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A Preliminary Response to Criticisms of the International Religious Freedom Act of 1998

T. Jeremy Gunn*

I. INTRODUCTION

In 1998, the U.S. Congress expressed its growing concern about violations of religious freedom abroad by enacting the International Religious Freedom Act of 1998 (“IRFA”).¹ IRFA directs the U.S. government generally—and the U.S. Department of State in particular—to play a more active role in promoting freedom of religion abroad. Although little has been published about IRFA, some scholars, human rights activists, and foreign observers view IRFA with suspicion.²

There are significant misunderstandings about IRFA, both by its supporters within the United States and by its critics in the United

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1. See 22 U.S.C. § 6401 (1998), amended by Pub. L. No. 106-55, 113 Stat. 401 (1999). For the Public Law version of the International Religious Freedom Act of 1998 (“IRFA”), see Pub. L. No. 105-292, 112 Stat. 2787 (1998). For a brief discussion of the history leading to the adoption of IRFA, see *infra* Part II.

2. The author heard the criticisms by foreign government officials while at the Department of State as well as criticisms by scholars and nongovernmental organizations (NGOs) in conferences, colloquia, and seminars. Unfortunately, there have been few published articles that articulate the criticisms that are commonly shared by informed people outside the United States and by some scholars and NGO activists within the United States. One of the first efforts to address IRFA systematically came at a conference entitled “Religious Persecution as a U.S. Policy Issue,” sponsored by the Center for the Study of Religion in Public Life at Trinity College in Hartford, Connecticut, on September 26-27, 1999. See RELIGIOUS PERSECUTION AS A U.S. POLICY ISSUE: PROCEEDINGS OF A CONSULTATION HELD AT TRINITY COLLEGE, HARTFORD (Rosalind I.J. Hackett et al. eds., 2000) [hereinafter HARTFORD CONFERENCE]. The participants at the Hartford Conference identified most of the criticisms that have been levied against IRFA. See discussion *infra* Part III; see also Winnifred Fallers Sullivan, *Exporting Religion: Where the Religious Freedom Act Fails*, COMMONWEAL, Feb. 26, 1999, at 10. Professor Sullivan and the author were among the participants at the Hartford Conference.

States and abroad. Its supporters are often unaware of the negative response that IRFA has provoked from abroad. To many of its critics, the law appears to be an attempt by the United States to employ the blunt tool of sanctions to promote unilaterally a peculiarly American agenda. But the critics of IRFA often have an inaccurate understanding of the genesis of the law and how the law actually is implemented by the U.S. government. This Article provides a preliminary discussion of some of the important criticisms that have been levied against IRFA and urges that there be a more informed discussion of the issues by both supporters and critics of the law.

II. THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

By 1996, the issue of religious discrimination and persecution abroad captured the attention of several members of Congress and their staffs. Early that year, the International Operations and Human Rights Subcommittee of the House of Representatives held hearings on the worldwide persecution of Christians³ and Jews.⁴ Following the hearings, Congress adopted resolutions on the persecution of Christians⁵ and on the persecution of Baha'is in Iran.⁶ Later that year, in conjunction with the passage of the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, the Managers' Statement requested that the Department of State report to the Congress on the persecution of Christians throughout the world.⁷ As interest in the issue of persecution and religious freedom continued to mount, some members of Congress came to believe that the United States was not doing enough to respond to the abuses of religious freedom and that Congress should enact a law requiring the U.S. government and the U.S. Department of State to become more fully engaged in the issue.

3. See *Persecution of Christians Worldwide: Hearing Before the Subcomm. on Int'l Operations and Human Rights of the Comm. on Int'l Relations of the House Subcomm. on Int'l Relations*, 104th Cong. (1996).

4. See *Worldwide Persecution of Jews: Hearing Before the Subcomm. on Int'l Operations and Human Rights of the House Comm. on Int'l Relations*, 104th Cong. (1996).

5. See S. Con. Res. 71, 104th Cong. (1996).

6. See H.R. Con. Res. 102, 104th Cong. (1996).

7. The report was released, in photocopy format, on July 22, 1997, as UNITED STATES POLICIES IN SUPPORT OF RELIGIOUS FREEDOM: FOCUS ON CHRISTIANS (Report Consistent with the Omnibus Consolidated Appropriations Act, Fiscal Year 1997, H.R. REP. NO. 3610). See also U.S. Department of State Web Site (visited Aug. 22, 2000) <http://www.state.gov/www/global/human_rights/970722_relig_rpt_christian.html>.

On May 20, 1997, Republican Congressman Frank Wolf of Virginia introduced H.R. 1685, a bill to “establish an Office of Religious Persecution Monitoring, to provide for the imposition of sanctions against countries engaged in a pattern of religious persecution, and for other purposes.”⁸ This bill, the first version of what was to become IRFA, was popularly known as the “Wolf-Specter” bill. It prompted an intense debate within the U.S. government, religious groups, and the business community.⁹ The most controversial provision of the Wolf-Specter bill was its requirement that the U.S. government automatically impose sanctions on countries found to be violators of international religious freedom, a provision that the Clinton Administration strongly opposed. After holding hearings in late 1997, the House International Relations Committee worked for six months to revise the original Wolf-Specter bill and introduced an amended version as H.R. 2431 in 1998.¹⁰ H.R. 2431, as amended, passed the House on May 14, 1998, as the “Freedom From Religious Persecution Act of 1998” and was sent to the Senate. In a surprise move, shortly before the Senate was scheduled to vote on the House version, Senator Nickles introduced a significantly revised version of the bill, which the Senate adopted unanimously on October 9, 1998, under the title “International Religious Freedom Act of 1998.” By voice vote, the House unanimously approved the Senate version the following day. President Clinton signed IRFA into law on October 27, 1998.

