

## THE BUSH ADMINISTRATION AND AMERICA'S INTERNATIONAL RELIGIOUS FREEDOM POLICY

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In February 2002, President George W. Bush appeared at Beijing's Tsinghua University and delivered a speech that was broadcast across China.<sup>1</sup> A substantial portion of the President's remarks focused on the religious nature of the American people, as well as the importance of religious freedom for the United States and for China.<sup>2</sup> In the United States, religious liberty advocates were greatly encouraged. The President had made it clear to the Chinese government, one of the world's worst violators of religious freedom, that his country stood resolutely for the protection of that right.

Before and during the early years of the Bush Administration, there were reasons for cautious optimism about the cause of international religious liberty. Beginning in 1998, U.S. law mandated that a goal of American diplomacy be the advancement of religious freedom around the world.<sup>3</sup> The International Religious Freedom (IRF) Act of 1998 created an office in the State Department, headed by a very senior diplomatic official—an ambassador at large—to lead the new foreign policy

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1. President George W. Bush, Address at Tsinghua University, Beijing, People's Republic of China (Feb. 22, 2002) (transcript available at <http://merln.ndu.edu/archivepdf/china/WH/20020222.pdf>).

2. *See id.*

3. International Religious Freedom Act of 1998 (IRF Act), Pub. L. No. 105-292, § 2(b), 112 Stat. 2787.

initiative.<sup>4</sup> The IRF Act also created an independent commission to assess the Department's performance.<sup>5</sup> President Bush clearly cared deeply about this issue. On several occasions during his tenure, he met with religious dissidents and the victims of religious persecution, sometimes in the face of criticism.<sup>6</sup>

Moreover, after September 11, 2001, the Administration began developing a policy called a "forward strategy of freedom."<sup>7</sup> The policy sought support for democratic reformers in the greater Middle East to undermine the pathologies feeding Islamist terrorism.<sup>8</sup> Both common sense and American history suggested that religious liberty would play a role in the new freedom agenda: Any highly religious society must be grounded in religious freedom for democracy to endure. For those who had led the legislative campaign for the IRF Act, it seemed that the stars might finally be coming into alignment: they had a President devoted to religious liberty, a powerful new official in the State Department dedicated to carrying out a statutory mandate, and a national security strategy designed to encourage the institutions and habits of freedom.

This Essay will explore how IRF policy fared under the George W. Bush Administration. In attempting to gauge success and failure, and strength and weakness, this Essay will focus on three issues: the extent to which U.S. diplomacy actually reduced religious persecution, how well it advanced the institutions and habits of religious freedom, and what basis it provided the Obama Administration to make further progress. In each of these areas, the record is, unsurprisingly, mixed. Our overall judgment is that the Administration focused a critically important spotlight on governments that persecute and managed to free some number of religious prisoners. In at least three countries—Sudan, Vietnam, and Saudi Arabia—significant structural steps were taken. Notwithstanding these successes, however, the

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4. IRF Act § 101.

5. IRF Act §§ 201–202.

6. *See Bush to meet privately next week with Dalai Lama*, AGENCE FR.-PRESSE, Oct. 11, 2007, [http://afp.google.com/article/ALeqM5goA\\_mx1wCE8baS9pclnJoXmIH9bg;Christian\\_Chinese\\_dissidents\\_meet\\_Bush\\_to\\_talk\\_about\\_religious\\_freedom\\_in\\_China](http://afp.google.com/article/ALeqM5goA_mx1wCE8baS9pclnJoXmIH9bg;Christian_Chinese_dissidents_meet_Bush_to_talk_about_religious_freedom_in_China), ASIA NEWS, May 11, 2006, <http://www.asianews.it/index.php?l=en&art=6134&size=>.

7. President George W. Bush, Speech at Whitehall Palace, London, England (Nov. 18, 2003) (transcript available at <http://merln.ndu.edu/merln/pfiraq/archive/wh/20031119-1.pdf>).

8. *Id.*

Bush Administration did not make significant progress toward either reducing persecution or advancing religious freedom. Surprisingly, it appears that IRF policy, isolated within the State Department, had virtually no role in democracy promotion, public diplomacy, or counterterrorism strategy.

#### I. THE INTERNATIONAL RELIGIOUS FREEDOM ACT

When George W. Bush was sworn in as the forty-third President on January 20, 2001, the machinery necessary to promote religious liberty already existed as an element of U.S. foreign policy. Just two years earlier, in October 1998, Congress had unanimously passed the IRF Act, and President William J. Clinton had immediately signed it into law. But the political harmony surrounding the law's passage and signing was deceptive. The questions of whether and how to promote religious freedom abroad had been extremely contentious during the previous two-year debate, both within the Clinton Administration and on Capitol Hill.<sup>9</sup>

The reasons why supporters believed a law was necessary were clear. In their view, the scourge of international religious persecution had taken a back seat in the foreign policy of the Clinton Administration. The genocidal war in Sudan, directed against Christian and animist Africans in the south and the Nuba Mountains, had been largely ignored by the press and the U.S. government, especially the State Department.<sup>10</sup> Other

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9. See ALLEN D. HERTZKE, *FREEING GOD'S CHILDREN: THE UNLIKELY ALLIANCE FOR GLOBAL HUMAN RIGHTS* 183–236 (2004).

