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## External Monitoring of Domestic Religious Liberties

*Michael Young\**

### I. INTRODUCTION

I have been asked to address some of the possible external pressures that might be exerted on a country to expand the liberties it affords its inhabitants, especially in the area of religious belief and practice. In this context, I intend to examine the nature of the external monitoring mechanisms for human rights generally, and then how those mechanisms are developing in the context of religious liberties. In this context, it is, of course, essential to examine the degree to which, and the mechanisms through which individual countries or groups of countries monitor the behavior of another country and then, if unsatisfied with that behavior, exert pressure on that country to modify its behavior. It is also important, however, to examine external monitoring by non-governmental organizations (NGOs), international organizations (IOs) such as the United Nations, and regional organizations. Finally, to complete the picture, it is important to understand the relationship between the actions of NGOs and IO's and the various nation-states that make up the international system. I will briefly examine each of these issues in turn.<sup>1</sup>

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1. In the context of country-to-country interaction, I will focus more on the actions of the United States than any other country. Not only is this the experience

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## II. EXTERNAL MONITORING OF HUMAN RIGHTS GENERALLY

Of course, one cannot even begin to discuss this issue without acknowledging that serious questions exist about the legitimacy of monitoring the internal affairs of other countries.<sup>2</sup> This monitoring has been debated extensively in the area of human rights.<sup>3</sup> It is always important to consider the extent to which one country, a group of countries, or an international organization has the right to look at the internal affairs of another country. Certainly, in the early development of public international laws, which began to take their current form in the 1800's, it was generally considered illegitimate to look at the internal affairs of another country. How a government dealt with its own citizens was considered to be the exclusive concern of that government.<sup>4</sup>

Over time, two principal challenges arose to the illegitimacy of external monitoring of the treatment a country affords its inhabitants. The first challenge arose in terms of defining what was a matter of internal concern.<sup>5</sup> Increasingly, matters that were initially thought to be entirely the province of the local government were considered fair game for criticism by other countries because those matters had some impact or effect on

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with which I am most familiar and in which I have myself participated over the years, but, as has been true of other areas of international human rights, I strongly suspect the United States' perspective will, to some extent, drive the international monitoring of religious liberties. Simply put, what the United States does, for good or ill, has a great effect on the way in which these issues develop in the world arena. When there is some question of external monitoring in the areas of trade, labor rights, environmental rights, and, I believe, to a very large extent in the area of human rights, the United States has largely driven the agenda and the action plan. The dramatic upsurge in interest in international religious liberties in the United States makes it highly likely that this will be the case in this area as well.

2. See Gregory H. Fox, *Multinational Election Monitoring: Advancing International Law on the High Wire*, 18 *FORDHAM INT'L L.J.* 1658, 1659 (1995).

3. See, e.g., John Quigley, *Perestroika African Style: One-Party Government and Human Rights in Tanzania*, 13 *MICH. J. INT'L L.* 611, 650-51 (1992) (discussing the concern that third world countries have about interference in their internal affairs by western countries that consider their involvement a legitimate role to ensure democracy).

4. See Gregory H. Fox, *The Right to Political Participation in International Law*, 17 *YALE J. INT'L L.* 539, 590-91 (1992); Randall Green, *Human Rights and Most-Favored-Nation Tariff Rates for Products from the People's Republic of China*, 17 *U. PUGET SOUND L. REV.* 611, 611-12 (1994); Quigley, *supra* note 3, at 650.

5. See Demetrios James Marantis, *Human Rights, Democracy, and Development: The European Community Model*, 7 *HARV. HUM. RTS. J.* 1, 27 n.123 (1994).

other countries. Actions in the trade arena provide perhaps the simplest example. With the dramatic increase in treaty based promises to provide access to domestic markets, any actions taken that might impede that access became legitimate targets of examination and criticism. Domestic taxes, environmental regulations, investment approval systems, and much more, became appropriate subjects of bilateral and multilateral discussions, criticism, and even sanctions.

The second and much more pointed challenge to the traditional view involves the proliferation of agreements to adhere to uniform international standards in the area of human rights. This process started in the mid-1960s and found its break-through expression in the mid-1970s with the Helsinki Accords.<sup>6</sup> In the Helsinki Accords, member countries of the Conference of Security Cooperation in Europe (CSCE) agreed to adhere to certain human rights standards.<sup>7</sup> The implicit subtext of the Helsinki Accords was that if the signatory countries failed to live up to those standards, that failure was a legitimate matter of multilateral discussion in the context of the CSCE. Thus, one country could legitimately raise and discuss the purely internal behavior of another country in a public international setting<sup>8</sup> and that discussion was considered legitimate and appropriate.