IRFA created three new entities within the U.S. government to promote international religious freedom: the Office on International Religious Freedom within the Department of State, headed by an Ambassador-at-Large; an independent nine-member Commission on International Religious Freedom (with the Ambassador-at-Large serving as an additional *ex officio* member); and a special adviser on international religious freedom at the National Security Council.¹¹

8. H.R. 1685, 105th Cong. (1997); S. 772, 105th Cong. (1997).

9. See, e.g., the testimony of the Honorable John Shattuck, Assistant Secretary of State for Democracy, Human Rights, and Labor, before the House International Relations Committee, Sept. 9, 1997, U.S. Department of State Web Site (visited Aug. 22, 2000) <http://www.state.gov/www/policy_remarks/970722.shattuck.html>. See also Jeffrey Goldberg, *Washington Discovers Christian Persecution*, N.Y. TIMES MAG., Dec. 21, 1997, at 46.

10. See H.R. REP. NO. 105-480, pt. 1, at 15 (1998).

11. See 22 U.S.C. §§ 6411, 6431 (1998); 50 U.S.C. § 402(i) (1998). The Office of International Religious Freedom has been placed organizationally within the Department of State’s Bureau of Democracy, Human Rights and Labor and is designated “DRL/IRF” within

The law imposes a number of responsibilities on the Office of International Religious Freedom, including issuing an annual report on the status of religious freedom on each foreign country, advising the President and Secretary of State on religious freedom abroad, and representing the United States with foreign governments on issues of religious freedom.¹² The report, to be issued in September of each year, also must identify those countries of the world that “violate” religious freedom, especially those that commit “particularly severe violations of religious freedom.”¹³

III. CRITICISMS AND RESPONSES

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

—Professor Jay Demerath at the Hartford Conference¹⁴

Possibly the most frequently heard complaint from abroad regarding IRFA is that the United States has, once again, taken upon itself the role of “moral watchdog” or “moral policeman” for the world. To foreign observers, it may well appear that the United States, which already issues an annual *Country Reports on Human Rights*, is now intervening one step further by criticizing states on what may well be regarded as the most difficult and sensitive human

the Department of State. The Ambassador-at-Large also serves as an *ex officio* member of the Commission on International Religious Freedom. See 22 U.S.C. § 6431(b)(1)(A). President Clinton appointed the Honorable Robert A. Seiple to be the first Ambassador-at-Large for International Religious Freedom shortly after IRFA was signed into law. Ambassador Seiple resigned effective September 2000.

12. See 22 U.S.C. § 6411(c).

13. *Id.* § 102(b)(1)(A). See DEPARTMENT OF STATE, ANNUAL REPORT: INTERNATIONAL RELIGIOUS FREEDOM 1999, REPORT TO THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS AND THE SENATE COMMITTEE ON FOREIGN RELATIONS (Joint Comm. Print 2000) [hereinafter 1999 RELIGION REPORT]. The first report was issued on September 9, 1999. The second report was issued on September 5, 2000.

14. HARTFORD CONFERENCE, *supra* note 2, at 20.

rights issue: the freedom of religion and belief. As a vastly more complex issue than freedom from torture or freedom of expression, the freedom of religion and belief is necessarily intertwined with each country's particular identity, traditions, culture, and nationhood.

The discussion below identifies six of the recurring and interrelated criticisms leveled at IRFA and replies briefly to each. Although these criticisms are not exhaustive, they include those most frequently raised.

A. Criticism 1: IRFA Promotes an American Model of Separation of Church and State that Does Not Conform to the Histories, Traditions, and Cultures of Other Societies

[IRFA] is premised on an American understanding of religious freedom and practice, including notions of “disestablishment” or separation of church and state. This is problematic as a basis for the protection of freedom of religion at a global level because of fundamental differences about what “freedom of religion” means.

—Professor Abdullahi An-Na'im at the Hartford Conference¹⁵

Professor An-Na'im correctly identifies perhaps the most important criticism that is offered against IRFA from outside the United States: that it promotes an American model of separation of church and state that is anathema to other societies and cultures. Such a criticism can be directed both at the way IRFA presents itself as well as at the underlying American failure to understand traditions and cultures that differ from its own.

IRFA's own rhetoric gives credence to the criticism that it is based narrowly on the American historical experience:

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

15. HARTFORD CONFERENCE, *supra* note 2, at 22.

standing for religious freedom and offering refuge to those suffering religious persecution.¹⁶

This description of the American founders as having established freedom of religion as a pillar of the nation is seriously misleading, if not incorrect.¹⁷ It triumphantly conveys an idealized self-image that would be unrecognizable to many religious minorities, including Catholics, Jews, Mormons, Jehovah's Witnesses, Quakers, Hindus, and Buddhists, who originally suffered from discrimination or violence in the United States. While it is true that some religious believers originally came to America to escape persecution, it is also true that many of them, upon arriving, promptly launched their own forms of religious persecution and intolerance against others. The religious freedom that exists in the United States today came not as a cherished legacy ceremoniously handed down from the founding fathers, as IRFA suggests, but emerged only after many painful political and legal struggles by minority religions against societal intolerance. Unfortunately, IRFA's idealized history can send a message to foreign observers that is counterproductive to IRFA's important goals, for it may wrongly imply that the United States has long been the beacon of full religious liberty and that other countries should attempt to emulate an American model.

While inserting such an idealized history in IRFA was rhetorically counterproductive, at least from the perspective of dispassionate foreign observers, it is nevertheless important to note that the Department of State itself does not convey such a message either in its public reporting or in its diplomatic negotiations. The Department of State identifies the official U.S. position as follows:

Grounded in and informed by the American experience, in which religious liberty is "the first freedom" of the Constitution, the law nevertheless does not attempt to impose "the American way" on other nations. Rather, it draws on the internationally accepted belief in the inviolable dignity of the human person and of the universal rights that flow from that belief. These rights are reflected in international covenants, which are, in turn, cited in the Act as key

16. 22 U.S.C. § 6401(a)(1).

17. Professor Sullivan correctly criticized IRFA for providing an inaccurate and idealized version of American history. See Sullivan, *supra* note 2, at 11.

standards on religious freedom by which governments—including that of the United States—must be judged.¹⁸

The Department of State correctly identifies religious liberty not as the oldest of American rights but as the first to have been enumerated in the Bill of Rights of the Constitution.