10. See William L. Saunders, Jr. & Yuri G. Mantilla, *Human Dignity Denied: Slavery, Genocide, and Crimes Against Humanity in Sudan*, 51 CATH. U. L. REV. 715, 721–25 (2002). President Bush actively pursued initiatives regarding Sudan from his first days in office. His achievements there significantly advanced religious freedom even though the State Department's Office of International Religious Freedom only played a very small role in the effort. Bush appointed former Senator John Danforth as "special envoy" to Sudan, and shepherded the Sudan Peace Act through Congress, which he signed in October 2002. Sudan Peace Act, Pub. L. No. 107-245, § 6, 116 Stat. 1504 (2002). U.S. involvement proved crucially important in moving the parties in the civil war to sign the Comprehensive Peace Agreement. The Sudan Peace Act authorized the U.S. government to spend \$100 million in each of the fiscal years 2003, 2004, and 2005 to assist the population in areas of Sudan outside Sudanese government control. Sudan Peace Act § 5. It required the President to certify the good-faith engagement of the Sudanese government in its negotiations with the Sudanese People's Liberation Movement every six months, and authorized U.N. arms embargoes if the Sudanese failed. Sudan Peace Act § 6.

serious problems of religious persecution that occurred in China, India, Saudi Arabia, Egypt, Iran, Iraq, Nigeria, and elsewhere also received scant attention.<sup>11</sup>

By the mid-1990s, the relative indifference of American policy and media elites had sparked a movement by Christian and human rights activists to make the issue of religious persecution part of the U.S. foreign policy agenda. In the fall of 1997, Congressman Frank R. Wolf (R-Va.) introduced the Freedom From Religious Persecution Act,<sup>12</sup> cosponsored by Senator Arlen Specter (R-Pa.). Wolf-Specter, as it was called, mandated automatic sanctions against governments responsible for religious persecution.<sup>13</sup> Secretary of State Madeleine Albright opposed the sanctions and other provisions, but she also argued against the very concept of such a bill as creating a “hierarchy among human rights.”<sup>14</sup> Within the State Department, considerable skepticism existed about a law perceived as emanating from the Christian right.

Ultimately, the IRF Act replaced Wolf-Specter. Sponsored by Senators Don Nickles (R-Okla.) and Joe Lieberman (D-Conn.), the IRF Act rejected the automatic sanctions upon which Wolf-Specter had been based and placed a greater emphasis on quiet diplomacy. It focused on the public designation of severe violators and the threat of economic sanctions against them as its central policy tools.<sup>15</sup> These provisions reflected political compromises that, when combined with other circumstances, induced the Clinton Administration to sign the bill.<sup>16</sup> But principle-based objections to the IRF Act remained.

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11. On more general indifference to religious persecution, see the remarks of Judge John Noonan, Jr. in W. Cole Durham, Jr., *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 1, 1 (Johan D. van der Vyver & John Witte, Jr. eds., 1996).

12. Freedom From Religious Persecution Act, H.R. 2431, 105th Cong. (1997).

13. *Id.*

14. Madeline K. Albright, Remarks on Religious Freedom, Columbus School of Law, The Catholic University of America, Washington, D.C. (Oct. 23, 1997) (transcript available at <http://publicaffairs.cua.edu/speeches/albright97.htm>).

15. International Religious Freedom Act of 1998 (IRF Act), Pub. L. No. 105-292, §§ 202, 401-402, 112 Stat. 2787, 2798, 2800, 2802.

16. President Clinton's impending impeachment trial and the 1998 midterm elections were two key political factors that led to the compromise. See HERTZKE, *supra* note 9, at 221-34; see also THOMAS F. FARR, WORLD OF FAITH AND FREEDOM: WHY INTERNATIONAL RELIGIOUS LIBERTY IS VITAL TO AMERICAN NATIONAL SECURITY 111-13 (2008).

The IRF Act required U.S. foreign policy to promote religious liberty. It established an Office of International Religious Freedom in the State Department, headed by an ambassador at large.<sup>17</sup> In a typically American attempt to create checks and balances, the IRF Act also established an independent, bipartisan “watchdog” Commission on International Religious Freedom to issue separate policy recommendations and public critiques of the State Department’s performance.<sup>18</sup> The Act also urged, but did not require, the establishment of a religious freedom advisor on the National Security Council.<sup>19</sup>

Although the State Department had issued human rights “country reports” for many years, those reports often deemphasized religious liberty.<sup>20</sup> Accordingly, the IRF Act required an annual report to describe the status of religious freedom in some 200 countries.<sup>21</sup> Just as important, the Act required that those reports state what actions the United States was taking to address problems in those countries where violations were occurring.<sup>22</sup> The annual IRF Report has provided the statute’s most consequential challenge to the secular culture of American diplomacy. The reporting requirement requires foreign service officers (FSOs) to engage religious actors, ideas, and communities in their respective countries. Although these officers are typically the most junior in American embassies and consulates, the annual report has ensured that the younger generation of diplomats is exposed to religious factors in a way that most of their elders were not.

During the first decade of IRF Act implementation, from 1998 to 2008, certain patterns of diplomatic action emerged. The Act encouraged a broad array of direct and indirect initiatives, including the use of foreign aid and grants to non-

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17. IRF Act § 101.

18. IRF Act §§ 201–202. We do not have space here to provide a thorough treatment of the Commission, but it has fulfilled, in part, its primary mandate by the issuance of its own detailed reports and “countries of particular concerns” recommendations. See United States Commission on International Religious Freedom, <http://www.uscirf.gov>. For a critical discussion of the Commission’s genesis and contemporary role, see FARR, *supra* note 16, at 118–21.

19. IRF Act § 301. Neither Clinton nor Bush considered this position important enough to vest it in a single, senior official.