Certain countries still strongly resist this marked trend in international law. China, for example, is a strong and vocal opponent of any external discussion of its human rights or civil liberties.<sup>9</sup> It claims that "domestic matters" are never a legiti

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6. Conference on Security and Co-operation in Europe: Final Act, Aug. 1, 1975, 14 I.L.M. 1292 [hereinafter Helsinki Accords]; see also Richard C. Visek, *Creating the Ethnic Electorate Through Legal Restorationism: Citizenship Rights in Estonia*, 38 HARV. INT'L L.J. 315, 326 n.60 (1997).

7. See Lucien J. Dhooze, *No Place for Melrose: Channelsurfing, Human Rights, and the European Union's "Television Without Frontiers" Directive*, 16 N.Y.L. SCH. J. INT'L & COMP. L. 279, 311 (1996); Lois E. Fielding, *Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises*, 73 U. DET. MERCY L. REV. 551, 553 (1996); Bozhena Olshaniwsky, *20th Anniversary of the Ukrainian Helsinki Group*, UKR. WKLY., Jan. 5, 1997, at 7, available in 1997 WL 1175677.

8. See Timothy William Waters & Rachel Guglielmo, Comment, *"Two Souls to Struggle with . . .": The Failing Implementation of Hungary's New Minorities Law and Discrimination Against Gypsies*, 9 HARV. HUM. RTS. J. 297, 312 (1996).

9. See Winston P. Nagan, *International Criminal Law and the Ad Hoc Tribunal for Former Yugoslavia*, 6 DUKE J. COMP. & INT'L L. 127, 157 (1995); Michael L.

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mate topic of bilateral or multilateral discussion. For most countries, however, the Helsinki Accords represents a watershed, making resistance to discussions of domestic behavior in international fora very difficult.<sup>10</sup>

Numerous additional agreements followed—and, of course, preceded—the Helsinki Accords. The Covenant on Civil and Political Rights,<sup>11</sup> among a range of other agreements, was negotiated before, but signed and ratified after, the Helsinki Accords. All are important and reinforce the notion that the purely internal actions of a country are an appropriate subject of international interest and attention. Equally importantly, with the accumulation of these kinds of international agreements, similar principles of customary international law began to emerge.<sup>12</sup> In contrast to bilateral external monitoring, external monitoring by an international or regional organization depends heavily on the specific agreements into which the countries have entered. Those countries that have entered into agreements, are members of the United Nations, or are members of regional organizations with some sort of agreement relating to civil and political rights—such as the Council of Europe or the Organization of American States—are also then subject to the agreements related to those international organizations, as well as regional organizations. Those organizations are considered legitimate fora for discussing the member countries' domestic treatment of its own citizens.<sup>13</sup>

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Burton, Note, *Legalizing the Sublegal: A Proposal for Codifying a Doctrine of Unilateral Humanitarian Intervention*, 85 GEO. L.J. 417, 437-38 (1996).

10. See, e.g., Priya Alagiri, Comment, *Give Us Sovereignty or Give Us Debt: Debtor Countries' Perspective on Debt-for-Nature Swaps*, 41 AM. U. L. REV. 485, 497 n.74 (1992) (discussing the human rights debates at the United Nations which took place in the 1950s).

11. G.A. Res. 2200, U.N. GAOR, 24th Sess., Supp. No. 16, at 55, U.N. Doc. A/6316 (1966).

12. Cf. Hari M. Ososky, Note, *Domesticating International Criminal Law: Bringing Human Rights Violators to Justice*, 107 YALE L.J. 191, 209 (1997) (explaining that United States courts have recently allowed numerous suits against human rights violators for customary international law violations).

13. See, e.g., Karl J. Irving, *The United Nations and Democratic Intervention: Is "Swords into Ballot Boxes" Enough?*, 25 DENV. J. INT'L L. & POL'Y 41, 48-49 (1996) (discussing organizations that are concerned with democratic and human rights efforts in other countries).

