

EXECUTIVE SUMMARY

The U.S. Commission on International Religious Freedom

This is the first report of the United States Commission on International Religious Freedom (Commission), created by the International Religious Freedom Act of 1998 (IRFA). IRFA established a multi-faceted program for ensuring that religious freedom has a permanent and significant place in the formulation and application of U.S. foreign policy.

IRFA created the Office of International Religious Freedom at the State Department, headed by an Ambassador-at-Large, and the U.S. Commission on International Religious Freedom to give the President, Secretary of State, and the Congress independent advice. It calls for the State Department to issue an Annual Report on International Religious Freedom every September 1 and for the Commission to issue its own report not later than May 1 of each year. Based on the September 1 report, the President designates “countries of particular concern for religious freedom.”

In preparing its report, the Commission reviewed the State Department reports, conducted its own hearings and research, met with non-governmental and religious organizations, and obtained information from other government agencies.

Since its first meeting in June 1999, the Commission has found religious freedom under serious threat in a number of countries. In setting its first-year agenda, it decided to address violations of religious freedom in Sudan, China, and Russia, and to focus on these three countries in its annual report. The State Department later designated Sudan and China as “countries of particular concern.” Since its first meeting, the Commission has spoken out or made policy recommendations on all three countries as well as on Egypt, Indonesia, Iran, Turkmenistan, and Vietnam. It held day-long hearings on Sudan on February 15 in Washington, D.C., and on China on March 16 in Los Angeles. Testimony from those hearings and other relevant documents can be found on the Commission’s web site at www.uscirf.gov.

In the course of its work, the Commission has, in general, received helpful cooperation from the White House, State Department, Securities and Exchange Commission (SEC), and the Treasury Department’s Office of Foreign Assets Control (OFAC). The Department of State, however, has withheld certain documents relating to the application of economic sanctions on Sudan on grounds of executive privilege and even more importantly is resisting making embassy cables available to the Commission on the same grounds, despite the fact that Commissioners and Commission senior staff hold the requisite security clearances. The Commission believes that this violates the

spirit of Congress's intent in IRFA when it provided: "The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary . . . subject to applicable law." The Commission is continuing to discuss this with the State Department, and will report further to Congress on whether Congressional intervention is required to obtain the necessary information.

Sudan

Commissioners chose to look at Sudan because of the 17-year civil war raging in that African nation – a tragic and genocidal war that has taken some 2 million lives, mostly Christians and followers of traditional animist religions. While the conflict has many contributing causes, religious factors are key: (a) the effort of the Islamist extremist government in Khartoum to extend Shariah, or Islamic law, to the African Christians and traditional religionists in the south; and (b) the government's efforts to impose its extremist interpretation of Islam on all other Muslims.

The Commission met with, and heard in its hearings from, foreign policy experts, humanitarian organizations doing work in Sudan, Sudanese religious leaders, other leaders from the beleaguered areas, legal experts on war crimes, and a variety of experts on the use of sanctions. In this process, the Commission learned that U.S. government attempts to enhance religious freedom depended on the effectiveness of our policies in addressing the broader conflict in that nation. And it was equally clear that efforts to help end the civil war needed a new impetus.

Toward that end, the Commission has proposed a comprehensive 12-month plan to significantly strengthen the United States' response to this crisis. In addition, the Commission recommends increasing economic pressure on Khartoum by tightening the current U.S. sanctions on the Khartoum government and constricting the ability of foreign-organized firms doing business with Sudan to raise money in U.S. capital markets. The Commission met with President Clinton in October 1999 to brief him on its work and ask him to strengthen U.S. efforts to address the urgent issues of Sudan and its violations of human rights and religious freedom.

At that meeting, the Commission raised particular concern about reports that the China National Petroleum Company (CNPC) – which owns 40 percent of the Greater Nile Petroleum Operating Company (GNPOC), the developer of Sudan's oil fields – planned to obtain capital on the U.S. market through an initial public offering (IPO). In the estimate of many observers, the new revenue from those fields is helping the Sudanese government finance and extend the war.

Subsequently, CNPC restructured itself, placing its domestic operations in a wholly-owned subsidiary, PetroChina Company Limited, and retaining its international operations. On the basis of a registration statement filed by PetroChina with the SEC, PetroChina and CNPC each offered and sold PetroChina shares on the U.S. market in early April 2000. The registration statement said that some of CNPC's proceeds might go into retirement of its debt, but left unclear whether any of that debt was incurred in developing the Sudan oil fields. OFAC, which administers the Sudanese Sanctions Regulations, opined that these shares could be purchased so long as there was no "clear statement" that CNPC would use the proceeds to retire Sudan-related debt. As a result, millions of those dollars from CNPC's sale of PetroChina shares may well end up benefitting GNPOC. Also, this and other interpretations by OFAC have clarified that a foreign-organized company may engage in revenue-generating activities in both Sudan and the United States without violating the sanctions regulations.

Recommendations on Sudan

- The United States should continue to increase its aid to Sudan, increase the percentage of that aid that flows outside the United Nations' food program, and should engage in vigorous multilateral and bilateral efforts to encourage other governments to follow suit.
- The United States should begin a 12-month plan of incentives and disincentives to pressure Sudan's government to improve human rights. If there is not measurable improvement in religious freedom in Sudan at the end of that period, the United States should be prepared to provide non-lethal and humanitarian aid to appropriate opposition groups. During the 12 months, the United States should:
 - a) launch a vigorous campaign, led by the President, to inform the world of Sudan's war crimes, crimes against humanity, and genocidal activities;
 - b) engage in vigorous multilateral and bilateral efforts to increase economic and other pressure on the Sudanese government;
 - c) identify specific criteria to measure the Sudanese government's actions and create linkages between Sudan's actions and the United States' responses;

d) include specific criteria for measuring whether opposition groups have made identifiable efforts to adhere to international human rights norms;

e) if after 12 months Sudan has not made measurable progress to end human rights violations and if opposition groups have taken steps to improve their human rights record, provide direct non-lethal aid to appropriate opposition groups; and

f) be prepared to provide aid sooner if the situation deteriorates markedly.

- The Administration should increase its financial and diplomatic support for the Intergovernmental Authority on Development (IGAD) peace negotiations and persuade Egypt to participate.
- The U.S. government should earmark additional humanitarian aid for building public works (such as roads and bridges) and civil government in southern Sudan.
- The U.S. government should work toward a “military no-fly zone” over Sudan using peaceful means.
- The United States government should formally request an investigation into whether Sudanese government forces have used chemical weapons in violation of international law.
- The Department of State should give Congress its opinion on whether Sudan’s government has committed and is committing “genocide” as defined by international law.
- The United States government should prohibit any foreign corporation from seeking to obtain capital in the U.S. market as long as it is participating in Sudanese oil-field development.
- The United States government should require any foreign corporation that is engaged in the development of the oil and gas fields in Sudan to disclose fully, before it may proceed with an IPO in the United States, whether it intends to use the proceeds from the IPO for the development of those oil and gas fields.

- The United States government should require any company that is engaged in both the development of the oil and gas fields in Sudan and revenue-generating activities in the United States to submit public reports from time to time on the nature and extent of both of those activities.
- OFAC should investigate: a) how much of the debt the China National Petroleum Company intends to retire arose from its Sudanese activities; b) what criteria CNPC will use to decide whether to retire Sudan-related debt from the proceeds of its recent sale of PetroChina shares in the U.S. capital market; c) whether prior to the sale CNPC earmarked any of the proceeds for use in retiring Sudan-related debt; and d) whether U.S. underwriters knew or should have known of any such earmarking.
- OFAC should call on the parties to the sale of PetroChina stock to inform it if CNPC does retire Sudan-related debt and explain how U.S. sanctions against Sudan relate to that debt retirement.
- OFAC should inform the Commission and the Congress of the results of its investigation, indicate any enforcement action it may take, and adjust its interpretations of the regulations as appropriate.
- The SEC should be especially careful to investigate the adequacy and reliability of representations made in any filings related to the recent sale by CNPC and PetroChina of PetroChina shares.

The People's Republic of China

Chinese government violations of religious freedom increased markedly during the past year. The Communist authorities in Beijing launched a nationwide crackdown on the Falun Gong spiritual movement. Leaders were sentenced to long prison terms and thousands of practitioners were detained. A few followers were even beaten to death or died suddenly while in custody.

Roman Catholic and Protestant underground “house churches” suffered increased repression; the crackdown included the arrests of bishops, priests, and pastors, one of whom was found dead in the street soon afterward. Several Catholic bishops were ordained by the government without the Vatican’s participation or approval. The repression of Tibetan Buddhists expanded; government authorities in Tibet, in defiance of the Dalai Lama, named a new Reting Lama. Another important religious leader, the

Karmapa Lama, fled to India. Muslim Uighurs, having turned increasingly to Islamic institutions for leadership in recent years, faced heightened repression of their religious and other human rights, as they responded to a deliberate government campaign to move Han Chinese into the region in order to out-populate the Uighurs in their own land.

The Commission concludes that the Chinese government's practices with respect to religious freedom violate the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Each of these international instruments prohibits discrimination on the basis of religion or belief, and the right to hold and to manifest beliefs. The government of China, however, imposes undue restrictions on the manifestation of beliefs and bans several beliefs altogether.

Recommendations on China

- While many Commissioners support free trade, the Commission believes that the U.S. Congress should grant China Permanent Normal Trade Relations (PNTR) status only after China makes substantial improvement in respect for religious freedom. Such improvement would be measured by the following standards:
 - a) open a high-level and continuing dialogue with the U.S. government on religious-freedom issues;
 - b) ratify the International Convention on Civil and Political Rights, which it has signed;
 - c) permit the U.S. Commission on International Religious Freedom and international human rights organizations unhindered access to religious leaders, including those imprisoned, detained, or under house arrest;
 - d) respond to inquiries regarding persons who are imprisoned, detained, or under house arrest for reasons of religion or belief, or whose whereabouts are not known, although they were last seen in the hands of Chinese authorities; and
 - e) release from prison all religious prisoners.

Also, before granting PNTR, the U.S. Congress should:

- a) announce that it will hold annual hearings on human rights and religious freedom in China; and
 - b) extend an invitation to the Dalai Lama to address a Joint Session of the Congress.
- The United States should continue to introduce annually a censure resolution against China in the UN Commission on Human Rights until China's record on religious freedom significantly improves. The President should lead a sustained effort to persuade other governments to vote for the resolution.
 - The United States should lead a multilateral campaign to seek the release of Chinese religious leaders imprisoned or under house arrest.
 - The U.S. government should highlight conditions in Xinjiang by raising the issue with other countries, increasing the number of educational and cultural exchange opportunities available to Uighurs, and increasing Uighur-language U.S. radio broadcasts into the region.
 - The United States should use its diplomatic influence with other governments to ensure that China is not selected as a site for the International Olympic Games until it makes significant improvement in human rights, including religious freedom.

The Russian Federation

The Commission selected the Russian Federation as one of the three principal countries on which it would focus in its first year not because the human rights situation is comparable to that of China or Sudan, but because of: (a) its influence in the region, (b) the fact that the condition of religious freedom in Russia could deteriorate significantly in the near future, and (c) the impact of U.S. foreign policy on promoting religious freedom in Russia.

The protection of freedom of religion in Russia today is dramatically better than during the Soviet period, and the Russian government has taken some positive steps to promote religious freedom. Unfortunately, Russia took a significant step backward in 1997 by enacting a federal law that replaced legislation adopted in 1990 that broadly protected religious freedom. The 1997 Religion Law creates a hierarchy of religious organizations and effectively restricts smaller, newer, and foreign religious communities. It also establishes an onerous and intrusive registration process and other

means of state interference with religious organizations' activities.

The U.S. Congress responded to this Russian law by passing the "Smith Amendment," to ensure the law would not be implemented in a manner so as to significantly diminish religious freedom in Russia.

The negative impact of the 1997 Religion Law appears, so far, to have been somewhat mitigated by the Russian federal authorities and by a 1999 Russian Constitutional Court decision. Most alarmingly, President-elect Putin issued a decree in March, which, while extending the registration deadline until December 31, 2000, would require the liquidation at that time of all non-registered groups. In addition, regional officials implementing the 1997 Religion Law have denied registration and sought the liquidation of unpopular religious communities – in some cases using panels of "experts" to examine the beliefs and activities of the targeted group.

Also on the regional level, officials have harassed and interfered with the activities of religious communities. Protestant, Catholic, and Muslim indigenous believers and foreign missionaries have been harassed by security officials, and even expelled for propagating their faith. In addition, one-third of Russia's constituent regions have enacted legal regulations on religious activities that are more restrictive and discriminatory than the 1997 Religion Law and that violate the Russian Constitution. The federal authorities have been unwilling, or unable, to discipline local officials or to bring these regional laws into compliance with the Russian Constitution.

While the conflict in Chechnya is based on political and geographic factors, the severity of the documented human rights abuses against the majority Muslim population requires the attention of this Commission and the U.S. government. The Russian government has used anti-Muslim rhetoric to promote the war and to justify reported acts of brutality.

Recommendations on Russia

- The United States should continue to monitor religious freedom in Russia, especially at the regional and local level. While addressing the continuing problems of non-Russian Orthodox Christian groups (including Catholics and Protestants) as well as Jews, it should seek more information on groups such as Muslims and dissident Orthodox groups such as the Old Believers about whom there is under-report.
- The United States should urge the Russian federal government to monitor more

closely and respond to more effectively the actions of regional and local officials who interfere with religious freedom and to ensure conformity of local government behavior on religion issues with the Russian Constitution and international human rights standards incorporated in IRFA.

- The State Department should make the humanitarian and human rights crisis in Chechnya a high priority issue in United States-Russian relations.
- Congress should maintain the “Smith Amendment” until President Putin’s commitment to religious freedom becomes clearer.
- The United States government, as an urgent diplomatic priority, should press President Putin to reverse the edict requiring liquidation of non-registered religious groups.
- The United States should urge the Russian government to extend the length of visas for religious workers or at least allow them to renew their residency permission from within the country.
- The United States should provide support to willing non-governmental organizations, journalists, and academic institutions engaged in programs to prevent intolerance and support international religious-freedom standards. The United States should also promote tolerance through exhibits, conferences, the Internet, and broadcasts in regions where intolerance is a serious problem.
- The United States should promote contacts between leaders of the Russian Orthodox Church and other Russian religious communities who may benefit from traveling to the United States and meeting with American political and religious leaders. The U.S. government should encourage American religious leaders traveling to Russia to discuss tolerance and religious freedom.
- The United States should promote both the activities of willing Russian public-interest organizations that defend religious freedom in Russian courts, as well as exchanges between Russian and U.S. judges, lawyers and legal rights organizations.
- The United States should encourage Russia to agree to a visit by the UN Special Rapporteur on Religious Intolerance.

State Department Reports on International Religious Freedom

The State Department and the Office of International Religious Freedom deserve high praise for the high quality and timely publication of the first Annual Report on International Religious Freedom, issued September 9, 1999 (*Report*). Equally important was the impact of the *Report* in making religious freedom a higher priority for the work of every U.S. embassy and consulate.

The Commission believes that the *Report* can be strengthened by (a) prioritizing and evaluating information, (b) placing information in context, (c) referencing relevant law, (d) eliminating the potential for bias, (e) referencing international law incorporated into IRFA, and (f) improving the methodology for information-gathering. The Commission's comments in this regard also apply to those sections of the *Country Reports on Human Rights Practices* that touch on matters related to freedom of religion or belief.

Specifically, the *Reports* should clearly identify the most significant religious-freedom problems in each country. Gaps in information should be identified, particularly where a foreign government itself is responsible for the inadequacy of available information. The facts and circumstances in the reports should be summarized and evaluated in light of the standards set out in IRFA.

The *Report* should contain enough historical, religious, and political context to present a more complete picture of religious freedom in each country. State interference with other human rights that are integral to religious exercise should be discussed. The *Report* should identify each country's relevant constitutional, statutory, and regulatory provisions affecting freedom of religion; explain the relationship between the state and religion; and assess whether the government and courts enforce the laws in a way that promotes religious freedom.

To avoid bias, the *Report* should distinguish between religious concepts and how a foreign government may interpret them; politically-loaded terms such as "cult," "sect," "orthodox," "fundamentalist," "jihad," or "Shariah" should be used in defined and appropriate ways. The consequences of state sponsorship of a favored religion should be discussed.

Reference should be made to the international human rights laws incorporated by the Congress into IRFA's definitions of violations of religious freedom.

United States embassies should circulate the *Religion Reports* to other foreign embassies and urge them to do their own evaluation and to share recommendations and information.

