November 15, 2005: Congress: USCIRF Chair to testify on State Department's Religious Freedom Report

Testimony by Michael Cromartie, Chair, United States Commission on International Religious Freedom - Hearing on the Annual Report on International Religious Freedom 2005 and the Designation of Countries of Particular Concern

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Mr. Chairman and distinguished Members of the Subcommittee, let me begin by thanking you for the opportunity to testify today at this important hearing. I plan to summarize the Commission's testimony in my oral remarks, but would like to request that my full written statement be included in the record.

The State Department's Annual Report on International Religious Freedom and the work of our Commission demonstrate that religious freedom concerns cut across the full swath of critical issues in American foreign policy. From constitutional developments in Iraq, to the propagation and export of religious extremist ideology by Saudi Arabia, to the persistence of religious freedom abuses in China, to the repressive nature of the governments in potentially destabilizing countries such as Iran, Uzbekistan, and North Korea, to the promotion of democracy and the fight against extremism in the Middle East, protecting the right to freedom of religion or belief is indispensable to advancing American interests. As President Bush recently said, "when the United States promotes religious freedom, it is promoting the spread of democracy." It is also promoting universal values as enshrined in international human rights norms.

With the passage of the International Religious Freedom Act of 1998 (IRFA), Congress declared that it was the policy of the United States to stand for liberty and stand with the persecuted to promote respect for religious freedom by all governments and peoples. The release of the Annual Report provides an opportunity to address some of the important challenges we face in doing so.

Along with the Commission's comments on the Annual Report, my testimony will address the Secretary of State's most recent designations of "countries of particular concern" (CPCs) and the U.S. government's response to last year's

first-time designation of Eritrea, Saudi Arabia, and Vietnam as CPCs. In addition, my testimony presents a special focus on two countries on which the Commission has been particularly active in the past year. First, I will address Iraq's new constitution, and offer specific recommendations for strengthening protections for religious freedom and other human rights during the next phase of political transition. The Commission continues to believe that the constitution and its implementation will be crucial to Iraq's overall success as a stable and democratic state. Second, my testimony will report in brief on the Commission's recent two-week trip to China, where we were able to visit not only Beijing but also Tibet and Xinjiang, among other areas.

Iraq's New Constitution: Freedom of Religion on Hold

Let me begin with Iraq. As Iraqis prepare for another round of elections in their historic transition from tyranny to democracy, the Commission's focus on the institutional dimension of the right to religious freedom and on securing the individual right to freedom of religion or belief for every Iraqi is more critical than ever. However, fundamental questions remain about the final content of the constitution, and how the provisions on religious freedom and other fundamental rights will be implemented through enabling legislation. Ultimately, it will be the Iraqi Supreme Court's interpretation of this legislation that will determine whether human rights principles will be applicable within the various regions of a federal Iraq, and also whether these rights will be subject to limitations in the event they are deemed to contradict the basic principles of Islam.

Iraq's new constitution, approved by 79 percent of voters in last month's referendum, incorporates positive provisions related to human rights protections, including constructive language on religious freedom. However, several of the articles are written in vague or ambiguous terms, resulting in a constitution that sets out two potentially disparate visions for Iraq. The first vision proclaims a country that respects fundamental freedoms and democratic principles; the second lays the foundation for a country in which Islamic law could be used to trump these freedoms. For example, Islam is a basic source of legislation, and no law can contradict Islam's established principles. The constitution allows for the appointment to Iraq's highest court of experts in Islamic jurisprudence who need not have any training in civil law or other relevant subjects. Such limited training places Iraq's Supreme Court requirements alongside those of Afghanistan, Saudi Arabia, and Iran, and could run the risk of tipping the scales towards the second of the two visions previously described.

Another problem is that nothing in the constitution explicitly provides that civil law, as opposed to religious law, will be applied in cases involving personal status issues. This means that women appearing in religious courts could be subject to discriminatory treatment in matters of marriage, divorce, and inheritance. The constitutional position on personal status also leaves open the questions of whether religious courts would be forced on unwilling parties and which court would rule on disputes between parties of different religions or beliefs. Personal status matters should generally fall under the jurisdiction of civil courts, and the free and informed consent of both parties should be required to refer a matter to religious courts, whose

rulings should be subject to final review by the civil courts.

These and other concerns are detailed in a legal analysis prepared by the Commission and released to the public in early October. Based on its findings, the Commission concludes that the enabling phase of constitutional reconstruction is vital and that the U.S. government must ensure that the fundamental right to freedom of thought, conscience, and religion or belief is strengthened by Iraq's future government across all of its work. It should be pointed out that this is not a fanciful luxury; rather religious freedom is, as President Bush himself said, a foundation for other fundamental human rights and a touchstone of any democratic society.

The need to continue to press for these human rights protections in the constitution is reinforced by an ongoing stream of violence and extremism driven by religious intolerance. During the past year, thousands of ChaldoAssyrians and other members of Iraq's indigenous non-Muslim religious minorities have fled the country out of fear of persecution; there have been numerous reports of violence, including murder, directed against women and others, in an extrajudicial effort to impose an extremist version of Islamic law that violates international human rights standards; and places of worship and religious clerics alike have been the target of insurgent attacks. These attacks have had a detrimental impact on the ability of all religious groups in Iraq, including Shia and Sunni Muslims, to worship freely.