Finally, it is important to understand, at least in the international context of human rights, it is critical to remember the role of NGOs. These organizations generally have no formal role in the monitoring process, but they do gather information and data, make that information public, and often put considerable pressure on various governments either to alter their behavior or to pressure other countries to alter their behavior.<sup>14</sup> These organizations try to bring to light the ways in which a country is allowing or disallowing civil rights or civil liberties within its own territorial borders and then urge the international community to take steps to force a country to alter its inappropriate behavior.<sup>15</sup>

In light of all this, it is increasingly difficult for a country to make a persuasive case in the international arena that it is no longer legitimate to look at how it treats its own citizens. Simply put, domestic treatment of citizens has become a legitimate subject of international discourse, and, without doubt, is likely to remain so.<sup>16</sup>

### III. EXTERNAL MONITORING OF RELIGIOUS LIBERTIES

Turning more specifically to external monitoring of religious liberties, a variety of questions arise, some general to the entire human rights debate and others rather specific to the nature of the liberty under discussion. Most important, of course, is the question of precisely what religious liberties are to be monitored and what standards are to be used? As this symposium amply demonstrates, despite all the good will in the world, there is still remarkably little agreement in this area. This, of course, considerably exacerbates the problems, or at least the tensions, that are likely to arise as one country, in some international context, questions how another country deals with religious liberties.

International human rights documents such as The Covenant on Civil and Political Rights<sup>17</sup> serve as useful starting

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14. See Kenneth W. Abbott, "Economic" Issues and Political Participation: The Evolving Boundaries of International Federalism, 18 CARDOZO L. REV. 971, 1007-09 (1996) (discussing the benefits derived from NGOs that monitor and report on domestic behavior).

15. See *id.*

16. See Waters & Guglielmo, *supra* note 8, at 312.

17. See *supra* note 11; see also *Universal Declaration of Human Rights*, G.A.

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points to agreement, but they are only starting points. Careful examination of the language and meaning of these documents reveals them to be both over- and under-inclusive. Monitoring religious liberties presents particularly difficult issues because religious liberties underlie culture, nation-building, history, and a whole range of things even more fundamental than other basic civil and human rights discussed in the international arena. Thus, developing some sort of a consensus on monitoring religious liberties presents a considerable challenge.

At least part of the problem is the absence of any systematic, effective and universally legitimate method for developing a consensus among countries. This lack of consensus increases the possibility of power politics, including the use of powerful economic and geopolitical positions to define the debates that are otherwise undefinable. For example, to the extent countries are unwilling to engage in this debate or work in good faith to establish mechanisms to decide issues of this sort, some countries—the United States, for example—will take matters into their own hands and begin to pressure countries to adhere to a standard that is not necessarily universally recognized, but that is imposed by the most powerful. The difficulty of reaching consensus may make some countries more impatient. The United States, certainly being foremost among the countries with little patience, may begin to define the debate in ways not satisfactory to all countries.

The area of religious liberties is thus likely to be one in which there may be appreciably more acrimony between governments. It is also likely that in this area, a few countries, like the United States and some of the Nordic and European countries, will drive the issue. This pressure may make external monitoring a particularly volatile political issue and perhaps in some ways even counter-productive. Pressure from some countries on other countries has the potential for actually delaying the dialogue rather than advancing it.

Nevertheless, some substantial pressure to engage in serious external monitoring of internal affairs is a fact. Good or bad, that is a reality today and we have to think about how to proceed in the face of an environment in which that kind of

monitoring is certain to occur. The absence of any kind of agreement over what is to be monitored or at least the development of some basic standards of religious liberties to which all countries can be expected to adhere are potential dangers in this area. Unless we are able to work together to develop those minimum standards, the absence of standards and the presence of external monitoring creates a very difficult and volatile international situation.

#### IV. MECHANISMS FOR EXTERNAL MONITORING

There is certainly some monitoring in the international human rights arena with which people are quite familiar. External monitoring, whether it be of the environment, human rights, or religious liberties, can be done by NGOs,<sup>18</sup> international and regional organizations,<sup>19</sup> and bilaterally by other countries.

##### A. *External Monitoring by NGOs*

NGOs do a great deal of monitoring, using the information they derive to pressure targeted countries.<sup>20</sup> They do this through publicity and lobbying their own governments to put pressure on targeted countries.<sup>21</sup> NGOs also operate within international and regional organizations to put pressure on different countries.<sup>22</sup>

NGO monitoring, though often disfavored by the targets of the monitoring, in fact has a number of considerable

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18. See Abbott, *supra* note 14, at 1008; Thalif Deen, *United Nations: U.N. Lauds NGOs for Humanitarian Work*, INTER PRESS SERVICE, Sept. 14, 1997 ("NGOs, he said, have made a particularly valuable contribution in the social, economic and humanitarian fields — by providing independent monitoring, gathering information, serving as alternative channels of communications and as providers of services and implementors of programs.").