More importantly, the Department of State refers to the international human rights instruments that IRFA itself identifies as the guiding norms by which the United States also should be judged. The legislative findings of IRFA itself include the recognition that:

(2) Freedom of religious belief and practice is a universal human right and fundamental freedom articulated in numerous international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(3) Article 18 of the Universal Declaration of Human Rights recognizes that “Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.” Article 18(1) of the International Covenant on Civil and Political Rights recognizes that “Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.” 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, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government.¹⁹

Thus, the Department of State and IRFA (setting aside some of its rhetoric) acknowledge that both the United States and other countries should be held to the standards adopted by the international

18. 1999 RELIGION REPORT, *supra* note 13, at 2 (Introduction).

19. 22 U.S.C. § 6401(a)(2)-(3).

community and not by an American model of church-state separation. The United States, officially, does not apply American standards on freedom of religion to others nor does it excuse itself from complying with international norms.²⁰

Professor An-Na'im's important criticism cannot be answered fully, however, simply by pointing to the official positions and intentions of the U.S. government. Americans, like all people, are capable of conflating their own parochial beliefs with idealized international norms. Whereas Americans might argue that they are promoting *international* standards, they might, in fact, simply be promoting their own system. It is reasonable to suspect that Americans' *interpretation* of international instruments will be influenced by the American historical experience, just as it would be reasonable to suspect that others also will interpret the meaning of international instruments through their own historical and cultural experiences.

Although each country has its own unique history and traditions, it is possible to identify two general types for the purpose of illustrating how a misunderstanding can develop between Americans and others regarding the meaning of religious freedom.

In most countries of the world, a dominant religious tradition played a disproportionately influential role in shaping the modern histories of those countries as well as helped form their cultures, traditions, and institutions. Catholicism played such a role in, for example, Latin America, Spain, Italy, Austria, and Poland. Lutheranism was such a religion in (northern) Germany, Scandinavia, and Estonia. Christian Orthodoxy is dominant not only in Russia, but throughout eastern and south-eastern Europe. Islam, in its many forms, is the dominant religious influence in the Maghreb, the Levant, the Middle East, Central Asia, Pakistan, Indonesia, and Malaysia. In such countries, the dominant religious tradition is not a mere cultural gloss, but has been deeply influential in shaping national and personal identity. As a part of the popular culture, it will be assumed that "to be Polish is to be Catholic," "to be Greek is to be Orthodox," and "to be a Saudi is to be a Wahhabi Muslim." In such countries, religion is not a matter of individual choice, but is an integral part of personal identity and is almost akin to one's race, native language, and

20. The author is aware of no instance where the Department of State has suggested to a foreign government that it should implement a U.S. model; rather, the benchmark is always presented as the language of the international instruments.

family. In such countries, governmental and political support to the traditional religion is not seen as a *violation* of religious freedom but as a means to *support* religion and religious freedom of the vast majority of citizens.

Moreover, it is quite common in many countries (including several in Europe) for the law to limit the number of religious groups that are able to receive a range of legal benefits. Consequently, a two-tiered system that provides different rights for religious groups depending on the type of legal recognition they receive is quite common.²¹ Thus, a few of the larger or more traditional religions commonly receive state benefits, including tax-exempt status, legal personality, state-financed religious education, and state-supported religious schools. These benefits are denied to other religious groups, even though members of those groups also are taxpayers and citizens. Governments frequently defend such practices as “protecting” citizens from foreign or unknown religions.

In the United States, on the other hand, religious affiliation is now generally understood to be a matter of personal choice. Although children may be born and raised in a particular religious tradition, as adults they will be free to convert to other faiths. While popular prejudices against some religions surely inhibit the range of personal choices, the dominant presumption in the United States is that religious affiliation is a matter to be decided by the individual and that such decisions should not undercut civil standing or political rights. This indulgence for personal choice in turn spawns a wide variety of religious groups from which the individual may choose. Although the United States continues to be predominantly Christian and Protestant, the range of choices both within and outside of Christianity is quite high. Similarly, Americans generally believe that governments should not provide financial support to specific religions and certainly should not select a particular religious doctrine as an established or state religion. These two types of system (“traditional” versus “individual choice”), though overly simplified here, illustrate a fundamental difference in how religious freedom is commonly understood outside and inside the United States.

21. For the most important publication describing this issue, see W. COLE DURHAM, JR., *FREEDOM OF RELIGION OR BELIEF: LAWS AFFECTING THE STRUCTURING OF RELIGIOUS COMMUNITIES* (1999). The publication was prepared for and issued by the Office of Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe in Warsaw, Poland.

The Department of State recognizes, in principle, that different countries have varying approaches to the role of religion in society that arise from their different traditions.

Occasionally a nation's policy on religious freedom can be better understood in the context of its history, culture, and tradition—a particular religion may have dominated the life of a nation for centuries, making more difficult the acceptance of new faiths that offer challenges in both cultural and theological terms. But tradition and culture should not be used as a pretext for legislation or policies that restrict genuine religious belief or its legitimate manifestations.²²

While formally recognizing the cultural and historical differences, the United States nevertheless argues, correctly, that differences of religious and cultural traditions do not exempt states from complying with international standards. Indeed, international human rights law is created for the purpose of bringing an end to historical and traditional practices that infringe on the rights that are identified in the international instruments. In fact, it is probably accurate to say that the *classic* argument used by those who oppose human rights is that they undermine traditional practices. Whether it was racial segregation in the American South, apartheid in South Africa, or the denial of the right of women to vote in Switzerland, the defenders of those practices complained that the innovations were inconsistent with the history, traditions, and cultures of those societies. The point of human rights, however, is to *end the historical, traditional, and cultural practices that discriminate on the basis of race, sex, and religion*.²³

22. 1999 RELIGION REPORT, *supra* note 13, at 4.

23. Some examples of nondiscrimination provisions within international conventions include:

[Purposes of the United Nations are accomplished in achieving] international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and *in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion*.

U.N. CHARTER art. 1, para. 3 (emphasis added).