Commission Recommendations on Iraq

The Commission has developed several recommendations for the next critical phases of Iraq's political transition: the upcoming election campaign and the new government's implementation and possible amendment of the constitution.

First, the Commission has recommended that a high-level human rights official, reporting directly to the Ambassador, be stationed within Embassy Baghdad to advance human rights, including religious freedom, as a key U.S. policy objective. Designating a high-level official demonstrates support for Iraqi efforts to make human rights a high-priority issue. Recently we learned that the Commerce, Justice, State Conference Report includes report language supporting this recommendation. The Commission hopes that the Department of State will implement this recommendation in a timely manner.

Second, the United States should encourage a robust discussion during the upcoming election campaign of how candidates would seek to implement the permanent constitution's provisions on the role of Islam and at the same time implement the protections for human rights. The Iraqi people deserve to know just how their representatives would address these issues. Related to this, U.S. contractors should conduct opinion polls designed to elicit how Iraqis understand the meaning and implementation of Islamic law, and the bearing such religious principles should have on their individual rights.

Third, given its experiences over the past 18 months, the Commission believes that a greater effort should be made by U.S. contractors and other organizations operating with U.S. government funding to cultivate and promote elements of Iraqi civil and political society that advocate in favor of democracy and human rights. As it stands, a number of dominant Iraqi political parties reportedly receive funding and support from other countries, including Iran, which do not share our interests in promoting human rights. Congress and agencies providing assistance should seek additional ways to encourage the emergence of new political voices in Iraq committed to individual rights and equality for all Iraqis.

Fourth, the Commission recommends that Congress urge the Administration to advocate the strengthening of constitutional human rights provisions during the four month period following the election when Iraqis are expected to consider amendments to the existing text.

Fifth, following elections, the new legislature will also begin to consider how to implement the no less than 50 provisions in Iraq's constitution that require enabling legislation. This represents a window of opportunity for the United States and the international community to communicate forcefully our desire to see that Iraq's legal framework in the post-Saddam era incorporates and upholds clear human rights guarantees for every Iraqi. The U.S. Agency for International Development should be granted specific authority to undertake rule of law programs focused on those pieces of enabling legislation that are related to human rights issues.

Finally, the Commission urges Congress and the Administration to press the UN and our international allies to engage directly with Iraqi political leaders concerning the strengthening of protections for human rights. Among other actions, Iraqi leaders should be encouraged to invite a field visit from the UN Special Rapporteur on Freedom of Religion or Belief, and to invite international human rights experts to consult on potential amendments to the constitution and on the drafting of any enabling legislation that may have an impact on human rights.

The Commission's Visit to China

In August 2005, the Commission traveled to China to engage senior officials responsible for the management of religious affairs and the protection of human rights in China, and meet with representatives of China's government approved religious communities.

Mr. Chairman, it is the Commission's assessment that the scope of political

openness, public activism, and civil and individual freedoms is narrowing in China. China is in the midst of a crackdown on public opinion and public dissent that has included religious leaders and their communities. Moreover, the Communist Party's recent campaigns to "halt foreign influence," stamp out "evil cults," and strike hard against "ethnic separatism and religious extremism" have caused an atmosphere of fear and uncertainty among China's religious communities and occasioned some of the country's most brutal human rights abuses.

Mr. Chairman, all of China's religious communities live in the long shadow of the Communist Party. Various government agencies maintain final authority over leadership, financial, and doctrinal positions of the five government-sanctioned religious bodies: Buddhist, Daoist, Protestant, Catholic, and Muslim. Religious groups must submit to government monitoring of their activities and the approval of many common religious activities. Religious groups must also accept restrictions on what doctrines and traditions can be conveyed and taught. There are numerous credible reports, for example, of Christian leaders having to refrain from teachings involving the second coming of Jesus, divine healing, the practice of fasting, the virgin birth, and religious perspectives on contraceptives, divorce, and abortion because these doctrines or practices are considered to be either "superstitious" or contrary to the Chinese Communist Party's social policies.

Over the last decade, the Party has made some accommodation for the spiritual aspirations of its people and openly praises the contributions of government approved religious organizations to Chinese society. The Commission was able to observe a distinct "zone of toleration" where members of religious organizations that accept government control are given some latitude to practice their faith traditions.

China has introduced new Regulations on Religious Affairs that were heralded as "a significant step forward in the protection of Chinese citizens' religious freedom." The regulations do include several provisions that are, on their face, potentially important advances, including the outlining of conditions under which religious organizations can provide social services in local communities, protect their property, sue abusive government officials, accept donations from overseas religious groups, and receive prompt responses from government agencies on registration applications.

However, it is the Commission's position that the new Regulations do not adequately protect the rights and security of religious believers and are not fully consistent with international norms on freedom of thought, conscience, and religion or belief. In fact, the Regulations extend Party officials control over all religious activity and groups. Moreover, the Regulations threaten criminal punishments and civil fines for "unregistered" religious activities.