20. FARR, *supra* note 16, at 335 n.60.

21. IRF Act § 102.

22. IRF Act § 102.

governmental organizations, to advance religious freedom. Most of the Act's language on this subject, however, was non-binding. For example, the IRF Act provides that "in the provision of foreign assistance, the United States should make a priority of promoting and developing legal protections and cultural respect for religious freedom."<sup>23</sup> Title V of the IRF Act amended existing statutes on foreign aid, international broadcasting, international exchanges, and Foreign Service awards to incorporate the advancement of religious freedom as a goal, but not as a mandate.<sup>24</sup> On the other hand, the IRF Act *required* public designation of the worst violators.<sup>25</sup> Each year, the State Department identifies all violations of religious freedom in its Annual Report on International Religious Freedom.<sup>26</sup> The State Department subsequently publishes a list of the "countries of particular concern" (CPCs).<sup>27</sup> The first IRF Ambassador, Robert Seiple, called CPCs the "poster child of religious persecution,"<sup>28</sup> and he was right. CPCs are governments guilty of perpetrating or acquiescing in "particularly severe violations of religious freedom," such as torture, rape, abduction, clandestine detention, and "other flagrant denial[s] of the right to life, liberty, or the security of persons."<sup>29</sup>

In determining which nations to designate as CPCs, the Secretary of State takes into account a variety of evidence, including the Department's own reports, the recommendations of the United States Commission on International Religious Freedom, and data from outside sources.<sup>30</sup> After publication of the CPC list, the Secretary must choose an action from a menu of options, ranging from very serious economic sanctions to a waiver of any action at all, for each identified CPC.<sup>31</sup> A waiver

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23. IRF Act § 501(a)(2).

24. IRF Act tit. V.

25. IRF Act § 3(11).

26. IRF Act § 102; *see* U.S. Dep't of State, *Diplomacy in Action, International Religious Freedom*, <http://www.state.gov/g/drl/rls/irf/> (last visited Mar. 1, 2009).

27. The President delegates to the Secretary of State the authority to designate nations guilty of particularly severe violations of religious freedom as "countries of particular concern." The President's authority to designate "countries of particular concern" is found in section 402(b) of the IRF Act.

28. FARR, *supra* note 16, at 149.

29. IRF Act § 3(11).

30. *See* IRF Act § 102.

31. IRF Act § 402(c).

can be exercised in three circumstances: when the violations have ceased, when the exercise of the waiver would “further the purposes” of the IRF Act, or when the “important national interest of the United States requires the exercise of such waiver authority.”<sup>32</sup>

Over the years, the annual CPC list usually contained six to ten countries, including four perennials: China, Sudan, Burma, and Iran.<sup>33</sup> Other CPCs included in the first designation in 1999 were Saddam Hussein’s Iraq, Slobodan Milosevic’s Serbia, and the Taliban-controlled Afghanistan.<sup>34</sup> In subsequent years, all three were removed from the list because their regimes were overthrown by U.S.-led military campaigns and replaced by democratic governments.<sup>35</sup> The Bush Administration added North Korea, Saudi Arabia, Vietnam, Uzbekistan, and Eritrea to the list.<sup>36</sup>

In sum, the IRF Act established a senior State Department official and a watchdog agency to counter religious persecution and advance religious freedom. It required an annual report, designation of the worst violators, and the threat of economic sanctions. But it also provided authority for a bevy of positive policy actions, including foreign aid, legal development, cultural programs, foreign broadcasting, and international exchanges.

## II. IRF POLICY, 2001–2008

The Bush Administration took control of the State Department in January 2001. By June 2001, most of the senior officials

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32. IRF Act § 407(a).

33. *See, e.g.*, Designation of Countries of Particular Concern Under The International Religious Freedom Act, 64 Fed. Reg. 59,821, 59,821 (1999).

34. FARR, *supra* note 16, at 225, 330 n.14.

35. *Id.* at 204; *see also* U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, 2004, at xix–xx (2004) [hereinafter 2004 IRF REPORT], available at <http://www.internationalrelations.house.gov/archives/109/20429.pdf> (noting that in June 2004, “the Secretary acted to remove Iraq’s designation as a ‘Country of Particular Concern’ for its severe violations of religious freedom under the regime of Saddam Hussein” which coincided roughly with the “date of the transfer of power from the Coalition Provisional Authority to the Iraqi Interim Government”); U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, 2002, at xxv (2002), available at <http://www.internationalrelations.house.gov/archives/107/82501a.pdf> (“The fall of the Taliban and the subsequent establishment of the interim governments resulted in a major improvement in religious freedom.”).

36. *See, e.g.*, U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, 2007, at xiv–xvii (2008) [hereinafter 2007 IRF REPORT], available at <http://www.internationalrelations.house.gov/110/37767.pdf>.

at the Department—assistant secretaries and higher—had been nominated and confirmed by the Senate, and had assumed their jobs.<sup>37</sup> These included the new Assistant Secretary for Democracy, Human Rights, and Labor (DRL). The White House, however, did not nominate an IRF Ambassador at Large until the late fall of 2001, and the new Ambassador, John V. Hanford III, did not take his position until May 2002, after it had been vacant for almost twenty months.<sup>38</sup>

The Clinton-Albright State Department was responsible for situating the IRF Ambassador at Large and his office in the Bureau of Democracy, Human Rights, and Labor within the State Department (DRL), a placement which made the Ambassador subordinate to the Assistant Secretary of State for Democracy, Human Rights and Labor.<sup>39</sup> At one level this made sense; after all, religious freedom was a human right. But this placement conflicts with the typical State Department hierarchy, in which an ambassador at large is senior to an assistant secretary.<sup>40</sup> Moreover, the IRF Act had designated the IRF Ambassador as “principal adviser to the President and the Secretary of State.”<sup>41</sup> These two factors suggested that the IRF office and its leader should be placed directly under the Secretary, or another more senior official, rather than in a Department bureau.

Nevertheless, Secretary of State Colin Powell did not alter the Clinton Administration’s arrangement; nor did Powell’s successor, Secretary Condoleeza Rice. Moreover, when John Hanford assumed his position in May 2002, he was informed that he would not be part of the regular senior staff meetings chaired by the Secretary.<sup>42</sup> Notably, other ambassadors at large and all assistant secretaries were part of those meetings. Under the Clinton Administration, Hanford’s predecessor Robert Seiple had been a

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37. FARR, *supra* note 16, at 162.

38. See U.S. Dep’t of State, Biography of John V. Hanford III, <http://www.state.gov/r/pa/ei/biog/113758.htm> (last visited Mar. 2, 2009).

