring their religion; Israel planned to redress government spending inequities between Jewish and non-Jewish areas; Kuwait allowed the Vatican to establish a permanent mission in the country; Latvia eased visa restrictions on foreign missionaries; the Netherlands took steps to reduce employment discrimination on religious grounds; Qatar approved the construction of the first Christian church; Russia allowed the Church of Jesus Christ of Latter-Day Saints to register; Saudi Arabia reaffirmed the right of non-Muslims to worship privately; Slovakia increased religious freedom by

245. *Id.*

246. *See id.*

247. *Id.*

248. *Id.*

changing primary and secondary educational curricula to combat anti-Semitism; Sudan released several religious prisoners and returned many abducted women and children to their families; Taiwan created a civilian alternative to military service for conscientious objectors; Turkey's Ankara Supreme Court approved a foundation for a Turkish Protestant church; Uzbekistan "responded to international diplomatic engagement and began to make a concerted effort to improve"²⁴⁹ religious freedom; and Vietnam decreased its interference with religious practices and released "[m]ost of the imprisoned 25 Christian Hmong church leaders"²⁵⁰ and three Catholic priests.²⁵¹

After the publication of both the 1999 and 2000 Reports, it is notable that no sanctions had been levied against violators of religious freedom.²⁵² "While all of these countries and regimes [labeled CPCs] have been sanctioned, no new sanctions have been imposed as a result of [the Act]."²⁵³ However, existing sanctions have been tied to religious freedom.²⁵⁴ "For example, the U.S. has banned the sale of police equipment since the Tiananmen Square massacres of 1989. Those sanctions will continue until America makes a judgment that the government in Beijing no longer persecutes religious persons."²⁵⁵

For his part, Seiple expressed his dislike for sanctions.²⁵⁶ He commented "when you get to the point of designating and sanctioning a country, you have made a statement to the world that you are unable to pursue this diplomatically. . . . I personally think a public designation is much more powerful than any . . . sanction[]."²⁵⁷

249. *Id.*

250. *Id.*

251. *Id.* Like the improvements discussed in the 1999 Report, no attempt was made to determine which improvements were a direct result of the Act and which may have happened without the Act. *Id.* In some cases, such a determination would be entirely speculative. *Id.*

252. Lake, *supra* note 239.

253. *Id.*

254. *Id.*

255. *Id.*

256. *See id.*

257. *Id.* Seiple described the public designation involved in labeling a nation a "Country of Particular Concern" as an "undressing in public in front of your peer group."

VII. RESPONSES TO THE SECOND REPORT

On September 7, 2000, Chairman of the House Subcommittee on International Operations and Human Rights Christopher H. Smith strongly criticized the 2000 Report.²⁵⁸ He called it “thorough, honest, and strong,” but then expressed concern that it may not have any practical effect on U.S. policy.²⁵⁹ Smith labeled the President’s choices of CPCs for 1999 “only the easy choices,” and feared similar results in the future.²⁶⁰ He noted that “[s]ix of the seven are already under severe sanctions for reasons other than religious persecution. The seventh, . . . China, represented a tough choice for the Administration, but the facts were so clear that it is difficult to imagine any other outcome.”²⁶¹ Smith then expressed his dismay that the Administration would not name any additional nations to the list of CPCs, in spite of abundant evidence of severe violations.²⁶² Specifically, he named Vietnam, North Korea, and Saudi Arabia—the three he had expressed concern about the year before—and then named the eight countries previously suggested for consideration by no less an authority than the Commission: Vietnam, North Korea, Saudi Arabia, Laos, Turkmenistan, India, Pakistan, and Uzbekistan.²⁶³ “I am deeply disturbed by reports that the Administration will not designate a single country of particular concern this year, beyond the

Id. But see McCormick, *supra* note 2, at 288. Sanctions have at times been quite effective. For example, the Jackson-Vanik amendment, passed by Congress in 1974, conditioned aid to the Soviet Union on the allowance of Jewish emigration. *Id.* Consequently, “[s]oviet chains around churches and political dissidents began to shatter.” *Id.* at 288 n. 32 (quoting Michael J. McManus, *Religious Persecution Targeted*, THE FRESNO BEE, May 23, 1998, at A15).

258. See *State Department Annual Report on International Religious Freedom for 2000: Hearing Before the Subcomm. on Int’l Operations and Human Rights of the Comm. on Int’l Relations H.R.*, 106th Cong. 48–50 (2000) (statement of The Honorable Christopher H. Smith, a Representative in Congress from New Jersey and Chairman, Subcommittee on International Operations and Human Rights), available at http://www.house.gov/international_relations/hr/irf00chs.htm (Sept. 7, 2000) [hereinafter Congressional Hearing].

259. *Id.* at 49.

260. *Id.*

261. *Id.*

262. *Id.* at 49–50.

263. *Id.* at 49.

seven that were designated last year.”²⁶⁴

Perhaps the sharpest criticism of the 2000 Report came from Acacia Shields, an Uzbekistan researcher for Human Rights Watch.²⁶⁵ Shields first argued that Uzbekistan should be designated a CPC.²⁶⁶ Second, she asserted that the 2000 Report was wrong, that there were *no* improvements in religious freedom in Uzbekistan.²⁶⁷ Third, she accused the 2000 Report of blindly accepting the claims of the local government.²⁶⁸ Shields detailed the facts of the arrest and conviction of thousands of Muslims, and characterized the release of six Christian prisoners—hailed in the 2000 Report as an improvement—as a “calculated effort [by the Uzbek government] to avoid designation as a country of particular concern and to distract the Administration from the lack of progress in the treatment of Muslims.”²⁶⁹ According to Shields, the Administration fell for it.²⁷⁰ “Only sophistry has allowed the Administration to avoid classifying Uzbekistan as a country of particular concern for its gross violations of religious freedom. The [2000 Report] would have us accept the Uzbek government’s own characterizations of those it arrests and tortures,”—which is to label them all political rather than religious prisoners.²⁷¹ Finally, Shields reported that, contrary to the 2000 Report’s contention that many prisoners were released, “our investigations have found that very few alleged releases of Muslims could be confirmed.”²⁷² In addition, several specific religious prisoners, whose release the 2000 Report applauds, have now been rearrested.²⁷³

The government’s tactics in this campaign recalls [sic] some of the worst moments of the Soviet era: It has

264. *Id.* at 49-50.

265. *See id.* at 80-85 (statement of Acacia Shields, Uzbekistan Researcher, Human Rights Watch, Europe and Central Asia Division).

266. *Id.* at 81.

267. *See id.* at 81-82.

268. *See id.*

269. *Id.* at 82.

270. *See id.*

271. *Id.* at 81.

272. *Id.* at 82.

273. *Id.*

created a climate of suspicion and fear, in which neighbors inform on one another, mothers turn their sons over to police, and local authorities organize “hate rallies,” in which police, government leaders and neighbors publicly denounce pious Muslims and their relatives as “enemies of the state.”²⁷⁴

Shields reported that U.S. officials have “raised concerns, issued demarches on specific cases, and pressed for changes in the domestic laws”—but the Uzbek government “has only intensified its campaign.”²⁷⁵ “[T]he condition of religious freedom has only deteriorated. More must be done.”²⁷⁶

Rather than sanction the nation, or simply designate Uzbekistan as a CPC, the U.S. government actually gave the nation an estimated thirty million dollars in assistance in 1999.²⁷⁷ Shields called such a policy “wink and nod’ politics.”²⁷⁸ Such practices “give[] abuser states . . . the impression that they can carry on with repressive policies and still profit.”²⁷⁹ As she concluded, Shields called on the Administration to designate Uzbekistan a CPC and to implement appropriate sanctions, including the denial of Export-Import Bank and OPIC credits.²⁸⁰

Finally, the Commission evaluated the 2000 Report.²⁸¹ Dr. Firuz Kazemzadeh, Vice Chairman of the Commission, testified that the 2000 Report “generally shows more complete understanding of religious freedom issues and extensive factfinding and verification. It reflects hard work on the ground.”²⁸² He also noted “with pleasure” that some of the Commission’s recommendations were implemented in the new report.²⁸³ However, others were not, and the Commission still

274. *Id.* at 83.

275. *Id.* at 85.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. *Id.* at 1.

282. *Id.* at 8.