Because "unregistered" religious activity is "illegal" under Chinese law, members of such groups are actively targeted for harassment, detention, and arrest. Since March, there have been three large-scale raids on

unregistered Protestant churches targeting leadership training, university Bible studies, and missionary activity. In addition, there are reports that two underground Catholic priests were arrested just last month in the city of Wenzhou in eastern China.

The Chinese government reserves for itself the right to distinguish between "normal" religious activity and activities deemed to be "heretical" or "cultic." Any religious or other group determined to be a "cult" is subject to brutal suppression, as is evidenced by the harsh crackdown on the Falun Gong and other spiritual movements. In recent years, some unregistered Protestant and Catholic groups have been officially designated as "cults."

Tibetan Buddhists and Uighur Muslims face serious and ongoing restrictions on the free practice of their religion. There are many similarities between the way the Chinese government controls Uighur Muslims and Tibetan Buddhists. The Chinese government fears secessionist activities and recent calls for greater autonomy in Tibet and Xinjiang. Crackdowns on religious activities in these regions are often harsher than in other parts of China. "Patriotic education" continues to occur in Tibet and Xinjiang. Muslim imams and Tibetan monks and nuns are required to be vetted for their political loyalty, all religious publications are controlled, there are severe restrictions on religious celebrations and religious education of minors, and there are tight restrictions on the number of religious venues and religious leaders. In Xinjiang, even government officials are subject to "patriotic education." The Commission was told that religious affairs officials must complete political education to avoid "paralyzed thinking" and to "distinguish between normal and illegal religious activities."

It is our conclusion, Mr. Chairman, that conditions for freedom of religion or belief in China remain poor overall and have deteriorated in the last year. Current Chinese law and practice continue to contravene both international human rights norms and the rights enshrined in the Chinese constitution.

Given the continuing critical human rights problems in China, the Commission concludes that these concerns must be raised at the highest levels and that U.S. officials should provide a consistent, candid, and coordinated message about human rights, including religious freedom, in their interactions with Chinese officials. The U.S. government should therefore continue to pursue broad-ranging policy options and discussions to ensure that progress on human rights and the rule of law remain core components of the bilateral relationship with China. The United States should also continue to help foster political, economic, and legal reforms in China. To this end, the Commission has recommendations for U.S. policy to strengthen the protection of human rights, in particular the freedom of thought, conscience, and religion or belief, in China. With your permission, Mr. Chairman, we would like to add those recommendations to the record.

The 2005 Designations of Countries of Particular Concern and the Countries

Omitted from the CPC List

The public identification by the U.S. government of the world's most severe violators of religious freedom is a hallmark of the IRFA legislation. One of the purposes of the Annual Report is to make available the factual information necessary for the Department to carry out this task, that is, to determine which countries will be designated as "countries of particular concern," or CPCs, for engaging in systematic, ongoing, and egregious violations of freedom of religion or belief.

The Commission welcomes the continued designation by Secretary of State Condoleezza Rice of Burma, China, Iran, North Korea, and Sudan as CPCs. We also welcome the fact that Eritrea, Saudi Arabia, and Vietnam were once again named, as there have been no developments in the past year in any of those countries to warrant their removal from the CPC list. At the same time, the information in this year's Annual Report makes clear that three other countries merit CPC status in addition to those that have been previously named by the Secretary of State. The Commission finds that the governments of Pakistan, Turkmenistan, and Uzbekistan persist in engaging in or tolerating particularly severe violations of religious freedom, and regrets that they were, once again, not designated as CPCs this year.

Pakistan

The government of Pakistan continues to provide an inadequate response to vigilante violence frequently perpetrated by Sunni Muslim militants against Shi'as, Ahmadis, Hindus, and Christians. Discriminatory legislation effectively bans many of the activities of the Ahmadi community. Blasphemy allegations, routinely false, result in the lengthy detention, imprisonment of, and sometimes violence against Ahmadis, Christians, and Hindus, as well as Muslims, some of whom have been sentenced to death. Belated efforts to curb extremism through reform of Pakistan's thousands of Islamic religious schools appear to have had little effect thus far, and many of these schools continue to provide ideological training and motivation to those who take part in violence targeting religious minorities in Pakistan and abroad. After the terrorist attacks in London last July, President Musharraf renewed his call to fight extremism in madrassas; however, his record on this issue has unfortunately not been encouraging.

Turkmenistan and Uzbekistan: Particularly Severe Violators Given a Pass

The omission of Turkmenistan and Uzbekistan from the CPC list is particularly troubling and a discredit to Congress's intent in passing IRFA. Turkmenistan, among the most repressive states in the world today, allows virtually no independent religious activity. The government of

Uzbekistan places strict restrictions on religious practice and continues to crack down harshly on individuals and groups that operate outside of government-controlled religious organizations. The Ambassador at Large and the State Department have for years attempted to engage the governments of these two countries in an effort to seek improvements. However, the response has been extremely limited. In the face of the severe religious freedom violations perpetrated by the Turkmen and Uzbek governments, the continued failure to name them as CPCs undermines the spirit and letter of IRFA.