The Commission's Work Program for Its Next Phase

The Commission plans to expand its work program but will need to continue its primary focus on Sudan, China, and Russia. On Sudan, it will need to advise the Congress and the Administration on implementation of its recommendations and monitor whether they are having the intended effect. On China, the deteriorating religious-freedom situation requires it to encourage sustained United States implementation of these recommendations. On Russia, the Commission will especially monitor the December 2000 deadline on registration and United States' efforts to persuade President Putin to revise his decree.

In other work, the Commission will make recommendations on the selection of "countries of particular concern" prior to the State Department's September 2000 report on religious freedom.

The Commission will continue to respond to instances of religious persecution whenever they occur. It will also begin the process of analyzing and addressing U.S. policy regarding religious-freedom issues in a larger number of countries. Some countries may be included in the next May 1 report, while the Commission may report on some earlier and others later. Countries that will draw greater attention during the next phase of the Commission's work are the seven designated by the State Department last October as "countries of particular concern" and the more than 25 countries discussed in the Executive Summary of the State Department's Religion Report of September 9, 1999.

The Commission will also evaluate U.S. policy options that could promote the right to change one's faith and the right to seek to persuade others to change theirs (i.e., evangelism by both foreign missionaries and indigenous believers).

Finally, the Commission will make further recommendations on the extent to which capital-market sanctions and other economic leverage should be included in the U.S. diplomatic arsenal to promote religious freedom in other nations.

I. THE U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

A. The International Religious Freedom Act of 1998

This first annual report of the United States Commission on International Religious Freedom (Commission) is a milestone in a process that began with Congress's passage of the International Religious Freedom Act (IRFA) in October 1998.¹

That act established a multi-faceted program for ensuring that religious freedom has a permanent and significant place in the formulation and application of U.S. foreign policy. It created the Office of International Religious Freedom at the State Department, headed by an Ambassador-at-Large, and charged that office with issuing an annual report on international religious freedom. The office issued its first report on September 9, 1999. Congress also urged the President to name a special adviser on international religious freedom to the National Security Council.

IRFA also established a Commission on International Religious Freedom to ensure, in the words of one central drafter, "that the President and the Congress receive independent recommendations and, where necessary, criticism of American policy that does not promote international religious freedom." The Commission is "to hold policymakers accountable to the purposes of this Act and thus ensure the Act's effectiveness."²

Under IRFA, the President must designate, by September 1 of each year, "countries of particular concern for religious freedom" and implement actions in response, taking into account "any findings or recommendations by the Commission with respect to the foreign country." In October 1999, the State Department designated Burma, China, Iran, Iraq, and Sudan as "countries of particular concern," and also listed the Taliban regime in Afghanistan and the Milosevic regime in Serbia as "particularly severe violators of religious freedom."

Congress established the Commission as an agency independent of the Executive Branch. Appointments to the Commission are for a two-year term. The President appoints three Commissioners; four are appointed by the congressional leadership of the political party that is not the President's, and two by the congressional leadership of the President's party. The Ambassador-at-Large for International Religious Freedom serves as an ex-officio, non-voting member.

Lawmakers charged the Commission with annual, ongoing, and independent review of the facts and circumstances of violations of religious freedom abroad. Not

later than May 1 of each year, the Commission is required to submit an annual report of its findings and policy recommendations to the President, the Secretary of State, and the Congress. In Part III of this report, the Commission evaluates both the State Department's *Country Reports on Human Rights Practices* and its September 1 Annual *Report on International Religious Freedom*. The Commission is also to consult with independent human rights groups; non-governmental organizations, including churches and other religious communities; and with other government agencies. It is also authorized to hold hearings for the purpose of taking testimony and receiving evidence of religious-freedom violations, and to travel abroad for in-country meetings and information gathering.

In addition to issuing the May 1 report, the Commission addresses countries where persistent violations of religious liberty occur and makes policy recommendations to the U.S. government. Its members testify before Congress, deliver briefings, help train foreign service officers on religious-liberty issues, and meet with interested institutions and parties within the U.S. government, in the international community, and among private voluntary and non-governmental organizations.

The Commission is the only governmental agency in the world with the sole mission of reviewing and reporting the facts and circumstances of violations of religious freedom. The Commission's impact and its success in accomplishing its mission depend on drawing public attention to and focusing U.S. foreign policy on the enhancement of religious liberty abroad. By providing information and policy recommendations as mandated, the Commission provides the U.S. government, and the American public, the tools necessary to promote this fundamental freedom throughout the world.

B. The Commission's First Year

1. Overview

With the final appointments of Commissioners in May 1999, the Commission first met in June 1999 and found religious liberty under serious threat in a number of countries around the world.³ In setting its first-year agenda, the Commission decided to begin by addressing violations of religious freedom in Sudan, China, and Russia, and to feature these countries in this annual report. The State Department later designated Sudan and China as "countries of particular concern" under IRFA.

Commissioners chose to look at Sudan because of the 17-year civil war raging in that African nation – a tragic and genocidal war that has taken some 2 million lives,

mostly Christian and traditional religionists. While the conflict has many contributing causes, religious factors are key: (a) the effort of the Arab Islamist extremist government in Khartoum to extend Shariah, or Islamic law, to the African Christians and animists in the south; and (b) the government's efforts to impose its narrow interpretation of Islam on all other Muslims.

In China, the Commission noted a sweeping turn for the worse as the Beijing government cracked down on Roman Catholics loyal to the Vatican; underground, unregistered Protestant "house churches"; Tibetan Buddhists; Muslim Uighurs; and the Falun Gong spiritual movement. This crackdown took place simultaneously with Beijing's successful negotiations with the United States over China's potential membership in the World Trade Organization.

The Commission chose to focus on Russia, not because it is an egregious violator of religious freedom on the order of Sudan and China (the second Chechen war had not yet begun), but because that country is at a crossroads in its approach to religious freedom, because it is so influential throughout all of the territory of the former Soviet Union, and because the United States has the ability to promote religious liberty there.

In October 1999, the Commission met with the President, National Security Adviser Samuel Berger, and Chief of Staff John Podesta to discuss violations of religious freedom in Sudan and China. The President commended the Commission for its work to date and strongly encouraged its continuing efforts. Commissioners also met with Secretary of State Albright in August 1999.

At the same time, the Commission monitored, reported on, and made recommendations regarding other countries engaging in or tolerating violations of religious liberty on a case-by-case basis in addition to the May 1 report⁴. In doing so, the Commission spoke out on problems in Egypt, Indonesia, Iran, Turkmenistan, and Vietnam in addition to its priority countries. Individual Commissioners also traveled to Bosnia, France, Italy (including meetings at the Vatican), Indonesia, Jordan, Laos, Lebanon, Romania, Sudan, Switzerland (to attend a session of the United Nations Commission on Human Rights), Turkmenistan, Vietnam, and the Netherlands (at the invitation of the Dutch to discuss cooperation on these issues).

2. Sudan

The Commission spent a large share of its time and efforts considering the civil war in Sudan and developing recommendations for U.S. policymakers. As the

Commission studied the conflict, it became clear that U.S. government attempts to help end the civil war needed a new impetus and U.S. sanctions on the Khartoum government needed tightening. While it is illegal for U.S. companies to do business with countries subject to sanctions, it is still possible for most foreign firms doing business with Sudan to raise money in U.S. capital markets. The Commission met with President Clinton in October 1999 to brief him on its work and to ask him to strengthen U.S. efforts to address the vexing issues of Sudan and its violations of human rights and religious freedom. Among its requests:

First, the Commission asked the President to apply his 1997 Executive Order imposing economic sanctions on that country to bar the Chinese government's China National Petroleum Corporation from using U.S. capital markets to finance Sudan's new oil pipeline. Revenues from the pipeline, the Commission judged, insulate Sudan's repressive Islamic extremist regime from the impact of U.S. economic sanctions, and perpetuate the 17-year-old civil war that has already claimed the lives of 2 million Sudanese, mostly Christian and traditional religionists.

Second, the Commission also urged the President to meet with prominent experts on Sudan (the Commission provided recommendations) to design future actions aimed at ending egregious religious persecution by that country's government, and to send Secretary of State Madeleine Albright to a congressionally-sponsored "summit meeting" on Sudan November 9.

Third, the Commission asked the President to speak out more forcefully and frequently – in public, before multilateral organizations, and in diplomatic exchanges – against the violations of religious freedom in Sudan and to strengthen the hand of the U.S. special envoy to Sudan. While the President and Secretary of State spoke out about the situation in Sudan at the National Summit on Africa in February 2000, a few days following the Commission's hearing on religious persecution in Sudan, the Commission believes the President must make better use of the "bully pulpit" if the situation in Sudan is to be improved.

In December the Commission, noting the Sudanese government's use of food aid as a weapon of war, called on the U.S. government to take a series of actions to ensure food aid reaches all hungry people in Sudan's war-torn southern region. It recommended that the U.S. government:

- orchestrate international multilateral pressure on the Sudanese government to immediately stop banning food flights;
- continue its policy of shipping food into southern Sudan, both through its

- participation in the United Nations Operation Lifeline Sudan (OLS) and outside that program, and to increase the percentage of food delivered outside OLS; and
- undertake an active diplomatic campaign to encourage other nations and humanitarian organizations to move food aid directly into Sudan outside OLS, consistent with international law.

The Commission met with nationally recognized experts on the use of sanctions and considered the extensive literature on the use of sanctions as policy tools. As a result, the Commission created a task force to examine the possibility of denying access to U.S. capital markets for companies investing or doing business in sanctioned countries that severely violate religious freedom, focusing in particular on foreign companies participating in the Greater Nile Petroleum Operating Company (GNPOC), the Sudanese government's oil consortium.

During January, Commissioner Elliott Abrams undertook a site visit to southern Sudan and Nairobi and Lokkichokio, Kenya, to discuss policy options with those on the front lines. The Commission hopes to arrange a corresponding visit to Khartoum and northern Sudan later this year.

The Commission held a day-long public hearing on Capitol Hill on February 15, 2000, to examine and highlight the degree of religious persecution in Sudan. At the Commission's request, Secretary of State Albright met on the day of the hearing with a key witness, Roman Catholic Bishop Macram (Max) Gassis of El Obeid, Sudan, along with the Commission Chair. The following day the U.S. Treasury Department extended two-year-old sanctions against Sudan to encompass GNPOC and Sudapet, the Sudanese-owned portion of GNPOC.

The Commissioners and their representatives met with State and Treasury Department officials, including Undersecretary of State for Economic, Business, and Agricultural Affairs Alan Larson, to discuss the reasoning behind the President's waiver of the Sudan sanctions to permit the importation of raw Sudanese gum arabic, an ingredient in candy, soft drinks, and pharmaceuticals. Commissioners also met with several administration officials and others to discuss the Sudanese civil war and humanitarian-relief efforts, including Assistant Secretary of State for African Affairs Susan Rice; Ambassador-at-Large for War Crimes Issues David Scheffer; Special Assistant to the President for National Security Affairs Gail Smith; and Senior Director for African Affairs; Eric Schwartz, Special Assistant to the President for National Security Affairs and Senior Director for Multilateral and Humanitarian Affairs; John Eibner, Director of Advocacy for Christian Solidarity International; and John Garang,

leader of the Sudan People's Liberation Army, the main southern rebel group.

On the question of capital-markets access, the Commission staff exchanged correspondence and met with R. Richard Newcomb, Director of the Treasury Department's Office of Foreign Assets Control (OFAC), and David Martin, Director of the Division of Corporation Finance of the Securities and Exchange Commission. The dialogue with OFAC focused on its issuance of a licence to import gun arabic from Sudan and the applicability of the Sudanese Sanctions Regulations to the initial public offering (IPO) by PetroChina. The dialogue with SEC focused the applicability of SEC disclosure requirements to IPOs by foreign corporations and the general sequence and timing of review by SEC staff of registration statements. SEC declined to make any comment on the PetroChina IPO.

Following these inquiries, with the situation in Sudan deteriorating rapidly and PetroChina's IPO having its debut on the New York Stock Exchange in early April, the Commission formulated further recommendations for actions the U.S. government can take to end the civil war and to promote religious liberty in Sudan. The Commission's report and recommendations on Sudan are found in Part II A.

3. The People's Republic of China

In late August and early September 1999, the Commission urged the Administration to designate China as a "country of particular concern" due to its severe and systematic violations of religious freedom, which worsened markedly during the summer of 1999 and the months following. It welcomed the State Department's October decision to do so.

In 1999, the authorities in Beijing launched a nationwide crackdown on the Falun Gong spiritual movement. Leaders were sentenced to long prison terms and thousands of practitioners were detained. A few followers were even beaten to death or died suddenly while in custody. Catholic and Protestant underground "house churches" suffered increased repression; the crackdown included the arrests of bishops, priests and pastors, one of whom was found dead in the street soon afterward. Several Catholic bishops were ordained by the government without the Vatican's participation or approval. The repression of Tibetan Buddhists expanded; authorities in Tibet, in defiance of the Dalai Lama, named a new Reting Lama. Another important religious leader, the Karmapa Lama, fled to India. Muslim Uighurs faced heightened repression as they turned to Islamic institutions against a deliberate government campaign of Han Chinese in-migration meant to out-populate the Uighurs in their own land.

The Commission urged the Administration to raise religious freedom issues as often and as prominently as possible in meetings with Chinese officials. In a public statement, it called upon the Chinese government to make peace with Falun Gong and other spiritual and religious groups. The Commission later expressed disappointment with the state ordination of Catholic bishops as a backward step away from improving Chinese-Vatican relations. It urged the Administration to include a condemnation of religious persecution in the resolution on Chinese human rights violations the United States introduced in the United Nations Commission on Human Rights in April, and to work vigorously for the resolution's approval. The Administration did so, and lobbied hard in Geneva to bring the resolution up for consideration in the face of heavy Chinese pressure against it – including the dangling of financial incentives to developing countries. On April 14, the Commission wrote the President and urged him to personally intervene in the effort to support the resolution against a Chinese “no action” motion. Regrettably, in a vote on April 18, 2000, the UNCHR adopted the Chinese motion to take no action on the U.S. resolution.

The Commission sought to arrange a fact-finding trip to China, but the Chinese government did not respond to the Commission's request. The Commission held a day-long hearing in Los Angeles on March 16 to gather evidence on religious persecution in China and explore actions the United States can take to change Beijing's behavior – hearing from prominent representatives of the major faith groups and from a wide range of policy experts. Commission Vice Chair Michael Young and Chair David Saperstein testified on religious freedom in China before the Congressional Human Rights Caucus March 28.

With the possible accession of China to WTO membership and the question of Permanent Normal Trade Relations for China before Congress as this report is issued, the increased religious persecution in that country is fraught with significance. The Commission's report and recommendations for the Administration and Congress in regard to China are found in Part II B.

4. The Russian Federation and the Newly Independent States

The Commission noted a regressive trend toward violations of religious freedom in Russia, along with the link between extreme nationalism and religious persecution. Commission staff met separately with Russian Pentecostals, Jehovah's Witnesses, and Ukrainian Christian representatives to explore the difficulties they are experiencing in Russia and the newly independent states. The Commission, in a public statement, called the Russian government to task for using religious bigotry to fuel the conflict in Chechnya. In another statement, the Commission welcomed a Russian constitutional

court decision in November that benignly reinterpreted portions of the restrictive 1997 law regarding the registration of religious groups. Commission travel to Russia is tentatively planned for later this year. The Commission's report and recommendations on Russia are found in Part II C.

Meanwhile, Commissioner Firuz Kazemzadeh traveled on the Commission's behalf to Turkmenistan, where religious repression has reached alarming proportions, including outright demolition of a Seventh-day Adventist church and the arrest, imprisonment, and deportation of Baptist pastors. He also testified for the Commission at a March 21 hearing on Turkmenistan held by the U.S. Commission on Security and Cooperation in Europe (Helsinki Commission).

5. Egypt

The six million members of the Coptic Orthodox Church in Egypt experience serious and pervasive religious discrimination. According to the State Department's most recent *Country Reports on Human Rights Practices for 1999* released February 25, Christians who proselytize are subject to arrest. Permits to build Christian churches can only be issued by President Hosni Mubarak. However, in a significant step toward government nondiscrimination, President Mubarak decreed on December 28, 1999, that church repairs no longer require a presidential, governor's, or federal ministry permit.

On the occasion of President Mubarak's impending state visit to the United States in June 1999, the Commission urged President Clinton to raise reports of infringements on religious freedom for Christian Copts and others in Egypt. It called particular attention to the widely reported 1998 arrests and torture of many hundreds of Coptic Christians in the village of Al-Kosheh and the failure of the Egyptian government to investigate these reports adequately. The Commission also expressed its concern over other actions by the Egyptian government, including a then-pending law that severely curtails action by human rights and other groups, including those reporting on violations of freedom of religion. This would affect Muslim groups as well as others and would broadly inhibit free exercise of religion. The President raised the issues with President Mubarak.