283. *Id.*

had complaints.²⁸⁴ First, the Vice Chairman mentioned the need for context in country reports because “the main thrust of what is happening and why is lost.”²⁸⁵ Second, the 2000 Report contained significant omissions, such as failing to describe the pivotal role that oil extraction had in providing money to the Sudanese government, enabling it to continue its criminal behavior.²⁸⁶

Third, the Commission warned that including a section on improvements in the 2000 Summary could easily misrepresent the conditions of religious freedom in each nation and must be “carefully handled.”²⁸⁷ Kazemzadeh said that mentioning such positive steps might overshadow an “overall negative situation.”²⁸⁸ He further noted the contradictory messages between the list of improvements and the country reports.²⁸⁹ For example, the 2000 Summary’s “Improvements” section named Laos as a country that had made “significant improvement[s]” when it released religious prisoners.²⁹⁰ However, the country report on Laos said that the government’s “already poor record for religious freedom *deteriorated* in some aspects.”²⁹¹

Like others before him, Kazemzadeh expressed disappointment that the State Department did not add any new countries to the list of CPCs, naming particularly Laos, North Korea, Saudi Arabia, and Turkmenistan as countries that should have been so designated.²⁹² In addition, he criticized the State Department for its handling of sanctions.²⁹³ “[The State Department] . . . appears to go out of its way to avoid

284. *Id.*

285. *Id.*

286. *Id.* This oil was being extracted largely by China and paid for by the selling of stock on the New York Stock Exchange. *Panel Targets Abusers*, *supra* note 193, at A02; *see* discussion *infra* Part VIII.A-B and note 295.

287. Congressional Hearing, *supra* note 258, at 8-9.

288. *Id.* at 9.

289. *See id.*

290. *Id.*

291. *Id.* (emphasis added). Similar contradictions are found in the discussion of Vietnam. *Id.*

292. *See id.*

293. *Id.*

mentioning” sanctions imposed under the Act.²⁹⁴ Rather than simply opposing loans to Sudan, the State Department should have followed the advice of the Commission and closed U.S. markets (such as the New York Stock Exchange) to companies participating in the Sudanese oil fields.²⁹⁵ Sanctions already in force in China are also ineffective.²⁹⁶ “[T]he Secretary of State restricts exports of crime control and detection instruments and equipment. It is difficult to believe that this sanction sends a strong message to Beijing on religious freedom.”²⁹⁷

Kazemzadeh also noted the apparent failure of the Clinton Administration to comply with the Act’s requirement of presidential action.²⁹⁸ “[U]nder [the Act] the President must take action (or issue a waiver of the requirement to take such action) with regard to *all* countries . . . which engage[] in or tolerate[] violations of religious freedom, and not only the CPC’s. These actions do not appear to be so recorded in the annual report.”²⁹⁹

Finally, Kazemzadeh noted that the 2000 Report described many countries where the status of religious freedom had worsened greatly, yet the 2000 Report reflected no change in State Department policies toward those countries.³⁰⁰ As

294. *Id.*

295. *Id.* at 10; see *Panel Targets Abusers*, *supra* notes 193, at A02 (reporting China’s desire to fund its oil industry in Sudan by selling stock on the New York Stock Exchange); see also *infra* note 312 (listing arguments for and against market sanctions). In April 2000, PetroChina made an initial public offering and raised \$2.9 billion. Roger W. Robinson, *Investing Against Sudan*, WASH. POST, Oct. 23, 2000, at A22. However, that fell short of the company’s \$10 billion goal, due to investors refusing to purchase the stocks and bonds of oil companies doing business in Sudan. *Id.* Within weeks, the grass-roots coalition of religious and secular organizations that mobilized the boycott was appealing to Americans to pressure their pension funds, mutual funds, and local governments to get rid of stock in companies doing business with Sudan’s Khartoum regime. Norman Kempster, *U.S. Coalition Seeks Sudan Boycott*, L.A. TIMES, June 1, 2000, at A.1.13. “Millions of Americans have become unwitting partners in slavery and genocide in Sudan through their pension funds and mutual funds.” (quoting Charles Jacobs); see *infra* Part VIII.A–B.

296. Congressional Hearing, *supra* note 258, at 9-10.

297. *Id.* at 10.

298. See *id.*

299. *Id.* (emphasis added).

300. See *id.* at 10-11.

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examples, he named China, Turkmenistan, and France.³⁰¹ Regarding China, Kazemzadeh said, "It is distressing that the Administration and the majority of the House of Representatives is willing to overlook all of this in pursuing its campaign for permanent normal trade relations status with China."³⁰²

301. *Id.*

302. *Id.* at 11. It is true that the Act does not require sanctions in every case. However, in the face of such egregious violations, the pursuit of trade with China appears to reflect a greater interest in profits than in people. Kazemzadeh noted that the Chinese government, a known persecutor of millions, refused to meet with U.S. embassy officials and denied visas to U.S. officials concerned with Tibet. *See id.* However, talks over trade apparently went on uninterrupted. In 2000, China won permanent normal trade relations with the United States. *See* Fred O. Williams, *Tearing Down the Economic Fences Between Neighbors*, BUFFALO NEWS, Jan. 28, 2001, at Prospectus, 66P. In November 2001, China won formal approval to enter the WTO from the 142 member countries. Paul Blustein & Clay Chandler, *WTO Approves China's Entry*, WASH. POST, Nov. 11, 2001, at A47.

VIII. UPSTAGED BY THE TALIBAN: THE 2001³⁰³ REPORT ON
INTERNATIONAL RELIGIOUS FREEDOM

A. *Sudan Sells Slaves for “\$33.00 a Head;”³⁰⁴ The Commission
Recommends Action*

On September 7, 2001, the Commission recommended the State Department name ten nations as CPCs: the Taliban of Afghanistan, Myanmar, China, Iran, Iraq, Laos, North Korea, Saudi Arabia, Turkmenistan, and Sudan.³⁰⁵ But it was Sudan in particular that had finally begun to stir the ire of not only human rights activists, but also “decent Americans” everywhere.³⁰⁶ Michael Horowitz had been concerned about

303. The Bush Administration brought the usual personnel changes. On September 26, 2001, Bush nominated John V. Hanford III to serve as Ambassador-at-Large for International Religious Freedom, replacing Robert Seiple, who had resigned a year before. James Morrison, *Nominations*, WASH. TIMES, Sept. 28, 2001, at A20. Hanford had been a Congressional Fellow in International Religious Freedom in the Office of Senator Richard Lugar and has been described as the lead architect of the Act. Previously he had worked as a Pastoral Assistant and is a graduate of Gordon-Conwell Theological Seminary. *President Bush to Nominate Five Individuals to Serve in His Administration*, U.S. NEWSWIRE, Sept. 26, 2001, National Desk. He is also the nephew of Elizabeth Dole. *Dole Nephew Named Ambassador*, THE HOTLINE, Sept. 28, 2001. Horowitz and others believed Hanford to be unqualified for the position, only landing it because his aunt made a request of President Bush. Nevertheless, they decided not to protest the nomination. “The Ambassador position is not an important position.” Interview with Michael J. Horowitz, *supra* note 22. To the more significant and independent Commission, Bush appointed a Muslim law professor, Leila Nadya Sadat; the head of religious liberty for the Southern Baptist Convention, the Reverend Dr. Richard Land; and a New York Catholic Bishop, the Most Reverend William F. Murphy. See Larry Witham, *White House Picks Ambassador for Religious Liberty*, WASH. TIMES, Sept. 27, 2001, at A7. The Commission also elected Michael K. Young as its new chairman. Lee Davidson, *U.S. Panel Elects LDS Man*, DESERET NEWS, Sept. 24, 2001, at B03.

304. Michael Paulson, *Clergy Press Case to Isolate Sudan, Call on U.S. Blacks to Lobby Congress*, BOSTON GLOBE, Sept. 11, 2001, at A8.

305. See *U.S. Report Targets Religious Oppressors*, DESERET NEWS, Sept. 8, 2001, at E02. The Commission noted that some improvements had been made in Yugoslavia, but “grave problems with religious freedom persist in India, Uzbekistan, Vietnam and Pakistan” and suggested careful monitoring of those nations. In Pakistan, for example, a court sentenced a man to death for the crime of blasphemy because he was found to have insulted Mohammed during classes at a private college. *Id.*

306. Nat Hentoff, *Oil Fuels Sudan’s Holocaust: Bachus’ Bill Would Help Demobilize Genocidal Regime*, WASH. TIMES, Sept. 10, 2001, at A17; see *infra* text

Sudan for several years. After the Act was passed in 1998, he wrote, "I believe that the tyrannical regime in Sudan is, by far, the world's most evil. I believe that politically correct appeasement of radical Islam and significant indifference to religious victims is the principal reason for different policies against today's regime in Sudan and the former regime in South Africa."³⁰⁷ Horowitz had even gone so far as to say that the coalition which supported the Act had failed in a "major, tragic respect" in its inability to transform U.S. policy toward Sudan into a parallel of former U.S. policies toward South Africa.³⁰⁸ Consequently, on April 13, 2001 (Good Friday), Horowitz, Joe Madison, a "radio activist," and Reverend Walter Fauntroy took the radical step of chaining themselves to the front of the Sudanese Embassy in Washington.³⁰⁹ In a statement, Horowitz, flanked by Johnny Cochran and Judge Ken Starr, spoke of the determination of "a critical mass of Catholic, Protestant, Jewish, black and human rights organizations and leaders that the murder, starvation, enslavement and ethnic cleansing policies of Khartoum must end—and end this year."³¹⁰ As a result of protests like these,³¹¹ the Commission held hearings on Sudan, eventually recommending unprecedented (and highly controversial) market sanctions to stop American investors from unwittingly funding a war with every dollar they invest in foreign oil companies trading on U.S. stock markets.³¹² Those

accompanying note 343.