19. See Fox, *supra* note 4, at 540-41; Farhan Haq, *El Salvador-Labor: New Deal For Maquila Workers*, INTER PRESS SERVICE, Nov. 3, 1997.

20. See Abbott, *supra* note 14, at 1007-08.

21. See Haq, *supra* note 19; *U.N. Event Shows Power of Activist Organizations*, PORTLAND OREGONIAN, Sept. 14, 1997, at A5.

22. See Abbott, *supra* note 14, at 1008 (discussing their effectiveness on reporting to international organizations on domestic behavior, especially in environment and human rights); see also Deen, *supra* note 18 (discussing how "NGOs have become 'indispensable partners' of the United Nations" and other organizations to ensure compliance by domestic actors).



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advantages.<sup>23</sup> Countries may be uncomfortable with NGO monitoring because they may perceive that NGOs are concerned with a relatively narrow range of issues.<sup>24</sup> For example, an NGO may focus exclusively on human rights without adequate emphasis on economic development or political stability. Nevertheless, across that range of issues, NGO monitoring has two substantial advantages. First, within their area of interest, most NGOs do tend to pick the most important issues to monitor. (This, by the way, tends to be slightly more true of the human rights NGOs than some other organizations; some environmental organizations, for example, have a history of targeting issues that may be somewhat less central to true environmental protection and may be somewhat more important for fund-raising purposes.<sup>25</sup> However, in the human rights area, the NGOs have tended to focus on areas that are central.<sup>26</sup>)

Second, NGOs tend to be rather objective or at least rather non-discriminatory in their criticisms.<sup>27</sup> They point the finger at their home country just as quickly as they point it at other countries. They examine police brutality in New York City to the same extent as police brutality in India. This approach presents considerable advantages over bilateral monitoring between countries because countries have a disconcerting tendency not to criticize themselves or to examine issues on which their record is not very strong. Thus, bilateral monitoring

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23. See Abbott, *supra* note 14, at 1007-08.

24. Cf. Richard Dicker, *South Korea Labor Rights Violations Under Democratic Rule*, 14 UCLA PAC. BASIN L.J. 196 (1996) (explaining the limited purpose of a specific NGO). *But cf.* Makau wa Mutua, *The Ideology of Human Rights*, 36 VA. J. INT'L L. 589, 610 n.73 (1996) (describing the work of an NGO called Human Rights Watch as covering the themes of arms transfers, children's rights, free expression, prison conditions, and women's rights).

25. See, e.g., Bob Williams, *Foreign Petroleum Companies Developing New Paradigm for Operating in Rain Forest Region*, OIL & GAS J., Apr. 21, 1997, at 37.

26. See, e.g., Anil Noel Netto, *Malaysia: Activists Protest Government Crackdown on NGOs*, INTER PRESS SERVICE, Jan. 1, 1997 (noting that Malaysian NGOs have focused on "major human rights abuses wherever they occur").

27. See *Country Reports on Human Rights Practices for 1996: Hearing Before the Comm. on Int'l Relations, House of Representatives*, 105th Cong. 46, 46-51 (1997) (statement of Elisa C. Massimino, acting Director, Washington Office, Lawyers' Committee for Human Rights); Mutua, *supra* note 24, at 621; A. Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, 68 CHI.-KENT L. REV. 61, 72-73 (1992); Comment, *Developments in the Law—International Environmental Law*, 104 HARV. L. REV. 1484, 1532 (1991).

often results in somewhat selective criticism of problems and selective determination of priorities. NGOs, on the other hand, generally monitor in a somewhat more neutral fashion and tend to pick the more important issues first. Both of these aspects of external monitoring are significant and highly useful.

Since some degree of external monitoring is now a fact of life for virtually all countries, targeted countries are better off encouraging and facilitating the most neutral, even-handed monitoring possible, and, in at least some cases, that may well be performed by NGOs and, for some of the same reasons, perhaps some international organizations as well. This type of monitoring may well be preferable politically and practically to bilateral monitoring.