[The General Assembly shall make recommendations for the purpose of] promoting international co-operation in the economic, social, cultural, educational, and health fields, and *assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion . . .*

Id. at art. 13, para. 1(b) (emphasis added).

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in

There are ample grounds for discussion and disagreement about the scope and meaning of the international standards regarding freedom of religion and belief. Americans and their foreign interlocutors would do well to engage in a serious discussion about how the United States and the world community can better understand the proper scope of the freedom of religion and belief and to end discrimination on the basis of religion and belief. The United States would do well to understand how different traditions have shaped viewpoints about the meaning of religious freedom. It also would be appropriate for foreign observers to examine how their traditions of dominant religions and state-approved religions can lead to discrimination against newer and minority religions whose rights are fully protected under ratified international human rights instruments.

B. Criticism 2: IRFA Reflects the Political Interests of the Christian Right in the United States and Promotes Missionary Religions

I think the legislative history of this Act will probably reflect there was a great deal of interest in protecting the rights of Christians and so forth when the bill was conceived and also when people responded, constituents and so forth. So I think that the burden is probably on the U.S. government to show that in this Act they're not engaging in crusading or proselytization [sic] on behalf of the Christian religion. . . . I see here that [the proponents of IRFA] are trying to be sensitive to that, and trying not to create that

the present Covenant, *without distinction of any kind, such as race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 2(1), 999 U.N.T.S. 171 (emphasis added).

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, *the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Id. at art. 26 (emphasis added).

The enjoyment of the rights and freedoms set forth in this Convention shall be secured *without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

[European] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 14, 312 U.N.T.S. 221.

impression. But I think it's certainly an uphill battle in terms of world opinion.

—Ms. Jemera Rone at the Hartford Conference²⁴

Jemera Rone, an African specialist at Human Rights Watch, identifies here two interrelated and widely shared foreign criticisms of IRFA: that the Christian right successfully pressured Congress into adopting legislation favoring Christianity and that it is designed, in part, to promote American missionary activities abroad. Some foreign officials have even suggested in private exchanges that they sympathize with American diplomats who must include religious freedom in negotiations in order to appease politically powerful domestic groups.

There are a number of understandable reasons why observers might reach such conclusions. As was discussed above, some of the actions by Congress in 1996 and 1997 focused conspicuously on Christian concerns.²⁵ The emergence of this Congressional interest was associated with some highly publicized contemporaneous allegations that Christians are the “most persecuted” people in the world.²⁶ It is frequently reported and widely believed, albeit inaccurately, that the early drafts of IRFA focused exclusively on protecting Christians from persecution.²⁷ It is true that the draft legislation was endorsed and promoted, at different points, by some influential groups associated with the religious right, including the National Association of Evangelicals, the Southern Baptist Ethics and Religious

24. HARTFORD CONFERENCE, *supra* note 2, at 56.

25. *See supra* notes 3, 7 and accompanying text.

26. *See* Goldberg, *supra* note 9, at 48; *see also* PAUL MARSHALL, THEIR BLOOD CRIES OUT: THE WORLDWIDE TRAGEDY OF MODERN CHRISTIANS WHO ARE DYING FOR THEIR FAITH (1997); NINA SHEA, IN THE LIONS DEN: PERSECUTED CHRISTIANS AND WHAT THE WESTERN CHURCH CAN DO ABOUT IT (1997); Linda Lawson, *Christians Labeled “Most Persecuted”*, BAPTIST PRESS, Dec. 26, 1996 (visited Aug. 22, 2000) <<http://www.umn.org/Htpersec.htm>>.

27. *See, e.g.*, Sullivan, *supra* note 2, at 10 (“The act, and its predecessor versions, some of which targeted only the persecution of Christians . . .”). The Wolf-Specter bill, H.R. 1685, 105th Cong. § 2(3) (1997), cited “[p]ersecution of religious believers, particularly Roman Catholic and evangelical Protestant Christians [by] Communist countries.” But the Wolf-Specter bill did not pertain solely to persecuted Christians. It also referred to the “persecution of Baha’is, Christians, and other religious minorities” in Iran, *id.* § 2(4), to Tibetan Buddhists, *id.* § 2(6), and to Sudan’s “religious war against Christian, non-Muslim, and moderate Muslim persons,” *id.* § 2(5).

Liberty Committee, the Christian Coalition, the Family Research Council, Evangelicals for Social Action, and the Prison Fellowship.²⁸

While it is fair to say that many influential groups affiliated with the Christian right campaigned for the law that ultimately became IRFA, their influence should not be overestimated or interpreted without nuance. One of the legislative staffers who worked on the legislation responded to this perception as follows:

It has seemed from several comments that some of you carry the suspicion that this Act was the work of the religious right. While it is undoubtedly true that there are many in the religious right who care deeply about this issue, this suspicion of their involvement with this bill is one which those of us who worked on the Act would view with a certain degree of irony, because we had such mixed experience and even some frustrations at times with the religious right. I do not want to get into naming names, but in one instance, for example, when Laura Bryant raised a couple of substantive questions about the Wolf-Specter bill, she was told by one leader that it was because of people like her that the Nazis succeeded in sending millions to the death camps, and she was standing in the way of large numbers of religious believers being saved from a similar fate.²⁹

The text of IRFA uses the word “Christians” only twice, and then only by way of reference to the resolutions that were adopted by the previous Congress.³⁰ The words “Catholic,” “Protestant,” and “Evangelical,” do not appear in the text. (Nor do the words “Muslim,” “Islam,” “Buddhist,” or “Hindu” for that matter.) The language of IRFA does not highlight persecution of any particular group but refers instead to the touchstone “international” and “universal” standards that are identified as the guiding norms for IRFA. IRFA, as enacted, did not reflect the narrow support of a particular group but was adopted unanimously in both the Senate and the House and ultimately was supported by the Clinton administration.

28. See Christy Cutbill McCormick, *Exporting the First Amendment: America's Response to Religious Persecution Abroad*, 4 J. INT'L LEGAL STUD. 283, 330 (1998). For brief histories of the legislative and lobbying process that culminated in IRFA, see, for example, *id.* at 283-89, and Kristin N. Wuerffel, *Discrimination Among Rights?: A Nation's Legislating a Hierarchy of Human Rights in the Context of International Human Rights Customary Law*, 33 VAL. U.L. REV. 369, 412 n.12 (1998). See also Goldberg *supra* note 9, at 48.