307. Horowitz, *Extraordinary Victory*, *supra* note 69, at 6.

308. *See id.* at 5.

309. Derek Orlando Ball, *Slavery Still Widespread in Sudan*, WASH. AFRO-AMERICAN, April 21–27, 2001, at 1.

310. Michael Horowitz, Statement of Michael Horowitz Outside the Sudanese Embassy, Washington, D.C., April 13, 2001, at 1 (on file with author) [hereinafter Horowitz, Statement]. Solidarity between Cochran, Starr, and Horowitz is only one of many examples of the "strange bedfellows" created by concern about religious persecution. *See e.g.*, Hertzke, *Faith Factor*, *supra* note 1, at 16 (noting that the legislative battle over the Act drew diverse parties into its vortex: "[L]iberal Jewish groups teamed up with conservative evangelicals, the Catholic Church with Tibetan Buddhists, Anglicans with the Salvation Army.").

311. The protest at the Sudanese Embassy, while instructive here, actually followed the initial announcement of the bill and the sanctions it contained. *Compare supra* text accompanying note 306, *with infra* text accompanying note 321.

312. Jane Lampman, *Boston Pastors, Ex-Slave Tell Story, Legislation Sought to*

sanctions were included in the Sudan Peace Act.³¹³ This bill is worth exploring for three reasons. First, the battle over the Sudan Peace Act was supported by many members of the coalition that created the International Religious Freedom Act two years earlier.³¹⁴ Second, the battle over the Sudan Peace Act provides insight into the larger battle for international religious freedom following the events of September 11. Third, some who accused the Administration of winking at the sins of Khartoum in order to build a coalition against bin Laden accused the State Department of doing the same thing with the sins of other nations in its 2001 Report.³¹⁵

The market sanctions in the Sudan Peace Act required the President to prohibit any entity “engaged in the development of oil or gas in Sudan (1) from raising capital in the United States,

Shut Off U.S. Markets to Oil Companies Active in Sudan, CHRISTIAN SCI. MONITOR, Sept. 13, 2001, Features, at 17. Proponents of market sanctions felt that because the United States already had sanctions in place against Sudan, they “had to look outside the standard menu of economic tools to compel the government to stop its 18-year campaign against non-Muslims. . . .” Jenny Anderson, *Capital Punishment*, INSTITUTIONAL INVESTOR, Nov. 1, 2001, at 29. Critics of sanctions argued: 1) capital market sanctions have never been used before; 2) they won’t help; 3) they set a terrible precedent; 4) they will only drive capital formation to Europe; 5) tougher SEC disclosure standards are enough to keep American investors from investing in companies that indirectly fund acts of terrorism; and 6) the American markets would suffer. *See id.* Proponents responded: 1) capital market sanctions are a powerful new diplomatic and political weapon that cannot be ignored; 2) we place burdens on banks to stop money laundering, why not place similar burdens on Wall Street?; 3) it makes no sense to allow foreign companies to raise money in the United States in order to conduct business in countries where American companies are prohibited from operating; 4) the President needs both sticks and carrots in the war on terrorism; 5) if sanctions scare foreign governments as much as they scare Wall Street, they must be powerful; 6) the simple threat of sanctions was persuasive with Canada’s President of Talisman Energy (doing business in Sudan), James Buckee, who said, “I don’t think anybody could afford not to have access to U.S. capital markets. No asset is more valuable than that.”; 7) it is too little money to affect Wall Street in any measurable way; 8) even if sanctions did not work, they should be imposed because they are morally right and because they could aid the war on terrorism (the so-called new kind of war may require a new kind of weapon); and 9) Representative Bachus, author of the sanctions provision said, “If capital markets sanctions can save our men and women in uniform from putting their lives at risk, that’s a better option.” *See id.*

313. Lampman, *supra* note 312.

314. *See* Hentoff, *supra* note 306; Horowitz, *Extraordinary Victory*, *supra* note 69.

315. *Compare infra* Part VIII.B, *with infra* Part IX.

or (2) from trading its securities . . . in any capital market in the United States.”³¹⁶ The bill was a response to the “systematic institution of slavery”³¹⁷ and the continued war being fought by the government of northern Sudan, the National Islamic Front (“NIF”) against non-Muslims in southern Sudan.³¹⁸ That war “has cost the lives of over two million . . . men, women and children.”³¹⁹ Consequently, the bill enjoyed bipartisan support from the very beginning.³²⁰ On March 22, 2001, Congressmen Charles Rangel and Dick Arney, two men who “seldom agree about anything,” held a joint press conference in support of the Sudan Peace Act.³²¹ “People are being tortured, mutilated and killed solely because of their Christian faith,” said Arney.³²² Black Christians and animists were also being captured and made slaves, and schools, hospitals, and humanitarian agencies were being bombed.³²³ Why the bombing? To get people out of the way “so that the government can get at the oil reserves underneath,” read one editorial.³²⁴ Not only was PetroChina spending millions to produce Sudan’s oil, but other oil companies had begun pouring money into Sudanese oil production (and therefore, the NIF war chest)³²⁵—Talisman Oil of Canada,³²⁶

316. Hentoff, *supra* note 306 (quoting Republican Spencer Bachus of Alabama).

317. See Ball, *supra* note 309.

318. See Hentoff, *supra* note 306. Before his “symbolic arrest” at the Sudanese Embassy (an action which resulted in the literal arrest of the three demonstrators), Horowitz expressed his desire to be linked “if barely, to millions now in the path of the scorched-earth bombings and gunship raids of the Khartoum regime, and with even larger numbers of Sudanese reportedly facing imminent starvation at the regime’s hands.” Horowitz, Statement, *supra* note 310. Such starvation occurs in spite of the “\$100 billion annually provided by American taxpayers for Sudan food relief” because much of that food is never distributed due to what has been called the Khartoum government’s weapon of “selective starvation.” *Id.*

319. Ball, *supra* note 309.

320. See Hentoff, *supra* note 306.

321. See *id.*

322. *Id.*

323. *Id.*

324. *Id.*

325. Horowitz, Statement, *supra* note 310.

European oil companies [are] now poised to provide Khartoum with billions of dollars in royalty payments. Such payments will allow the regime to purchase the bombers, helicopter gunships, tanks and troop carriers that it has long sought to complete its final-solution policies against the Christian

Sweden's Lundin Oil,³²⁷ and firms from Malaysia and Italy.³²⁸ On June 13, 2001, the Sudan Peace Act passed the House of Representatives by an overwhelming majority: 422 to 2.³²⁹ It appeared Congress was about to support religious freedom for Sudan as forcefully as it supported international religious freedom in 1998.³³⁰ But the Senate balked. Senators struck out the sanctions, held no hearings, and passed what was left of the bill late at night by a voice vote.³³¹ PetroChina and others were once again free to sell stock on the New York Stock Exchange and pay cash to the NIF.³³²

Protests followed. In Boston, an alliance of about 80 black Boston-area ministers rallied in support of the sanctions provision dropped by the Senate.³³³ "We are concerned about the Wall Street lobby that is pressuring the senators to kill this particular sanction," said the President of the Black Ministerial Alliance, the Reverend Wesley A. Roberts. "This would make the act meaningless and give the Sudanese government the ability to continue its present policies."³³⁴ Three of the ministers had been to Sudan in July and reportedly purchased the freedom of 6,700 slaves at \$33 each; many of those slaves were women and children and had been sexually abused.³³⁵

and animist populations of South Sudan.

Id. In fact, "[t]he Khartoum government has admitted that it uses oil revenues to fund the war." Anderson, *supra* note 312. Note that in contrast to the United States and several other Western countries, the sovereign in most nations holds all mineral rights. Walter Hellerstein, *Political Perspectives on State and Local Taxation of Natural Resources*, 19 GA. L. REV. 31, 39 (1984).

326. Hentoff, *supra* note 306.

327. Lampman, *supra* note 312.

328. Jim Lobe, *Officials Say Sudan Moving Quickly to Cooperate*, INTER PRESS SERVICE, Sept. 20, 2001.

329. Hentoff, *supra* note 306.

330. *See supra* text accompanying note 73.

331. Hentoff, *supra* note 306.

332. *See id.*

333. Michael Paulson, *Clergy Press Case to Isolate Sudan, Call on U.S. Blacks to Lobby Congress*, BOSTON GLOBE, Sept. 11, 2001, at A8.