39. FARR, *supra* note 16, at 142; see U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM, 2001, at xi (2001), available at <http://www.state.gov/documents/organization/9001.pdf>; U.S. Dep’t of State, About the Bureau of Democracy, Human Rights and Labor, <http://2001-2009.state.gov/g/drl/about/index.htm>.

40. See FARR, *supra* note 16, at 195.

41. International Religious Freedom Act of 1998, Pub. L. No. 105-292, §§ 101(c)(2), 112 Stat. 2787, 2972.

42. FARR, *supra* note 16, at 194.

participant in regular senior staff meetings.<sup>43</sup> This bureaucratic isolation of the IRF Ambassador and the IRF function communicated to officials inside the Department, in Washington, and in foreign capitals that the issue of religious freedom—although personally important to the President—remained unconnected to the broader imperatives of U.S. foreign policy.

The way in which the Secretary of State employed the CPC methodology conveyed a similar message. In most cases, no action was taken with respect to designated countries, either positive or punitive. Only Eritrea received economic sanctions, but these sanctions ultimately failed to improve the situation.<sup>44</sup> Most other countries appearing on the CPC list previously faced U.S. sanctions for other human rights violations. In such cases, the IRF Act permitted the Administration to “double hat” the existing sanction, that is, to cite it as satisfying the legal requirement for action.<sup>45</sup> This provision and the rather liberal standards for waiver were two key concessions in statutory language the Clinton Administration won in the final stages of negotiations over the IRF Act.

Notwithstanding these problems, Ambassador Hanford made significant contributions to U.S. foreign policy in at least four areas. First, he employed the IRF Act creatively in Vietnam and Saudi Arabia.<sup>46</sup> For several years the East Asian Bureau and U.S. embassy in Hanoi prevented the designation of Vietnam as a CPC, even though the facts favoring the designation were reasonably clear.<sup>47</sup> Modeled to an extent on the Chinese approach to controlling religion, Vietnam's system was more flexible but still repressive.<sup>48</sup> Indigenous Buddhists and Hoa Hao were at constant risk of arrest or worse, and Protestant Christians in the Highlands were subject to forced renunciations, displacement, and church destruction.<sup>49</sup> Catholics faced lesser, but still serious, disabilities.<sup>50</sup>

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43. *Id.* at 141–42.

44. Sanctions were applied after designation in 2005. Two years later, however, conditions had “further deteriorated.” 2007 IRF REPORT, *supra* note 36, at 32.

45. See FARR, *supra* note 16, at 196–97.

46. See *id.* at 203–07.

47. See *id.* at 203–04.

48. *Id.*

49. *Id.* at 203.

50. *Id.*

Ambassador Hanford decided to focus on Vietnam at the beginning of his tenure at the State Department.<sup>51</sup> During his first two years, he slowly and methodically built a case based on the facts of persecution until he convinced Secretary Powell to list Vietnam as a CPC in 2004.<sup>52</sup> Ambassador Hanford then negotiated a binding agreement with Hanoi, one of the options from the menu of actions in the IRF Act.<sup>53</sup> Ultimately, the agreement led Hanoi to pass a law that has reduced persecution, and, in 2006, the State Department removed Vietnam from the CPC list.<sup>54</sup> It remains to be seen whether these actions will result in permanent improvements in religious freedom in Vietnam, but the case serves as the most promising example of successful U.S. IRF policy to date.

A more tentative, albeit equally hopeful, example of progress is Saudi Arabia, a country where the utter absence of religious freedom has directly impacted U.S. security. Indeed, it is Saudi Arabia in which Osama bin Laden and other al Qaeda terrorists imbibed the Wahhabism that provided much of the theological oxygen for their movement against the United States.<sup>55</sup> Preeminent among Wahhabism's destructive theological premises is the belief that non-Wahhabis, Muslim and non-Muslim alike, are infidels deserving of harsh repression and even death.<sup>56</sup>

As U.S. attitudes about Saudi Arabia shifted after 9/11, Ambassador Hanford and other senior Bush Administration officials secured designation of Saudi Arabia as a CPC in 2004.<sup>57</sup> By 2006, they had negotiated an informal, nonbinding Saudi agreement to a series of positive steps, including cessation of official funding for Wahhabi imams and literature overseas and revision of bigoted Wahhabi language in Saudi textbooks.<sup>58</sup> By 2008, neither pledge had been fully implemented; rather, there was some evidence of Saudi resistance.<sup>59</sup> But the agreement serves as an im-

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51. *Id.* at 204.

52. *Id.*

53. *Id.*

54. *Id.* at 204–05.

55. *Id.* at 220–23.

56. *Id.* at 231–32.

57. 2004 IRF REPORT, *supra* note 35, at xxxiii.

58. 2007 IRF REPORT, *supra* note 36, at 596.

59. See, e.g., 2008 UPDATE: SAUDI ARABIA'S CURRICULUM OF INTOLERANCE (2008), available at [http://www.hudson.org/files/documents/saudi\\_textbooks\\_final.pdf](http://www.hudson.org/files/documents/saudi_textbooks_final.pdf).

portant example of an IRF policy action with an impact on U.S. national security.

Second, Ambassador Hanford brought the annual IRF Report under the management and control of his office.<sup>60</sup> Until 2005, it had been edited and compiled under the operational control of the DRL Assistant Secretary, not under Ambassador Hanford.<sup>61</sup> This arrangement provided yet another signal that the State Department wanted to reduce the independent status of the IRF issue and return it to the less elevated position it occupied prior to 1998. Indeed, before Ambassador Hanford gained control of the IRF Report, the DRL Assistant Secretary made a failed attempt to reabsorb it into the country reports on human rights.<sup>62</sup> Once the ambassador and his office came to manage the IRF Report, however, the chances of its becoming a significant policy tool, rather than a mere catalogue of persecutory data, increased.