Commissioners and staff met with Coptic Bishop Thomas of Egypt in November 1999, to discuss religious-freedom issues there.

Unfortunately, religious violence broke out again in Al-Kosheh January 1-3, 2000, resulting in the deaths of 21 Copts and one Muslim. Local police reportedly withdrew from the scene immediately prior to the attack by Muslims. While the

Egyptian government offered to provide token compensation to the victims, the Commission fears that local prosecutors will again resort to blaming the victims and that justice will once again languish.

The Commission wrote again to President Clinton on the eve of Mr. Mubarak's state visit in March 2000. It urged him to reiterate to the Egyptian President that concerns about the Copts and promotion of religious freedom are critical to Egyptian-American relations. The Commission understands that the matter was raised with President Mubarak by Egyptian-Americans at a roundtable discussion attended by President Clinton, at which he raised the issue of human rights.

6. Indonesia

During 1998 and 1999, Indonesia suffered several regional outbreaks of religious and ethnic violence, often related to separatist activity, as the country moved from authoritarianism to a fragile democracy. The Commission followed closely the violence by pro-Indonesian militias in mostly Christian East Timor following that province's vote for independence in September 1999, and the multinational intervention to halt the violence. Archbishop Theodore McCarrick, a Commissioner, visited East Timor and Jakarta, Indonesia in February 2000.

In January 2000, serious intercommunal violence between Muslims and Christians broke out again in the Maluku Islands of Indonesia, leading to hundreds of deaths, the destruction of churches and mosques, and atrocities on both sides. The Commission called upon the Administration to urge the Indonesian government, as well as civil and religious leaders, to take all possible steps to restore civil order, foster interreligious dialogue, and help the communities reintegrate and rebuild. It asked that any Indonesian troops sent in to quell the violence show respect for human rights. It further recommended the United States consider offering economic assistance for the people of the Maluku Islands.

7. Iran

The Commission also closely followed developments in Iran, which the State Department has designated a "country of particular concern". In June 1999, a Commission public statement called on the Administration to continue to work at the highest levels to ensure protection of the rights of 13 Jews arrested in Iran on charges of spying for the United States and Israel, charges that appear to be based solely on the men's religion. Indications are the men's trial will begin this week.

In February 2000, the Commission called for nullification of the death sentences handed down to three local leaders of the Baha'i faith in Mashdad, Iran. Nearly 200 Baha'is have been put to death since the Islamic Revolution in 1979; the Baha'i religion has been declared illegal in the land of its origin.

The Commission recommended that:

- The State Department consider introducing a resolution in the United Nations Security Council condemning the death sentences and the general persecution of Baha'is in Iran;
- State also co-sponsor in the United Nations Commission on Human Rights a resolution condemning Iran's repression of religious freedom; and
- The House and Senate pass a pending sense-of-the-Congress resolution insisting that the men be freed and Baha'is be recognized as full citizens.

The United States is supporting a resolution before the UNCHR on Iranian human rights violations and resolutions enjoying wide sponsorship are moving through the House and Senate.

Iran is undergoing significant political changes following this spring's elections, but the positive gains thus far are fragile and turmoil there continues.

8. Vietnam

Religious freedom is severely repressed in Vietnam in the manner common to Communist countries in general: through arbitrarily enforced registration laws, tightly controlled official organizations, and strict limitations on religious activity. On March 29-30, some of the two million to four million Hoa Hao Buddhist practitioners in Vietnam tried to assemble on their "sacred ground" in Hoa Hao village (their founder's birthplace), located in Chau Doc Province in the Mekong Delta. Vietnamese authorities, however, forcibly prevented any of the faithful from entering the grounds. According to reliable reports reaching the Commission, key leaders were arrested or their houses were surrounded by police. Other devotees were threatened or detained on their way to the site. Eventually only about 1,000 people made it to Hoa Hao village, where a phalanx of police met them.

The Commission had previously written to Secretary of State Albright asking that the State Department monitor the situation, which reportedly it did. In a public

statement, the Commission condemned the Vietnamese authorities' unwarranted interference with the Hoa Hao Buddhist's freedom of religion and reminded the Hanoi government that the international community was watching.

Commissioner Robert Seiple visited Vietnam in July 1999; Commissioners and staff met with Hoa Hao representatives in the United States in March 2000.

9. Other Activities

Section 104 of IRFA provides for improved training of U.S. foreign service officers in international religious-freedom issues. To assist in this effort, Commission staff attended sessions at the Foreign Service Institute to observe and initiate discussions with the State Department about how the Institute instructs diplomats on these issues. Commission Executive Director Steven T. McFarland co-taught a classroom of officers on March 21 regarding the provisions of IRFA and the Commission hopes to establish regular opportunities for training.

As part of the Commission's responsibility to "review . . . The facts and circumstances of violations of religious freedom presented in the Country Reports on Human Rights Practices,"⁵ Commission staff met with the authors of those reports in the State Department to discuss the Commission's evaluation of and recommendations for improvement of the Department's coverage of religious freedom. That evaluation and those recommendations appear in Part III, below.

On October 6, 1999, Commissioner Nina Shea testified before the House International Relations Committee's Subcommittee on International Operations and Human Rights on the Department's first *Annual Report: International Religious Freedom 1999*, particularly regarding China and Sudan. In addition, Commissioner Nina Shea in March 2000 testified on the Commission's behalf before the House Subcommittee on International Operations and Human Rights regarding the State Department *Country Reports on Human Rights Practices for 1999*.

10. Web Site

Commissioners' testimony before Congress, this report, and other relevant documents can be found on the Commission's Web site at www.uscirf.gov. Posted there is information about the Commission and the Commissioners, the State Department's reports on human rights and international religious freedom, transcripts of both Commission hearings, press releases, and links to related government and non-governmental information sites.

11. Cooperation From Other Agencies

When Congress adopted amendments to strengthen the Commission, it concluded that the Commission would need access to information in the possession of other government agencies. It believed this was necessary in order for the Commission to give sound advice on conditions of religious freedom abroad and on effective foreign policy for enhancing that freedom. Consequently, IRFA conferred on the Commission the power to

secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission, subject to applicable law.⁶

The level of cooperation by other government agencies with the Commission's information requests has varied. The Securities and Exchange Commission and the Treasury Department's Office of Foreign Assets Control were helpful and responsive in providing information and documentation relevant to this Commission's investigation of the PetroChina IPO referred to in Section B above and in Part II A below.

The Office of International Religious Freedom in the Department of State has been most cooperative with the Commission. However, other offices in State have withheld documents requested by the Commission relating to the partial lifting in December 1999, of the U.S. ban on importation of gum arabic from Sudan. More recently, the Department is resisting the Commission's request for full access to cables to and from embassies and consulates in countries of interest to the Commission.⁷ Other records requested have also not been provided. The Department, in response to all these requests, has asserted a legal position (executive privilege as to deliberative process within the Administration) with which the Commission does not agree.

The Commission will continue its discussions with the State Department, but believes the deadlock must be resolved soon. The Commission will report to Congress on the degree to which the Department's level of cooperation improves and whether the Commission might need Congress's assistance in obtaining from the Department information the Commission deems vital to an informed evaluation of religious liberty abroad. In the meantime, the Commission strongly urges the Secretary of State to intervene to ensure that the Commission is provided with the requested State Department documents on a regular and timely basis.

II. POLICY RECOMMENDATIONS: SUDAN, CHINA, AND RUSSIA

A. SUDAN

1. Background on Sudan

a. A Religious and Humanitarian Tragedy

The U.S. Commission on International Religious Freedom finds that the government of Sudan is the world's most violent abuser of the right to freedom of religion and belief. Sudan has been engulfed in a brutal civil war for all but 10 years since gaining independence in 1956; two million Sudanese have been killed since 1983. More than 4.5 million have been, at some point, internally or externally displaced as a consequence of the war – a figure higher than that of any other country. An estimated 1.5 million displaced persons now live in squalid conditions in government-controlled “peace camps.” The scope of the humanitarian tragedy of Sudan dwarfs the figures of other recent conflicts, and yet Sudan receives far less international attention or scrutiny than many other conflicts.

The Commission finds that religion is a major factor in the conflict in Sudan, and therefore it serves as an essential starting point for understanding a civil war that also includes racial, cultural, geopolitical, economic, and linguistic factors. Because religion is intertwined with broader human rights abuses, the civil war, the ethnic strife, and the attacks on civilian population centers and institutions, the Commission's policy recommendations must address these broader issues.

The Sudanese government has committed and continues to commit genocidal atrocities against civilian populations in the south and in the Nuba Mountains. Its military repeatedly bombs and strafes schools, hospitals, and large gatherings of civilians awaiting distribution of food or engaged in worship. The government uses food as a weapon by a combination of attacking villages (thereby disrupting food production and distribution) and by preventing humanitarian food relief from reaching many areas of the country. Toward that end, it has threatened to shoot down any United Nations plane seeking to deliver food to designated rebel-controlled areas. The regime arms Arab tribes who are traditional rivals of indigenous African southern villagers, commissioning them as militia and allowing them to attack, burn, and loot villages, and to kill, rape and enslave the villagers. The Sudanese army is using “scorched earth” campaigns to massively relocate populations off their land in the areas where petroleum companies pump oil. Some sources report the government is using cluster bombs and chemical weapons against civilian and rebel groups.

The Sudanese government identifies itself as Islamic and declares that its mission is to impose its interpretation of Islamic law (*Shariah*) on the country. It has declared the civil war to be a *jihad* (against both non-Muslims and Muslims) and uses religion to recruit (or conscript) soldiers for the civil war. There are reports of forced conversions to Islam and aggressive indoctrination in the refugee camps. Muslims who do not subscribe to the government's extremist interpretation of Islam are persecuted. Christian schools were nationalized in 1992. Christian churches and prayer centers continue to be demolished, and the government has not granted permission to build or repair a church in over 30 years. The regime also promotes Islamization in an effort to suppress Christian and traditional religions.

Neither the international community nor the United States has any plan to address the mounting tragedy in Sudan. Although the United States has taken important steps to isolate Sudan economically and to provide massive amounts of humanitarian relief, these steps – by themselves – do not respond to the underlying catastrophe in Sudan.

The U.S. government has not determined whether such acts constitute “genocide” under international law, but has decided that they do constitute war crimes and crimes against humanity. The Commission concludes that the Sudanese government's actions constitute not only war crimes and crimes against humanity but genocidal activities as well.

b. PetroChina and U.S. Capital Markets

The terrible situation in Sudan is likely to become worse. The Sudanese government, which has been waging a campaign of death and destruction against its own people, is now receiving windfall profits from oil fields in south central Sudan. During 1999, Sudan became a net exporter of oil, and its oil income is expected to rise to \$ 400 million this year – with additional increases over the next few years. These oil profits will provide the government with funds to increase its purchases of military equipment, which will in turn be used to further its campaigns against religious, racial, and ethnic minorities.

There is a critical linkage between oil and gas production and human rights violations in Sudan. The government of Sudan destroyed a number of villages surrounding the Bentiu oil fields in order to rid them of human habitation. The proceeds from the oil revenues will, in turn, be used to support the Sudanese military's actions against other regions of the country.

In this context, the Commission was alarmed by reports in late 1999, that the China National Petroleum Company (CNPC), a 40 percent stakeholder in a joint venture to develop the Sudanese oil and gas fields, was poised to obtain additional funds from the U.S. capital markets on a huge scale. According to those reports, CNPC was planning to make an initial public offering (IPO) of equity shares in the amount of \$10-12 billion. At that level, the IPO would have been one of the largest ones ever made on the New York Stock Exchange.

In response, the Commission studied the applicability of the President's economic sanctions and the disclosure requirements of the Securities and Exchange Commission (SEC) to such an IPO, in consultation with the Department of the Treasury's Office of Foreign Assets Control (OFAC) and the SEC. In October 1999, the Commission urged President Clinton and top White House officials at a meeting with them to prevent the IPO. The Commission also focused a substantial part of its February 14, 2000 hearing on Sudan on this sort of use of our capital markets.

In the face of the issues raised by the Commission and others, CNPC substantially changed the structure of its operations and its plans for obtaining financing in the United States and elsewhere. CNPC created a new, wholly-owned subsidiary, PetroChina Company Limited (PetroChina), and placed most of its domestic business into PetroChina, retaining its foreign business, including its business in Sudan. Then, in March 2000, PetroChina filed a registration statement with the SEC disclosing that CNPC and PetroChina each planned simultaneously to make an offering of shares in PetroChina. Thus, while PetroChina would be offering shares in its own business, its parent CNPC would also be offering PetroChina shares. The registration statement became effective on March 30, 2000, and the offerings took place in early April. Globally, according to press accounts, the proceeds totaled \$ 2.5-3 billion.

The Commission has addressed many of the disturbing aspects of this corporate restructuring and sale in Recommendations 1.8 to 1.13 below. But it wishes to emphasize here the artificial nature of CNPC's "carve-out" of PetroChina. The economic reality is that the infusion of capital into PetroChina that has now occurred may free up resources within CNPC, so that it can better pursue its international activities, including development of the oil and gas fields in Sudan. Also, PetroChina is explicit in its registration statement that major portions of its dividends will go directly to CNPC. Thus, capital obtained on the U.S. market quite likely will end up facilitating the development of those fields and hence the predatory activities of the government of Sudan.

2. Commission Recommendations on Sudan

Based on the above-described violations of human rights, including religious freedom, in Sudan, the Commission recommends the following policies to the President and the Congress:

Recommendation 1.1: Increasing Non-OLS support

The government of Sudan has restricted, on a continuing basis, the UN's Operation Lifeline Sudan (OLS) from making deliveries of food and other humanitarian aid to the peoples of the Nuba Mountains, the Beja, the Furs of western Sudan, and broad areas of southern Sudan. As a result, hundreds of thousands of Sudanese civilians have died of starvation and related illnesses, even though international relief was available. Reliable sources report that over 100,000 civilians died in Bahr al Ghazal alone when the government imposed a "no-fly zone" over that area in 1998. Several international humanitarian organizations have chosen to ignore the government's flight ban and have delivered food and other supplies to areas that fall under the ban. These non-OLS operations often fly into dangerous situations to deliver food and other supplies to areas that fall under the ban. The Commission believes the U.S. government should intensify this shift to non-OLS efforts and encourage other governments to do so as well, so as to guarantee that the government of Sudan cannot block aid from reaching Sudanese who desperately need it.

Some aid groups have chosen to terminate their aid to southern Sudan because they were unwilling to sign a Memorandum Of Understanding with the SPLA's relief arm that would have granted the SPLA power to regulate their relief activities.

1.1 The U.S. government should continue to increase its aid to non-OLS providers of aid to Sudan and should engage in vigorous multilateral and bilateral efforts to encourage other governments to join.

The U.S. government contributes over \$ 110 million annually in food aid to Sudan, most of which flows through OLS. During the past three years the U.S. government has increased significantly its support for non-OLS aid. The Commission believes that the U.S. government should increase significantly its support for such non-OLS efforts and encourage other governments to do so as well.

The Commission also believes that the U.S. government should seek to persuade the SPLA and the humanitarian groups that withdrew from Sudan to settle

their differences so that the latter may return.

Recommendation 1.2: A Comprehensive Plan for a Solution to the Tragedy in Sudan

Sudan is engulfed in a religious and humanitarian tragedy that worsens daily. The response by the U.S. government, the countries involved in the Intergovernmental Authority on Development (IGAD) Partners Forum, and the broader international community is woefully inadequate. While the U.S. government should be commended for doing more than any other country, the Commission is unaware of any plan by the U.S. government or any other government to respond in a timely way to this crisis. The Commission believes that unless immediate, concrete, and far-reaching actions are taken by the U.S. government, the conditions of civilian life indispensable for religious freedom cannot be achieved and there will be great additional loss of life in Sudan through both violence and starvation. We therefore call upon our government to act – now.

1.2. The U.S. government should launch a comprehensive 12-month plan to reverse the tragic human rights situation in Sudan. The plan should establish a direct linkage between the Sudanese government’s actions measurably improving religious freedom and the U.S. government’s proportionate responses. To the extent that the Sudanese government improves its record on human rights and religious freedom, the U.S. government should respond by improving diplomatic relations as well as providing humanitarian and other assistance. To the extent the Sudanese government’s behavior does not improve in measurable ways, the U.S. government should, following a 12-month preparation period, provide non-lethal and humanitarian aid to Sudanese opposition groups that have developed procedures to comply with verifiable international human rights standards.

There are many components that could be included within such a comprehensive plan – *most of which can and should be pursued vigorously by the U.S. government, regardless of whether a comprehensive plan as such is adopted.* With the exception of providing aid to opposition groups (Recommendation 1.2.e below), each of these elements should be launched immediately so that the U.S. government will be able to provide assistance to legitimate opposition groups by the end of the 12-month period.