334. *Id.* Roberts added that black ministers, "as ministers of the gospel and descendants of slaves, are morally obligated to act." *Id.*

335. *Id.* "Radio activist" Joe Madison likewise traveled to Sudan in September of 2000 and "was responsible for the extrication of 4,435 slaves." In April of 2001,

On July 4th, our Independence Day, I participated in a mission to redeem slaves. . . . I interviewed women and children and heard stories of youngsters who saw their parents slaughtered, and women who endured unimaginable sexual abuse, including forced genital mutilation. . . . I came back a mad woman, and I ask the Senate to have the courage to risk the wrath of Wall Street and to invest in morality over money.³³⁶

The market sanctions were also supported by the Congressional Black Caucus, the U.S. Conference of Catholic Bishops, the American Israel Public Affairs Committee,³³⁷ many liberal Democrats and conservative Republicans, human rights groups, the National Association for the Advancement of Colored People, and “a handful of Texas oil companies.”³³⁸ But the sanctions had powerful opponents: Wall Street, the Chairman of the Federal Reserve, Alan Greenspan, and President Bush.³³⁹ Wall Street and the Treasury argued that mixing access to capital markets with foreign policy could drive investors away from U.S. markets.³⁴⁰ State Department spokesman Richard Boucher spoke for President Bush: “We believe that prohibiting access to capital markets in the United States would run counter to global and United States support for open markets, would undermine our financial market competitiveness, and could end up impeding the free flow of capital worldwide.”³⁴¹ A House-Senate conference was expected to decide whether or not the market sanctions would be restored to the Sudan Peace

Madison and the Reverend Fauntroy “witnessed an additional 2,931 slaves freed.” Ball, *supra* note 309.

336. Lampman, *supra* note 312. Another minister described their trip this way: “It was extremely horrifying—I heard story after story involving murder, beatings, forced Muslim conversions, the splitting apart of families, the gang rape of young girls who also sometimes experienced genital mutilation by forced circumcision.” Paulson, *supra* note 333.

337. Hentoff, *supra* note 306.

338. Paulson, *supra* note 333.

339. Lampman, *supra* note 312.

340. *Id.*

341. Hentoff, *supra* note 306. Hentoff says it’s profits over people: “According to our president, free markets and profits must have priority over ending slavery and genocide.” *Id.*

Act.³⁴² Nat Hentoff of the Washington Times predicted that, if Bush were to veto an act that *did* contain sanctions, it would result in outrage from “[b]lack, Jews, Muslims opposed to genocide in Sudan, Christians, . . . schoolchildren, . . . and just plain decent Americans.”³⁴³ “This can become a deciding, historic moment in the Bush presidency.”³⁴⁴ That was on September 10th.³⁴⁵

B. September 11th Changes Everything: Sudan Becomes an Ally

The facts of September 11 need no repetition here: thousands of people were killed by terrorists who would deny all religious freedom but their own.³⁴⁶ The destruction was like nothing before seen on American soil.³⁴⁷ The nation was stunned. And soon everyone was saying it: *September 11th changed everything*.³⁴⁸ The President found his deciding historic moment, or to be fair, it found him. That day a broad coalition of market sanctions supporters, including anti-slavery groups, small business, labor, and national security organizations had scheduled a press conference on Capitol Hill.³⁴⁹ It was cancelled.³⁵⁰ Suddenly, U.S. lives “ha[d] been turned topsyturvy.”³⁵¹ Getting back to business as usual would be a

342. *Id.*

343. *Id.* Hentoff notes that schoolchildren across the country have been raising money to liberate slaves. *Id.*

344. *Id.*

345. *Id.*

346. See Dan Eggen & Karen DeYoung, *FBI Draws ‘the Line’ with Names and Faces, New List Supplements the ‘10 Most Wanted,’* WASH. POST, Oct. 11, 2001, at A16 (discussing the terrorist link to the New York and Washington D.C. attacks); see James Morrison, *Religion in Afghanistan*, WASH. TIMES, Nov. 27, 2001, at A10 (discussing the religious intolerance of the now-overthrown Taliban regime).

347. See David Von Drehle, *World War, Cold War Won. Now the Grey War*, WASH. POST, Sept. 12, 2001, at A9 (discussing the magnitude and unique nature of the attacks).

348. See, e.g., Morrison, *supra* note 303; Anderson, *supra* note 312.

349. Lampman, *supra* note 312.

350. *Id.*

351. Anderson, *supra* note 312. “So, too, has American foreign policy: Enemies have become friends, pariahs pals, as the world’s remaining superpower struggles to build a broad coalition to pursue its war on terror.” *Id.*

struggle.³⁵²

Nine days later, it was not business as usual for religious freedom activists and other supporters of the Sudan Peace Act, or for the Coalition that had helped create that act.³⁵³ On September 20th, Colorado Representative Tom Tancredo got an urgent call from the Vice Chairman of the House International Relations Committee, Chris Smith.³⁵⁴

Fellow Republican Smith wanted Tancredo to drop whatever he was doing and run over to the Capitol to put forward a motion to vote the Sudan Peace Act . . . on to conference. . . . Tancredo, who had sponsored the bill, rushed over to the well of the House . . . and took the floor. But just as he was about to introduce his motion, he was interrupted by a messenger from the House leadership. The Sudan Peace Act, Tancredo was curtly informed, would be shelved and the motion canceled for political reasons.³⁵⁵

Suddenly the Sudan Peace Act was “all but dead, at least for the 107th Congress.”³⁵⁶ Now Sudan had something the United States wanted—information about Osama bin Ladin and access to several of his “key players” still present in Sudan.³⁵⁷ From 1991 until 1996, bin Ladin and his al Qaeda network had been sheltered by the Khartoum regime.³⁵⁸ In 1996 bin Laden left—ironically—after Clinton threatened increased sanctions against Khartoum, and the NIF sent the bloodthirsty billionaire

352. Interview with Michael J. Horowitz, *supra* note 22 (explaining that even four months later, “we are still reorganizing from the events of September 11th”).

353. See *supra* text accompanying note 314.

354. Anderson, *supra* note 312.

355. *Id.*

356. *Id.*

357. Lobe, *supra* note 328.

Washington is particularly interested in getting information on, and possible custody of, some two dozen people closely tracked by the . . . NIF. . . . The targets are considered key players around bin Laden. . . . “I’m convinced that they’re going to toss us at least several bones that we want. . . . We may get to a place where they start to screw around with us, but it’s very productive right now.”

Id.

358. *Id.*

packing.³⁵⁹ Knowing the warring Sudanese government could provide some answers about bin Laden, the President persuaded the House leadership to pull the Sudan Peace Act.³⁶⁰ The war—both wars—would continue.

Secretary of State Colin Powell agreed. He described the Khartoum as having become “suddenly much more interested and active in working with us on various items.”³⁶¹ Another reported, “We’re getting very good cooperation.”³⁶² But many remained unconvinced, having hoped that the September 11th terrorist attacks would persuade President Bush “to treat the NIF as part of the problem, rather than part of the solution.”³⁶³ Commission member Nina Shea cited a recent State Department report on international terrorism, which found that Sudan “continued to be used as a safe haven of various groups,’ including bin Laden’s al Qaeda, the Islamic Group, and the Egyptian Islamic Jihad, among others.”³⁶⁴ Shea declared, “Sudan must be seen as an essential piece of the puzzle.”³⁶⁵ Nevertheless, not only did the Bush Administration shelve the Sudan Peace Act, but it also ignored protests from “mostly . . . bedrock Republican constituencies,”³⁶⁶ and supported an Egyptian bid to lift U. N. sanctions on Sudan.³⁶⁷

359. Gayle Smith, *Terrorism? Sudan Gave U.S. No Help*, L.A. TIMES, Dec. 7, 2001, at B15. “The only definitive step Khartoum ever took against terrorism—asking bin Laden to leave the country in 1996—came about not out of a desire to thwart bin Laden’s intentions but because Sudan wanted to avoid further sanctions.” *Id.*

360. Anderson, *supra* note 312. “Sources say Bush didn’t want to veto a bill that had such widespread support, and he was trying to get Sudan to cooperate in the war on terror.” *Id.*

361. Lobe, *supra* note 328.

362. Steven Mufson, *New Casualty: Sudan Peace Act; Activists Fear Crackdown on Khartoum May be Sidelined*, WASH. POST, Oct. 5, 2001, at A8.

363. Lobe, *supra* note 328.

364. *Id.* Shea also downplayed any contributions from Sudan: “Sudan has already reaped tremendous benefit from the United States for the *tidbits* of information it’s given even while the government continues to terrorize its own people. . . . Southern Sudan has lost a lot of ground with the alliance in the Bush war against terrorism.” Mufson, *supra* note 362, at A9 (emphasis added).