Since 2001, the Commission has recommended that Turkmenistan be designated a CPC. In addition to the severe government restrictions that effectively leave most, if not all, religious activity under strict-and often arbitrary-state control, Turkmen President Niyazov's ever-escalating personality cult has become a quasi-religion to which the Turkmen population is forced to adhere. His self-published work of "spiritual thoughts," called Ruhnama, is required reading in all schools. In addition, copies of Ruhnama must be given equal prominence to the Koran and the Bible in mosques and churches. In the past year, in a move likely aimed at avoiding a possible CPC designation, President Niyazov passed several decrees that permitted the registration of five very small religious communities. Despite this alleged easing of registration criteria, religious groups continue to require permission from the state before holding worship services of any kind, making it unclear what-if any-practical benefits registration actually provides. Moreover, religious groups that do not meet the often arbitrary registration rules still face possible criminal penalties due to their unregistered status, and even newly registered religious groups have been raided by police.

Even the rights of members of the two largest religious communities, the majority Sunni Muslims and the Russian Orthodox, are seriously circumscribed. Last year, seven mosques were destroyed in the country and President Niyazov forbade the construction of any new ones. Turkmenistan's former chief Mufti, Nazrullah ibn Ibadullah, was sentenced to 22 years in prison because he apparently refused to elevate the Ruhnama to the level of the Koran. This past June, President Niyazov undertook various moves against the country's only Muslim theological faculty. And, according to recent reports, the Russian Orthodox Church has been refused re-registration as part of an effort by President Niyazov to pressure Russian Orthodox parishes in Turkmenistan to sever ties with the Tashkent-based Central Asian diocese and to subordinate themselves to the Moscow Patriarchate.

Turkmenistan is clearly a highly repressive state, where the Turkmen people suffer under the yoke of a personality cult that allows them few freedoms of any kind, including religious freedom. The Commission finds it extremely troubling that despite a few superficial legal changes regarding religious freedom, and little if any change to the situation on the ground, Turkmenistan continues to escape the CPC designation it so clearly deserves.

The Commission has also recommended that Uzbekistan, which the Commission visited last year, be designated a CPC. The Uzbek government continues to exercise a high degree of control over the practice of the Islamic religion and to crack down harshly on Muslim individuals, groups, and mosques that do not conform to state-prescribed practices or that the government claims are

associated with extremist political programs. This has resulted in the imprisonment of thousands of persons in recent years, many of whom are denied the right to due process. There are credible reports that many of those arrested continue to be tortured or beaten in detention, despite official Uzbek promises to halt this practice. Moreover, Uzbekistan has a highly restrictive law on religion that severely limits the ability of religious communities to function, leaving over 100 religious groups currently denied registration.

The government of Uzbekistan does face threats to its security, including from members of Hizb ut-Tahrir and other political groups that claim a religious linkage, and the Commission's recommendation of CPC status for Uzbekistan should not be construed as a defense of that or any similar organization. However, these threats do not excuse or justify the scope and harshness of the government's ill treatment of religious believers nor the continued practice of torture, which reportedly remains widespread.

The shooting by Uzbek troops of hundreds of unarmed protestors in Andijon in May of this year provides the most brutal example to date of the Uzbek government's response to real or perceived threats to its security. In Andijon's aftermath, the Uzbek authorities have mounted a repressive campaign against journalists; human rights activists; Uzbek employees of western non-governmental organizations; and religious adherents, particularly Muslims. The Uzbek government has refused requests from the U.S. and other Western governments for an independent international investigation into the Andijon tragedy and is reportedly cracking down on any human rights or other activists who have attempted to report on the events. According to a number of human rights organizations, as many as 11 activists have been imprisoned and at least 15 have been forced to flee the country. In addition, hundreds of Andijon residents have been arrested on suspicious of involvement. Many other civil society activists have been forced to cease their investigative activities after being arrested on false charges, detained, beaten, threatened, or put under surveillance or under de facto house arrest.

The Commission would like to note the recent introduction by Chairman Smith of legislation highlighting the political and human rights challenges facing the five countries in Central Asia. This legislation reflects longstanding Commission recommendations that U.S. assistance to the governments of Turkmenistan and Uzbekistan be linked more closely to the protection of religious freedom and that efforts continue to be made to support non-governmental actors seeking to promote democracy and human rights.

The U.S. Response to Last Year's Designation of Three New CPCs: Action on Saudi Arabia Should Come Soon

Last year, the Department of State for the first time named Eritrea, Saudi Arabia, and Vietnam as CPCs. In order to ensure that the promotion of religious freedom be a consistently integral part of U.S. foreign policy, the U.S. government was required by IRFA to take active steps in response to that

CPC designation. Though the response came well past the deadline of March 15, the Commission welcomed the State Department's announcement on September 23 of decisions on these three serious religious freedom violators in fulfillment of statutory obligations under IRFA.