Comprehensive plan: Informational Campaign

1.2.a. The President should launch a vigorous campaign to inform both the American public and the international community of the human rights abuses, the pervasive infringement of religious freedom, war crimes, crimes against humanity, and genocidal activities perpetrated by the government of Sudan.

The United States should launch immediately a vigorous domestic and international campaign to inform the world community of the situation in Sudan. The President should play an active role in launching the plan by identifying the war crimes, crimes against humanity, and the genocidal activities of the Sudanese government. The United States should publicize such actions as: (a) the intentional bombings of civilian populations in the Nuba mountains, southern Sudan, and northeastern Sudan (among the Beja people); (b) the intentional destruction of entire villages in the Bentiu region; (c) the intentional restrictions of international deliveries of food to starving people; (d) complicity in militia raids to abduct civilians (particularly women and children) and place them in conditions of slavery and forced labor; and (e) the systematic abridgement of religious freedom and the pervasiveness of religious persecution.

Comprehensive plan: Economic Pressures

1.2.b. The U.S. government should engage in vigorous multilateral and bilateral efforts to increase economic and other pressures on the Sudanese government.

The United States should use its diplomatic influence to urge governments, international organizations, and businesses to: (a) refrain from engaging in trade relations with the government of Sudan (with the exception of humanitarian goods and services); (b) boycott the importing of oil from Sudan; (c) cease production, transporting, or refining of oil in Sudan; and (d) cease selling military equipment to the government of Sudan.

In addition to the diplomatic efforts involving other countries, the Commission has recommendations pertaining to access to U.S. capital markets by foreign corporations. Those recommendations are found at Recommendations 1.8 to 1.13 below.

Comprehensive plan: criteria for measuring Sudanese government actions

1.2.c. The comprehensive plan should identify specific criteria to measure the Sudanese government's actions and create specific linkages between those actions and U.S. government responses.

The types of criteria that should be used to measure the government's actions and improvement in conditions include: (a) stopping the bombing of civilian populations; (b) discontinuing all flight bans and travel restrictions for humanitarian relief operations; (c) permitting international human rights observers complete access to places such as the Nuba Mountains, Darfur, Red Sea province, "peace camps," western upper Nile (areas surrounding oil fields), and villages along the Wau-Babanusa train track, and (d) complying with the Geneva Conventions.

If the Sudanese government's actions and human rights conditions improve in the areas of the criteria, the United States should respond proportionately by such steps as improvement of diplomatic relations, the provision of additional humanitarian relief to areas within government control, and, if there is significant and systemic improvement, the easing of United States-imposed sanctions. The United States should respond to the failure to make improvements by increasing pressures on Sudan.

Comprehensive plan: Criteria for Measuring Opposition Groups' Actions

1.2.d. The comprehensive plan should include specific criteria for measuring whether opposition groups that are potential recipients of United States aid have made verifiable efforts to adhere to international human rights norms.

It is important that Sudanese opposition groups (such as the Sudanese People's Liberation Army and the National Democratic Alliance) that may receive humanitarian and other non-lethal aid from the United States make serious and verifiable efforts to comply with international human rights norms. It must be recognized that serious human rights abuses have been committed by opposition forces. The Commission concludes that there is no parity between the scale of human rights abuses of the SPLA and those by the government of Sudan. Before providing aid to such groups, the United

States should ensure that verifiable steps are being taken by opposition forces to comply with international human rights norms. Such norms should include, for example, observing the Geneva Conventions, establishing fair and transparent judicial procedures for the trial of persons accused of committing crimes, and providing access to international human rights observers.

Comprehensive plan: Aid to Sudanese Opposition Groups

1.2.e. If, after 12 months, the President concludes that: (a) the Sudanese government has not taken actions to measurably improve human rights and religious freedom, and (b) Sudanese opposition groups have established procedures to comply with verifiable international human rights standards, the Commission believes that the U.S. government should provide non-lethal and humanitarian aid directly to appropriate opposition groups. Any such aid provided to opposition groups should be separate and distinct from ongoing U.S. assistance to humanitarian organizations through OLS or non-OLS channels.*

If the Sudanese government does not alter its behavior, the Sudanese people will continue to suffer. The only organized groups capable of defending the people against the government's onslaught (thereby offering the possibility of the resumption of normal civilian life, including religious life) are opposition groups, particularly the Sudanese People's Liberation Army (SPLA) and possibly the National Democratic Alliance (NDA). Although the Commission is not prepared to recommend lethal aid to these groups, it does believe that – as a last recourse – nonlethal and humanitarian aid to such groups may be a necessity for preventing an exacerbation of this humanitarian and human rights tragedy.

Comprehensive plan: Acceleration of Response

1.2.f. The United States should be prepared to provide aid to opposition groups on an accelerated basis if the situation in Sudan deteriorates markedly

¹ For the dissent of Commissioner Al-Marayati to Recommendations 1.2.e-f, see pp. 57-58 below.

or if the Sudanese government shows no signs of engaging in serious efforts to remedy its human rights abuses.

If the President determines that the Sudanese government is increasing its attacks on civilians or exacerbating the humanitarian crisis, the U.S. government should accelerate its decision to provide humanitarian and other non-lethal aid to opposition groups.

Recommendation 1.3: IGAD and Egypt

1.3 The U.S. government should increase its financial and diplomatic involvement and support for the IGAD peace negotiations, and use diplomatic influence to urge Egypt to join that process. The United States should promote implementation of the IGAD Declaration of Principles.

Virtually all of the witnesses at the Commission's February 15, 2000 Sudan hearings and in its private interviews espoused support for the ongoing peace talks occurring under the auspices of IGAD and the IGAD Partners Forum. The government of Sudan and the SPLA have agreed to conduct these negotiations using the Declaration of Principles (DOP) as the framework for resolution of the conflict (although the Sudanese government no longer consents to the DOP as a blueprint for resolution of the conflict). The IGAD talks have been sluggish at best. Nevertheless, IGAD appears to be the best hope for a negotiated settlement, due in part to its inclusion of most of the neighboring countries as partners in the process.

Egypt and the National Democratic Alliance (NDA) are not participants in the IGAD-sponsored discussions on Sudan. Some speculate that Egypt would not endorse the DOP because it conditionally provides for self-determination for the south, while Egypt would prefer a unified, Arab, and Islamic neighbor at the headwaters of the Nile. (Egypt and Libya recently proposed their own peace initiative, one that omits self-determination as an option for the southern Sudanese.) Nevertheless, the United States should make every effort to use the leverage of its close relationship with Egypt to convince Egypt to become an active and constructive partner in the IGAD process.

Recommendation 1.4: Aid to Build Infrastructure in Southern Sudan

1.4. The U.S. government should earmark more of its humanitarian aid for the building of infrastructure and civil government in southern Sudan.

While humanitarian relief is essential and is the top priority. In the long run the peoples of southern Sudan must build a decent and just political order. U.S. assistance to them in this endeavor will be critical and has begun. Increased efforts are worthwhile if southern Sudan is ever to emerge into a stable democratic order.

Recommendation 1.5: Creation of a “Military No-Fly Zone”

As discussed above, the Sudanese military is increasing its bombing of civilian areas, including hospitals and primary schools. It has demonstrated that it recognizes no distinction between military and civilian facilities when selecting bombing targets.

1.5. The U.S. government should advocate within the international community for a “military no-fly zone” over Sudan and for taking steps to prevent civilians from being hurt by Sudanese bombing attacks.

The Commission recommends three steps aimed at reducing Sudanese bombings of civilian targets. First, the United States should provide civilian leaders in targeted areas with communication and tracking equipment that can help provide early warning of military flights. Second, the United States should urge IGAD to call for a moratorium on military flights over Sudan. The third step, if necessary, would be to call upon the Organization for African Unity and the United Nations Security Council for a moratorium and an internationally enforced ban.

Recommendation 1.6: Request Investigation Regarding Chemical Weapons

1.6. The U.S. government should formally request that the Organization for the Prohibition of Chemical Weapons investigate and determine whether the government of Sudan violated the Chemical Weapons Convention.

In February 2000, the Nobel Peace Prize winner, *Médecins Sans Frontières*, reported evidence that the Sudanese government is using chemical weapons against civilian populations. Both Sudan and the United States are parties to the Chemical

Weapons Convention. The United States should request the Organization for the Prohibition of Chemical Weapons to investigate the allegations thoroughly.

Recommendation 1.7: Request for Opinion on “Genocide”

In the half-century since the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the world community has rarely invoked it or applied its definitions. And typically, when the United Nations or the United States has done so, it has either been years after the fact – after the killing has stopped and the mass graves have been exhumed (e.g., Cambodia) or when it has helped to justify a decision to intervene militarily (e.g., Bosnia and Kosovo).

Millions of Sudanese have already died as a direct result of the actions of their government, and the killing continues to this day. The Commission concludes that by the nature of these actions, the government of Sudan has engaged in genocidal activity, whether or not that activity meets the technical definition of “genocide” in the 1948 Convention. A determination that the Sudanese government is guilty of “genocide” under the Convention would have significant international legal and political ramifications.

1.7. The Department of State should give the Congress its opinion on whether the government of Sudan has committed, and/or continues to commit, acts against any segment of the Sudanese people that meet the definition of “genocide” under the 1948 Genocide Convention.

The State Department has informed this Commission that it has never prepared an opinion on this subject. The Commission believes it is time to do so. If the Department concludes that genocide has been or is being committed by the government of Sudan, then its opinion also should explain what legal powers and obligations upon signatories to the Convention flow therefrom.

Recommendations 1.8-1.9: Strengthening the Sudanese Sanctions Regulations

For an earlier discussion of the relationships between violations of human rights by the government of Sudan, development of the oil and gas fields in Sudan, and the recent sale of PetroChina stock, see “PetroChina and the U.S. Capital Markets” in section II.A.1.b. above.

The President's program of economic sanctions for Sudan takes the form of the Sudanese Sanctions Regulations, 31 CFR Part 538. Those regulations, which are administered and enforced by OFAC, prohibit, among other things, any U.S. person from performing any financing contract in support of a government project in Sudan, including any project of a "Specially Designated National" (SDN). On the day after the Commission's hearing on Sudan in February, OFAC named the Greater Nile Petroleum Operating Company (GNPOC) as an SDN. The Regulations also prohibit any "U.S. person" from dealing in any "property" of the government of Sudan, including any property of an SDN. The term "U.S. person" includes any corporation "in the United States." The term "property" includes "contracts of any nature whatsoever," including presumably CNPC's performance obligations to GNPOC. The Regulations impose civil liability for violating its prohibitions and criminal liability for violating them willfully. They also point to a federal statute that imposes criminal liability for willfully misrepresenting material facts.

In consulting with OFAC about the applicability of the Sudanese Sanctions Regulations to the offering by PetroChina and CNPC of PetroChina shares, the Commission obtained various letter interpretations by OFAC of those regulations, one of which was in response to a specific Commission inquiry. Those interpretations clarified that the Sudanese Sanctions Regulations present no significant barrier against a foreign-organized company both (1) collaborating with the GNPOC or otherwise participating in the development of the oil fields in Sudan and (2) engaging in revenue-generating activities in the United States, including selling securities, assuming (in the case of selling securities) that its Sudan work is not a predominant part of its overall business.⁸ For example, Talisman Energy Corporation, a Canadian company, which is another partner in GNPOC, apparently would be free to sell shares in the company on the U.S. capital markets, even though its work with GNPOC generates financial support for the Sudanese government, which as described above is engaging in genocidal activity. It is wrong that a company that is benefitting the government of Sudan might be able to gain the benefits of our marketplace, particularly our capital markets.

Furthermore, a foreign-organized company may now conduct revenue-generating activities in both Sudan and the United States outside the realm of public scrutiny, because there is at present no obligation to report to the federal government on those activities. This means that neither policymakers nor the public have a full understanding of the scope and significance of those dual activities. As a result, policymakers do not have a strong factual foundation for building sound policy, nor does the public for guiding its choices in the marketplace.

Therefore, the Commission recommends the following:

1.8. The United States should prohibit any foreign-organized corporation from obtaining capital in the U.S. markets as long as it is engaged in the development of the oil and gas fields in Sudan, including exploration, extraction, piping or refining.

1.9. In view of the linkage between oil and gas revenues and the human rights violations of the government of Sudan, the United States should mandate that any foreign-organized corporation engaged in the development of the oil and gas fields in Sudan must:

(a) in the event it intends to make an IPO in the United States, disclose fully whether or not it intends to use the proceeds of the IPO for development of those oil and gas fields before it may proceed with the IPO; and

(b) in the event it is engaged in revenue-generating activities in the United States, submit periodically for public review reports on the nature, extent and duration of its involvement in developing those oil and gas fields and its revenue-generating activities in the United States.

In making the above recommendation for public disclosure (Recommendation 1.9), the Commission recognizes that there are various ways to implement it – for example, various amendments by the President of his Sudan sanctions executive order or even special legislation – and that the recommended changes may have generic implications that should be taken into account in fashioning a solution. For example, should the recommended changes be extended to sanctions programs for countries other than Sudan? These matters call for further careful consideration by the Commission of the transferability of these policies elsewhere in the event that the President or the Congress wish to pursue this recommendation.

Recommendations 1.10-1.13: Investigations by the Office of Foreign Assets Control and the Securities and Exchange Commission

In early April 2000, CNPC and PetroChina, with the help of U.S. underwriters, offered and sold shares in PetroChina on the U.S. market on the basis of a registration

statement filed by PetroChina with the SEC. The registration statement said that CNPC planned to use some of its proceeds to retire its borrowings except to the extent that such use would result in a violation of the Sudanese Sanctions Regulations or the sanctions regulations of any other country. Further, the registration statement noted that CNPC would establish a special account for the proceeds of the sale and guidelines for administering it, thereby implying that CNPC had no clear intention at the time of the sale to use the proceeds to retire any debt that it might have incurred in working with GNPOC. The registration statement, however, did not disclose (1) how much of the borrowings arose from CNPC's work with GNPOC, nor (2) what criteria CNPC would use to decide whether to retire such debt. In effect, it left unclear whether and to what extent the proceeds of the sale would go into development of the Sudan oil and gas fields. To the best of the Commission's knowledge, CNPC has not disclosed that information publicly through any other means. Thus, it remains conceivable that (1) CNPC will retire Sudan-related debt in sufficient volume so as to benefit its work with GNPOC, (2) it has planned to do so all along, and (3) the U.S. underwriters knew or should have known, in the event CNPC had earmarked some of the proceeds for retiring Sudan-related debt, that it had done so.

In this context, OFAC has taken the position that "a clear statement" of intent on the part of CNPC to use the proceeds to retire Sudan-related debt would be necessary prior to the sale in order to impose liability on purchasers of the PetroChina shares.⁹ In other words, according to OFAC, there would have to be a pre-sale visible "earmarking" of the proceeds for such use. Moreover, OFAC apparently does not believe that U.S. purchasers, including U.S. underwriters, have a duty of inquiry in the circumstances of the CNPC offering.

Therefore, the Commission recommends the following:

1.10. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) promptly should use its investigatory powers, to the extent it has not already done so, to learn from the parties to the PetroChina offering (e.g., PetroChina, and the U.S. underwriters):

the extent to which the borrowings that CNPC has targeted or may target for retirement arose out of its activities in Sudan;

what criteria CNPC plans to use to decide whether to retire Sudan-related debt out of the proceeds of the sale;

whether CNPC prior to the sale had earmarked any of the proceeds for use in retiring Sudan-related debt; and

whether the U.S. underwriters were aware of any such earmarking or had reason to inquire.

1.11. OFAC should call on such parties, especially PetroChina and the U.S. underwriters, to inform it if ever CNPC does retire Sudan-related debt out of the proceeds and to explain the rationale for such retirement in relation to the Sudanese Sanctions Regulations.

1.12. OFAC should inform this Commission and appropriate congressional committees of the results of this investigation, initiate any enforcement action that may be appropriate in the circumstances, and adjust its current interpretations of the Regulations as may be appropriate. For example, OFAC should clarify that U.S. underwriters in the circumstances presented here have a duty of inquiry as to whether the seller has earmarked any significant portion of the proceeds for its activities in Sudan.

While the Commission recognizes that the law and the facts in these circumstances are complex, it believes (in connection with recommendation 1.12) that the U.S. underwriters, who participated with CNPC in the structuring of CNPC's efforts to gain capital on the U.S. market, should have a duty to inquire, particularly when the surface indications point to the possibility that CNPC might use the proceeds in part to benefit its operations in Sudan.