Despite the advantages of granting some access to NGOs, however, many countries take just the opposite tack, trying to inhibit and restrict NGOs.<sup>28</sup> From a medium- to long-term perspective, this may ultimately be a serious political mistake.

The same is almost certainly true of multilateral and regional organizations. The United Nations' Human Rights Commission has a deserved reputation for both objectivity and considerable international legitimacy. It is therefore wise to encourage countries to permit the UN Human Rights Commission to monitor religious liberties.

#### *B. External Monitoring by Regional Organizations*

Regional organizations can also monitor a country's internal affairs. A number of regional organizations have an institutionalized human rights component to their activities,<sup>29</sup> such as the European Court of Human Rights<sup>30</sup> and the Organization of American States' Human Rights Commission.<sup>31</sup>

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28. See, e.g., Daniel P. Bradow, *Hong Kong: Preserving Human Rights and the Role of Law*, 12 AM. U. J. INT'L L. & POL'Y 361, 442 (1997) (describing restrictions in China that are probable in Hong Kong).

29. Cf. Fox, *supra* note 2, at 1658-59 (discussing membership in regional organizations); Gregory H. Fox, *Self-Determination in the Post-Cold War Era: A New Internal Focus?*, 16 MICH. J. INT'L L. 733, 769 (1995) (describing monitoring by regional organizations) (reviewing YVES BEIGBEDER, *INTERNATIONAL MONITORING OF PLEBISCITES, REFERENDA AND NATIONAL ELECTIONS: SELF-DETERMINATION AND TRANSITION TO DEMOCRACY* (1994)).

30. See Laurence R. Helfer & Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273, 276 (1997).

31. See, e.g., Paul E. Sigmund, *Religious Human Rights in Latin America*, 10

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These are highly useful monitoring organizations. Moreover, since they are regionally oriented and thus, by some lights at least, have a greater degree of cultural and historical sensitivity, many countries consider them a particularly appropriate fora for examining human rights issues.

Thus, in theory at least, regional organizations could be effective in developing religious liberty standards and applying those standards with a cultural and historical sensitivity that is most useful.<sup>32</sup> From this perspective, perhaps regional organizations ought to be developed and encouraged most of all.

The problem with regional organizations, however, is that in many cases they have a limited jurisdictional mandate and, more importantly, a limited geographical coverage.<sup>33</sup> Major regions of the world have no such organizations. Asia, for example, contains a large percentage of the world's population but has no regional organizations capable of addressing these kinds of issues in even a marginally effective way.

### C. *Bilateral External Monitoring*

Bilateral monitoring, sometimes referred to as unilateral monitoring, is becoming increasingly important in the world today and, not surprisingly, where most of the real trouble occurs. The United States has been perhaps most aggressive of all countries of the world in scrutinizing human rights practices abroad,<sup>34</sup> but other countries or groups of countries are increasingly visible in this arena.<sup>35</sup> The European Union comes immediately to mind as a good example.<sup>36</sup>

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EMORY INT'L L. REV. 173, 177 (1996); Christopher R. Thomas, *The OAS at a Time of Change in the Americas*, INT'L DEF. REV., Dec. 31, 1994, at 66.

32. See Thomas, *supra* note 31, at 66.

33. Cf. Anthony D'Amato, *The Concept of Human Rights in International Law*, 82 COLUM. L. REV. 1110, 1119 (1982) (stating that there are a number of regional tribunals lacking enforcement powers).

34. See, e.g., Bert a Esperanza Hernandez Truyol, *Out in Left Field: Cuba's Post-Cold War Strikeout*, 18 FORDHAM INT'L L.J. 15, 17-18 (1994) (discussing the United States' practice with respect to Cuba).

35. See Wippman, *supra* note 28, at 670-71.

36. See, e.g., Vladimir Lavrishchev & Yevgeni Spiridonov, *Russian Steel Will Keep Being Partly Barred From Western Europe Until the Year 2001*, BIZEKON NEWS, April 11, 1997, available in 1997 WL 7801814 (discussing the European Unions' interactions with Russia).

Of course, bilateral monitoring is not always undertaken with entirely pure motives. Sometimes it is used for purely political purposes, such as the large-scale embargos of Iraq which are sponsored by the United Nations.<sup>37</sup> Sometimes bilateral monitoring has been more narrowly targeted for a particular purpose, such as the embargo of Rhodesia and South Africa.<sup>38</sup> Additionally, it may be bilateral for purely political reasons such as the United States' embargoes of Cuba and North Korea.<sup>39</sup>

Bilateral monitoring may occur in a variety of ways. For example, one country may completely terminate its economic relationships with another country, though this generally requires substantial political disagreements in addition to human rights violations. Such severe sanctions are rarely used solely for targeted problems like human rights, environment, and labor.