Until this past September, the only official action taken by our government with respect to countries that to date have been designated CPCs has been to invoke already existing sanctions, rather than to take additional measures pursuant to IRFA. Because neither Eritrea, Saudi Arabia, nor Vietnam were subject to pre-existing sanctions, their designation provided our government with an opportunity decisively and actively to engage in serious discussions with the governments of those countries against the backdrop of U.S. authority to take punitive steps. While Vietnam has taken some preliminary actions in response to U.S. engagement, this has unfortunately not been the case with Saudi Arabia and Eritrea.

Vietnam and Eritrea

On Vietnam, the State Department referred to last May's conclusion of a binding agreement with the Vietnamese government to work towards improvements in religious freedom conditions in that country. The CPC designation of Vietnam has allowed the U.S. and the Vietnamese governments to talk seriously about religious freedom concerns, several of which are addressed in the binding agreement. However, it remains to be seen if the promises made in the agreement will be met with measurable and durable improvements in the situation in Vietnam. The Commission is concerned about reports that serious religious freedom violations persist in that country. The government of Vietnam continues to actively repress, and target as subversive, religious activity it cannot control or that which resists government oversight. Targeted in particular are leaders of the Unified Buddhist Church of Vietnam (UBCV), ethnic minority Christians in the Central Highlands and northwest provinces, "house-church" Protestants, and followers of religious minority groups such as the Hoa Hao and Cao Dai. This repression has not abated in the last year.

In response to the religious freedom violations perpetrated by the government of Eritrea, the State Department announced the "denial of commercial export to Eritrea of any defense articles and services controlled under the Arms Control Export Act," with some items excepted. The Commission welcomed the announcement of this action on Eritrea, the imposition of the first unique sanction to be taken under IRFA. Despite efforts by the U.S. government to engage the government of Eritrea, the already poor religious freedom situation there has deteriorated in the past year. To date, the government of Eritrea has not registered any of the religious groups, including various Christian groups as well as Baha'is, whose public religious activities were banned in 2002 pending registration. This year, the government's religious crackdown has intensified with a series of arrests and detentions of members of unregistered religious groups. Those detained are typically held without charge or due process of law. The Commission believes that the imposition of export controls demonstrates the seriousness with which the United States views the violations being perpetrated by the Eritrean government.

Delay on Response to Saudi Arabia

Last year, the Commission applauded the long awaited September 2004 CPC designation of Saudi Arabia, a country where, as the State Department itself has noted, religious freedom does not exist. In September 2005, fully one year after that CPC designation and with no ascertainable human rights progress in Saudi Arabia over the intervening year, the Secretary of State authorized a 180-day waiver of action "in order to allow additional time for the continuation of discussions leading to progress on important religious freedom issues."

Yet, the pattern of punishment and abuse by Saudi authorities of non-Muslim foreign residents for private religious practice has in fact increased since early 2005. There have been numerous reports of raids of private homes by the mutawaa or religious police; these reports describe detentions, beatings, and deportations of foreign workers engaged in private religious worship, the burning of religious literature, and the destruction of private non-Muslim places of worship.

During the past year, the Commission has made several statements urging the State Department to select and implement one or more of the concrete actions for CPCs set forth in IRFA. In the absence of real progress in Saudi Arabia over the past year, the Commission believes that the U.S. government should use the 180-day extension to engage the Saudi government directly to achieve demonstrable progress by the end of that period of time. The Commission has laid out in its reports several immediate steps that could be taken by the Saudi government.

If such progress is not forthcoming, the Commission has made recommendations for U.S. government action in accordance with IRFA. These remain appropriate and include:

- order the heads of appropriate U.S. agencies, pursuant to section 405(a)(13) of IRFA, not to issue any specific licenses or grant any other specific authority for the export of any item on the U.S. Commerce Control List of dual-use items to any Saudi agency responsible for committing particularly severe violations of religious freedom;

- identify and render inadmissible for entry into the United States any Saudi government official who was responsible for or directly carried out religious freedom violations, as outlined in section 604 of IRFA; and

- issue a proclamation, under the President's authority pursuant to section 212(f) of the Immigration and Nationality Act (8 USC 1182(f)), to bar those Saudi government officials from entering the United States who have been responsible for propagating globally an ideology that explicitly promotes hate, intolerance, and human rights violations.

The Commission notes that the State Department did not invoke a national interest waiver on Saudi Arabia. This may be a positive move, as it could allow for more options in the future to respond to religious freedom violations. The Commission hopes that genuine progress will be made in Saudi Arabia to justify the course of action taken by the State Department. We also encourage the State Department to consult with Congress and other parts of the U.S. government, including the Commission, during its discussions with the Saudis, and to make any agreement reached with the Saudi government public in the interest of the accountability that results from transparency. If, however, no progress on religious freedom is seen after the 180-day period has ended, the U.S. government must not hesitate in taking aggressive action as suggested above which meets the requirements of IRFA to demonstrate that it will not disregard the persistent and egregious religious freedom violations committed by the Saudi government.