365. Lobe, *supra* note 328.

366. See Mufson, *supra* note 362, at A9.

367. Lobe, *supra* note 328. One congressional aide responded:

I’m really curious to know what happened in the six months between the last

In addition to Sudan, the Administration altered the nature of its relationships with Uzbekistan and Russia as it sought to forge an international coalition.³⁶⁸ Many understood, given the unique needs in a time of war.³⁶⁹ But fears persisted that human rights complaints would be “muted or, in some cases, dropped altogether.”³⁷⁰ Michael Young, Chairman of the Commission, expressed concern that “in forming alliances against terrorism, the United States not compromise its commitment to democracy and human rights, including religious freedom. [The Commission] oppose[s] such policy trade-offs.”³⁷¹ Similarly, the religious liberty panel of the Helsinki Commission voiced its fear that not the war on terrorism, but terrorism itself will make the religious freedom of minority religions harder to protect, and restrictions on them will likely increase as nations seek ways to prevent future acts of terrorism.³⁷² This odd mix of U.S. alliances with former enemies and other nations’ fear of former friends left advocates of religious freedom in a difficult position.³⁷³ “Clearly, we face a much more uphill struggle being heard today than we did September 10th.”³⁷⁴ It was into this “topsy-turvy,”³⁷⁵

terrorism report and Sep. 10 that would make us abstain on lifting sanctions. . . . This is part of a larger pattern in this administration of moving toward engagement, even though everyone admits the situation in Sudan is only getting worse.

Id. Note that, in this case, abstaining on the vote to lift sanctions was considered equivalent to “quietly decid[ing] to go along” with the motion to lift sanctions. *Id.*

368. David R. Sands, *Bush Chides Chinese on Rights*, WASH. TIMES, Oct 20, 2001, at A1.

369. *Id.* “If it becomes a choice between tolerating Karimov’s repression or getting bases our military leaders say they need, I would opt for the bases and so would at least 90 percent of the Congress right now,” said former Representative Stephen Solarz, a Democrat and “leading human rights campaigner.” *Id.* A State Department official defended the changed treatment of Sudan during war—“If we are getting serious cooperation from Khartoum, that’s a shift and we must recognize it.” Mufson, *supra* note 362, at A9.

370. Sands, *supra* note 368.

371. Lee Davidson, *Allies’ Stand on Religion Questioned*, DESERET NEWS, Nov. 27, 2001, at A1.

372. Larry Witham, *Europe Fears for Liberty of Religious Sects*, WASH. TIMES, Oct. 12, 2001, at A10.

373. See Sands, *supra* note 368.

374. *Id.*

375. See *supra* text accompanying note 351.

post-September 11th world that the 2001 Report on International Religious Freedom was released.³⁷⁶

C. The Third Year: The 2001 Report on International Religious Freedom

The third report (“2001 Report”) was not released on schedule.³⁷⁷ The State Department initially postponed the 2001 Report so Secretary of State Colin Powell could participate in a large-scale press conference to announce the 2001 Report’s findings.³⁷⁸ After September 11th, the 2001 Report was postponed further.³⁷⁹ On October 26, the 2001 Report was finally released, “nearly two months after its congressionally mandated September 1 due date.”³⁸⁰

The organization of the 2001 Report did not vary from the 2000 Report.³⁸¹ It explained the process: 1) information was gathered in the field; 2) U.S. embassies wrote the sections for the countries in which they work; 3) those texts were sent to Washington for State Department review; 4) the Bureau of Democracy, Human Rights and Labor corroborated, analyzed and edited the reports; and 5) State Department officers consulted experts in religious discrimination and persecution and legal matters,³⁸² before the 2001 Report was released. “The guiding principle was to ensure that all relevant information was assessed as objectively, thoroughly, and fairly as

376. See William Douglas, *Intolerance Report Released*, NEWSDAY, Oct. 27, 2001, at A21.

377. *Id.*

378. *Id.*

379. *Id.*

380. *Id.*

381. See U.S. Dep’t of State *Preface, 2001 International Religious Freedom Report*, Oct. 26, 2001, <http://www.state.gov/g/drl/rls/irf/2001/index.cfm?docid=5529> [hereinafter 2001 Preface]; U.S. Dep’t of State, *Introduction, 2001 International Religious Freedom Report*, Oct. 26, 2001, <http://www.state.gov/g/drl/rls/irf/2001/index.cfm?docid=5529> [hereinafter 2001 Introduction]; U.S. Dep’t of State, *Executive Summary, 2001 International Religious Freedom Report*, Oct. 26, 2001, <http://www.state.gov/g/drl/rls/irf/2001/index.cfm?docid=5529> [hereinafter 2001 Summary].

382. 2001 Preface, *supra* note 381.

possible.”³⁸³

The Introduction began with a quote from President Bush’s speech of May 3, 2001, to the American Jewish Committee: “[F]reedom of religion is . . . the first freedom of the human soul. . . . We must stand for that freedom in our country. We must speak for that freedom in the world.”³⁸⁴ The Executive Summary (“2001 Summary”) noted that although all nations should meet the international standards they have agreed to, many do not.³⁸⁵ “Each nation is accountable to the international community for its failure to meet these standards.”³⁸⁶ The 2001 Summary continued, “The United States acknowledges and accepts its responsibility to meet these standards in the

383. *Id.*

384. 2001 Introduction, *supra* note 381 (quoting *Speech to the American Jewish Committee*, 37 PUB. PAPERS 18 (May 3, 2001) [hereinafter Bush Remarks]). Horowitz described this speech as a “high-water mark” in the battle against religious persecution. Interview with Michael J. Horowitz, *supra* note 22. President Bush spoke of the “deep American commitment to freedom of religion” and of President Washington’s letter to the Touro Synagogue, arguing for “a respect for the inherent and equal right of everyone to worship God as they think best.” Bush Remarks, *supra*. “Over the years, Washington’s rejection of religious bigotry has matured from a foundation of our domestic politics into a guiding doctrine of our foreign policy.” *Id.* Bush congratulated the American Jewish Committee for having been an early supporter of the Act. Then he told the story of Theodore Roosevelt’s willingness to denounce a Russian program and offend the czar. To his critics, Roosevelt said “that there were crimes so monstrous that the American conscience had to assert itself.” Bush added: “And there still are.” *Id.* The President then named nations that regularly commit these crimes against the freedom of religion:

Sudan is a disaster area for human rights. . . . We must turn the eyes of the world upon the atrocities in the Sudan. . . . [M]y [A]dministration will continue to speak and act for as long as the persecution and atrocities in the Sudan last. . . . Iraq murders dissident[s]. . . . Iran . . . [mistreats] Jews, Christians, and adherents of the Baha’i faith. The Burmese junta tortures adherents of Islam, Buddhism, and Christianity. Cuba monitors and harasses . . . priests and ministers. Afghanistan’s Taliban government has horrified the world with its disdain for fundamental human freedoms, epitomized by its destruction of ancient Buddhist works of art. And the newly independent republics of central Asia impose troubling limits on religious expression and missionary work.

Id. Bush also spoke at some length about “alarming reports” from China, before concluding with the passage quoted above and at the top of the introduction to the 2002 Report. *Id.*

385. 2001 Summary, *supra* note 381.

386. *Id.*

safeguarding and protection of religious liberty.”³⁸⁷

Violators of religious freedom were discussed according to the same five categories used in the 1999 and 2000 Reports.³⁸⁸ Because so many of the nations and conditions did not change, few will be discussed here. Afghanistan topped the list of totalitarian regimes.³⁸⁹ “Through rigid enforcement of its strict interpretation of Islamic law, . . . the Taliban has caused a marked deterioration of religious freedom in the territory under its control.”³⁹⁰ For example, the Taliban persecuted believers, killed Hazaras, a Shi’a ethnic group, and “despite pleas from many parts of the world, . . . destroyed two giant Buddhist statues of immense cultural value.”³⁹¹ In addition, non-Muslims were forbidden from building places of worship or proselytizing.³⁹² Leaving Islam was also a capital offense.³⁹³ Legislation passed in 1999 required non-Muslims to identify their houses and to wear identifying clothing, and prohibited non-Muslims from living in the same buildings as Muslims.³⁹⁴

China was another nation in which “[t]he situation for religious freedom and spiritual movements worsened in the past year.”³⁹⁵ The Communist government intensified its campaign against the Falun Gong movement, and some practitioners died in prison “due to torture and other kinds of mistreatment.”³⁹⁶ Secret house churches suffered more frequent raids and persecution, and security forces used threats, destruction of property, extortion, and detention to crack down on unregistered

387. *Id.*; see discussion, *supra* Part IV.

388. 2001 Summary, *supra* note 381.

389. *Id.* The list is in alphabetical order within each category. *Id.*

390. *Id.*

391. *Id.*

392. *Id.*

393. *Id.*

394. *Id.* The 2001 Summary made no mention of terrorism or bin Laden. *Id.* For a discussion of the U.S. pre-September 11 negotiations with the Taliban regarding the terrorism of bin Laden, see Christopher L. Gadoury, Comment, *Should the United States Officially Recognize the Taliban? The International Legal and Political Considerations*, 23 HOUS. J. INT’L L. 385, 409–415 (2001).

395. 2001 Summary, *supra* note 381.