29. HARFORD CONFERENCE, *supra* note 2, at 58 (John Hanford, legislative aid to Senator Lugar).

30. See 22 U.S.C. § 640(a)(7) (1998).

Regardless of its parentage and textual wording, IRFA can be criticized in practice for focusing disproportionately on religious issues of particular concern to Americans, including difficulties encountered abroad by American missionaries and by religions that are particularly identified with the United States origination, such as the Jehovah's Witnesses and the Mormons. For example, it is probably fair to say that the Department of State's annual Country Reports on Human Rights and the U.S. Department of State Annual Report on International Religious Freedom demonstrate a relatively greater awareness of difficulties encountered by Protestant Evangelical, Catholic, and Jewish communities abroad than, for example, the problems encountered by Muslims and Orthodox Christians.³¹ There is, in a word, under-reporting by the Department of State of discrimination suffered by certain groups that are relatively under-represented in the United States.

This is not to say, however, that such violations go totally unreported or that there is an intentional policy of omission.³² The explanation is in some measure due to the simple fact that overworked and understaffed U.S. embassies are more likely to report on problems that are brought to their attention than they are on problems that would need to be researched. American missionaries abroad are becoming increasingly well aware that they can report difficulties they encounter, whether in obtaining visas or distributing literature, to appropriate U.S. embassies or the Department of State in Washington and that they are increasingly likely to receive helpful responses. In contrast, it is probably not obvious to Muslims living in Norway or Old Believers living in Russia that they should report on incidents of discrimination to U.S. embassies in Oslo and Moscow respectively.³³ With additional time and resources, the quality and

31. The author has also heard the criticism that IRFA is designed to protect only rights of *religion* rather than rights of religion *or belief*—and thus that the United States is not actually promoting the international standard but only the religious component of the international standard. There is, in fact, only modest reporting by the Department of State on belief-related rights of atheists and agnostics.

32. For example, the controversies surrounding the right of religious Muslim women to wear headscarves are included in the 1999 RELIGION REPORT, *supra* note 13, for Azerbaijan, Turkey, France, Germany, and the Netherlands.

33. The author had a conversation with a Norwegian Muslim on exactly this point. She commented that the religious freedom report on Norway was overly generous to the government and under-reported discrimination suffered by Muslims. She acknowledged that it had not occurred to her or to other Muslims to convey such information to the U.S. embassy in Oslo.

thoroughness of the reporting should improve. While the Department of State continues in its efforts to enhance the quality and consistency of its reporting, significant logistical and practical obstacles remain. We can hope that, over time, people will bring to the attention of U.S. officials examples of violations of religious freedom and that the quality of reporting will improve.

While working at the Department of State and while participating in discussions with foreign governments, the author observed no obvious effort by the United States to favor Christians nor to seek remedies for Christian groups at the expense of other faiths. Indeed, the United States voiced concerns to the Greek government, for example, about the rights of Muslims in Greece just as it voiced concerns to the Turkish government about the rights of Greek Orthodox believers in Turkey. In relations with governments in western Europe, the United States has expressed concern about several new religious groups, some of whom were Protestant, but most of whom were not. Moreover, U.S. embassy officials are increasingly making efforts to reach out to a range of religious groups that suffer discrimination. The Office of International Religious Freedom has taken concerted efforts to reach out to Muslim communities that traditionally have had relatively less access to the foreign policy machinery than have Christian and Jewish groups.

IRFA, as correctly suggested by Jemera Rone, also is seen as promoting the work of American missionaries abroad. For some critics, the providing of political support to missionaries who encounter difficulties abroad can be seen to be a part of the larger problem of American insensitivity and indifference to foreign histories, traditions, religions, and cultures. To such observers, the United States may be characterized as constantly selling to others its superficially appealing but ultimately shallow exports, whether they be McDonald's, Coca-Cola, Disneyland, sneakers, blue jeans, rock music, or motion pictures. IRFA thus may be seen as an effort to export and defend yet another product: American religions and missionaries.³⁴

34. Foreign observers sometimes caricature the American religious culture as embodying a "consumer market" ethos. The critics will see American missionaries abroad as salesman exporting and attempting to fulfill their quotas of converts and thereby gain a "market share" over their competitors. Such missionaries are said to use sophisticated "sales techniques" to gain new customers at the expense of religions that have failed to modernize and have lost touch with their own "consumer base" through poor advertising. Countries with more traditional approaches to regulation of religion may well find such analogies to be persuasive and to be consistent with other fears about the growing influence of American popular culture.

But the correct issue is not whether religious communities in the United States have an overabundance of missionary zeal, but whether governments should be permitted to restrict freedom of expression on matters of religion or restrict the right of people to receive information about religion. Though new forms of religion may appear to undermine traditional beliefs, international covenants do not permit limitations on expression on the grounds that such expression is anathema to history, tradition, and culture. International standards, moreover, suggest that missionaries do have a right to freedom of expression,³⁵ that individuals have the freedom to change their religious beliefs,³⁶ and that individuals have the right to receive information.³⁷

C. Criticism 3: IRFA Improperly Establishes a Hierarchy of Human Rights and Places Religion at the Zenith

There has been some suggestion that IRFA constitutes an effort to establish a hierarchy of rights and to place religious freedom at its zenith.³⁸ It should not be surprising if many IRFA supporters might believe that religious freedom is the most important human right any more than it would be surprising to learn that other human rights advocates believe that freedom from torture or freedom of expression to be the most important human rights. It is only natural that people involved in human rights campaigns are attracted to work on

The country that has responded with possibly the strongest reaction against foreign missionaries has been Russia. For a number of articles describing this reaction, see PROSELYTISM AND ORTHODOXY IN RUSSIA: THE NEW WAR FOR SOULS (John Witte Jr. & Michael Bourdeaux eds., 1999).