The Annual Report on International Religious Freedom

Mr. Chairman, the Annual Report on International Religious Freedom continues to be a critical part of the process of promoting religious freedom throughout the world. As we have stated in the past, the Annual Report each year is proving to be an important achievement that consistently demonstrates the substantial efforts of the foreign-service officers in our embassies around the world, as well as the Ambassador at Large for International Religious Freedom and his staff at the State Department's Office of International Religious Freedom. The 2005 Annual Report is no exception.

Individual Country Reports

As in the past, many of the individual country reports in the 2005 Annual Report are excellent-thorough and accurate. However, the Commission is concerned about a number of informational inaccuracies and troubling conclusions in several important reports.

Although we recognize the substantial achievements that have occurred in Afghanistan since the institution of the new government, the Commission continues to believe that the Afghanistan country report does not adequately address the problems faced by individual Muslims in that country, as a result in part of the insufficient religious freedom protection afforded to individual Muslims in the new constitution passed in January 2004. These constitutional pitfalls, including the repugnancy clause that states that "no law can be contrary to the beliefs and provisions of Islam" and the fact that the Supreme Court is empowered to make this determination, have negatively influenced other legislation also, including legislation on press freedom. The report does mention that the vagueness in the wording of the clause prohibiting materials "offensive to Islam" in the press law could lead to potential abuse, but it does not give sufficient weight to the significance of this problem.

The most recent-and perhaps most alarming-example of the seriousness of the inadequate constitutional guarantees occurred too recently to be included in the 2005 Annual Report, but nonetheless deserves mention here. Just last month, a respected journalist and editor was convicted on charges of blasphemy and "insulting Islam." His purported "crime" was to question the use of certain harsh punishments under traditional Islamic law, including amputation and public stoning. Particularly troubling is that certain authorities ignored Afghanistan's own legislation stating that journalists cannot be arrested until the government's Media Commission has examined the case. As it happened, the Media Commission found him not guilty of insulting Islam. Nevertheless, the journalist was found guilty and sentenced to two years in prison. Clearly, despite the many remarkable advances there, it remains clear that even today in Afghanistan, protections for human rights and democracy remain under threat from sources of religious extremism within the Afghan government.

The report on China was quite positive about the new National Regulations on Religious Affairs implemented in March 2005, saying that they have the "potential to improve respect for religious freedom, to enhance legal protection for religious groups, and to strengthen the process of governing religious affairs according to law." The Commission believes that the Regulations do include several provisions that may be important advances, including several of the provisions that I noted earlier in my testimony.

However, contrary to the impression left by the report, the Regulations are not the "paradigm shift" promised by Chinese officials. In fact, given the vague and sometimes contradictory language of the Regulations, the Commission believes that they do not adequately protect the rights and security of religious adherents and are not fully consistent with international norms. For example, permission is now required for a number of commonplace religious activities, including holding meetings outside a place of worship, inviting a special speaker or teacher, printing religious material, or instituting a change in leadership. The Regulations also threaten criminal punishments and civil fines for "unregistered" religious activities. In fact, "unregistered groups" have reported increased harassment, arrests, and detentions since the Regulations were implemented. Since March of this year, there have been four large scale arrests of "house church" Protestant leaders, apprehending over 500 religious practitioners.

Second, the China report tends to focus the primary blame for religious freedom abuses on "local officials" in China. Although the Commission continues to recognize as a result of its recent visit that religious freedom conditions do vary from province to province, it is unmistakable that recent campaigns to "halt foreign influence," "strike hard against religious extremism," "stamp out evil cults," "promote atheism," and "eliminate the influence of the Dalai Lama" have all emanated directly from Beijing and are approved by top Communist Party leaders. Clearly, religious freedom abuses do not stem only-or even primarily-from local corruption or provincial officials misinterpreting the law.

The Commission welcomes the inclusion of a country report on Iraq in this year's Annual Report. The report offers a thorough summary of religious freedom conditions in Iraq and highlights areas of particular concern. However, in addressing religious freedom violations, the report tends to classify all abuses as stemming from "terrorist organizations," a generalized term that conflates the various groups in Iraq that seek to impose Islamic rule with terrorist groups that support the insurgency, and plays down the support the former may have in Iraq, particularly within the provincial and municipal government structures. For example, the report fails to mention the deteriorating situation in Basra, where local Islamic groups-not connected to the insurgency-are imposing a strict version of Islamic law that has resulted in human rights violations as severe as extra-judicial killings. The report makes no mention of the implications of these developments for religious freedom in Basra, its surrounding areas, and Iraq more generally. In addition, though the report notes that Law No. 105 of 1970 prohibits the Baha'i faith, it fails to make clear if any efforts have been made on the part of the U.S. government to encourage the Iraqi government to repeal this discriminatory law. The report also does not mention other difficulties faced by the the Baha'i community, including the fact that the Baha'i faith cannot currently be listed as a religion on Iraqi national identity cards. Finally, the report omits mention of religiously motivated attacks targeting the Roma and Sufi Muslim communities in Iraq.

