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INTERNATIONAL RELIGIOUS FREEDOM



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United States Commission on International Religious Freedom**

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ON THE COVER: Members of Pakistan's Women Action Forum in Lahore, Pakistan rally against the presence of Taliban and militants in the northwest of Pakistan on Thursday, February 12, 2009. The banners condemn religious extremism, domestic violence, and the burning down of girls' schools in Swat. (AP Photo/K.M. Chaudary)

PROMOTING INTERNATIONAL RELIGIOUS FREEDOM THROUGH MULTILATERAL INSTITUTIONS

The International Religious Freedom Act of 1998 (IRFA) specifically cites U.S. participation in multilateral organizations as an avenue for advancing freedom of religion or belief, which is enshrined in numerous international human rights declarations and conventions.

The 192 member states of the United Nations have agreed, by signing the UN Charter, to “practice tolerance” and to “promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” These fundamental freedoms include the freedom of thought, conscience, and religion, which is protected and affirmed in numerous international human rights instruments, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

The 56 participating States of the Organization for Security and Cooperation in Europe (OSCE), comprising Eastern and Western Europe, the states of the former Soviet Union, the United States, and Canada, also have committed themselves to uphold extensive standards to protect freedom of religion or belief and to combat discrimination, xenophobia, intolerance, and anti-Semitism. Freedom of thought, conscience, and religion or belief is singled out in the OSCE founding document, the 1975 Helsinki Final Act, and in many subsequent political agreements.

The United Nations

The UN Human Rights Council

In 2006, the UN Commission on Human Rights was replaced by a new body, the UN Human Rights Council, which meets more often, is marginally smaller, and has certain new procedures such as the “universal periodic review” (UPR), to

which all UN member states are subject. The Human Rights Council was intended to address and correct the perception that the Commission on Human Rights unfairly singled out some states for repeated scrutiny while ignoring many others. The UPR process offers UN members the opportunity to assess the human rights performance of all 192 member states, some of whose records have

never before been subject to human rights review by an intergovernmental body.

In February 2009, the Commission wrote to Secretary of State Clinton to urge the United States to ask questions and make recommendations concerning key countries being reviewed in that month’s UPR session, such as China and Saudi Arabia, that are designated as “countries of particular concern” under the International Religious Freedom Act. While the Bush Administration participated in the initial sessions of the UPR process, this was halted in the latter part of 2008 as part of that administration’s policy of not engaging with the Human Rights Council except in narrow circumstances. The Obama Administration did not speak in the February UPR session, but on March 31, 2009, the State Department announced that the U.S. will run for election to the Council. The Commission hopes that the new administration will take advantage of the opportunity, in future sessions of the UPR, to ask hard questions of nations whose records on religious freedom and related human rights do not meet UN standards. In various country-specific chapters of this report, the Commission also recommends that the United States should vigorously demand scrutiny of such states, with special attention to freedom of religion and related human rights.

The Special Rapporteur on Freedom of Religion or Belief

In 1986, on the initiative of the United States, the former UN Commission on Human Rights (the aforementioned predecessor to the Human

Rights Council) appointed an independent expert, or Special Rapporteur, to investigate and report on instances of religious intolerance and violations of the internationally-protected right to freedom of religion or belief around the world. The Special Rapporteur on Freedom of Religion or Belief monitors this fundamental freedom worldwide, communicates with governments about alleged violations, conducts country visits, and, perhaps most importantly, brings religious freedom concerns to the UN and public attention. The Special Rapporteur's mandate was most recently renewed by the Human Rights Council in December 2007, at which USCIRF participated as part of the U.S. delegation.