Third, with assistance from members of Congress, including Representatives Frank Wolf (R-Va.) and Chris Smith (R-N.J.), and often against the resistance of State Department officials, the staff of the IRF office grew from a handful of officials to approximately twenty-five persons during Hanford's tenure.<sup>63</sup> Most of these men and women are highly accomplished and dedicated to the causes of opposing religious persecution and advancing religious freedom. As Ambassador Hanford once put it, "We have almost more Ph.D.s per capita than any other office, more lawyers than any office but the legal office, and probably more seminary grads. I like to say we can out-think, out-sue and out-pray any other office at the State Department."<sup>64</sup> Even so, he added quite sensibly, "We're still a tiny office taking on the whole world's religious freedom problems."<sup>65</sup> That being said, it remains true that the growth of this office will be critical to the future success of U.S. IRF policy.

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60. FARR, *supra* note 16, at 172.

61. *Id.* at 171.

62. *Id.* at 172.

63. *Id.* at 211.

64. John V. Hanford III, Speech at the International Religious Freedom: Religion and International Diplomacy Conference, Pew Forum, Washington, D.C. (May 8, 2007) (transcript available at <http://pewforum.org/events/?EventID=139>).

65. *Id.*

Finally, Ambassador Hanford and his office, working with American diplomats in various countries, were responsible for freeing religious prisoners and safeguarding individuals and families in flight from persecuting governments or private actors.<sup>66</sup> There are hundreds of people today, perhaps more, living in safety and freedom because of the actions of America's IRF diplomacy. This is a significant contribution in itself, because it can give hope to millions more who either remain in prison or are subject to the cruel whims of those in power. Those millions, however, remain highly vulnerable. U.S. IRF policy has had very little impact on overall levels of religious persecution around the world.

On balance, President Bush and his IRF Ambassador at Large, John Hanford, made important contributions to the policy initiated by the 1998 IRF Act. They failed, however, to overcome the indifference and, in some cases, the hostility of American diplomacy to the new religious freedom policy.

### III. ASSESSING THE BUSH YEARS

What were the failures of U.S. IRF policy and what accounts for those failures? Four areas in particular bear further scrutiny: the willingness of the Bush White House, at the outset of the Administration, to permit the Ambassador's position to remain unfilled for a full year after other senior State Department officials were in place; the bureaucratic and functional isolation of the issue within Foggy Bottom and the implications for broader American interests in the world; the secularistic culture of the American foreign service; and that culture's intellectual underpinnings.

Exploring in any detail why the Bush Administration permitted the Ambassador's position to remain vacant for so long would take the discussion too far afield.<sup>67</sup> We merely note here that there were serious differences among Bush supporters over who should get the job. But such disputes are a staple of Washington politics. Had the Bush White House considered the Ambassador's function of any policy significance, it would have acted quickly to fill it. Instead, the Bush Administration

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66. FARR, *supra* note 16, at 210.

67. For a discussion of this issue, see FARR, *supra* note 16, at 187-96.

began establishing State Department priorities and lines of authority, and simply allowed the Ambassador position to remain unfilled while IRF supporters squabbled.<sup>68</sup> The White House also did not object when the State Department considered absorbing the Ambassador's mission into the portfolio of the Assistant Secretary for DRL, a move which would have eliminated the position as an independent entity.<sup>69</sup> It is difficult to avoid the conclusion that the Bush team saw the IRF ambassadorship as, at best, a second-order personnel issue. The ambassadorship was likely viewed more as a reward for domestic supporters than as an appointment with significant foreign policy implications.

The Department's decision to keep the IRF function housed under DRL, which is itself outside mainstream foreign policy making, as well as its refusal to permit the IRF Ambassador into senior staff meetings or senior policy discussions, seems to confirm this judgment. Notwithstanding his title and his confirmation by the Senate, this Ambassador was to be treated as a "special interest" appointment rather than a senior member of the Department.<sup>70</sup> It was made immediately clear to all that Ambassador Hanford would not in fact be a "principal adviser to the President and Secretary of State," despite the mandate from the IRF Act.<sup>71</sup> Unfortunately, the marginalization of the IRF office continued under Secretary Condoleezza Rice.<sup>72</sup>

The bureaucratic and functional isolation of the IRF issue at Foggy Bottom exacerbated an existing problem: the hesitation of FSOs to work in the office. The proportion of FSOs in the IRF staff at the time of Ambassador Hanford's appointment was, and remains, quite low.<sup>73</sup> While brilliant and creative minds from outside the diplomatic service are attracted to this issue of growing international importance, few FSOs see it that way. Most of them, even those interested in religion as a policy issue, perceive working on the IRF staff to be a dead-end for their careers. It would be difficult to prove them wrong.<sup>74</sup>

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68. *Id.* at 190.

69. *Id.* at 167–68.

70. *Id.* at 194.

71. International Religious Freedom Act of 1998, Pub. L. No. 105-292, §§ 101(c)(2), 112 Stat. 2787, 2972; *see also* FARR, *supra* note 16, at 194.

72. FARR, *supra* note 16, at 195.

73. *Id.* at 211.

74. *Id.*

As problematic as all these issues were, however, the placement of the IRF Ambassador and his office at the State Department reflected an even deeper deficiency: The policy of advancing international religious freedom was not considered relevant to broader American national interests.<sup>75</sup> When inter-agency meetings were held on U.S. policy in such countries as China, India, or Saudi Arabia—or even on engaging Islam more broadly—the mandates of the IRF Act were not considered pertinent.<sup>76</sup> Religious freedom also played a very minor part in the development of public diplomacy, the vehicle by which the United States conveys its identity and what it stands for in the world.<sup>77</sup> This neglect of religious liberty is astounding given its importance in American history.