1.13. Because disclosure requirements for corporations are inadequate under Chinese law, and given the fungibility of money, the Securities and Exchange Commission should be especially careful to investigate the adequacy and reliability of representations made in any PetroChina filings.

B. The People's Republic of China

1. Background on China

The government of China and the Communist Party of China (CPC) discriminate, harass, incarcerate, and torture people on the basis of their religion and beliefs. Chinese law criminalizes collective religious activity by members of religious groups that are not registered with the state. It registers only those groups that submit to membership in one of the government-controlled associations affiliated with the five officially recognized religions. Members of registered religious groups can only engage in a limited range of what the state deems “normal” religious activities.

The religious and belief communities that resist registration or that have been denied permission to register, including Catholics loyal to the Pope and Protestants who worship in “house churches,” have no legal standing in China. Adherents are often harassed, detained, and fined. Meetings are broken up, unauthorized buildings are destroyed, and leaders are arrested and frequently imprisoned.

Over the past several years, Chinese officials have been employing increasingly strict laws and regulations as instruments to harass religious groups and maintain control over religious activities. Officials responsible for enforcing the strict laws continue to be guided by CPC policy directives on religion. Furthermore, the Chinese legal system does not protect human rights from state interference, nor does it provide effective remedies for those who claim that their rights have been violated. Thus, this Commission finds that even though the Chinese government modified its means of state control by moving to a system of regulation of religion according to law, it has not improved the conditions of religious freedom in China.

The right to freedom of religious belief is explicitly denied to the 60 million members of the CPC, and the 3 million members of the Chinese military, and to hundreds of millions of minors under the age of 18, whose education the government monopolizes.

The new “anti-cult” provision of the Criminal Code is being used to impose long prison sentences on leaders of the Falun Gong and Zhong Gong spiritual movements as well as Protestant house church leaders.

Chinese authorities exercise tight control over Tibetan Buddhist monasteries, select and train important religious figures, and wage an invasive ideological campaign both in religious institutions and now among the Tibetan people generally.

Chinese authorities similarly exercise tight control over the Uighur Muslims in Xinjiang in northwest China. There are credible reports of thousands of arbitrary arrests, the widespread use of torture, and extra-judicial executions.

This Commission concludes that the practices of the Chinese government and the CPC with respect to freedom of religion and belief violate the standards of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR). Each of these international instruments prohibits discrimination on the basis of religion or belief, and the Universal Declaration and the ICCPR protect the right to hold and to manifest beliefs. The government of China, however, imposes undue restrictions on the manifestation of beliefs and bans several beliefs altogether.

2. Commission Recommendations on China

In light of the preceding description of the situation in China, the Commission makes the following recommendations:

Recommendation 2.1: Permanent Normal Trade Relations (PNTR) with China

As of May 1, 2000, the date on which the Commission is releasing this report, China has applied for entrance into the World Trade Organization (WTO), a multilateral organization including the United States and other industrialized countries. As a part of the admission process, the WTO established a “Working Party on the Accession of China,” a task force that oversees the consideration of China’s application to join the WTO. The Working Party is responsible for drafting a Protocol for the accession of China and for monitoring a series of bilateral market-access agreement negotiations between China and 37 members of the WTO (including the United States and the European Union). Although conclusion of these bilateral agreements is not strictly necessary for obtaining WTO membership, such agreements establish the terms of the trade relations, on a bilateral basis, between China and the WTO members with whom it enters into the bilateral agreements. China and the United States signed a bilateral accession agreement in 1999, although China is not bound by the agreement unless the United States grants China PNTR status. As of April 28, the European Union and several other members, unlike the United States, have not concluded their bilateral discussions with China. After China agrees to an accession Protocol with the Working Party, China will likely receive a sufficient number of votes from WTO members to permit it to join. The U.S. Congress currently is scheduled to vote on the question of

whether to grant PNTR status to China within the next few weeks (currently scheduled for the week of May 22).

The Commission believes that in many countries, including some of China's neighbors, free trade has been the basis for rapid economic growth, which in turn has been central to the development of a more open society and political system. This belief is the basis for the annual decision, by presidents and congressional majorities of both parties, to grant "most favored nation" (MFN) trade relations with China each year over the past two decades. Moreover, a grant of PNTR and Chinese membership in the World Trade Organization may, by locking China into a network of international obligations, help advance the rule of law there in the economic sector at first, but then more broadly over time.

Nevertheless, given the sharp deterioration in freedom of religion in China during the last year, the Commission believes that an unconditional grant of PNTR at this moment may be taken as a signal of American indifference to religious freedom. The government of China attaches great symbolic importance to steps such as the grant of PNTR, and presents them to the Chinese people as proof of international acceptance and approval. A grant of PNTR at this juncture could be seen by Chinese people struggling for religious freedom as an abandonment of their cause at a moment of great difficulty. The Commission therefore believes that Congress should not approve PNTR for China until China makes substantial improvements in respect for religious freedom, as measured by the following standards:

2.1. The U.S. Congress should grant Permanent Normal Trade Relations status to China only after China makes substantial improvements in respect for freedom of religion, as measured by the following standards;

2.1.a. China agrees to establish a high-level and ongoing dialogue with the U.S. government on religious-freedom issues.

China's policy on treatment of religious exercise and religious groups is dictated by the Chinese Communist Party through its United Front Work Department (UFD). This policy is implemented by the national and local offices of the Religious Affairs Bureau (RAB).

Since May of 1999, no dialogue on religious freedom or other human rights has taken place between the United States and any level of the Chinese government. The

RAB has refused to meet with U.S. embassy personnel or even to receive official communications. Obviously, this closed door policy in Beijing is not conducive to bilateral communication or improvement in religious freedom for the Chinese people.

The Commission recommends that the first condition for granting PNTR be the reestablishment of direct, ongoing, and constructive dialogue between high-level United States and Chinese officials on freedom of religion and belief. The dialogue should include officials within the UFWD.

In addition to official dialogue between governments on religious-liberty issues, the U.S. government should press Beijing to allow contacts, official and unofficial, between and among various religious groups in China and their counterparts in the United States. This communication can only increase understanding in both countries of the similarities and differences in conditions for religious liberty in each country.

2.1.b. China must agree to ratify the International Covenant on Civil and Political Rights.

China is the only member of the UN Security Council that has not ratified the ICCPR. In anticipation of President Clinton's trip to China in 1997, China signed the ICCPR in 1998. Ratification of the ICCPR would demonstrate to the world and the people of China that the government takes seriously its role as a member of the international community.¹⁰

2.1.c. China must agree to permit unhindered access to religious leaders, including those imprisoned, detained or under house arrest, by the U.S. Commission on International Religious Freedom and respected international human rights organizations.

2.1.d. China must provide a detailed response to inquiries regarding a number of persons who are imprisoned, detained, or under house arrest for reasons of religion or belief, or whose whereabouts are not known but who were last seen in the custody of Chinese authorities. The Department of State, after consultation with human rights and religious groups, should compile a detailed list of such prisoners of conscience and make specific inquiries to the Chinese government.

China has detained thousands of religious practitioners, many in the “reeducation through labor” (laojiao) system. Using its laws against “cults,” the government recently prosecuted scores of religious leaders and gave them prison sentences as long as 18 years. At least seven Roman Catholic bishops who have refused to join the relevant governmental association have been arrested and remain imprisoned or have not been seen in public since. In 1997, a delegation to China of three American clerics (including now-Commissioner Archbishop Theodore McCarrick), asked to meet with several leaders (such as James Su Zhimin, Bishop of Hebei), but Chinese authorities refused to permit it.

Shen Yiping and Zheng Suqian were imprisoned for their leadership of large Protestant “house churches” in 1999. Thousands of practitioners of Falun Gong have been detained and more than 300 have been sentenced, including one leader to 18 years. Within the Tibetan Buddhist community, the Dalai Lama’s choice for the Panchen Lama – a child named Gendun Choekyi Nyima – has not been seen since 1995, and numerous monks and nuns remain in prison in Lhasa.

2.1.e. China must release from prison all persons incarcerated for religious reasons.

Needless to say, the Commission believes that all prisoners incarcerated for reasons of religion or belief should be released immediately. The very least the government of China should be required to do before PNTR is granted is to free those who are minors and those whose health is poor.

Recommendation 2.2: Steps the U.S. Congress Should Take Before Granting PNTR

Before granting PNTR to China:

2.2.a. The U.S. Congress should announce that it will hold annual hearings on human rights in China.

The Commission believes that congressional monitoring of human rights conditions in China should be intensive and continuous. If normal trade relations are to be permanent, so should congressional monitoring of human rights conditions in China be permanent. Toward this end, the Commission urges Congress to hold annual hearings for monitoring Chinese human rights performance. Congress should announce this initiative before PNTR is granted, while the issue is still visible and while both proponents and opponents of PNTR are espousing the importance of monitoring and

leveraging improvements in human rights in China. The full Senate Committee on Foreign Relations and House Committee on International Relations should plan regular, in-depth hearings (to be held at least annually).

2.2.b. Congress should invite the Dalai Lama to address a Joint Session of Congress.

The Dalai Lama is an international symbol of religious freedom and non-violence. A congressional invitation to address a joint session would honor him and the cause of religious freedom at a moment when that cause is under attack in China. Such an invitation would demonstrate continuing Congressional concern and a firm resolve never to abandon freedom of religion as a central human right. The Commission therefore urges that Congress issue the invitation as soon as possible.

Recommendation 2.3: UN Human Rights Commission Resolution on China

The Commission believes that China should be censured annually by the UN Commission on Human Rights (UNCHR) as long as the government's treatment of religious communities falls dramatically short of the standards of the UN Declaration on Human Rights and the ICCPR.

Since 1990, the United States has sponsored a resolution on China in the UNCHR every year except 1998. The UNCHR has voted to take no action on those resolutions every year except in 1995. On only two occasions, in 1995 and 2000 (the only two years that the UNCHR came close to debating the United States' resolution on China) did the Administration make an early and concerted effort to push for the resolution. China, on the other hand, lobbies UNCHR member countries year-round, dispensing aid and favors in return for commitments that the members will support a "no action" motion each year at the UNCHR.

2.3. Until religious freedom significantly improves in China, the U.S. government, led by the personal efforts of the President of the United States, should initiate a resolution to censure China at the annual meeting of the UN Commission on Human Rights and should support a sustained campaign to convince other governments at the highest levels to support it.

The U.S. government should decide by October of each year – six months before the UNCHR vote in April – whether a resolution condemning China's human

rights performance is warranted. If so, the Administration should coordinate all appropriate agencies in a sustained campaign to enlist the support of UNCHR member countries.

Even with a six-month lead time, a U.S. resolution will likely continue to fail in Geneva unless the President makes its adoption a high priority of the Administration. At the 2000 meeting of the UNCHR, the Secretary of State and the Assistant Secretary for Democracy, Human Rights and Labor pressed hard for passage of the resolution, but the unsuccessful result shows that presidential involvement is clearly needed. The Commission urges the President personally to solicit support for the resolution from the governmental leaders of UNCHR member countries. Indeed, this year the Commission urged the President to increase his involvement in the final days leading up to the vote. The importance that the United States places on passage of the resolution would not be lost if the President were to address the UNCHR in Geneva. The success or failure of this referendum on China's standing in the international community is likely to depend on whether the President makes liberal use of the "bully pulpit" and effective diplomacy at every opportunity.

Recommendation 2.4: International Campaign for Prisoner Release

As discussed above, the PRC government routinely arrests and incarcerates religious practitioners of unofficial churches or illegal "sects" in "reeducation through labor" camps for up to three years, and imprisons religious leaders for long sentences. The current victims include Roman Catholic Bishop Su Zhimin, and a number of other bishops and priests, Falun Gong leaders, House Church leaders, Gendun Choekyi Nyima (the Panchen Lama designated by the Dalai Lama), and members of the Muslim Uighur community who have been imprisoned for their religious belief, association or practice.

Multilateral overtures to the Chinese government comprise the most promising means of liberating some of these individuals.

2.4. The United States should lead a multilateral campaign to seek the release of Chinese religious leaders imprisoned or under house arrest.

All diplomatic means should be used to effect the release of those Chinese religious leaders who are imprisoned, who have not been seen in public since their detention, or who are under house arrest.

The means employed should be the full range of diplomatic tools – from private demarches to UN Security Council resolutions to presidential statements. Every

meeting of U.S. embassy personnel with the Chinese government should include prominent mention of our government's profound concern for the welfare of these religious leaders and a request that they be released.

Recommendation 2.5: Measures to Enhance Freedom of Uighur Muslims

The residents of Xinjiang province are the only Chinese who are subject to capital punishment for political crimes. That apparently is intended to suppress the separatist movement of the Uighur people in that province, a movement that sometimes apparently involves violence. But one reported result of the government's heavy-handed policy toward Xinjiang is the limitation of religious exercise by nonviolent Uighur Muslims.

Because the Chinese government vigorously suppresses the flow of information from Xinjiang, and because the Uighur people are not well-known and lack a large international constituency (in contrast to the Tibetan Buddhists), the Commission recommends that the U.S. government enhance their visibility, in the hope of relieving their religious exercise of current strictures.

2.5. The U.S. government should raise the profile of conditions in Xinjiang by addressing religious-freedom and human rights concerns in bilateral talks, by increasing the number of educational exchange opportunities available to Uighurs, and by increasing radio broadcasts in the Uighur language into Xinjiang.

The Commission recommends that the State Department raise the status of Xinjiang toward the same level presently enjoyed by Tibet. The religious freedom of Uighur Muslims in that province should be made a priority agenda item in discussions with the Chinese government. American diplomats should also raise the plight of the Uighurs on a bilateral basis with other countries, particularly Islamic governments, and urge them to pursue the issue in their own discussions with Beijing.

In addition, the Commission recommends that the U.S. government increase the number of educational and cultural exchange opportunities available to Uighurs.

The Commission further recommends that the U.S. government devote more attention and resources to documentation of the situation in Xinjiang.

Finally, the Commission believes that religious freedom would be promoted in

Xinjiang by increasing the flow of information via radio in the Uighur language, through, for example, Radio Free Asia.

Recommendation 2.6: China's Hosting of Olympic Events

2.6. The U.S. government should use its diplomatic influence with other governments to ensure that China is not selected as a site for the International Olympic Games until it has made significant and sustained improvement in religious freedom and human rights.

C. The Russian Federation

1. Background on Russia

When the Commission selected Russia as one of the principal countries on which it would focus, it was not because the religious freedom situation was then comparable to that of China or Sudan, but because of: (a) Russia's influence in the region, (b) the possibility that the conditions of religious freedom in Russia could deteriorate significantly in the near future, and (c) the opportunity the United States has to promote religious freedom in Russia.

The protection of freedom of religion in Russia today is dramatically better than during the Soviet period, and the Russian government has taken some positive steps to promote religious freedom. Unfortunately, Russia took a significant step backward in 1997 by enacting a federal law (1997 Religion Law) that replaced legislation adopted in 1990 that provided broad protections for the exercise of the right to freedom of religion and for the equality of religious communities. The 1997 Religion Law creates a hierarchy of religious organizations and effectively restricts the rights, powers, and privileges of smaller, newer, and foreign religious communities. It also establishes an onerous and intrusive registration process and other mechanisms of state interference with the activities of religious organizations. The negative impact of the 1997 Religion Law on religious freedom appears, thus far, to have been mitigated to some extent by the Russian federal authorities and by a 1999, decision of the Russian Constitutional Court.

On March 26, 2000, President Putin quietly signed an amendment to the 1997 Religion Law that contained one positive and one very negative provision. On the positive side, it extended the registration deadline for religious organizations by one year until December 31, 2000. On the other hand, the law now *requires* that non-

registered groups be “liquidated” after that date. (The original law provided only that unregistered groups *could* be liquidated.) It bears close watching whether Russian officials, at all levels, will make good faith efforts to register religious groups and whether unjustifiable liquidations will take place in 2001. In addition, in January 2000, President Putin signed an important directive specifying that one of the measures necessary to protect Russian national security is a “state policy to maintain the population’s spiritual and moral welfare and counter the adverse impact of foreign religious organizations and missionaries.”

Regional officials implementing the 1997 Religion Law have denied registration and sought the liquidation of unpopular religious communities – including Baptists, Pentecostals, Charismatic churches, Jehovah’s Witnesses, Roman Catholics, Mormons, Seventh-day Adventists, and Orthodox groups not associated with the Moscow Patriarchate – in some cases using panels of “experts” to examine the beliefs and activities of the targeted group.