At that session, the Organization of the Islamic Conference (OIC)—a regional organization headquartered in Jeddah, Saudi Arabia, comprised of 57 nations with Muslim majority or significant Muslim populations—attempted to amend the resolution extending the Special Rapporteur's mandate to remove a reference to the right of individuals to change their religion. The U.S., European Union members, and Canada mounted a vigorous opposition effort, and ultimately the resolution was passed without the OIC's desired change. However, because of the rejection of their request, the OIC members of the Council abstained.¹

The position of Special Rapporteur was held from 1986 to 1993 by Mr. Angelo d'Almeida Ribeiro of Portugal, from 1993 to 2004 by Mr. Abdelfattah Amor of Tunisia, and since 2004 by Ms. Asma Jahangir of Pakistan. Over the years, the successive Special Rapporteurs have visited and reported on the religious freedom situations in 25 countries: China, Pakistan, Iran, Sudan, Greece, India, Australia, Germany, the United States, Vietnam, Turkey, Bangladesh, Argentina, Algeria, Georgia, Romania, Nigeria, Sri Lanka, France, Azerbaijan, the Maldives, Angola, Israel and the Palestinian territories, India, and Turkmenistan. The Special Rapporteur reports to the Human Rights Council and the Third Committee of the UN General Assembly each year. During the 2008 interactive dialogue at the Third Committee, the U.S. Ambassador-at-Large for International Religious Freedom for the first time participated in

the discussion and spoke publicly in support of the Special Rapporteur's work.

The Campaign to Protect Religions from Alleged Defamation

Over the past several years, the Commission has become increasingly concerned about the campaign by some UN member states to create an international legal principle protecting religions, rather than individuals, from alleged "defamation," which would violate key principles that guarantee the freedoms of religion and expression. At the Human Rights Council, these efforts have been led by Pakistan, as chair of the OIC. OIC member Egypt has played a leading role at the General Assembly in New York, as well as in Geneva.

In recent years, and particularly since the controversy over a Danish newspaper's publication of cartoons of the Prophet Muhammed in September 2005, some countries with predominately Muslim populations have increasingly demanded formal measures to combat the so-called "defamation of religions," a flawed concept without basis in international law. Though justified by its proponents as protecting religious practice and promoting tolerance, the "defamation of religions" concept in fact promotes intolerance and human rights violations, including violations of religious freedom and freedom of expression. The concept subverts international human rights law by subordinating individual rights to the purported rights of religions. It also empowers repressive governments and religious extremists to suppress and punish whatever they deem to be offensive or unacceptable speech about a particular, favored religion or sect. The concept has been used in some states to justify actions that selectively curtail civil dissent, halt criticism of political or religious structures, and restrict the religious speech of members of minority faith communities, dissenting members of the majority faith, and persons of no religious faith.

The "defamation of religions" concept seeks to export the blasphemy laws found in some OIC countries to the international level. Under these laws, criminal charges can be levied against individuals for

defaming, denigrating, insulting, offending, disparaging, and blaspheming Islam, often resulting in gross human rights violations.² For example, in Pakistan, the domestic law makes blasphemy against Islam a criminal offense subject to severe penalties, including death. These broad provisions have been abused by extremists to intimidate members of religious minorities, including members of disfavored minority Muslim sects, and others with whom they disagree. Blasphemy allegations in Pakistan, which are often false, have resulted in the lengthy detention of, as well as threats of violence and actual violence against, the accused. Even persons who have been acquitted of blasphemy have been forced into hiding or to flee the country because of fears of vigilante violence. Recent cases in Pakistan include the following: In June 2008, four Ahmadis were arrested and charged with blasphemy following a dispute over the construction of an Ahmadi prayer center and protests from local mullahs. In May 2008, authorities arrested a Christian after a mob that suspected him of committing blasphemy attacked his home; local Islamist groups reportedly have threatened to kill the man if he is acquitted.

Since 1999, the OIC has brought annual resolutions to the UN Human Rights Council and its predecessor, the UN Commission on Human Rights, calling on UN member states to outlaw “defamation of religions”—most recently, in March 2009. Similar resolutions have been adopted at the General Assembly each year since 2005. At the March 2008 Human Rights Council session, the OIC succeeded in amending the mandate of the Special Rapporteur on the Freedom of Opinion and Expression to require that expert “to report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination”—by which they mean instances of “defamation of religions.” The OIC has indicated that its goal is the adoption of a binding international covenant to protect religions, particularly Islam, from “defamation.”