As early as 2003, the State Department's Inspector General (IG) concluded that America's IRF policy was not working: "The current structure that places the congressionally mandated office of the Ambassador-at-Large for International Religious Freedom within DRL is at odds with the Department's organizational guidelines and has proved to be unworkable."<sup>78</sup> This was a reference to the problem, noted above, that ambassadors at large are senior to assistant secretaries, but that the IRF Ambassador had, since the inception of the position, been subordinate to an assistant secretary.<sup>79</sup> "As a consequence, *the purposes for which the religious freedom function was created are not being adequately served.*"<sup>80</sup> Unfortunately, the IG report was ignored by the Congress, the White House, and the State Department.<sup>81</sup>

Perhaps most troubling of all, the Bush Administration decided not to integrate religious freedom into its "forward strategy of freedom," the initiative to facilitate the growth of democracy in the greater Middle East as a means of draining the swamps of religious extremism and terrorism.<sup>82</sup> Democracy programs funded by the United States, such as those of the National Endowment

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75. *See id.* at 44.

76. *See id.*

77. *Id.*

78. OFFICE OF INSPECTOR GEN., U.S. DEP'T OF STATE, MONTHLY REPORT OF ACTIVITIES, SEPTEMBER 2003, at 13 (2003), available at <http://oig.state.gov/documents/organization/28328.pdf> [hereinafter MONTHLY REPORT].

79. FARR, *supra* note 16, at 195.

80. MONTHLY REPORT, *supra* note 78, at 13 (emphasis added).

81. FARR, *supra* note 16, at 195.

82. *Id.* at 223.

for Democracy, began to engage Islamic groups, but they did so with great hesitation and not in a comprehensive fashion, despite Islam's influence over political culture.<sup>83</sup> Religious freedom was manifestly not a major part of the democracy promotion effort.<sup>84</sup>

These deficiencies were, and remain, embedded in U.S. diplomatic culture, but they were exacerbated by what the IRF Act required and what it did not. As noted, the central policy instrument prescribed by the IRF Act was the annual designation of the CPCs—those nations whose governments were guilty of particularly severe violations of religious freedom. Other than Ambassador Hanford's creative use of the CPC process with Vietnam, the CPC designation process was largely ineffective. It did shine a spotlight on the persecutors, but, apart from Vietnam, it failed to alter their behavior in any fundamental way.

For example, China was listed as a CPC in 1999.<sup>85</sup> By 2002, however, it was reasonably clear that the designation was having little if any effect on the Chinese. For one thing, it had proven to be a toothless, rhetorical denunciation.<sup>86</sup> As permitted under the IRF Act, the Clinton and Bush Administrations followed the designation with the "action" of reaffirming an existing human rights sanction, in this case, the action imposed in the wake of the 1989 Tiananmen Square massacres.<sup>87</sup> That restriction forbade the export of U.S. crime control and detection equipment to the Chinese.<sup>88</sup> Even among those who supported punitive sanctions as a policy instrument, this double use of an empty punishment seemed a cynical ploy. "All this has done," as one skeptic put it, "is force the Chinese to buy their barbed wire and tear gas from the French."<sup>89</sup>

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83. *Id.* at 260.

84. *Id.* at 7–8; see also Thomas F. Farr, *Diplomacy in an Age of Faith*, FOREIGN AFF., Mar.–Apr. 2008, at 110. On the general reluctance of American diplomats to engage religion, see LIORA DANAN & ALICE HUNT, MIXED BLESSINGS: U.S. GOVERNMENT ENGAGEMENT WITH RELIGION IN CONFLICT-PRONE SETTINGS 10–28 (2007).

85. Designation of Countries of Particular Concern Under The International Religious Freedom Act, 64 Fed. Reg. 59,821, 59,821 (listing Burma, China, Iran, Iraq, Sudan); FARR, *supra* note 16, at 196.

86. FARR, *supra* note 16, at 196.

87. *Id.*

88. *Id.*

89. David Jones, *The Joy of Sects: Religious Freedom Reporting*, FOREIGN SERVICE J., Jan. 2001, at 26, available at <http://www.afsa.org/fsj/jan01/jonesjan01.cfm>.

Initially, the Chinese, although untouched by this “sanction,” were quite irritated by the CPC designation itself.<sup>90</sup> China is famously sensitive to the issue of “face” in the international community. But, as the CPC designations recurred year after year, duly accompanied by a reaffirmation of the ban on crime control equipment, even the Chinese began to yawn.<sup>91</sup> Any hope that the CPC “stick” might change that government’s behavior, a dubious proposition in any case, dissipated when it became clear that neither the Clinton nor Bush Administrations were serious about employing pressure. Indeed, one could argue that repeated CPC designations have set back the cause of religious freedom in China by debasing the CPC coinage.<sup>92</sup>

Despite the failure of the CPC methodology, the CPC designation itself constituted the primary content of U.S. IRF diplomacy. This essentially punitive approach deepened the existing perception abroad that American policy was simply an example of cultural imperialism, designed to undermine majority religious communities and pave the way for American missionaries. It also did nothing to counter the view that, for U.S. diplomats, “religious freedom” meant the separation of religion from public policy and political life. Such perceptions seriously reduced the potential effectiveness of U.S. policy and ensured that it played no role in the forward strategy of freedom.

#### IV. THE PROBLEM OF RELIGION AND ISLAMIST TERRORISM

American diplomacy’s reticence about engaging religion has harmed our national security as well. For the most part, we have failed to understand the religious dimensions of Islamist

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90. FARR, *supra* note 16, at 196.