396. *Id.*

churches and their members.³⁹⁷

In 2001, North Korea was listed as a CPC for the first time, due in part to the beatings, arrests, and killings of underground church members because of their religious beliefs.³⁹⁸ “In particular religious persons who proselytize or who have ties to overseas evangelical groups operating across the border with China appear to have been arrested and subjected to harsh penalties, including death.”³⁹⁹

The discussion of Sudan began by noting that the government continued to restrict the activities of Christians, followers of indigenous religions, and some Islamic groups.⁴⁰⁰ In addition, non-Muslims were forbidden to proselytize, apostasy was a capital offense, Catholic priests had trouble getting visas renewed, and non-Muslims were treated as second-class citizens.⁴⁰¹ Then the violations became more egregious, noting the

intentional bombings of civilian targets, the burning and looting of villages, and the killings, rapes, and arbitrary arrests and detentions of civilians, most of whom were practitioners of traditional indigenous religions or Christians. The forced abduction of women and children and the taking of slaves by slave traders supported the Government in war zones, and their transport to parts of central and northern Sudan and sometimes beyond, continued and was due in part to the victim’s religious beliefs.⁴⁰²

In addition to Sudan, allies in the war on terrorism were also listed among those nations where the State is “hostile to certain minority religions . . . and implement[s] policies designed to intimidate certain religious groups, cause their adherents to

397. *Id.*

398. *Id.*; Douglas, *supra* note 376.

399. 2001 Summary, *supra* note 381. Horowitz described North Korea as a “lunatic asylum.” “North Korea and Sudan [are] two places where your life’s at stake if you have a Bible.” Interview with Michael J. Horowitz, *supra* note 22.

400. 2001 Summary, *supra* note 381.

401. *Id.*

402. *Id.*

convert to another faith, or cause their members to flee.”⁴⁰³ Those allies included: Pakistan, Saudi Arabia, Turkmenistan, and Uzbekistan.⁴⁰⁴

The 2001 Report praised Mexico for “[s]ignificant [p]ositive [d]evelopments in [r]espect for [r]eligious [f]reedom.”⁴⁰⁵ The government held numerous meetings to address religious freedom issues and signed agreements with six southern states to promote “prompt, efficient, and coordinated action in religious affairs.”⁴⁰⁶ Among many other developments, Protestant Evangelical and Catholic representatives in Oaxaca ended 47 years of tension by signing a peace accord.⁴⁰⁷ Seventeen other nations were also lauded for “[p]ositive [s]teps in [r]espect for [r]eligious [f]reedom.”⁴⁰⁸

D. Reactions to the 2001 Report

China, the newest member of the WTO,⁴⁰⁹ expressed “barely-concealed rage” at the 2001 Report.⁴¹⁰ Chinese Foreign Ministry Spokesman Sun Yuxi said the 2001 Report “distorted the facts and made gratuitous accusations [about] China’s banning of the Falun Gong and other religious policies.”⁴¹¹ Sun called the 2001 Report “a grave violation of international laws and international relations and a gross interference in China’s internal affairs.”⁴¹² He said the United States had no right to publish this report and to “fabricate stories to interfere in another country’s religious cause.”⁴¹³ “The United States is not entitled to issue

403. *See id.*

404. *See id.*; World News Tonight (ABC television broadcast, Mar. 4, 2002) (naming U.S. allies in the anti-terrorism efforts).

405. 2001 Summary, *supra* note 381.

406. *Id.*

407. *Id.*

408. *Id.*

409. *See* Blustein & Chandler, *supra* note 302.

410. *China Fumes at ‘Irresponsible’ U.S. Religious Freedom Report*, AGENCE FRANCE PRESSE, Oct. 30, 2001, 2001 WL 25050318 [hereinafter *China Fumes*].

411. *Id.*

412. *Id.*

413. *Section on China of U.S. Annual International Religious Freedom Report Distorts Facts*, XINHUA, Oct. 30, 2001, 2001 WL 29712968 [hereinafter *Report Distorts Facts*].

any international freedom reports or to make irresponsible accusations or point its fingers at other countries.”⁴¹⁴ Sun further argued “that China ha[d] made great progress in developing the religion cause following the founding of the People’s Republic of China—especially in the last two decades.”⁴¹⁵ “The Chinese government protects citizens’ freedom of religious beliefs . . . but it will never allow any group or individual to conduct illegal activities or commit crimes in name of religion.”⁴¹⁶ “We urge the United States to . . . stop using the issue of religion as a mean [sic] to interfere in China’s internal affairs, [thus delivering] another blow to U.S.-China relations.”⁴¹⁷

North Korea was also unhappy. “The U.S. is invoking its own law as if it were the judge on religious issues.”⁴¹⁸ A Foreign Ministry spokesman further denounced the 2001 Report as “groundless mud-sliding” [sic], and called on Washington to admit that its forces destroyed religious buildings and killed religious personnel during the Korean War.⁴¹⁹ He then claimed the United States was a threat to the survival of Islam: “Many Muslims are [being] killed by the U.S. forces’ bombing of Afghanistan at this moment and, consequently, the very destiny of Islam is threatened by the U.S.”⁴²⁰ Later that week, North Korea demanded its name be removed from the list of CPCs, calling the description an “unpardonable provocation.”⁴²¹ In its defense, North Korea’s Religionists Council cited a 1995 courtesy call made to President Clinton by the head of the country’s Catholic Association and the approval of several

414. *China Fumes*, *supra* note 410.

415. *Report Distorts Facts*, *supra* note 413.

416. *China Says U.S. Religious Freedom Report “Distorts the Facts,”* BBC MONITORING, Oct. 30, 2001, 2001 WL 29653950.

417. *China “Deeply Resents,” “Firmly Opposes” U.S. Report on Religious Freedom*, BBC MONITORING, Oct. 31, 2001, 2001 WL 29654467.

418. *NK Blasts U.S. Over Religion*, KOREA TIMES, Nov. 1, 2001, 2001 WL 25565652. A Foreign Ministry spokesman was quoted as saying this by the official Korea Central News Agency, which is monitored via the Internet. *Id.*

419. *Id.*

420. *Id.*

421. *N.K. Demands U.S. Remove it From Religious Suppression Report*, KOREA HERALD, Nov. 5, 2001, 2001 WL 27049119.

religious services conducted by the Reverend Billy Graham.⁴²² “Everybody knows our religionists enjoy freedom of religion without discrimination.”⁴²³

Reactions at home were less outrageous, if no less passionate. The State Department was accused of “sparing anti-terrorism allies such as Saudi Arabia, Turkmenistan and Uzbekistan.”⁴²⁴ “Clearly, the [A]dministration doesn’t want to offend key allies in the [anti-terrorism] coalition through excessive truth-telling,” argued Washington advocacy director for Human Rights Watch, Tom Malinowski.⁴²⁵ Congressman Christopher Smith wrote that, in spite of good rhetoric from the White House, “when the rubber really meets the road, there is a disconnect between the . . . [goal] of steadfastly promoting religious freedom and the immediate goal of creating the appearance of a global mandate.”⁴²⁶ Smith complained that notorious violators of religious freedom were not included in the list of CPCs.⁴²⁷ “I can think of no other reason for this abandonment of principles, other than for fear of offending our new ‘partners’ in this war against terror.”⁴²⁸ Smith chided the State Department for neglecting to name as CPCs nations that persecute Muslims.⁴²⁹ Such a designation would have been evidence that the war on terrorism was not a war on Islam.⁴³⁰ The Human Rights Watch agreed: “By not designating Uzbekistan a [CPC], the [A]dministration missed an easy opportunity to show that the war on terrorism cannot be a

422. *Id.* The year of those services was not given. *See id.*

423. *Id.* At the date of this writing, no other foreign government reactions to the 2001 Report could be located.

424. Steven Mufson, *U.S. Cites 6 Nations in Report on Religious Intolerance*, WASH. POST, Oct. 27, 2001, at A28.

425. *Id.*

426. Christopher H. Smith, *Religious Freedom, a Casualty of War?: Human Rights Violators Jump Into America’s Anti-Terror Coalition*, WASH. TIMES, Nov. 27, 2001, at A15. “Over the agonizing weeks since September 11, I have observed a trend in U.S. foreign policy that is of great concern: a willingness to allow religious freedom and other human rights to suffer in order to combat terrorism abroad.” *Id.*

427. *Id.*

428. *Id.*

429. *See id.*

430. *Id.*

campaign against Islam.”⁴³¹ Malinowski went further, expressing the fear that for the United States: “[t]he irony is that getting too close to countries that crush religious freedom may be more dangerous for America now, . . . particularly when the religion crushed is Islam.”⁴³² “If the United States is going to ally itself with Uzbekistan, it has to find a way to avoid aligning itself with Uzbekistan’s brutal policies,” he said later.⁴³³

Shortly after the release of the 2001 Report, the Commission expressed its concern that “some new, less-than-savory allies in the war on terrorism might now feel they have license to continue violating religious freedom.”⁴³⁴ Similarly, Laila al-Marayati, a Muslim and former Commission member, warned that the war on terrorism is on a “collision course” with the U.S. commitment to religious freedom.⁴³⁵ Michael Young, the new Chairman of the Commission said, “If we abandon our values to fight this battle, the terrorists will already have won.”⁴³⁶

In November of 2001 the Commission asked Secretary of State Colin Powell to guarantee freedom of religion in a “post-Taliban Afghanistan.”⁴³⁷ “Without strong U.S. leadership to ensure the protection of religious freedom and tolerance, we fear

431. *Id.*

432. See Jane Lampman, *Who’s On, Who’s Off?*, CHRISTIAN SCI. MONITOR, Nov. 1, 2001, at 14.

433. Stephanie Casler, *Panel Says Uzbekistan Violates Human Rights*, WASH. TIMES, Nov. 23, 2001, at A2. Not only are Muslims arrested and tortured for attending unsanctioned mosques or meeting privately for prayer and study, but Christians have also been severely persecuted. *Id.* Others complain the United States is going to great lengths to protect Muslims in the States while ignoring the jihad or “religious war” being waged against Christians by adherents to radical Islam: “The Congress . . . is apparently oblivious to the [C]ommission’s reports of anti-Christian repression and violence—some of it state-sanctioned—in Saudi Arabia, Egypt, Syria, Turkmenistan, Malaysia, Indonesia and Pakistan.” Oliver North, *Striking Coincidence*, WASH. TIMES, Nov. 4, 2001, at B3.