International support for the flawed “defamation of religions” concept appears to be eroding, however. While the resolutions continue to pass, the last three times the world community has considered these resolutions, the votes in favor

diminished, resulting in a plurality instead of a clear majority of all members. At both the March 2008 and March 2009 Human Rights Council sessions, as well as the December 2008 General Assembly, the no votes and abstentions combined outnumbered the yes votes, although those voting for the defamation resolutions still outnumbered those voting against. Countries in Asia, North America, and Europe, including the Holy See, have consistently voted or spoken out against the concept. In addition, in December 2008, the four international experts serving as freedom of expression rapporteurs of, respectively, the United Nations, the OSCE, the Organization of American States, and the African Commission on Human and Peoples’ Rights issued a joint statement urging international organizations to stop issuing statements supporting the idea of “defamation of religions,” because it “does not accord with international standards accepted by pluralistic and free societies.” The UN Special Rapporteur on the Freedom of Religion or Belief also has spoken separately against the concept, pointing out that international human rights law protects individuals, not belief systems, and the individual right to freedom of religion or belief does not include the right to have one’s religion or belief be free from criticism.

Recently, some countries advancing the flawed “defamation of religions” concept have begun to argue that speech insulting or criticizing religions is outlawed under existing international norms. They mainly cite the prohibition of “advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence” in Article 20 of the International Covenant on Civil and Political Rights (ICCPR), but also point to Article 4 of the Covenant on the Elimination of Racial Discrimination (CERD), which prohibits the “dissemination of ideas based on racial superiority or hatred” and “incitement to racial discrimination.” The United States has reservations to both ICCPR Article 20 and CERD Article 4 to the extent that they restrict the rights to free expression and association protected under the U.S. Constitution.

Article 20 is a narrow exception to the ICCPR’s broad free speech guarantee, and requires

much more than the expression of critical or even insulting views on religious matters. As the Special Rapporteur on the Freedom of Religion or Belief has explained,

[t]he threshold of the acts that are referred to in article 20 is relatively high because they have to constitute advocacy of national, racial, or religious hatred.... [E]xpressions should only be prohibited under article 20 if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group.... At the global level, any attempt to lower the threshold of article 20 of the Covenant would not only shrink the frontiers of free expression, but also limit freedom of religion or belief itself. Such an attempt could be counterproductive and may promote an atmosphere of religious intolerance.³

The Special Rapporteur on the Freedom of Opinion and Expression also has noted that the limitation in Article 20 is narrow and meant to protect individuals, not belief systems, and that the freedom of expression applies “not only to comfortable, inoffensive or politically correct opinions, but also to ideas that ‘offend, shock and disturb.’”⁴

The Commission is seriously concerned by these efforts. The UN Human Rights Committee has decided to prepare a new General Comment interpreting Article 19 of the ICCPR, which protects the freedom of opinion and expression. In so doing it should resist attempts to lower Article 20’s high standard and thereby limit Article 18 and 19 religion and expression rights. The Human Rights Council’s Ad Hoc Committee on the Elaboration of Complementary Standards, which is working on a possible additional protocol to the CERD, also should not include allegedly religiously defamatory speech within the ambit of Article 4 of the CERD, which addresses race, not religion.

A related issue has arisen in connection with the European Union’s annual resolution in both the UN Human Rights Council and the General Assembly entitled “Elimination of all forms of intolerance and of discrimination based on religion or belief.” This resolution traditionally has had two foci—ways to combat religious intolerance, and also admonitions to member states on the importance of protecting religious freedom. Over the past two years, however, the European Union has proposed new language limiting speech freedoms, urging member states to ensure that “any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited by law.” In the past, the resolutions have merely sought condemnation of this kind of speech. Going further to call for legal prohibitions is problematic, as it introduces language from ICCPR Article 20 into the context of religious freedom. An express call for legal prohibitions on forms of speech concerning religions could lend support to the efforts of OIC countries to reinterpret Article 20 to fulfill their goal of prohibiting “defamation of religions.”