91. *Id.*

92. *Id.* at 197 (“To give credit where it is due, both presidents Clinton and Bush pressed their Chinese counterparts on religious persecution. Both presidents spoke privately with President Jiang Zemin about their own faith. Their overt religious views very likely stimulated Jiang’s policy interest in religion and contributed to the intensity of his involvement in a Chinese National Work Conference on Religion later in late 2001. The following year, Bush devoted fully one-third of a major Beijing speech to the issue. As valuable as this and other presidential efforts are with the Chinese, significant policy shifts by a Chinese government are usually slow in coming. Any outside government, even the United States, seeking to influence those shifts must devote time, resources, and policy planning to the effort. Consistency in addressing any internal issue, let alone the internal issue of religion, is an utter necessity.”).

terrorism, and failed to incorporate religion into counterterrorist strategies, especially democracy promotion. A host of factors have converged to keep religion off the policy table, including a kind of religion-avoidance syndrome, an inordinate fear of political Islam, a default "realism" that refuses to incorporate religion into strategy, and a tendency to project Western secularist preferences into the minds of Muslim reformers. U.S. policies have often been grounded in the belief that the only effective antidotes to Islamist extremism are either democracies that relegate Islam to the private sphere or authoritarian governments that control religion, such as Egypt and Saudi Arabia. Such policies have proven at best ineffective.<sup>93</sup> At worst, they have nourished the very forces they were intended to destroy: Islamist extremism and terrorism.

Consider Afghanistan. After the United States deposed the Taliban in 2001, the Afghans elected a democratic government and ratified a democratic constitution. The terrible religious persecution of Afghan women and minority Shiites slowed dramatically. But these developments did not bring about religious freedom. The Afghan government no longer tortures people on the basis of religion, but it continues to bring charges against apostates and blasphemers, including officials and journalists seeking to debate the teachings of Islam. Instead of seeing such cases as serious obstacles to the consolidation of Afghan democracy, the State Department has treated them as humanitarian problems. It declared victory when U.S. pressure sprang the Christian convert Abdul Rahman from an apostasy trial (and certain execution), permitting him to flee the country in fear of his life.<sup>94</sup>

While this was a praiseworthy success regarding the life of one individual, the Rahman case was actually a defeat for U.S. international religious freedom *policy* because it ignored the real problem: Afghanistan's democracy is unlikely to endure unless it defends the right of all Afghan citizens to full religious liberty, especially the right of Muslims to debate the meaning of freedom and the public good, the role of sharia, and the religion-state nexus.<sup>95</sup> This kind of sustained discourse is vital to the

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93. *Id.* at 247.

94. *See id.* at 210.

95. The new constitutions of Iraq and Afghanistan, produced with U.S. assistance, fail adequately to provide for religious freedom. Neither the Iraqi nor the

success of any Islamic democracy and to overcoming Islamist radicalism. U.S. IRF policy should confront this problem in Afghanistan and elsewhere, but it lacks the resources, the bureaucratic clout, and the policy mandate to do so.

#### V. WHAT ACCOUNTS FOR THE ADMINISTRATION'S RETICENCE?

Given the high expectations that attended the Bush Administration's commitment to international religious freedom, what accounts for its shortcomings? Much of the answer has to do with the entrenched worldviews of American diplomats and the inability of the Administration to alter them. One key element of that worldview is a perception among many foreign policy officials that the Establishment Clause of the U.S. Constitution prohibits any government activity dealing with religion.<sup>96</sup> While there is no reason U.S. domestic constitutional provisions should dictate the content of U.S. promotion of democracy abroad, it is still true that this "strict separationist" understanding of our First Amendment shapes U.S. diplomatic views on the meaning of religious freedom. This is particularly ironic because it is clear that the Constitution neither mandates ignorance about religion nor proscribes its public practice. The Constitution, however, manifestly requires the defense of religious liberty.<sup>97</sup>

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Afghan constitution mentions Sharia. Both, however, have repugnancy clauses that prohibit any law from being contrary to Islam. IRAQ CONST. art. 2 ("No law may be enacted that contradicts the established provisions of Islam."); CONST. OF AFG. art. 3 ("No law shall contravene the tenets and provisions of the holy religion of Islam in Afghanistan."). Afghanistan's constitution is particularly restrictive, guaranteeing only that "[f]ollowers of other faiths [than Islam] shall be free within the bounds of law in the exercise and performance of their religious rituals." CONST. OF AFG. art. 2. It appears that members of high judicial courts may be selected who lack training in civil law. CONST. OF AFG. art. 118. If this is combined, as it is in these two constitutions, with broad clauses guaranteeing that laws may not be repugnant to Islam, as discussed above, it opens the possibility of an interpretation of constitutional provisions at variance with basic human rights and contrary to the good of persons and communities. It opens a way for coercion to be exercised upon religious minorities and even upon Muslims who do not subscribe to every tenet of Islam, as happened in Afghanistan in 2002 when the new women's affairs minister, Sima Samar, was formally charged with the crime of blasphemy. FARR, *supra* note 16, 5–6.

96. DANAN & HUNT, *supra* note 84, at 39.

97. U.S. CONST. amend. I.

Confusion about religion's place in foreign policy also stems from prevailing assumptions in the foreign policy community about the direction of history and the meaning of modernity. Specifically, the so-called "secularization theory" holds that societies will inevitably become less religious over time as scientific knowledge displaces faith.<sup>98</sup> In this view, religion is inherently emotive and irrational, and thus opposed to modernity and an obstacle to political and economic progress.<sup>99</sup> As modernity advances, religion will shrink to the irrelevant margins of human behavior and ultimately will disappear. Data on religious belief and practice in the United States,<sup>100</sup> as well as evidence from around the world, however, suggest that the secularization theory is obsolete.<sup>101</sup>

Disarray over the public role of religion has heavily influenced U.S. diplomacy. A recent study by the Center for Strategic and International Studies concludes that

U.S. government officials are often reluctant to address the issue of religion, whether in response to a secular U.S. legal and political tradition . . . or simply because religion is perceived as too complicated or sensitive.

Current U.S. government frameworks for approaching religion are narrow, often approaching religions as problematic or monolithic forces, overemphasizing a terrorism-focused analysis of Islam and sometimes marginalizing religion as a peripheral humanitarian or cultural issue.<sup>102</sup>

And yet, the reality is that the world is overflowing with religious ideas, actors, communities, and movements, all of

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98. See FARR, *supra* note 16, 47–48.