35. See, e.g., *Kokkinakis v. Greece*, 260 Eur. Ct. H.R. (ser. A) at 17 (¶ 31) (1993) (“According to Article 9 [of the European Convention on Human Rights], freedom to manifest one’s religion is not only exercisable in community with others, ‘in public’ and within the circle of those whose faith one shares, but can also be asserted ‘alone’ and ‘in private’; furthermore, it includes in principle the right to try to convince one’s neighbour, for example through ‘teaching’, failing which, moreover, ‘freedom to change [one’s] religion or belief’, enshrined in Article 9, would be likely to remain a dead letter.”).

36. See *id.*

37. See, e.g., *Leander Case*, 116 Eur. Ct. H.R. (ser. A) at 29 (¶ 74) (1987) (“[T]he right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him.”).

38. For a discussion of this issue, see Wuerffel, *supra* note 28. Mickey Spiegel of Human Rights Watch similarly raised the concern about creating a hierarchy of rights, particularly when rights in reality should be understood to be interconnected. See HARTFORD CONFERENCE, *supra* note 2, at 18-19. See also the September 9, 1997, testimony of John Shattuck, *supra* note 9.

the particular issues of greatest personal significance to them. It is understandable that some people believe that the right of conscience is the most sensitive right and needs the most protection.

Regardless of the motivations of the law's supporters, IRFA and the Department of State do not assert that religion is the most important human right, nor do they emphasize the importance of religious freedom to the exclusion of other rights. The fact that Congress adopted legislation does not signify, in and of itself, that religion should be placed at the top of a hierarchy. The legislation need signify only that religious freedom is a right that has been relatively neglected by governments and international organizations and that it needs greater protection. IRFA does not create a hierarchy; rather, it highlights an important, vulnerable, and heretofore neglected right.

D. Criticism 4: IRFA is Designed to Punish Countries by the Unilateral Imposition of Sanctions by the United States

The original Wolf-Specter bill contained provisions that imposed economic sanctions automatically on countries that were found to engage in religious persecution.³⁹ These provisions generated the greatest opposition from the Clinton Administration and the business community.⁴⁰ However, unlike the Wolf-Specter bill, IRFA does not impose automatic sanctions. Instead, it provides the President with a menu of fifteen enumerated "presidential actions," any one of which should be imposed against countries that are identified by the

39. See H.R. 1685, 105th Cong. (1997). In brief, the Wolf-Specter bill created an Office of Religious Persecution Monitoring within the Executive Office of the President. See H.R. 1685, § 5. The Director of the Office of Persecution Monitoring ("Director"), who was to be appointed by the President, see *id.* § 5(b), was charged with the responsibility of, *inter alia*, "determin[ing] whether a particular country is engaged in . . . religious persecution, and identify[ing] the responsible entities within such countries." *Id.* § 5(e)(4). Once a country had been so designated, Wolf-Specter provided that the appropriate agencies within the U.S. government "shall—(i) prohibit all exports to the responsible entities . . . and (ii) prohibit the export to such country . . . products, goods, and services: that had been identified by the Director." *Id.* § 7(a)(1)(A) (emphasis added). The President was nevertheless authorized, under certain circumstances, to waive the sanctions for periods of not more than 12 months. See *id.* § 8(a).

40. For the Clinton Administration's position on sanctions generally, see Stuart E. Eizenstat's testimony before the Senate Foreign Relations Committee, July 1, 1999. See Stuart E. Eizenstat et al., *U.S. Department of State, On-the-Record Briefing on the International Religious Freedom Act* (visited Aug. 22, 2000) <http://www.state.gov/www/policy_remarks/1998/981009_eizen_etal_relig.html>.

Department of State as violators of religious freedom.⁴¹ They include issuing a private demarche, withdrawal of foreign aid, and blocking commercial contracts.⁴² The President also is authorized to take an

41. 22 U.S.C. § 6445.

42. The fifteen enumerated actions are:

- (1) A private demarche.
- (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.
- (9) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 2151n of this title.
- (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, extensions of credit, or participations in the extension of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442 of this title.
- (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 of this title.
- (13) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specific number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442 of this title, under –
 - (A) the Export Administration Act of 1979 [50 U.S.C. 2401 et seq.];
 - (B) the Arms Export Control Act [22 U.S.C. 2751 et seq.];
 - (C) the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; or
 - (D) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.
- (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 found or determined by the President to be responsible for violations under section 6441 or 6442 of this title.
- (15) Prohibiting the United States Government from procuring, or entering into any contract for the procurement of, any goods or services from the foreign government, entities, or officials found or determined by the President to be responsible for violations under section 6441 or 6442 of this title.

appropriate “commensurate” action, even if it is not included in the list of fifteen.⁴³ Unlike the Wolf-Specter bill, IRFA does not use the term “sanction” to describe the enumerated presidential actions. Both publicly and privately, the first Ambassador-at-Large advised that IRFA is not designed to punish violators but to promote religious freedom. In his September 9, 1999 press conference announcing the release of the first religion report, Ambassador Seiple stated:

This International Religious Freedom Act is designed to promote religious freedom. [W]e desperately want to work with those countries in the promotion around the common agenda in ways that will enhance religious freedom for their people.

. . .

. . . We do not look at this bill as a punitive bill. We do not look at this bill as a way to punish people. We do not look at this bill as a moral high ground for one country against another. We are in the business of promoting international religious freedom; we will work with anyone who will work with us to enhance that right.⁴⁴

In the minds of some foreign officials, however, IRFA retains the vestigial legacy of the automatic sanctions provision of the Wolf-Specter bill.⁴⁵

Although the law does not provide for “sanctions” per se, it does require that the President undertake one of the fifteen specified actions against “violators” of religious freedom as well as one of six

22 U.S.C. § 6445(a) (citations omitted).

43. According to 22 U.S.C. § 6445(b),

Except as provided in subsection (d) of this section, the President may substitute any other action authorized by law for any action described in paragraphs (1) through (15) of subsection (a) of this section if such action is commensurate in effort to the action substituted and if the action would further the policy of the United States set forth in section 6401(b) of this title. The President shall seek to take all appropriate and feasible actions authorized by law to obtain the cessation of the violations. If commensurate action is taken, the President shall report such action, together with an explanation for taking such action, to the appropriate congressional committees.