The Russia report provides a wealth of information on the complex status of religious freedom in that country, including more attention to a wider range of religious groups. Yet, the report should draw more attention to the increasingly troubling situation faced by the country's largest religious minority: Muslims. Thus, while it gives admirably detailed coverage of the recent legal travails of the Jehovah's Witnesses and the Church of Scientology, no mention is made of a secret Supreme Court decision which outlawed 15 Muslim organizations for alleged ties to terrorism.
This secret decision reportedly has led to the prosecution of several hundred Muslim individuals and groups in various parts of Russia, based on reportedly unsubstantiated accusations. In addition, Muslims increasingly face instances of workplace and other discrimination and widespread media attacks.

The report on Saudi Arabia is more comprehensive than in previous years, highlighting the problems of the Shia population and non-Muslim guest workers. However, as in past years, the report continues to omit any mention of the Saudi export of a highly intolerant and hate-filled ideology, despite the fact that this issue was mentioned publicly by the Ambassador at Large for Religious Freedom and other U.S. officials on several occasions during the past year. The subject was also mentioned at the press conference releasing this year's Annual Report.

One of the most troubling country reports in the 2005 Annual Report is the report on Turkmenistan, which makes the startling claim that "the status of Government respect for religious freedom improved during the period covered by this report." Even more disturbing is that Turkmenistan is listed in the Executive Summary as one of the countries which has seen "significant improvements in the promotion of religious freedom." This conclusion seems to contradict the State Department's most recent Human Rights Report on Turkmenistan, which clearly states that "the Government's human rights record remained extremely poor, and the Government continued to commit serious

abuses." The claim of this year's religious freedom report is regarded as erroneous not only by the Commission but by most human rights organizations and other observers of Turkmenistan. Indeed, a number of U.S. and international human rights organizations have submitted a statement to this hearing expressing their strong objection to the report's assessment of the situation in Turkmenistan and providing details of other inaccuracies in the Turkmenistan report.

The conclusion of the Annual Report is based largely on the Turkmen government's recent registration of nine extremely small religious communities, even though their registration has not ended police harassment and tight government control of them and other groups. The report appears to allow these insignificant improvements-on paper-for these small groups to overshadow the worsening situation for the country's majority religious group, the Muslims. The report also does not mention the growing problems for the Russian Orthodox Church. Even more troubling, however, is that the report does not devote sufficient attention to President Niyazov's quasi-religious, all-pervasive personality cult, which was discussed earlier in my testimony. The report also fails to mention the Turkmen government's refusal to respond to repeated requests by the UN Special Rapporteur on Freedom of Religion or Belief for an invitation to Turkmenistan. Moreover, at the event marking the report's release, the Ambassador at Large claimed that all religious prisoners in Turkmenistan had been released; yet the report notes that the former Grand Mufti remains incarcerated for his refusal to elevate Niyazov's book of "spiritual thoughts" to equal prominence with the Koran.

This year's Annual Report claims that the status of religious freedom has also improved in Vietnam over the course of the past year. It is true that after Vietnam was designated as a CPC last year, the Vietnamese government released some prominent religious prisoners and issued new ordinances regarding religion. It also made promises to improve conditions for its ethnic and religious minorities-promises that have not yet been translated into concrete changes.

The Commission does not believe that religious freedom conditions in Vietnam have improved during the past year. In fact, since the public announcement of a May 2005 binding agreement on religious freedom concerns between the United States and Vietnam, reports about restrictions and other abuses continue to surface, particularly against the country's religious and ethnic minorities. In congressional testimony last June, the Commission described evidence of forced renunciations of faith occurring in the northwest provinces and central highlands. Although the State Department states that "a few" such renunciations occurred in the last year, the Commission submitted 21 police summons to the International Relations Committee from only one community in Vietnam. What is more, the Commission has reliable information on the arrests and detention of Hoa Hao and Protestant religious leaders and continued harassment of the Unified Buddhist Church of Vietnam (UBCV), all since May of this year. Finally, the report also states that "almost all" the churches and meeting points closed in the Central Highland since 2001 have been reopened. Yet, 432 churches and meeting points reportedly remain closed in that region.

Religious Persecution and the U.S. Refugee Program

Section 601 of IRFA specifically directs that the Annual Report on International Religious Freedom serve as a resource for refugee and asylum adjudicators. In that sense, the Annual Report plays an important role not merely in documenting religious freedom violations, but in facilitating refuge for those who are fleeing religious persecution.

Appendix E of the report, the Overview of Refugee Policy, continues to improve, with more comprehensive coverage of religious persecution and the Refugee Program than in past years. Once again, however, the 2005 report contains little acknowledgment of the serious problem of intra-religious persecution, but instead focuses almost exclusively on the persecution of religious minorities by a majority religious community. Moreover, this section contains no mention of significant refugee-source countries such as Afghanistan, Eritrea, or Iraq, where serious religious freedom problems persist. Indeed, the Secretary of State has designated Eritrea a CPC, and problems in Iraq-particularly with regard to the security of religious minority communities-are severe.

The Overview of Refugee Policy section does cite Saudi Arabia, a CPC, as well as Pakistan, which the Commission has recommended be designated a CPC, for their mistreatment of religious minorities. The Overview fails, however, to indicate how the U.S. Refugee Program has been responsive to this mistreatment.