At the same time, if the political climate is right, virtually all economic relations may appear to be predicated on behavior in the area of human rights. For example, under the so-called Jackson-Vanik Amendment,<sup>40</sup> the United States predicated normal trade relations with non-market economies on those countries' emigration policy.<sup>41</sup> This was initially designed largely to encourage Russia to allow Jewish emigration to Israel.<sup>42</sup> Over time it was expanded, however, to allow a broad-scale human rights investigation before "most favored nation" trade status was granted. In the case of China, for example, it has resulted in a much broader annual debate about Chinese human rights behavior.<sup>43</sup> As the case of China makes clear,

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37. See Michael D. Greenberg, Note, *Creating an International Criminal Court*, 10 B.U. INT'L L.J. 119, 136 (1992).

38. See Keith Stolte, *OFAC: Hands off Intellectual Property Rights*, 4 J. INTELL. PROP. L. 25, 27 (1996).

39. Cf. Michael S. Mensik, *International Considerations in Licensing*, 496 PLI/PAT 689, 697 (1998) (describing the United States' complete embargoes of Cuba and North Korea).

40. Exec. Order No. 12,167, 44 Fed. Reg. 61,167 (1979).

41. See 19 U.S.C. § 2432 (1994).

42. See Peter B. Maggs, *International Trade and Commerce*, 42 EMORY L.J. 449, 461 (1993) ("MFN [most favored nation] treatment for the Soviet Union became linked with that of Jewish emigration from the Soviet Union.").

43. See S. Chen & W. Huang, *Wei Jingsheng and China's Next 'Long March'*, CHRISTIAN SCI. MONITOR, Dec. 23, 1997, at 19 (noting that many people in America support linking China's most favored nation status to its willingness to discuss human

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however, this broad brush approach is never implemented unless there are additional reasons why limiting economic relations is considered a good policy.

Economic leverage has also been used in the area of labor rights. For example, the United States has predicated certain kinds of economic relations on the kinds of labor rights that a country affords to its citizens.<sup>44</sup> Additionally, economic leverage has been used to encourage certain kinds of environmental protection. For example, the United States has placed embargoes on certain kinds of goods from certain kinds of countries either because those goods were produced in an environmentally unsafe way or because the process of producing or developing those goods was environmentally destructive.<sup>45</sup>

Finally, in the last couple of years, we have begun to see some movement toward monitoring in the religious liberties area as well. Those who have followed developments in Washington, D.C., have seen substantial discussion of legislation that would predicate trade relations with a country on its non-discriminatory treatment of religious minorities.<sup>46</sup> This issue has strong political appeal in the U.S. and is likely to become very potent over the coming years. Both the political left, represented by many of the human rights activists, and the political right, particularly the conservative religious movements, may well end up supporting this kind of approach. You add to that those who generally seem to favor

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rights conditions); *see generally* Nancy B. Zucker, *China: Most-Favored-Nation Treatment and U.S. Policy on the Chinas*, 87 AM. SOC'Y INT'L L. PROC. 432 (1993). *But see* Truyol, *supra* note 34, at 37, 43 (stating that granting China "most favored nation" status is now divorced from human rights considerations).

44. *See* Theresa A. Amato, Note, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79, 83-84 (1990) (discussing the use of United States economic relations to require a variety of labor law changes).

45. *See* Douglas Jake Caldwell, Comment, *International Environmental Agreements and the GATT: An Analysis of the Potential Conflict and the Role of a GATT "Waiver" Resolution*, 18 MD. J. INT'L L. & TRADE 173, 193 (1994); Chan a R. Schoenberger, *Shrimp Dispute Tests U.S. Use of Trade to Protect Environment*, WALL ST. J., July 15, 1997, at A14.