434. Lee Davidson, *Allies’ Stand on Religion Questioned*, DESERET NEWS, Nov. 27, 2001, at A1.

435. See Laila Al-Marayati, *Casting the Net Too Widely*, CHI. TRIB., Oct. 21, 2001, at C19.

436. Davidson, *supra* note 434.

437. See James Morrison, *Central Asian Stability*, WASH. TIMES, Nov. 27, 2001, at A10.

that egregious persecution will soon again be the norm.”⁴³⁸ Chairman Young admitted that the United States should not impose its will on a new regime, and recognized the complexity of forming a broad-based Afghan government.⁴³⁹ Consequently, he urged Powell to “promote . . . the idea of a future Afghan political system that practices religious tolerance.”⁴⁴⁰ Finally, Young said the Administration had failed to make religious freedom a priority.⁴⁴¹

Responding to these complaints, State Department spokesman Richard Boucher said officials “did not pull any punches to avoid disturbing the anti-terrorism coalition.”⁴⁴² He noted that China and Sudan were both named CPCs, even though they have provided “good cooperation” in the war on terrorism.⁴⁴³ Boucher also admitted that “there is, essentially, no religious freedom in Saudi Arabia,” because all religions but Islam are prohibited.⁴⁴⁴ However, he argued, the situation was unchanged from last year, so one would not expect the designation to change.⁴⁴⁵ In Turkmenistan, he explained, “the harassment of unregistered religious groups has continued and, in fact, some say intensified there, but we didn’t feel that they met the standard to be designated this year.”⁴⁴⁶

Paula Dobriansky, Undersecretary of State for Foreign Affairs, urged critics not to confuse progress on terrorism “with a desire to turn a blind eye to other issues.”⁴⁴⁷ “We have not . . . suppressed our objections to their human-rights violations because of this increased cooperation. We . . . will continue to

438. *Id.* The Kyrgyzstan Ambassador also appealed to the State Department. “Without a solution to the Afghan problem, there will be no security in Central Asia. . . . September 11 changed everything.” *Id.*

439. *Id.*

440. *Id.*

441. *Id.*

442. Norman Kempster, *7 Nations Labeled Oppressors of Faith Policy*, L.A. TIMES, Oct. 27, 2001, at A18.

443. *Id.* Boucher cited Iran as a third nation whose cooperation did not prevent its designation as a CPC. Mufson, *supra* note 424.

444. *See* Mufson, *supra* note 424.

445. *See id.*

446. *Id.*

447. Davidson, *supra* note 434.

raise our concerns with our partners, regardless of their level of counterterrorism cooperation. They are not mutually exclusive goals.”⁴⁴⁸ She then argued that these new alliances actually provide increased opportunities to raise these concerns.⁴⁴⁹ In addition, the goal of expanding international religious freedom does not run counter to the war on terrorism.⁴⁵⁰ On the contrary, expanding religious freedom is instead a tool the Administration plans to use to *fight* terrorism.⁴⁵¹ “[Terrorism] is at its core a pure form of anti-religion. At its best, religion is, therefore, an antidote to [terrorism], not its cause.”⁴⁵² Boucher agreed. “Things that are important to the United States in terms of human rights, in terms of religious freedom, haven’t changed. . . . Respect for human rights is essentially part of the tools we use against terrorism as well.”⁴⁵³

E. A Final Word

For some there is hope. In the 1980’s when the “Soviet-style government” was cracking down on believers in Poland, Cesariusz Czaplą was arrested several times.⁴⁵⁴ He escaped and eventually reached West Miami, where he now has a wife, two children, and a job in a bank.⁴⁵⁵ But the real victory is back home:⁴⁵⁶ “Not only did the Marxist regime fall; his old [Catholic] comrades are now respected leaders: doctors, lawyers, members of the parliament. ‘We won. . . . The government couldn’t beat the ideas out of our heads.’”⁴⁵⁷ What would he say to persecuted believers around the world? “I would tell them, hold on to your ideas. Someday, the government will disappear, and you will be valued members of society. They will need your strength and

448. *Id.*

449. *Id.*

450. *See id.*

451. *Id.*

452. *See id.*

453. Mufson, *supra* note 424.

454. James D. Davis, *Christian Persecution Thrives; Report: More Than 160,000 Die for Faith Each Year*, SUN-SENTINEL, Nov. 4, 2001, at 1F.

455. *Id.*

456. *See id.*

457. *Id.* (quoting Cesariusz Czaplą).

experience. You're going to win."⁴⁵⁸

IX. CONCLUSION: FIRST THEY CAME FOR THE JEWS.⁴⁵⁹

The International Religious Freedom Act has the ability to promote and protect religious freedom around the world. Many believe that recent civil rights movements at home and abroad have reduced racial discrimination.⁴⁶⁰ However, the number and severity of acts of religious discrimination are increasing,⁴⁶¹ and not just in third-world countries.⁴⁶² Even democratic nations like France and Germany have policies in place that make life more difficult for religious minorities.⁴⁶³ The Act and the work it has generated have the power to improve this situation. Few countries welcome the evaluation required by the reports, and many resist the "arrogant powers"⁴⁶⁴ who sit in judgment over other nations. Yet for those who understand the plight of the persecuted, the evaluation is the lesser of two evils. A detailed report is a force with which to be reckoned. If no one hears about the violations, there will be no motivation to change. But a well-

458. *Id.*

459. Martin Niemoller, a German Protestant pastor, had the courage to battle religious persecution. For that battle he spent seven years in concentration camps, often in solitary confinement. *See* Simon Wiesenthal Center, Multimedia Learning Center Online, at <http://motlc.wiesenthal.org/pages/t053/t05389.html> (last visited Mar. 23, 2002). After he was released, he helped issue the "Stuttgart Confession of Guilt," acknowledging the collective war guilt of those who had done nothing. *See* Museum of Tolerance Multimedia Learning Center at <http://motlc.wiesenthal.org/text/x00/xr0076.html> (last visited Mar. 23, 2002). Though he had been imprisoned for his efforts, Niemoller believed he shared in that guilt, and he wrote these famous words:

First they came for the Jews. I was silent. I was not a Jew.

Then they came for the Communists. I was silent. I was not a Communist.

Then they came for the trade unionists. I was silent. I was not a trade unionist.

Then they came for me. But there was no one left to speak for me.

Id.

460. William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 475 (2001) (discussing various civil rights movements).

461. *See* 1999 Summary, *supra* note 119.

462. *See id.* (detailing religious stigmatization by industrialized nations like France, Austria, Japan, Belgium, and Germany).

463. *See id.*

464. *See supra* text accompanying note 216.

written report—supported by appropriate press releases and attention from national leaders—will make sure the world hears. What is done in secret will be shouted from the rooftops. Change will follow.

A. The Executive Summary Should Not Mention Improvements Without Noting the Often-Severe Context in Which Those Improvements Have Been Made

As Kazemzadeh testified, mentioning improvements in the 2000 Summary without the context of violations can lead to or even promote misconceptions.⁴⁶⁵ The improvements section of the 2000 Summary makes interesting material easy to find. But it could be greatly improved by adding brief notes about the often-severe violations that form the backdrop for those improvements. Setting one man free while ten others remain in jail⁴⁶⁶ is not much of an improvement, and in a report of such length, the two facts must be mentioned together — few can be expected to read an entire report carefully enough to place every fact in context.