44. Robert Seiple & Harold Hongju Koh, *Briefing, Release of the 1999 Annual Report on International Religious Freedom*, U.S. Department of State Web Site (visited Aug. 22, 2000) <http://www.state.gov/www/policy_remarks/1999/990909_seiple_koh_irf.html>.

45. In the author’s experience, officials of foreign governments who are aware of IRFA typically assume that it operates in the manner initially proposed by the Wolf-Specter bill.

actions against those countries designated as “particularly severe violators.”⁴⁶

While it is correct to say that a “presidential action” must be taken against each state identified as a “violateur,” a private demarche—a confidential communication between governments—satisfies this requirement.⁴⁷ This falls well short of the automatic sanctions that bore the brunt of criticism surrounding the Wolf-Specter legislation.

E. Criticism 5: The United States Acts Hypocritically by Arguing in Favor of Religious Freedom Abroad While it Commits Human Rights Abuses at Home

States sometimes respond to U.S. government criticism of their human rights practices by replying that the United States should not criticize other states until it perfects its own human rights record. For example, after the United States criticized French government policies on religious minorities at a human rights implementation meeting of the Organization for Security and Cooperation in Europe (“OSCE”), the French delegate countered that the United States, which bears responsibility for the incident of the Branch Davidian

46. See *supra* note 42 for a listing of the fifteen possible actions. For “particularly severe violators,” which are also described in the law as “countries of particular concern,” the President must take one of the actions designated as 9 through 15 or some commensurate action. 22 U.S.C. § 6442(c).

At his congressional testimony on October 6, 1999, Ambassador Seiple identified the five countries designated by the President as “countries of particular concern” for 1999: Burma (Myanmar), China, Iran, Iraq, and Sudan. Ambassador Seiple also identified “the Taliban in Afghanistan, which we do not recognize as a government, and Serbia, which is not a country, as particularly severe violators of religious freedom.” Although the Secretary of State’s official designation of these countries was subsequently forwarded to Congress, neither Congress nor the President has released a copy of that message. *Human Rights, and Labor Testimony Before the Subcomm. on Int’l Operations and Human Rights House Comm. on International Relations* (visited Aug. 22, 2000) <http://www.state.gov/www/policy_remarks/1999/991006_sciple_koh_irf.html> (testimony by Ambassador Robert A. Seiple).

47. According to the Department of State:

The promotion of religious freedom involves far more than public airing of violations. The most productive work often is done behind the scenes, for a very simple reason: no government or nation is likely to respond with alacrity when publicly rebuked. It is, of course, sometimes necessary for the United States, and the international community, to denounce openly particularly abhorrent behavior by another nation.

1999 RELIGION REPORT, *supra* note 13, at 9.

disaster at Waco, should not criticize other countries.⁴⁸ The Chinese government similarly responds to the U.S. Department of State reports issued on its human rights practices. In response to the U.S. criticisms of China's crackdown on the Falun Gong, the Chinese Foreign Ministry announced that "China is indignant over the U.S. government's double standard on the Falun Gong Sect. The U.S. appears to be totally oblivious to the pernicious influence of the sect in China and continues to meddle in China's internal affairs."⁴⁹ When the United States released the *1999 Country Reports on Human Rights Practices*, the China Society for Human Rights Studies responded that the "U.S. Government needs to keep an eye on its own human rights problems, mind its own business and stop interfering in the internal affairs of other countries."⁵⁰

If the United States were to assert that it commits no human rights abuses and that other countries should follow its example, the criticisms offered by the French government and Chinese government might well be appropriate. But the Department of State does not lay claim to American perfectionism nor does it hold out the United States as a role model. When asked whether the United States complies with international standards for freedom of religion, Ambassador Seiple responded:

The United States has its imperfections and we do not set ourselves up as a moral watchdog for the rest of the world. We have problems that we are working on. I think if you look at the history of the 223 years of this republic, compare that with any other nation-state in the world, we can be very proud of what has happened. That doesn't make us perfect and we don't suggest that that is the case.⁵¹

The United States should not be precluded from calling other countries to account simply because it has its own failings. Similarly,

48. The November 1998 speech by the French representative was not published or transcribed.

49. Zhang Qiyue, *China Against U.S. Double Standard on Falun Gong Cult*, CHINA DAILY, Dec. 7, 1999 (visited Aug. 23, 2000) <<http://www.chinadaily.net/falun/c081.htm>>.

50. *U.S. Human Rights Record in 1999* (visited Aug. 23, 2000) <<http://www.human-rights-china.org/en/eindex.html>>. The article was prepared by The China Society for Human Rights Studies, which the official Chinese government web site describes as "a national academic society [that is] a nongovernmental organization in special consultative status with the United National Economic and Social Council (UNESCO)."

51. Seiple & Koh, *supra* note 44.

France and China should not be precluded from criticizing the United States because of their internal problems. The international human rights regime assumes mutual accountability; it does not require that the accuser be above reproach.⁵²

F. Criticism 6: The United States Acts Inconsistently on Human Rights Issues by Advocating International Standards While Acting Unilaterally

[I]f these are international standards[,] why then are we not part of an international effort to make changes within some of the countries that we are concerned about?

—Ms. Mickey Spiegel at the Hartford Conference⁵³

[The U.S. should join] other countries in efforts to protect and promote all human rights, instead of focusing so exclusively on this particular right [of religious freedom] while refusing to ratify other international human rights treaties It is curious that the U.S. is so protective of its own sovereignty that it refuses to ratify an almost universally ratified treaty like the Rights of the Child Convention, and yet it expects other countries to share its own particular concern with freedom of religion.

[The] U.S. has consistently refused to be part of the process of developing and implementing international rights, whether on freedom of religion or any other human right, and yet here comes this “Lone Ranger” effort on this particular freedom.