46. *See, e.g.*, Pat M. Holt, *Religious Persecution in the Global Balance*, CHRISTIAN SCI. MONITOR, Oct. 2, 1997, at 19; *In the Real World, Principles Are Costly*, BUFF. NEWS, July 6, 1997, at H3; Mary Leonard, *Faith, Hope, But First, Policy*, BOSTON GLOBE, Oct. 26, 1997, at E1; *U.S. Hits China, Russia on Persecution of Christians*, CHI. TRI., July 22, 1997, at 6.

protectionism, such as the labor unions, and you have a potentially powerful political coalition. This issue also has a morally appealing dimension, which makes it even more irresistible. Moreover, that moral appeal derives from among the feelings that Americans hold most dear, religion. After all, the United States is a deeply religious country.<sup>47</sup> Over 95% of Americans profess a belief in a divine being,<sup>48</sup> and over 80% say they go to church on a regular basis.<sup>49</sup> America is thus still fundamentally a deeply religious country and there is likely to be little around which agreement can coalesce more effectively than persecution of religious minorities. Religious persecution is also a powerful issue in the United States Congress because who, after all, can be seen as opposing religious liberties or favoring the repression of religious minorities. Thus, as a predictive matter, concern over religious liberties will likely increase in the United States.

#### V. CONCLUSION

In conclusion, it is important to recall the role the United States Congress plays in pressuring the President. Economic and other sanctions are, of course, administered by the President, who is generally given considerable discretion. Nevertheless, as time goes on and the President rarely exercises that discretion in a prominent and visible way that satisfies the supporters of the particular right being advanced, that discretion is gradually reduced. That pattern can be seen most clearly in the areas of trade and environment, where the President's discretion to refrain from acting has been dramatically reduced, almost to the point of non-existence. Well aware of that pattern, moreover, many Presidents act to avoid further restrictions on their discretion. Thus, despite the protestations that most Administrations make that unilateral

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47. See *Flocking to Church*, ARIZ. DAILY STAR, Jan. 4, 1998, at 1E [hereinafter *Flocking to Church*]; see also Madeleine Albright, *Religious Freedom: A Foreign Policy Priority*, VITAL SPEECHES OF THE DAY, Nov. 15, 1997, at 72-75.

48. See Julia Spoor, Comment, *Go Tell it on the Mountain, But Keep it Out of the Office: Religious Harassment in the Workplace*, 31 VAL. U. L. REV. 971, 978 n.35 (citing Karlyn Bowman et al., *Faith In America*, PUB. PERSP., Sept. 1994, at 90 (1994)); see also *Reports: American Faith Steady, Poised for Growth*, SUN-SENTINEL (Ft. Lauderdale), Jun. 14, 1997, at 6D.

49. See *Flocking to Church*, *supra* note 47.

or bilateral sanctions are not a good thing and always compromise international relations, nevertheless, the President often follows the will of Congress much more than one might expect, given the Administration's rhetoric, and threatens or actually imposes sanctions with surprising frequency.

The problems with these unilateral or bilateral sanctions are quite considerable. First, the selection of countries tends not to be based solely on the factors that are identified in the legislation. That is, human rights or labor concerns, however paramount in the language of the legislation, often become less important in the actual imposition of sanctions than other foreign policy concerns. Second, this bilateral monitoring and bilateral or unilateral sanctions are not applied in an even-handed manner. Countries with whom we have other problems tend to be the quickest targets, for example. We also tend to pick on smaller, less economically important or politically powerful countries when we impose sanctions. Third, unlike NGOs, there is less evidence that the U.S. focuses most intensely on the most important issues first. In the environmental and human rights areas, for example, this has certainly been true. We have often urged actions in areas that can only be described as marginal to real environmental protection or real enhancement of human rights. Fourth, unlike the NGOs, we do not tend to examine our own behavior very closely when we engage in bilateral monitoring. In fact, we tend to avoid any examination of human rights violations in areas in which we have some problems in the U.S. Finally, this sort of an approach is often counter-productive in that it not only does not focus on the main issues or main countries, but it very likely upsets virtually everybody in the process.

What is the answer? This behavior by the United States is, after all, a reality and not likely to disappear soon. Therefore, the question, I think, is whether those with concerns about religious liberty and geopolitical stability can work quickly enough to develop a consensus on at least some minimal set of norms, as well as on monitoring devices, to ameliorate the pressure in the United States for this kind of bilateral monitoring. Such a substantive consensus will be difficult to achieve, but conferences like this one are certainly a step in the right direction. A consensus on institutions will also be difficult, but one might well anticipate that such a consensus, at least on

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institutions, would involve some range of regional organizations, international organizations, and perhaps even NGOs. Though undoubtedly difficult to achieve, that consensus is certainly what our goal should be.