Also on the regional level, some officials have harassed and interfered with the activities of religious communities, preventing them from renting suitable places for worship, distributing religious publications, and conducting religious education. Protestant, Catholic, and Muslim indigenous believers and foreign missionaries have been harassed by security officials, and even expelled, for propagating their faith. In addition, one-third of Russia’s constituent regions have enacted legal regulations on religious activities that are more restrictive and discriminatory than the 1997 Religion Law and that violate the Russian Constitution. The federal authorities have been unwilling, or unable, to discipline local officials or to bring these regional laws into compliance with the Russian Constitution and international human rights standards and international human rights standards. They have themselves harassed foreign priests and pastors, particularly Roman Catholics, by issuing them visas for a three-month stay only and then requiring them to return to their home countries for visa renewal.

While the conflict in Chechnya is primarily political and ethnic in nature, religion appears to play a role on both sides of the conflict. Chechens are Muslims and Islam is a part of their nationalistic identity. Russian authorities, meanwhile, have played upon deep-seated and historic prejudices against Muslims to rally domestic support for the war, portraying Islam and Muslims as synonymous with terrorism and extremism.

Three widely shared attitudes in Russia exacerbate the impact of the defects in the legal system (and ultimately may be more significant to the protection of religious freedom). *First*, many hold prejudices against ethnic and religious minorities, including,

most importantly, Muslims, Jews, and various Christian groups other than the Russian Orthodox Church. *Second*, among many Russians, longstanding nationalistic resentment against “foreign influences” affects the treatment of religious groups that are perceived to have strong foreign ties (such as Roman Catholics, Protestants and some Muslim groups). *Third* is the related belief among some that the Russian Orthodox Church, or the “traditional” religions of Russia, should be accorded special privileges and protection in contrast to smaller, newer, and “foreign” religious groups.

2. Commission Recommendations on Russia

Based on these threats to religious freedom in Russia, the Commission recommends the following policies to the U.S. government.

Recommendation 3.1: Ongoing U.S. Government Monitoring

The Commission believes that the State Department has made commendable efforts to keep religious freedom a priority in its bilateral agenda with the Russian government. The Commission also believes that the U.S. embassy in Moscow has done an effective job of monitoring the religious-freedom situation. Nevertheless, many interferences with the activities of religious groups occur in regions outside major population centers and involve groups that have not had regular contacts with American officials. It is important that monitoring efforts continue and be expanded to cover effectively the most significant religious-freedom problems in Russia.

3.1. The U.S. government should actively continue to monitor conditions of religious freedom in Russia – in particular, interference with the activities of religious groups at the regional and local level as well as the implementation of the 1997 Religion Law. It should make additional efforts to document interferences with the right to freedom of religion or belief and discrimination against groups on which there is under-reporting, including, for example, Muslims and other Orthodox groups (such as Old Believers).

Interference with religious activities by regional and local officials in those areas known to be problems in the past should be given particularly close attention. Since religious denominations and organizations in other countries often have more ongoing communications with Russian religious communities, the U.S. government should expand its consultation with such groups (both inside and outside Russia), to obtain a more comprehensive picture of existing problems.

Recommendation 3.2: Ongoing Russian Monitoring of Local Regulations

The State Department reports that 30 of the 89 constituent regions of the Russian Federation have adopted, in violation of the Russian Constitution, legal regulations that restrict the activities of religious institutions. Many of these regulations specifically target members of foreign religious groups for restrictions on their activities. Difficulties encountered by religious groups in Russia are related to the enforcement of these restrictive regional and local laws as they provide the mechanism, or in some cases the pretext, for local officials to harass or interfere with religious activities. Apparently, significant action has not been taken by the federal authorities to discipline local officials or to bring regional and local laws into compliance with the Russian Constitution.

3.2. The U.S. government should urge the Russian government to monitor the actions of regional and local officials that interfere with the right to freedom of religion or belief, and to take steps to bring local laws and regulations on religious activities into conformity with the Russian Constitution and international human rights standards.

The U.S. government should urge the Russian federal authorities to monitor local *officials* effectively and, if appropriate, to investigate and punish officials whose actions are in violation of the Russian Constitution and international human rights standards. In addition, Russian officials reportedly have stated that many regional and local *laws and decrees* concerning religious activities violate the Russian Constitution. The U.S. government should urge the government of Russia to act – consistent with their constitutional system – to bring such laws into conformity with the Russian Constitution and international human rights standards.

Recommendation 3.3: Chechnya as a High Priority Bilateral Issue

The Russian government has inadequately responded to the concerns expressed by the international community over the humanitarian situation in Chechnya and the allegations of serious human rights abuses by Russian forces. These responses fall short of allowing full access to affected regions by human rights monitors and humanitarian organizations ready to provide aid to civilians affected by the fighting.

While the conflict in the Caucasus is primarily political and ethnic in nature, religion appears to play a role on both sides of the conflict. Islam forms the basis of Caucasian Muslim identity, and it is a significant element of resistance to domination

by Moscow. Russian authorities, meanwhile, have played upon deep-seated and historic prejudices against Muslims to rally domestic support for the war, which in turn has fueled anti-Muslim attitudes in Russia by making Islam and Muslims synonymous with terrorism and extremism. These actions apparently have had a direct impact on the religious freedom of Muslims who are independent of the officially-sanctioned Muslim organizations.

3.3. The U.S. State Department should make the humanitarian and human rights crisis in Chechnya a high priority issue in its bilateral relations with Russia.

The U.S. government should make it clear to the Russian government that its handling of the humanitarian crisis in Chechnya is an important consideration in U.S. government policy toward Russia. The U.S. government should also deplore any efforts on the part of the Russian government to use intolerance against Muslims as a mechanism to fuel public support for its offensive in Chechnya, or the offensive in Chechnya as a justification to violate the religious freedom of Muslims in Russia.

Recommendation 3.4: Re-enactment of the “Smith Amendment”

3.4. The Congress should continue to include the “Smith Amendment” in its appropriations bills, at least until it becomes clear whether the Putin administration will work to ensure that Russian laws do not discriminate against groups on the basis of religion.

Following the adoption of the 1997 Religion Law in Russia, the U.S. Congress enacted an amendment to the foreign assistance appropriations act that would prohibit foreign assistance to the government of Russia unless the President determines that “the Government of the Russian Federation has implemented no statute, executive order, regulation or similar government action that would discriminate, or would have as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.” This provision – commonly known as the “Smith Amendment” (after its sponsor, Senator Gordon Smith) – has been included in the foreign assistance appropriations bills for fiscal years 1999 and 2000.

The Commission believes that the “Smith Amendment” has been an effective tool for promoting religious freedom in Russia and urges Congress to reenact it until it becomes clearer the direction that Russia will proceed under its new president.

Recommendation 3.5: Liquidation of Religious Organizations

3.5. The U.S. government should continue, as a major diplomatic priority, efforts to ensure that legitimate religious groups that have not registered by 2001 are not liquidated. The President of the United States should communicate directly with President Putin on this issue.

As explained in the opening section on Russia above, President Putin signed an amendment to the 1997 Religion Law in March 2000. The amendment requires the liquidation of religious organizations that are not registered by December 31, 2000. The U.S. State Department and the President should engage in serious diplomacy with the Russian government to ensure that no legitimate religious organizations are liquidated.

Recommendation 3.6: Promoting Religious Tolerance

As described above, there are significant societal attitudes in Russia that undermine the promotion of religious freedom and encourage intolerance and discrimination on the basis of religion or belief. These include negative attitudes toward Muslims, Jews and non-Orthodox Christians and the view that the Russian Orthodox Church and the so-called “traditional” religions of Russia should have privileges and protections not afforded to other religious communities. The United States cannot impose religious freedom in Russia, and religious freedom will be vigorously protected only when the people and the government of Russia themselves seek to promote and protect it. Therefore, the U.S. government should take positive steps to support Russian efforts at promoting religious freedom and opposing intolerance.

3.6. The U.S. government should actively promote religious tolerance in Russia by providing support to willing non-governmental organizations, journalists, and academic institutions engaged in programs aimed at preventing intolerance and discrimination and supporting international standards on freedom of religion or belief. The U.S. government should also promote religious tolerance through appropriate activities such as exhibits, conferences, and media and Internet broadcasting, particularly in regions

where numerous manifestations of intolerance have occurred.

One of the means by which religious freedom can be promoted in Russia is for the United States to identify Russians who themselves seek to promote international standards of religious freedom and tolerance. The United States can provide support to these individuals by such measures as providing support for NGOs and providing for educational, journalistic, and academic exchanges in Russia and the United States. The U.S. government can also promote religious tolerance by conducting and supporting activities in Russia such as exhibits, media broadcasting, and Internet postings directed toward that end.

Recommendation 3.7: Hosting Russian Religious Leaders

One of the impediments to promoting religious freedom in Russia is the distrust of Western (particularly American) ideas and the identification of international human rights standards related to religious freedom with those ideas. A number of leaders of Russia's major religious communities have criticized the activities of unfamiliar and foreign religious groups and have supported efforts to restrict the activities of such groups, including the 1997 Religion Law and discriminatory regional laws.

3.7. The U.S. government should promote contacts with leaders of the Russian Orthodox Church and members of other religious communities in Russia who may benefit from traveling to the United States and meeting with American political and religious leaders. The U.S. government also should encourage appropriate American religious leaders and seminarians in traveling to Russia to discuss issues of tolerance and religious freedom.

Russian religious leaders may benefit significantly from travel in the United States and exposure to American political and religious leaders who concern themselves with the process of the protection and promotion of religious freedom and with interreligious dialogue and action in the United States.

Recommendation 3.8: Supporting Legal Defenders

Effective legal advocacy is important for the protection of religious freedom in Russia. Russians have only begun to use the judicial process to seek effective remedies for violations of the right to freedom of religion and to reform federal and local law in

accordance with the Russian Constitution and international human rights standards. Legal representation is necessary for religious groups to effectuate their rights under federal and local law and to protect their activities from undue interference by the authorities.

3.8. The U.S. government should promote the legal protection of freedom of religion or belief in Russia by supporting the activities of Russian public interest organizations that defend the right to freedom of religion or belief in Russian courts. The U.S. government should promote exchanges between Russian judges, lawyers, and legal rights organizations with their counterparts in the United States.

Many religious groups, in particular small and indigenous Russian communities, do not have the resources to secure adequate legal representation to challenge state action and defend their rights in court. Public interest organizations exist in Russia for these purposes, but their effectiveness is limited due to a lack of resources. The U.S. government should support such organizations in ways that do not compromise their independence or integrity.

Recommendation 3.9: Visit By UN Special Rapporteur

3.9. The U.S. government should, on a bilateral basis, encourage the government of Russia to agree to the request of the UN Special Rapporteur on Religious Intolerance to visit Russia.

In his 2000 report to the UNCHR, the Special Rapporteur for Religious Intolerance noted that the Russian government has not responded to his request for a site visit. The U.S. government, which previously agreed to such a site visit by the Special Rapporteur, should urge the Russian government to do so as well.

Recommendation 3.10: Visas

3.10. The U.S. government should, to the extent possible, encourage the Russian government to extend the length of visas for religious workers, or at least allow them to renew their residence permission from within Russia.

The obtaining of visas is an ongoing problem for foreign clergy and missionaries who wish to work in Russia. The U.S. government should raise this issue with appropriate Russian officials and urge that the length of visas be extended or permit visa renewals to be obtained from inside Russia.

Dissent to Commission Recommendation 1.2.e-f by Dr. Laila Al-Marayati

This dissent is written in response to the recommendation by the Commission to provide non-lethal aid to the Sudanese People's Liberation Army (SPLA) if the government of Sudan has not taken action to measurably and substantially improve religious freedom in Sudan, particularly in the south. My opposition to this recommendation is based on four points:

First, the SPLA has a history of human rights abuses that have not significantly abated in recent years. The UN Special Rapporteur on the Sudan and other human rights organizations such as Human Rights Watch have documented the ongoing abuses such as abductions, extrajudicial killings, and the diversion of relief supplies and food from the civilian population. Although the Commission recommends that aid to the SPLA be conditional upon documentation of compliance with international human rights standards, it is improbable that substantial, verifiable improvement will occur in the short time span of 6-12 months. Therefore, to provide aid of any kind to an organization known to commit abuses against populations that need protection is irresponsible and dangerous. Until the SPLA demonstrates that it is capable of respecting the rights of civilians and dissident SPLA factions, the United States should not even consider providing such aid to the SPLA.

Second, the human rights violations perpetrated by the government of Sudan and its military upon civilian populations of southern Sudan emanate to a large extent from its involvement in the 17- year civil war. Substantial progress in advancing human rights and religious freedom in Sudan is unlikely to occur until the civil war ends. The argument that strengthening the SPLA will bring the Sudanese leadership to the negotiating table and pressure them into concessions is not only highly speculative but is extremely unlikely, according to most informed observers. By promoting and aiding one side over the other in this tragic conflict, the United States will only contribute to prolonging the war and perpetuating the suffering of millions of Sudanese, particularly in the south where the war is being fought.

Third, the U.S. government has not demonstrated sufficient political will to bring about a peaceful resolution to the conflict in Sudan. The current policy that emphasizes isolation of Sudan as a "rogue state" has further hindered the United States from playing a constructive role in bringing the parties to a negotiated settlement. Without a concerted good faith effort, in conjunction with allies in the region, to invigorate and empower the peace process (see Recommendation 1.3), it is premature to offer aid to the SPLA, as this will compromise any ability of the U.S. government to negotiate fairly. It is not enough for the Commission to recommend diplomatic efforts

that could occur simultaneously with aid to the SPLA. Until the diplomatic channels have been completely exhausted, aid to the rebel forces should not be an option, as this will thwart any opportunity for peace. To the extent that the United States aids rebel groups, it will become a party to the conflict, thereby undermining its credibility in the region and undercutting its own peace efforts.

Fourth, ancillary equipment and supplies (i.e., the type of non-lethal aid that is recommended by the Commission) can strengthen the forces in a way that will enable them to function more effectively on the battlefield. In addition, non-lethal supplies can be sold or exchanged for weapons and ammunition such that the distinction between lethal versus non-lethal aid is blurred. It is possible that the government of Sudan and perhaps other states and individuals in the region will consider aid to the rebels as a declaration of war by the United States against Sudan. Such a perception would have severe ramifications not only for American relief workers in Sudan but for American interests in the region, and violent backlash against American targets (human or otherwise) could readily occur. If American citizens were to become victims of aggression in Sudan, the U.S. government may be called upon to defend them, which could lead to actual military involvement that could threaten to destabilize the entire region.

Thus, because of its ongoing human rights abuses, its internal divisiveness and its general inability to govern, aid to the SPLA is unwise at this time. Moreover, such a move can only undermine U.S. credibility in the region and much of the international community.

III. STATE DEPARTMENT ANNUAL REPORTS

A. Background of the State Department Reports

The U.S. Department of State now issues reports twice each year that describe the status of religious freedom in countries of the world. The *Country Reports on Human Rights Practices (Country Reports)* have been issued annually since 1979, and report on a wide range of human rights issues, including freedom of religion or belief.¹¹ Following the statutory requirements of the International Religious Freedom Act of 1998 (IRFA), the Department of State issued its first *Annual Report on International Religious Freedom (Religion Reports)* on September 9, 1999.¹²

The Department of State, and in particular its Office of International Religious Freedom (IRF), deserves high praise for issuing a report of such high quality as the *Religion Reports* and in such a timely manner. Perhaps as important as the report itself was the impact its preparation had on the Department of State and our embassies. By requiring this report, investigation and reporting on religious freedom became a higher priority to the work of every U.S. embassy and consulate. Foreign service officers and posts researched religious-freedom conditions and, in many cases, made new contacts with religious communities whom they had rarely, if ever, met. Country desks and regional bureaus at the State Department needed to review all this material. Higher ranking officials needed to consider more controversial decisions. When Commissioners traveled to countries for site visits, they generally found that embassy staff had been nurturing those new connections with religious, human rights, and government officials involved in these issues whom they had first encountered in preparing these drafts. Relatedly, the religious-freedom components of this year's *Country Reports* have been strengthened by information gathered for the *Religion Reports*. As a result, the latter report marked a sea change in bringing attention to an otherwise neglected issue; religious freedom was elevated to a more important element of U.S. foreign policy. If nothing else ever came of IRFA, this in itself would prove the law's worth.

The Commission also wants to commend Ambassador Robert Seiple, Ambassador-at-Large for International Religious Freedom. The Commission recognizes the enormous effort and dedication that went into preparing the *Religion Reports* within the constraints of the State Department's personnel, budget, and other operational priorities. With limited time, they forged from the drafts of the foreign service officers a very strong report. Ambassador Seiple has since traveled widely, visiting countries that the report identified as having problems, to discuss ways to improve religious freedom there. He, as well as the Commission staff, has been approached by other

countries interested in enhancing religious freedom issues within their own foreign policy, as well as exploring ways to work more closely with the Ambassador's staff and with the Commission.