—Professor Abdullahi An-Na’im at the Hartford Conference⁵⁴

It is true that the United States does not always act or wish to act as a full participant in supporting the international human rights re-

52. By analogy, there are medical doctors who smoke cigarettes even though they know of the serious risks attached to smoking. If one of these doctors urges a patient not to smoke, what is the wisest response of a patient who genuinely wishes to improve her health? To criticize the doctor for being a hypocrite? To ignore the doctor’s advice? While accusing the doctor of hypocrisy may comfort the accuser, it is not a useful response if the patient genuinely wants to improve her health or the doctor’s. Rather than denounce the hypocrisy of the accuser, the goal should be to undertake a conscientious effort to determine what can be done to improve the quality of life.

53. HARTFORD CONFERENCE, *supra* note 2, at 21 (Spiegel).

54. HARTFORD CONFERENCE, *supra* note 2, at 25-26 (An-Na’im).

gime. There are a number of telling examples where the United States has removed itself from full participation with the international community. For example, the United States has been in serious arrears in its payments to the United Nations, a solemn obligation of U.N. membership.⁵⁵ It conspicuously asserts its own sovereignty in order to shelter it from international obligations that other states are willing to assume. The United States also frequently urges that there be significant changes during the process of drafting international human rights conventions, only to refuse to sign or to ratify the convention once it has been adopted by the remainder of the international community.⁵⁶ When it does ratify a human rights convention, the United States often does so only after interposing a number of “reservations, understandings, and declarations.”⁵⁷ Finally, although the United States files its annual country reports on the human rights practices of other states, it has been delinquent in filing reports on its own human rights practices, as required under such conventions as the International Convention on the Elimination of All Forms of Racial Discrimination.⁵⁸ For foreign observers, it can be troubling when the United States avoids full participation in the international human rights process, but then insists that other countries must adhere to international freedom of religion standards as they are interpreted by the United States.⁵⁹

The U.S. Congress could enhance significantly the Department of State’s ability to promote international standards by helping to make the United States a full participant in the international system. Measures include ensuring that debts are paid to international or-

55. See U.N. CHARTER art. 2, para. 2.

56. Perhaps the most recent example is the United States’ refusal to sign the Rome Statute of the International Criminal Court. See U.N. Doc. A/CONF.183/9 (as corrected by the procès-verbaux of Nov. 10, 1998, and July 12, 1999).

57. One of many such examples is the International Covenant on Civil and Political Rights. For a typical criticism of this practice, see HUMAN RIGHTS WATCH WORLD REPORT 1999, at 386 (1999).

58. See International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195. While it is appropriate to criticize the United States in this regard, it also should be noted that many other states similarly are delinquent and that the valid criticism also applies to others.

59. This is another version of the hypocrisy argument that was made in Criticism 5 above. Here, the emphasis is not on internal U.S. human rights behavior but on American participation in the international community. As with the preceding criticism, there is some merit to the argument, except when it is overstated or used to excuse others’ failures to comply with human rights norms.

ganizations of which the United States is a member; ratifying international conventions; and ratifying conventions without attaching reservations, understandings, and declarations that undermine the merits of the conventions.

It is, nevertheless, inaccurate to suggest that the United States always acts alone on issues related to religious freedom. In the United Nations Human Rights Commission, for example, Ireland traditionally takes the lead for resolutions on religious freedom, and the United States is a continuing supporter of Ireland's efforts.⁶⁰ The United States was one of the original supporters of the resolution that created the Special Rapporteur of the Commission on Human Rights on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief and has supported the renewal of his mandate.⁶¹ In the OSCE, the United States has been a constant supporter of efforts to advance religious freedom. This strong support was manifest, for example, at the 1996 Seminar in Warsaw on Freedom of Religion and the creation of the Advisory Panel of Experts on Religion. The U.S. strongly supported Norway's leadership in the first OSCE "Supplementary Meeting on Freedom of Religion," which met in Vienna early in March of 1999. The United States joined with a number of European states in opposing the adoption of Russia's 1997 Law on Freedom of Conscience and Belief. It has worked regularly with other countries to free their nationals who have been arrested for practicing religion in third countries.

Critics of IRFA typically are unaware of these efforts by the United States to involve itself multilaterally in issues related to freedom of religion and belief. From the author's experience, the critics who accuse the United States for acting as a "Lone Ranger" are not fully aware of the many multilateral efforts that the United States has undertaken. At the same time, the United States can and should undertake more multilateral efforts to enlist the support of those governments that are relatively sympathetic to religious freedom.

The United States could strengthen its moral authority and influence in promoting freedom of religion if it were seen as a more

60. See, e.g., *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief*, U.N. Comm'n on Human Rights, U.N. Doc. E/CN.4/RES/2000/33 (2000); U.N. Doc. E/CN.4/RES/1999/39 (1999).

61. See, e.g., David Weissbrodt, *The Three "Theme" Special Rapporteurs of the UN Commission on Human Rights*, 80 AM. J. INT'L L. 685, 695-97 (1986).

consistent and engaged actor in the international community and if it sought to promote all recognized freedoms. But the critics of IRFA and the United States would do well both to recognize the multilateral efforts that the United States has made and, much more importantly, to urge other governments to engage more fully in the goal of promoting freedom of religion and belief.

IV. CONCLUSION

As long as foreign observers believe that the United States is promoting a peculiarly American notion of religious freedom, the effectiveness of the United States' efforts will be reduced. Religious freedom will best be advanced only when international standards are understood to be genuinely international and when the United States is seen as participating in a genuinely international effort.

IRFA's critics, however, frequently caricature the law and the efforts of the United States by loosely employing clichés such as “Lone Ranger,” “imperialism,” and “market-oriented religion.” Such rhetorical criticisms are made without fully understanding how American diplomats actually engage other governments in discussions regarding discrimination on the basis of religion. Admittedly, the United States must be very careful about how it approaches the sensitive issue of freedom of religion. But its critics also should be equally careful about how they characterize the United States' efforts. There is an important need, for all who are concerned by the issue of the promotion of religious freedom, to engage in a serious and nonpolemical discussion of the issues.