Recommendations for U.S. Policy

In order to ensure that the United Nations fully upholds its crucial mandate to protect and promote freedom of thought, conscience, and religion, the U.S. government should:

- participate actively in the UN Human Rights Council, including its Universal Periodic Review process, and in particular seek to ensure that each country’s compliance with international religious freedom standards constitutes an important part of the UPR review, as well as all country-specific resolutions;
- continue firmly and unequivocally to support a mandate and mandate-holder for the position of UN Special Rapporteur on Freedom of Religion or Belief that focuses on the universal right of every individual to the freedom of thought, conscience and religion, rather than on the purported rights of religions;

- continue to support the existing UN Special Rapporteur positions that focus on the human rights situations in countries that have been designated as “countries of particular concern” (CPCs) under IRFA, and seek either the creation of additional Special Rapporteur positions for the other countries on that list or visits to those countries by teams of thematic Special Rapporteurs including the Special Rapporteur on the Freedom of Religion or Belief and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression;
- continue to oppose efforts in international fora to establish an international legal principle that would claim to protect religions from “defamation” or criticism, offering new rights to religions that would undermine many fundamental, individual human rights;
- if a Special Envoy to the Organization of the Islamic Conference is reappointed, include in the Special Envoy’s mandate the task of raising with OIC countries U.S. concerns about “defamation of religions” and efforts to reinterpret ICCPR Article 20 and CERD Article 4;
- work diplomatically, through its ambassadors in OIC countries, its Special Envoy to the OIC (if reappointed), its Ambassador-at-Large for International Religious Freedom, and its Ambassadors to the UN in New York and Geneva to persuade OIC members that religious intolerance and discrimination can best be fought not through national or international legal prohibitions that purport to stop criticism or “defamation” of religions, but rather through efforts to encourage respect for the human rights of every individual;
- continue to educate member states who have not voted against past “defamation” resolutions, as well as moderate OIC countries, about the human rights abuses perpetrated under this concept and urge them to oppose the resolutions and any attempts to reinterpret ICCPR Article 20 or CERD Article 4;
- reach out to the OIC Secretary General and to the governments of Pakistan and Egypt, among others, to raise concerns about the “defamation of religions,” ICCPR Article 20, and CERD Article 4 initiatives, and to make clear that their continuance will negatively impact the emerging relationship between the OIC and the United States, as well as the bilateral relationships between other governments and the United States;
- clarify to members of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, and the Ad Hoc Committee on the Elaboration of Complementary Standards the nature of U.S. concerns, given its previous reservations on these provisions, with any reinterpretation of ICCPR Article 20 or CERD Article 4; and
- urge the European Union to stop offering language in their annual resolution on “Elimination of all forms of intolerance and of discrimination based on religion or belief” calling for legal prohibitions against “advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence” and explain how this could support OIC efforts to undermine international human rights norms.

¹ The OIC members also expressly disassociated themselves from the resolution’s reference to the right to change one’s religion, which they said they do not consider to be binding—despite the fact that this right is a long-recognized element of international human rights law. *See* Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993), para. 5 (“The Committee observes that the freedom to ‘have or adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views. . . .”).

² The Commission has spoken out repeatedly against repressive domestic blasphemy laws in Pakistan and elsewhere. *See, e.g.,* U.S. Commission on

International Religious Freedom, *Sudan: USCIRF Condemns Punishment of Teacher for Allegedly Insulting Religion, Urges her Release and Safe Passage*, December 1, 2007; U.S. Commission on International Religious Freedom, Pakistan: *USCIRF Decries Abuse of Blasphemy Laws, Apostasy Bill*, June 11, 2007.

³ A/HRC/2/3, paras 44-47 (2006).

⁴ A/HRC/7/14, paras 63-66 (2008).