In its Report to Congress on Refugee Admissions for FY2006, the Department of State provides a more complete description of the way in which it is facilitating access to the Refugee Program, at least for those asylum seekers who have fled CPCs. The Report to Congress is required to include such information under Section 304 of the North Korea Human Rights Act of 2004. Such information should be in the Annual Report on International Religious Freedom as well, even if not required by law.

The Commission does remain concerned that other refugee and asylum provisions of IRFA have been unevenly implemented. For example, Appendix D of the Report, "Department of Homeland Security (DHS) and the International Religious Freedom Act," accurately describes the measures taken by the Asylum and Refugee Corps to train its refugee and asylum adjudicators in international religious freedom, as required by sections 602 and 603 of IRFA. Yet, this section makes no mention of the training-if any-on international religious freedom undertaken by DHS Border Patrol agents and inspectors exercising Expedited Removal authority, even though such training is also required under IRFA. Nor does the report mention the efforts by the Department of Justice to ensure that immigration judges comply with IRFA training requirements.

The importance of such training has been underscored by recent positions

advanced by the Department of Justice and initially adopted by the Federal Court of Appeals for the Fifth Circuit in Li v Gonzales. Li involved a Chinese Christian who claimed persecution-including arrest, detention, beatings, loss of employment, and forced labor-for organizing an unregistered church. An immigration judge granted the asylum seeker protection from removal, finding his claim to be credible and consistent with country conditions in China. The Department of Justice Board of Immigration Appeals (BIA), on a motion from the Immigration and Naturalization Service (INS), reversed the decision and ordered that Mr. Li be removed to China. When Mr. Li appealed the decision to the Fifth Circuit, the Department of Justice continued to argue that Mr. Li should be removed because he had been subject to prosecution for violating China's religious registration laws-not persecution for his religious beliefs. The Fifth Circuit agreed with the Department of Justice.

The Commission wrote the Department of Justice to make it clear that U.S. foreign policy has long maintained that China's control over registered churches-and its prosecution of individuals like Mr. Li for engaging in "unauthorized" religious activity-are clear violations of international law with regard to freedom of religion or belief. The Departments of Justice and Homeland Security were receptive to the Commission's concerns, and the Fifth Circuit subsequently vacated its original decision. Although immigration judges are already required by IRFA to have training on religious freedom, other relevant entities are not: the BIA, the trial attorneys who work for Immigration and Customs Enforcement (ICE) in DHS, as well as those who work for the Office of Immigration Litigation (OIL) in the Department of Justice. The BIA and OIL have recently invited the Commission to participate in training its attorneys. We urge ICE to do the same. All of these entities should make religious freedom a regular component of their training curricula, whether mandated by IRFA or not. We also urge that the Departments of Homeland Security, Justice, and State coordinate better their efforts to ensure that legal positions on asylum which are advanced in court by these agencies do not set legal precedents which could undermine longstanding positions of the United States on international human rights.

Finally, section 602(b) of IRFA requires that all consular officers be trained in refugee law and policy. Although consular officers do not adjudicate refugee applications, they are authorized to refer refugee applicants to the Department of Homeland Security for adjudication, since the vast majority of asylum seekers are not permitted to apply to the Refugee Program without a referral from a U.S. embassy or the UNHCR. Appendix C of the Report, "Training at the Foreign Service Institute Related to the International Religious Freedom Act," states that consular training "includes a lecture on Immigrant Visa (sic) that incorporates discussion of refugee and asylum issues as they pertain to consular officers. The subject is covered in further detail in the Self-Instruction Guide (SIG) on immigrant visa processing." Based on inquiries made by the Commission, however, it appears that the only training received by consular officers relevant to the Refugee Program is on the processing of immediate relative petitions filed by refugees and asylees. Such training does not even begin to comply with the broad requirements of section 602(b).[1]
Consequently, the Commission is concerned that consular officers remain unaware of their ability to facilitate access to the resettlement program for asylum seekers in need of protection. Once again, the Commission urges the Department of State to comply with this training requirement, which could save the lives of bona fide refugees, particularly those who may have access to a U.S. consulate but not UNHCR.

Conclusion

Mr. Chairman, thank you for the opportunity to share with you the Commission's views and recommendations. We look forward to continuing to work closely with the Congress to advance respect for the freedom of religion in U.S. policy. In that regard, I would like to highlight one upcoming Commission activity. This afternoon, in the presence of yourself and other Members of Congress, the Commission will release a report on conditions for freedom of religion or belief in North Korea, relating the first-hand experiences of dozens of former North Koreans. This report was authored by human rights expert David Hawk and describes severe violations of human rights, including the extent to which the regime attempts to control the very thoughts and beliefs of the North Korean people.

Thank you again for holding this important hearing and inviting the Commission to testify. I am happy to answer any questions that you may have regarding my oral or written statements.

[1] Section 602(b) of IRFA holds that "(t)he Secretary of State shall provide sessions on refugee law and adjudications and on religious persecution to each individual seeking a commission as a United States consular officer...."