A number of lessons can be learned from an assessment of this praiseworthy first effort. The goals of the *Religion Reports* require that the facts and circumstances reported must be accurate, comprehensive, free from bias, and undistorted by foreign policy considerations other than the promotion of religious freedom. Trends and events must be placed in their political, social, and historical context. The information must be organized, effectively summarized, and prioritized to present clearly the most urgent problems. These trends and events must be evaluated in light of the standards set out in IRFA.

As these goals are met, the *Religion Reports* can more effectively meet the statutory requirements under IRFA, focus Congress and the Executive branch on the most egregious violators, provide a factual basis for sound policy for the State Department and sound recommendations by the Commission, and serve as reliable tools for human rights defenders at home and abroad to promote international religious freedom.¹³ Notwithstanding the professionalism and commitment of the State Department personnel, the Commission recognizes that improvements can and should be made. It recognizes that these goals may be difficult to achieve and moving to implement them fully will be a process taking several years. These recommendations are offered with the hope that next year's report will begin this process.

B. Commission Commentary

The Commission has identified six areas that could be improved in the *Religion Reports*: (a) prioritizing and evaluating information, (b) placing information in context, (c) referencing relevant law, (d) eliminating the potential for bias, (e) referencing international authorities, and (f) improving the methodology for information-gathering. The Commission's comments in this regard also apply to those sections of the *Country Reports* that touch on matters related to freedom of religion or belief.

1. Prioritizing and Evaluating Information

The *Religion Reports* are an important basis for presidential action taken pursuant to IRFA to promote and protect the right to freedom of religion or belief.¹⁴ The statutory requirement of presidential action is triggered by a finding that a country's government engages in or tolerates violations of religious freedom.¹⁵ The choice of presidential actions – including the designation of a “country of particular

concern” – is dependent on the severity of the violations. Thus, IRFA requires that the *Religion Reports* contain an "assessment and description of the nature and extent of violations of religious freedom in each foreign country."¹⁶

Prioritizing information. The information presented in the *Religion Reports* should be prioritized in order to identify the most significant religious-freedom problems in each country. Commissioner Nina Shea testified in October 1999, with respect to the *1999 Religion Reports*:

The report itself contains an overwhelming and unselective compilation of facts and information without reaching definitive conclusions, or conveying a sense of priority. In a report of this magnitude and type, prioritizing American concerns becomes essential. Not to do so is to lose sight of severe persecutors in a welter of detail.¹⁷

Information in the *Religion Reports* is often presented as a string of unconnected incidents. Information about a given topic or problem in a particular country is also scattered throughout the report. In a number of cases, the exact same information is presented in the sections on "Freedom of Religion" and on "Societal Attitudes," thereby blurring the distinction between the two.¹⁸ A wealth of information may be reported on a particular group or issue and only sketchy information on others.

As stated in Commissioner Shea's testimony, the primary problem with this form of presentation is that it is difficult to draw an overall picture of the status of religious freedom or to assess the comparative significance or seriousness of the multitude of events or trends reported. In other words, the most important problems relating to religious freedom can be buried in a wealth of seemingly unconnected events. This problem can be avoided by organizing each county's report to identify clearly the types of religious freedom problems that exist as well as the facts, events, and trends connected with each particular problem. Finally, those problems should be prioritized according to their relative seriousness.

Identifying Gaps in Information. The unavailability of information can lead to an erroneous assessment of the status of religious freedom. Identifying gaps in information is particularly important before conclusions can be drawn or comparisons made between the status of religious freedom in relation to different groups or regions. Reference to inadequate information also alerts religious communities, human rights NGOs, and other interested parties to the need to develop such information. For example, the religious-freedom conditions of indigenous peoples are generally not reported in the *Religion Reports*.

States that have interfered with the development of reliable information (for example, North Korea) should not be “rewarded” by leaving this problem unacknowledged. The *Religion Reports* should specify whether a state itself is responsible in any way for the absence or inadequacy of available information because it has (a) failed to adequately investigate alleged abuses, (b) improperly withheld information that it has developed, (c) interfered with the investigations of external human rights monitors, or (d) interfered with the ability of domestic human rights groups to conduct their own investigations or to communicate their findings to the outside world.¹⁹

Evaluating Information. In addition to prioritizing the data and identifying relevant gaps in information, the information in the *Religion Reports* should be evaluated in light of the standards set out in IRFA, including the international norms to which it refers. Utilizing such measures will strengthen our efforts to bring into this work other nations committed to those international norms. The atomized listing of seemingly unconnected facts discussed above intensifies the difficulty of drawing conclusions based on the requirements of IRFA.

2. Presenting Information in Context

To assess the severity of religious-freedom problems and the direction in which the country is headed, the reported current events may need to be placed in historical, political, or social context as well as in the context of other human rights violations.²⁰ This type of information is also important to developing policies that will work.

While the *Religion Reports* should not provide an academic thesis on each country, where an accurate depiction of the severity and direction of religious-freedom problems requires it, context should be provided. Among the important contextual factors that may deepen the understanding of religious-freedom problems and the impact that U.S. policy might have on them are: the history of religious communities in that nation; political and legal developments; historical patterns of human rights and religious-freedom abuses; the development of religion and state relationships; inter- and intra-religious relations; those political, ideological, and philosophical movements that exert a strong influence on a particular nation; and relationships between national and ethnic communities.

The report on Tibet is a case in point.²¹ Reflecting the severity of religious freedom violations in Tibet requires at least reference to the vast network of monasteries and the tremendous number of monks and nuns that were present in Tibet

prior to the consolidation of Chinese control over Tibet in 1959. Most of these monasteries and other places of religious significance were destroyed between 1959 and the end of the Cultural Revolution, and there are credible estimates that the Chinese authorities either directly or indirectly imprisoned, tortured, and killed tens of thousands of lamas, monks, and nuns. It is only against background information such as this that the current information presented in the report (such as the numbers of Buddhist monasteries, monks, and nuns, as well as the significance for religious freedom of the state-ordered “education” programs for monks) can be assessed and the status of religious freedom in Tibet measured.²²

In addition to historical, political, and social conditions, it is also important for potential religious-freedom violations to be placed in the context of state interference with other rights and freedoms, the exercise of which are integral to religious freedom. For instance, it is important to consistently identify where state surveillance of religious organizations or interference with religious expression takes place in a broader context of state interference with other political, social, or cultural groups’ privacy, expression, assembly, and manner of association.²³ While the *Religion Reports* do this for a number of countries, this type of information is notably lacking in the report on China. The problems faced there by adherents of unregistered religious groups are related to those faced by many other individuals or independent groups that the state has identified as potential centers of opposition or foreign influence. In many such cases, the instruments and methods of state control and repression are the same, as is the detrimental impact on freedoms of expression, assembly, and association. Such information is therefore especially significant in fashioning responses or policies that are directed at the root causes of religious-freedom violations and can achieve the desired results.

3. Referencing Relevant Law

In countries where there are religious-freedom problems, the *Religion Reports* should identify the relevant constitutional, statutory, and regulatory provisions regarding freedom of religion, the prevention of discrimination, the legal treatment of religious minorities, and the relationship between the state and religion and religious institutions. There should be a candid assessment of whether the government and courts enforce, interpret, and apply the laws in a way that promotes religious freedom.²⁴ In reports on some countries, the operations of the legal systems are described with a reasonable degree of sophistication.²⁵ But in others, there is little or no meaningful discussion of the protection (or lack thereof) provided by the constitution, laws, regulations, and courts (whether judicial or administrative).²⁶

4. Eliminating the Potential for Bias

The *Religion Reports* identifies an important goal of the report, stating that the “guiding principle was to ensure that all relevant information was assessed as objectively, thoroughly, and fairly as possible.”²⁷ Imbalanced reporting and inconsistent treatment of states or religious communities can appear as favoring or disfavoring certain states or religious traditions compared with others. This type of problem, however inadvertent, can compromise the usefulness of the *Religion Reports* as a tool to promote religious freedom.

When reporting on state policies or political movements that purport to be based on religious law, practices, or beliefs, it is very important to distinguish between religious concepts in the abstract and governments’ and political movements’ interpretations of those concepts and practices. Except where religious leaders or groups make assertions of a religious justification to engage in human rights abuses, the State Department should, of course, be neutral regarding religious concepts in general. The governments’ interpretation of such concepts, however, may have a significant impact on the status of religious freedom, but these interpretations should not be imputed to the religion itself. It is also important to recognize that varying views exist within any religious tradition or community, and believers of a particular religion should not be treated as if they represented a single, undifferentiated whole. In addition, politically-loaded terms such as "nationalist," "cult," "sect," "orthodox," "fundamentalist," "jihad," or "Shariah" should be used in defined and appropriate ways.²⁸

Overlooking the problems encountered by state-controlled religious organizations, which happened occasionally in the *Religion Reports*, can result in another type of bias. In the report on China, for example, little information is presented on the limits on religious practice placed on the adherents of officially-recognized and registered religious organizations, such as state control over the size of congregations. In countries where Islam, or a particular school of Islam, is the state religion, comparatively little information is presented on state control over and interference with the religious activities of some Muslims. As is briefly noted in some countries, such interference can be significant and include state control over the selection and training of clergy and even the content of sermons. These controls clearly affect religious freedom and in many cases affect the overwhelming majority of the population in a country. The lack of this type of reporting can lead to the mistaken impression that in countries where a state religion exists, only minorities suffer interferences with religious freedom.²⁹

5. Referencing International Authorities

Critics of the U.S. government's efforts to promote international religious freedom frequently assert that Americans are attempting to promote their peculiar beliefs about the separation of religion and government on the remainder of the world. While America's distinctive concern for religious freedom permeates IRFA, the legislation's use of international norms to measure abuses can help prevent such critics from isolating Americans from the international community on this issue. Further, since religious freedom ultimately will be achieved only when people within a country accept and implement the ethic of freedom of religion themselves, the *Country Reports* and *Religion Reports* should explain violations of religious freedom in terms that are widely accepted in the international community.³⁰

Toward that end, Congress wrote into IRFA definitions of violations of religious freedom that explicitly incorporate standards set out in international human rights instruments.³¹ Findings by appropriate international bodies of violations of the right to freedom of religion, discrimination on the basis of religion, and related human rights are also relevant to the State Department's reporting task and should be highlighted in cases where doing so would advance the protection of religious freedom.³²

6. Improving Information Gathering

The State Department should articulate more fully the methodology used to prepare the *Religion Reports*, including at least the gist of instructions or guidelines sent to embassies or State Department staff related to the gathering of information. Obviously, the gathering and confirmation of information must take place in light of the particular circumstances in each country. The Commission has several recommendations in this regard (recognizing that some of these may, in fact, have been utilized, but because the methodology was not fully specified, this is unclear):

1. Embassy staffs should proactively develop and encourage sources of information, rather than rely solely on information presented to them by outside sources. In the words of IRFA, they should: "seek out and maintain contacts with religious and human rights nongovernmental organizations."³³

2. State Department staff in Washington should do the same, perhaps using the Department and Commission Web sites as suitable vehicles for outreach.

3. State Department personnel should proactively investigate problems related to religious freedom. IRFA requires that U.S. missions abroad "maintain a consistent

reporting standard and thoroughly investigate reports of violations of the internationally recognized right to freedom of religion.”³⁴

4. The IRFA reporting process should be publicized within countries so that the relevant human rights organizations, religious communities, and public officials will be aware that embassy staff are gathering information for the *Religion Reports*.

5. Training of foreign service officers needs to be adapted to strengthen these skills.

7. Sharing Information with Foreign Embassies

In order to foster greater cooperation and multinational attention to the status of religious freedom, U.S. embassies in foreign capitals should circulate the *Religion Reports* and the Commission Report to other embassies, particularly those who have shown concern with human rights and religious freedom. They should urge those embassies to share the *Religion Reports* and the Commission Report with officials of other embassies in foreign capitals in the various countries, to do their own evaluations, and, where appropriate, to share recommendations and information.

IV. THE COMMISSION'S WORK PROGRAM FOR NEXT YEAR

Ongoing Focus: Sudan, China, and Russia

With the experience of its first year behind it, during which the Commission organized itself, hired staff, and occupied its offices, the Commission looks ahead to an expanded work program in its next phase. Yet the three primary countries that it focused on this year will need the Commission's continued attention.

If the U.S. government does not implement this report's recommendations regarding Sudan, the Commission will need to continue to urge their implementation. If the United States does implement the recommendations, continued attention will be needed to determine whether Khartoum is meeting the requirements for improved relations and whether the implementation is having the intended effect or whether further steps are required. In either event, the magnitude of the Sudanese conflict will require the Commission's attention over the next 12 months. If its recommendations are implemented but do not succeed in reining in the conflict, new approaches must be developed.

China will likewise demand continued attention during the next year. Beijing's pattern has been to grant the West's wishes in a few high-visibility human rights cases while doing little or nothing about the underlying system that violates human rights in the first place. It is widely perceived that the status of religious freedom in China continues to deteriorate: the government's egregious rights violations show no sign of abating any time soon and will need additional Commission action. Indeed, as the Chinese Communist Party struggles with the economic dislocations caused by modernization and its entrance into the global economy, its desperation to hold onto power could worsen the human rights situation in the short term.

Russia, while not comparable to Sudan and China in terms of religious persecution, nevertheless requires continued Commission attention for the same reasons the Commission chose to focus on it in the first place: the potential for religious freedom to make significant gains or suffer significant losses over the next few years and the effect Russia's choice will have on neighboring countries. Authorities have now set December 31 as the deadline for religious groups to re-register under the 1997 Religion Law, which requires authorities to dissolve religious groups not registered by then. This and the election of a new president, whose policies on religious freedom have yet to fully emerge, raise the importance of continued Commission scrutiny of Russia at this watershed period.

The Commission will work diligently with the Administration and the Congress over the next year to implement its recommendations regarding these three countries and to make them an integral part of United States foreign policy.

Countries of Particular Concern

The State Department designated seven countries of particular concern following the issuance of the *1999 Religion Reports* last fall. The Commission will make recommendations on the selection of “countries of particular concern” this summer before the Department issues its designation of “CPCs” in September.

Freedom to Change One’s Belief and Engage in Religious Persuasion

In its meetings with religious communities and non-governmental organizations, the Commission has noted a common problem that runs through many violations of religious freedom worldwide: a refusal to permit the freedom to change one’s faith. To this are related the freedom not only to choose a disfavored faith (or no faith at all), but also the freedom to preach and propagate one’s religion. Indeed, indigenous religious leaders and foreign missionaries often suffer equally severe prohibitions and punishment.

This issue transcends any one region or even continent. During the next year, the Commission will examine this trend, report on how it affects a number of countries, and formulate policy recommendations.

Economic Leverage

The Commission during this past year has conducted an in-depth inquiry into U.S. policies that permit companies that are engaged in revenue-generating activities in Sudan – especially those developing oil fields – to raise money in U.S. capital markets despite U.S. economic sanctions on Sudan. In doing so, the Commission developed the recommendations found in Part II A of this report for tightening the U.S. sanctions regime. The Commission will study and make recommendations on whether, and under what circumstances, such capital-market sanctions and other forms of economic leverage would be useful and should be included as a new tool in the U.S. diplomatic arsenal to deal with religious persecution.

Countries Meriting Scrutiny

While maintaining its policy focus on Sudan, China, and Russia, and while responding to instances of religious persecution wherever they arise, the Commission intends to address religious freedom issues in a larger number of countries. They may include some or all of the “countries of particular concern” designated by the State Department in October, 1999, as well as the 30 countries discussed in the Executive Summary of the *Religion Reports* of September 9, 1999. Many of these countries are egregious violators of religious freedom, while others are not, but suffer significant problems that U.S. policy may be able to address. Inclusion on the Commission’s agenda does not mean a country is necessarily a candidate for designation as a “country of particular concern” (although it may); exclusion does not necessarily imply that a country has an exemplary record on religious freedom.

In selecting countries for scrutiny, the Commission will use four general criteria. Not all may apply in every case, and some may overlap:

- The violations of religious freedom in a given country are serious and systematic.
- Conditions for religious freedom are deteriorating or are in danger of deterioration.
- U.S. policy in a given country needs to be reconsidered, given the severity of religious-freedom violations there.
- U.S. policy could have a significant impact on religious freedom in that country.

As resources permit, the Commission will address some or all of these countries during the next year and may include some or all of them in its May 1, 2001 report. The urgency of some problems may require Commission action sooner than the next report, while the complexity of others may require more time to develop effective policy recommendations.

As has been its practice since its inception, the Commission will not limit itself to these countries, should events dictate that it open an inquiry or make policy recommendations to the President, Secretary of State, or Congress regarding violations of religious freedom in other countries.