99. See *id.*

100. *E.g.*, BAYLOR INST. FOR STUDIES OF RELIGION, AMERICAN PIETY IN THE 21ST CENTURY: NEW INSIGHTS TO THE DEPTH AND COMPLEXITY OF RELIGION IN THE US 7–8, 11–12 (2006).

101. See, *e.g.*, JOSE CASANOVA, PUBLIC RELIGIONS IN THE MODERN WORLD (1994); DAVID MARTIN, A GENERAL THEORY OF SECULARIZATION (1978); DAVID MARTIN, ON SECULARIZATION: TOWARDS A REVISED GENERAL THEORY (2005); GEORGE WEIGEL ET AL., THE DESECULARIZATION OF THE WORLD: RESURGENT RELIGION AND WORLD POLITICS (Peter L. Berger ed., 1999). For an early theological perspective on desecularization, see HARVEY COX, THE SECULAR CITY: SECULARIZATION AND URBANIZATION IN THEOLOGICAL PERSPECTIVE (1965). On secularization in American culture, see THE SECULAR REVOLUTION: POWER, INTERESTS, AND CONFLICT IN THE SECULARIZATION OF AMERICAN PUBLIC LIFE (Christian Smith ed., 2003).

102. DANAN & HUNT, *supra* note 84, at 3.

which can have very public consequences. There is little reason to believe that this state of affairs will change anytime soon. Polls from across the Muslim world, for example, show a growth in religious affiliation and the desire for religious leaders to be more involved in politics.<sup>103</sup> Two demographers of religion, Todd Johnson and David Barrett, have concluded, "Demographic trends coupled with conservative estimates of conversions and defections envision over 80% of the world's population will continue to be affiliated to religions 200 years into the future."<sup>104</sup>

How to respond to the resurgence of religion around the globe is a vital question for U.S. foreign policy. Islamist radicalism draws the most attention, but the issue is hardly confined to Muslim majority countries or the Muslim diaspora. An explosion of religious devotion among Chinese citizens increasingly worries communist officials; just such a phenomenon was on public display during the 2008 Summer Olympics in Beijing. Religious ideas and actors affect the fate of democracy and public policy in Russia, relations between nuclear powers India and Pakistan, and the consolidation of democracy in Latin America. In sub-Saharan Africa, religion plays an important role in issues from economic growth to political stability and public policies on HIV-AIDS. To meet the challenges these developments pose for our national security, the United States cannot continue to treat religious liberty as taboo in the formulation and execution of foreign policy.

#### CONCLUSION

If there was a central fault line in the Bush international religious freedom policy, it was a failure to overcome State Department inertia on engaging the issue of religion. IRF diplomacy focused heavily on the goal of reducing persecution. In the abstract, this seems a reasonable choice, but in fact this decision yielded an ad hoc, reac-

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103. See, e.g., Robert Inglehart & Pippa Norris, *The True Clash of Civilizations*, FOREIGN POL'Y (Mar.-Apr. 2003), at 63, 64-65; THE PEW GLOBAL ATTITUDES PROJECT, 17-NATION PEW GLOBAL ATTITUDES SURVEY 22 (2005), available at <http://pewglobal.org/reports/pdf/248.pdf>; 1 WORLD CHRISTIAN ENCYCLOPEDIA: A COMPREHENSIVE SURVEY OF CHURCHES AND RELIGIONS IN THE MODERN WORLD 4 (David B. Barrett et al. eds., 2d ed. 2001).

104. Todd M. Johnson & David B. Barrett, *Quantifying alternative futures of religion and religions*, 36 FUTURES 947, 947 (2004).

tive approach which had modest short-term successes but no systemic effect on the structures of persecution. At Foggy Bottom, however, the anti-persecution approach permitted the Department to compartmentalize IRF and isolate it from broader U.S. foreign policy concerns. At the same time, virtually no attempts were made to advance religious freedom in any political or cultural sense as part of the Bush Administration's "democracy agenda."

The two goals—reducing persecution and advancing religious freedom—overlap, but they are not the same. Religious freedom certainly means freedom from persecution, but it is much more. For instance, under international law, "religious freedom" means the right to believe or not, the right to enter and exit religious communities, and the right of individuals and communities to act publicly, within due limits.<sup>105</sup> Such acts include building houses of worship, training clergy, founding and running religious schools, convincing others that one's religious claims are true, inviting others to join one's community, and bringing one's religiously informed moral arguments to bear on public policy, laws, and norms. Reducing or even eliminating religious persecution is the beginning, not the end, of religious freedom.

The Bush Administration took important steps toward reducing persecution. The United States consistently and forthrightly condemned governments that conducted or tolerated persecution. U.S. diplomats made laudable strides in relieving the suffering of particular individuals. As for structural advances in religious freedom, IRF policy initiated legal changes in at least one country, Vietnam, that might have positive long-term effects, although it is too soon to judge. In another country, Saudi Arabia, U.S. diplomats won important commitments from the government that could also have long-term effects, although there remain significant reasons for skepticism.

As important and potentially fruitful as these achievements appear, however, they are nonetheless disappointing. The United States has many compelling reasons to encourage the political institutions and cultural dispositions that advance religious freedom. Those reasons include simple justice, the desire to reduce persecution, and the need to defend human

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105. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (Mar. 23, 1976).

dignity, to which religious liberty is so closely bound. If our public diplomacy is to convey our identity and values, it must be informed by our own history, including our struggles to win religious freedom for all Americans. And if we are to defeat Islamist terrorism, especially by means of the diplomatic promotion of stable democracy, our diplomacy must have the capacity and the will to engage religious ideas, actors, and movements. It is ironic that, under one of the most religious Presidents in recent history, so few of these objectives were considered worthy of adoption.