B. Honest, Thorough Reporting of Violations Is More Important Than Sanctions, and the Reluctance to Use Sanctions Should Not Be Allowed to Weaken The Report

Sanctions have not been popular with the Clinton or Bush Administrations.⁴⁶⁷ But the Act calls for them in certain situations.⁴⁶⁸ Not implementing sanctions for severe violations of religious freedom, when we do implement them for other human rights abuses, contradicts the Act's assertion that religious freedom is a fundamental right.⁴⁶⁹ U.S. officials will always speak highly of a theoretical religious freedom. But practical actions speak louder than words. Even worse, an administration that wishes to avoid sanctions altogether may be tempted to not report certain abuses. A thorough report without accompanying

465. See *supra* text accompanying note 282.

466. See Shield's discussion of Uzbekistan *supra* Part VII.

467. See *supra* text accompanying notes 208, 275.

468. 22 U.S.C. § 6445(a)(1)-(15) (1998).

469. *Id.* § 6445(a)(1); see also *supra* note 5 (defending the Act's position).

sanctions is more valuable than one that hides the most severe violations of those we do not wish to sanction. Sweeping violations under the rug allows them to continue and promotes a double-standard which the watching world will know is being applied more kindly to America's friends, like Saudi Arabia, and more harshly to her foes, like Iraq.⁴⁷⁰ The Act is flexible enough that no administration will ever be bound to levy sanctions. How hard is it to write a waiver? Honest reporting of violations, however, is a must and should never be compromised.

C. Countries Whose Actions Merit Designation as CPCs Should Be So Designated, with Little Concern for Their Current Diplomatic Relations with the United States

There is no reason not to designate as a CPC every nation whose actions merit such "particular concern."⁴⁷¹ Whatever risk such "name calling" may involve, we can afford it. It is required by law, and only sophistry or cowardice will prevent the designation of every nation that engages in or tolerates "gross violations of religious freedom."⁴⁷² After all, the designation is reserved for only the worst violators.⁴⁷³ Yet, countries that engage in or tolerate arrests, executions, torture, rape, and the genocide of thousands based primarily on religion have not been designated.⁴⁷⁴ How much worse can the violations be?

While brothers and sisters and fathers and mothers around the world vanish due to religious persecution, the U.S. government remains. We must not be silent. We should speak out for enslaved Muslims. We should demand an end to the murder of Tibetan monks. We should expect the release of house church leaders. And we should marshal forces to end the torture, rape, and murder of the faithful around the world. Those forces include the appropriate remedies of a thorough report, the designation of countries of particular concern, and the removal of foreign aid—especially non-humanitarian foreign aid—from

470. See, e.g., *supra* text accompanying note 200.

471. See *supra* text accompanying note 102 (citing 22 U.S.C. § 6442(b)(1)(A)).

472. Congressional Hearings, *supra* note 265.

473. See *supra* text accompanying note 102 (citing 22 U.S.C. § 6442(b)(1)(A)).

474. See, e.g., 1999 Fact Sheet, *supra* note 116 (discussing atrocities in Serbia).

those countries who tolerate religious persecution.

D. Salient Words from the Leader of a Movement: Michael Horowitz Talks About the Act Four Years Later

Just before it was sent to the press, Michael Horowitz read this article. He clarified several things and offered two very helpful comments. The first was his previously noted objection to the word “sanction.” I agree—the Act is about setting some conditions on U.S. foreign aid, “not about taking away some right.”⁴⁷⁵

His second comment provided great insight. He explained that it is a mistake to focus on the State Department Reports—lengthy documents no one ever reads anyway.⁴⁷⁶ The real story here is the Commission.⁴⁷⁷ “The State Department will do what the State Department is pushed to do by American public opinion and not more than that. Ever.”⁴⁷⁸ The bipartisan and independent Commission is much more important than the State Department, because it is not subject to political pressures.⁴⁷⁹ In fact, it is the Commission alone that has the power to educate the country and galvanize public opinion.⁴⁸⁰

Horowitz noted that he had been excited about the Commission since he first discovered it in the Nickles bill.⁴⁸¹ I asked Horowitz if the Commission had done all he had hoped. He said no.⁴⁸² He explained that he had originally envisioned something like the early days of the Civil Rights Commission—an independent body moving about the country, holding public hearings in large halls, and raising awareness at the grass-roots level.⁴⁸³ For the same reason, Horowitz said that the Act has not

475. Interview with Michael J. Horowitz, *supra* note 22 (emphasis added).

476. *Id.*

477. *Id.* “I see the statute, not as State Department reports but as Commission action.” *Id.*

478. *Id.*

479. *Id.*

480. *Id.*

481. *Id.* With the exception of the Commission idea, Nickles bill was a “utopian mishmash” and largely unworkable. *Id.*

482. *Id.*

483. *Id.*

done all that it set out to do: “the Commission has not lived up to its promise. . . . The Commission must put this issue out there” and arrest the attention of believers across America, moving them to action.⁴⁸⁴ He admitted that it has been difficult to get the national media to pay any attention to this issue “because of their innate hostility to evangelical believers.”⁴⁸⁵ However, if the Commission had been true to its role, it would be “holding hearings on Sudan in Chicago and getting 10,000 church members just to jam-pack the hearing room.”⁴⁸⁶ Then they would go to another city and hold a meeting on Pakistan.⁴⁸⁷ Then they would have a meeting in a third city to draw attention to the atrocities in North Korea.⁴⁸⁸ “That’s the real Commission role and that hasn’t happened.”⁴⁸⁹ In addition, the Commission should work closely with denominational newsletters, Christian radio, and the many other outlets that would be interested in religious freedom. “I’d say the Commission has at best gotten a ‘C’ in terms of communicating to the country at large and the people in the pews what is going on.”⁴⁹⁰

Horowitz acknowledged that some progress has been made:

The press is considerably more open on this issue. We’ve made some progress, no question about it. It used to be when in Indonesia, Muslim groups were murdering Christians, the story would be “ethnic conflict” and the word “Christian” would never appear. . . . The *Baltimore Sun* had a four-part series . . . on slavery in Sudan. It was an astonishing series about how you could buy and sell black slaves in Sudan. And it was so indicative—the word “Christian” never appeared. They talked as if it were some “ethnic conflict” because the press was, by and large, part of an establishment that defined Christianity in terms of the sins committed in its name. . . . But I think we’re

484. *Id.*

485. *Id.*

486. *Id.*

487. *See id.*

488. *See id.*

489. *Id.*

490. *Id.*

changing that somewhat.⁴⁹¹

Horowitz called President Bush's speech to the American Jewish Committee in May of 2001,⁴⁹² "a high-water mark in the fight to gain some concern for religious freedom."⁴⁹³

And the State Department acted and wished [the speech] never had been delivered. Just like the State Department went nuts when I was in government and Ronald Reagan called the Soviet Union the "Evil Empire." They just thought the world would end. Instead it was a powerful, historic speech. Well, I think the religious persecution speech didn't yet have the legs it should have had and I think the Commission could have done a better job. And as we were developing that momentum however, September 11th came and we're still reorganizing from the events of September 11th.⁴⁹⁴

The Commission must do more. "The focus of the statute is to have a full-time educational arm of distinguished citizens and a first-rate staff that are sending out the word about religious persecution around the world. And the job hasn't been [done] well enough."⁴⁹⁵

It is not only the Commission and others in government that Horowitz would move to action; he also had advice for all who care about religious persecution, particularly Christians: get involved.⁴⁹⁶ Read, pray, but also act.⁴⁹⁷ Noting that the chief opponent to the Sudan Peace Act is the retiring Senator Phil Gramm, Horowitz suggested churches in Texas get organized.⁴⁹⁸ "Now I don't mean to politicize churches. Believing churches don't make the fatal mistake of thinking that God is some political platform. [But] [o]n the other hand, these churches have *extraordinary* power." Why not organize churches and

491. *Id.*

492. Bush Remarks, *supra* note 384.

493. Interview with Michael J. Horowitz, *supra* note 22. Horowitz noted, "Once again, the press didn't cover [the speech] particularly." *Id.*

494. *Id.*

495. *Id.*

496. *See id.*

497. *See id.*

498. *Id.*

invite the candidates to debate issues of religious freedom and Sudan specifically?⁴⁹⁹

The power is in the hands of this movement to make things happen. When this movement gets officially aroused, nothing's going to stand in [its way]. Last time I looked, there were more churches than chamber of commerce buildings in every congressional district. Democracy really does work. But it means that . . . Christians have got to organize themselves more effectively.

The difference between some Evangelicals and this Old Testament guy . . . [is that] some people use prayer to duck personal responsibility, as if prayer alone is the answer. . . . [But] I pray, and I think Chuck Colson prays, and some Christian leaders pray, for God to provide us with an opportunity to make a difference by our own action and our own moral commitment. I wish I saw more of that in the Christian community.

That is, [if you have] prayer and then you get a warm feeling about it in your belly because you prayed [and you do nothing further]—that's not going to alter the landscape in my judgment. But prayer for the strength to make a difference by your own moral conduct in a democracy . . . [that's] going to succeed.⁵⁰⁰

*Steven Wales*⁵⁰¹

499. *Id.*

500. *Id.*

501. This Comment received the Baker & McKenzie (Dallas) L.L.P. Writing Award. This paper is dedicated to the author's wife Wendy, and his children Twila and Marshall: *you are a tower of refuge.*