Expedited Removal Procedure in Asylum Claims

The Commission is undertaking preparations for an independent expert study of the Immigration and Naturalization Service's expedited-removal program and how it affects potential refugees applying for asylum based on a fear of religious persecution, as authorized in IFRA. It will solicit bids for the study in the near future.

APPENDIX

Biographies of Members **United States Commission on International Religious Freedom**

Rabbi David Saperstein, the Commission's first Chair, is the Director of the Religious Action Center of Reform Judaism, which represents the Reform Jewish Movement to Congress and the Administration. He has headed several religious coalitions and served on the boards of numerous national organizations, including Common Cause, the NAACP, and People for the American Way. He currently co-chairs the Coalition to Preserve Religious Liberty, comprised of more than 60 national Catholic, Protestant, Jewish, and educational groups opposing school-prayer amendments and legislation. Also an attorney, Rabbi Saperstein teaches seminars in both First Amendment church-state law and Jewish law at Georgetown University Law School.

Dean Michael K. Young is the Commission's Vice-Chair. He joined the George Washington University Law School as Dean in 1998, after serving as the Fuyo Professor of Japanese Law and Legal Institutions at the School of Law of Columbia University. He also served as Director of the Center for Japanese Legal Studies, the Center for Korean Legal Studies, and the Project on Religion, Rights, and Religious Freedom. During the Bush Administration, he served as Ambassador for Trade and Environmental Affairs, Deputy Under Secretary for Economic and Agricultural Affairs, and Deputy Legal Adviser to the U.S. Department of State.

Elliott Abrams is President of the Ethics and Public Policy Center in Washington, D.C. After serving on the staff of Sens. Henry M. Jackson and Daniel Patrick Moynihan in the 1970s, he served as Assistant Secretary of State for International Organization Affairs, Assistant Secretary of State for Human Rights and Humanitarian Affairs, and Assistant Secretary of State for Inter-American Affairs during the Reagan Administration. He was a Senior Fellow at the Hudson Institute from 1990 to 1996, when he moved to the Ethics and Public Policy Center. He is a member of the Council on Foreign Relations and the National Advisory Council of the American Jewish Committee.

Laila Al-Marayati, M.D., is a founding member and Past President of the Muslim Women's League, a Los Angeles-based nonprofit organization focusing on the dissemination of accurate information about Islam and Muslims, particularly regarding women. Along with 20 religious leaders, scholars, and activists, Dr. Al-Marayati was a member of the State Department's Advisory Committee on Religious Freedom Abroad. In September 1995 she served on the U.S. Delegation, chaired by first lady Hillary

Rodham Clinton, to the United Nations-sponsored Fourth World Conference on Women in Beijing, China. In 1993, Al-Marayati led a private delegation to Zagreb, Croatia, to determine how Americans could assist rape survivors and other refugees fleeing Bosnia.

John R. Bolton has been Senior Vice President of the American Enterprise Institute for Public Policy Research since January 1997. In the Bush Administration, Mr. Bolton was Assistant Secretary of State for International Organization Affairs. He served in the Reagan Administration as Assistant Attorney General of the Civil Division from 1988 to 1989. Before that, he was Assistant Attorney General for the Office of Legislative Affairs (1985-88), where he was responsible for obtaining Senate confirmation of the President's nominees to the Supreme Court and lower Federal benches. He also served as General Counsel (1981-82) and Assistant Administrator for Program and Policy Coordination (1982-83) of the Agency for International Development.

Firuz Kazemzadeh, Ph.D., of Alta Loma, California, is Secretary for External Affairs of the National Spiritual Assembly of the Baha'is of the United States. He is Professor Emeritus of History at Yale University, having taught Russian history there from 1956 until his retirement in 1992. During his tenure at Yale, Dr. Kazemzadeh also served variously as Director of Graduate Studies in Russian and Eastern European Studies; Chair of the Committee on Middle Eastern Studies; Director of Graduate Studies in History; and Master of Davenport College. He is the author of several books relating to Russia and Central Asia.

Most Reverend Theodore Edgar McCarrick was named the Fourth Archbishop of Newark, New Jersey, in 1986. The National Conference of Catholic Bishops elected Archbishop McCarrick to head its Committee on Migration in 1986 and in 1992. In 1992, he was also named to head the Committee for Aid to the Church in Central and Eastern Europe, and was elected in 1996 as Chair of the Committee on International Policy. He was elected one of 15 U.S. bishops to serve as a member of the Synod for America held in 1997. At the conclusion of that Synod, the bishops elected him to serve on the Post Synodal Council. In November 1996, Archbishop McCarrick was invited to serve on the Secretary of State's Advisory Committee on Religious Freedom.

Robert A. Seiple (*ex officio*) joined the State Department in August 1998 as Principal Advisor to the President and Special Representative to the Secretary of State for International Religious Freedom. In May 1999, he was named the first U.S. Ambassador-at-Large for International Religious Freedom. Before that, he spent 11 years as President of World Vision, Inc., the largest privately funded relief and

development agency in the world. He founded within World Vision the Institute for Global Engagement, a strategic think tank for global advocacy. Seiple, who was President of Eastern College and Eastern Baptist Theological Seminary from 1983 to 1987, was named “Churchman of the Year” in 1994 by Religious Heritage America.

Nina Shea is the Director of the Center for Religious Freedom of Freedom House in Washington, D.C. She has been an international human rights lawyer for 20 years and has for 13 years focused specifically on the issue of religious persecution. Before her appointment to the Commission, Ms. Shea served on the Advisory Committee on Religious Freedom to the U.S. Secretary of State. Ms. Shea has organized and sponsored numerous fact-finding missions to Sudan, China, Egypt, and elsewhere and has testified regularly before Congress on the governments of these and other countries. She is the author of *In the Lion's Den*, a book on anti-Christian persecution around the world.

The Honorable Charles Z. Smith, of Seattle, Washington, is a Justice of the Washington State Supreme Court. He was originally appointed in July 1988, to fill an unexpired term, and was elected, unopposed, in 1988 and 1990, and most recently in 1996 to another term of six years. Justice Smith served from 1965 to 1995 on the General Board of the American Baptist Churches, USA, and was President of the American Baptist Churches from 1975 to 1977, and Immediate Past President from 1977 to 1979. He has served in several local, national, and international organizations concerned with religious freedom and human rights, including active participation with the national Interreligious Task Force on Soviet Jewry, monitoring compliance with the Helsinki Accords during the period from 1977 to 1985.

Endnotes

1 P.L. 105-292, as amended, 22 U.S.C. § 6401, et seq.

2 Remarks of Sen. Don Nickles of Oklahoma, Congressional Record, S12999, November 12, 1998.

3 Two factors delayed the Commission's start up: a) the delay in appointing Commissioners; and b) a delay in making the Commission's appropriation available, which was resolved only with the passage of an amendment (P.L. 106-55) to IRFA in August 1999.

4 See Part IV below for a discussion of the Commission's work program for the next report year.

5 IRFA § 202(a)(1), 22 U.S.C. § 6432(a)(1).

6 Ibid. § 203(b), 22 U.S.C. § 6432a(b).

7 This is particularly puzzling and troubling insofar as the State Department has provided the U.S. Commission on Security and Cooperation in Europe (Helsinki Commission) with access to cable traffic for years, even though the Helsinki Commission does not have the explicit statutory authorization to request information.

8 See, e.g., Letter dated March 14, 2000, from Peter Wyckoff, Deputy Director/General Counsel, USCIRF, to R. Richard Newcomb, Director, OFAC; Letter dated March 27, 2000, Newcomb to Wyckoff (FAC No. SU-180427).

9 Letter dated March 27, 2000, from Newcomb to Wyckoff (FAC No. SU-180427). See also, Letter dated December 27, 1999, from Linda Robertson, Assistant Secretary, Department of the Treasury, to Congressman Frank Wolf; Letter dated December 13, 1999, Robertson to Wolf.

10 The ICCPR was adopted by the United Nations General Assembly on December 16, 1966, became effective March 23, 1976, and was ratified by the U.S. Senate on June 8, 1992. Among the rights guaranteed by signatory countries that help protect religious freedom are:

- equal rights regardless of religion (Art. 2, cl. 1);
- “freedom of thought, conscience and religion,” including “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” (Art. 18, cl. 1);

- freedom to have or adopt a religion and to inculcate religion in one’s children (Art. 18, cls. 2,4);
- the right of religious minorities “to profess and practice their own religion” (Art. 27);
- freedom of expression (Art. 19, cl. 2);
- the right to peaceful assembly (Art. 21);
- freedom of association (Art. 22); and
- freedom from arbitrary arrest or detention (Art. 9, cl. 1).

11. The statutory requirement to issue the *Country Reports* derives from Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. §§ 2151n(d), 2304(b), and Section 505(c) of the Trade Act of 1974, as amended, 19 U.S.C. § 2465(c). The *Country Reports* provide the information necessary to prevent countries that engage in a consistent pattern of gross violations of internationally recognized human rights from receiving security assistance and other forms of U.S. aid.

12. The statutory requirement to prepare the *Religion Reports* derives from Section 102 of the International Religious Freedom Act of 1998, 22 U.S.C. § 6401 et seq., (P. L. 105-292, 112 Stat. 2815, as amended by P. L. 106-55, 113 Stat. 401) (“IFRA”). IRFA requires the Secretary of State to prepare and transmit to Congress the *Religion Reports*, which are to provide “detailed information with respect to matters involving international religious freedom.” IRFA § 102(b). These reports must include: (1) a “description of the status of religious freedom in each foreign country” along with trends toward either improvement or deterioration in the respect and protection of religious freedom, (2) an “assessment and description of the nature and extent of violations of religious freedom in each foreign country,” and (3) a “description of United States actions and policies in support of religious freedom in each foreign country engaging in or tolerating violations of religious freedom.” Ibid. Violations of religious freedom are not limited to state actions or policies, but can include actions taken by non-governmental entities and by one religious group against another. IRFA § 102(b)(1)(B). The *Religion Reports* must also identify foreign countries in which the United States is actively promoting religious freedom and foreign countries of

significant improvement in religious freedom. IRFA § 102(b)(1)(F).

13. Other U.S. government actions – particularly asylum adjudications – will also benefit from more accurate information on the status of international religious freedom.

14. See IRFA §§ 401(a)(2), 402(b)(1)(B).

15. See IRFA §§ 401(a)(1)(B) (violations of religious freedom), 402(a)(2) (particularly severe violations of religious freedom), 402(c)(1) (same). The term “violations of religious freedom” is defined at IRFA § 3(13). The term “particularly severe violations of religious freedom” is defined at IRFA § 3(11).

16. IRFA § 102, 22 U.S.C. § 6412.

17. Testimony by Commissioner Nina Shea on “The First Annual State Department Report on International Religious Freedom” before the House International Relations Subcommittee on International Operations and Human Rights, October 6, 1999 (<http://www.house.gov/international-relations/hr/irfshea.htm>).

18. This is particularly evident in the reporting on incidents of anti-Semitism in Russia. House Committee on International Relations and Senate Committee on Foreign Relations, *Annual Report: International Religious Freedom 1999*, report prepared by U.S. Department of State, 106th Cong., 2d sess., 2000, Joint Committee Print, 301-04.

19. Each of the *Country Reports* includes a section devoted to this topic in general entitled “Governmental Attitudes Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights.” See Section 116(c)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2151n(c)(1). For example, as of September 1999, requests by the Special Rapporteur on Religious Intolerance of the UN Commission on Human Rights to visit Indonesia, Israel, Mauritius, and Russia had not yet been responded to by those countries. UN Special Rapporteur on Religious Intolerance, *Elimination of all forms of religious intolerance*, A/54/386, September 23, 1999, ¶ 123. This fact is not mentioned in the reports on these countries.

20. As the Lawyers Committee for Human Rights has stated with respect to the *Country Reports*:

Understanding the full character of a human rights situation is a matter of much more than chronological fact. History has an enormous bearing on the present reality of human rights, as well as on the future prospects

for their observance. . . . Likewise, larger political factors, which do not appear at first blush to be related to the mandate of the Country Reports, may have an enormous influence on human rights.

Lawyers Committee For Human Rights, *Critique: Review of the U.S. Department of State's Country Reports on Human Rights Practices for 1996* (1997).

21 See *1999 Religion Reports*, "China," 110-14.

22. Other important factors not reported in the *1999 Religion Reports* on Tibet include the state policy directing migration of ethnic Han Chinese into Tibet and the admission in 1980 by Hu Yaobang, then Communist Party Secretary, that the repression of religion in Tibet may have been a misguided policy. See Ronald D. Schwartz, *Circle of Protest: Political Ritual in the Tibetan Uprising*, 15-17 (1994).

23. See, e.g., *1999 Religion Reports*, "Tunisia," 391-92.

24. The following are some of the issues that should be considered in setting forth and characterizing the legal context for the protection of religious freedom in a particular country:

- a. Are there constitutional norms and other laws in place that protect the right to freedom of religion and belief and the right to protection against discrimination on the basis of religion or belief, and provide effective remedies for violations of those rights?
- b. Are these laws applied and enforced in a rigorous and non-discriminatory manner?
- c. Do any protections against discrimination reach actions by private parties?
- d. Are whatever administrative enforcement mechanisms that have been put into place accessible and effective?
- e. Is there a state body (or bodies) charged with supervising or regulating religious institutions or the religious affairs of religious communities and are any standards in place to insure that the personnel of such bodies act in an impartial fashion?
- f. Do laws or regulations governing the recognition or registration of religious communities, establishing their privileges and regulating their affairs

unjustifiably restrict freedom of religion or create unwarranted distinctions between religions, or are they applied in a way that does?

- g. Are definitions of “religion,” “religious worship,” “religious activities,” and similar terms interpreted and applied in such a way so as to pass judgment on the truth, correctness (orthodoxy) or merits of religious beliefs?
- h. Are otherwise neutral and generally-applicable laws that regulate individuals or groups or cover expressive or associational activities applied in such a way as to target manifestations of religion or belief as such or to discriminate between persons or institutions of different religions?

The Commission notes that the UN Special Rapporteur on Religious Intolerance is undertaking a project to compile constitutional, statutory, and regulatory provisions regarding freedom of religion or belief. See UN Special Rapporteur on Religious Intolerance, *Elimination of all forms of religious intolerance*, A/54/386, 23 September 1999, ¶¶ 98-99. IRF may be able to cooperate or coordinate with the Special Rapporteur in this regard.

25. See, e.g., *1999 Religion Reports* “Austria,” 206-07.

26 See, e.g., *1999 Religion Reports*, “Sudan,” 75-79; “Vietnam,” 152-158.

27. *1999 Religion Reports* “preface”, xi.

28. For example, in the report on Turkey, the terms “Islamic fundamentalism,” “Islamist,” “Islamic extremism,” and “moderate Islam” are all used without any attempt at definition. See *1999 Religion Reports*, “Turkey,” 323 -26. See also *1999 Religion Reports*, “Algeria,” 344.

Particular attention should also be paid to states that have taken steps to suppress political movements (violent or otherwise) espousing religious motivations to determine whether such actions have resulted in interferences with religious freedom. For example, the report on Turkey notes that the state’s campaign against “Islamic fundamentalism” has included tighter state controls on the administration of all existing mosques and the construction of new mosques. The report also notes recent state initiatives such as increased enforcement of a 50-year-old ban on wearing religious headgear in government offices and a 1997 moratorium on new enrollments in Islamic primary schools. See *1999 Religion Reports*, “Turkey,” 324-25. Thus, measures taken against “Islamists” and “fundamentalists” have resulted in interferences with the religious freedom of all Muslims. No information is presented on comparable situations

in Algeria, Egypt, or Tunisia.

29 See, e.g., *1999 Religion Reports*, “Bahrain,” 345, “Egypt,” 346, and “Morocco,” 380.

30 See Michael K. Young, “Religious Liberties and Religious Tolerance: An Agenda for the Future,” *Brigham Young University Law Review* (1996): 973-87, 984.

31. IRFA defines “violations of religious freedom” as “violations of the internationally recognized right to freedom of religion and religious belief and practice” as set forth in international instruments such as the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Helsinki Final Act (1975), the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981), the United Nations Charter (1945) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950). 22 U.S.C. § 6402.

32. Such international bodies include the European Court of Human Rights (adjudicating violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms), the Organization for Security and Cooperation in Europe (considering the Helsinki Accords); the Human Rights Committee (in consideration of state party reports under the International Covenant on Civil and Political Rights, and the UN Special Rapporteur on Religious Intolerance (applying the standards of the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination on the Basis of Religion and Belief).

33. 22 U.S.C. § 6412.

34. See 22 U.S.C. § 6412. A laudable example of monitoring by embassy personnel is the observer sent to the Russian court proceedings concerning the liquidation of a local organization of the Jehovah’s Witnesses in Moscow. See *1999 Religion Reports*, “Russia,” 305.