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The Dean F. Herzog Memorial Lecture: Religious Freedom under Assault in the Middle East: An Imperative for the U.S. and International Community to Hold Governments to Account, 45 J. Marshall L. Rev. iii (2011)

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THE DEAN FRED F. HERZOG MEMORIAL LECTURE

RELIGIOUS FREEDOM UNDER ASSAULT IN THE MIDDLE EAST: AN IMPERATIVE FOR THE U.S. AND INTERNATIONAL COMMUNITY TO HOLD GOVERNMENTS TO ACCOUNT

DR. DWIGHT BASHIR*¹

CHICAGO
17 FEBRUARY 2011

Dean Corkery, Dean Ruebner,

Professor Berendt and Professor Dana and other members of the
Herzog Memorial Lecture Committee,

Members of the Herzog family in attendance, faculty, students, and
guests:

Let me offer special thanks to members of the Herzog Memorial Lecture Committee who have been such gracious hosts. It is a real pleasure to speak here at The John Marshall Law School. This is my first time visiting the law school. I had the opportunity last night to interact with some faculty and students and engage in very stimulating discussions.

It is truly a privilege to address you this afternoon in honor of the late Dean Fred Herzog. As I read about his exemplary life of public and academic service, I was struck by the fact that Dean Herzog was also a victim of religious persecution. Thankfully, he was able to flee and seek refuge, ultimately in the United States, unlike the six million Jews who could not flee and suffered a horrific fate.

Since the seventeenth century, America has been a haven for victims of religious persecution. In fact, "the New England colonies, New Jersey, Pennsylvania, and Maryland were originally

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1. The views expressed here are solely those of the author and do not reflect the official views of the U.S. Commission on International Religious Freedom.

conceived and established ‘as plantations of religion.’”² Today, victims all over the world continue to seek asylum in the United States, one of the most religiously diverse and pluralistic countries in the world.

I. INTRODUCTION

The United States is the only country in the world that boasts a federal Commission explicitly focused on the issue of freedom of religion or belief abroad. The U.S. Commission on International Religious Freedom (“USCIRF”) was created through the International Religious Freedom Act of 1998 (“IRFA”).³ Established as an independent, bipartisan, federal entity, the Commission is mandated to monitor the status of freedom of religion or belief worldwide and provide policy recommendations to the President, the Secretary of State, and Congress.⁴ These recommendations are designed to inform both the foreign policy and the national security agendas of the United States. IRFA also created an office at the State Department, which is headed by an Ambassador-at-Large for International Religious Freedom.⁵

In particular, USCIRF is mandated to make recommendations to the President about which countries are responsible for ongoing, systematic, and egregious violations of religious freedom.⁶ Governments on this blacklist are called “countries of particular concern,” or CPCs. Once a country is designated a CPC, the President is required—in the absence of special circumstances—to take specific actions against that nation.⁷ These actions can include economic or other sanctions, travel bans on government officials connected with religious freedom violations, and various limitations on aid and other foreign assistance.

USCIRF is tasked with using international human rights standards, such as those found in the Universal Declaration of Human Rights (“UDHR”)⁸ and the International Covenant on Civil and Political Rights (“ICCPR”),⁹ as the basis for evaluating severe

2. *Religion and the Founding of the American Republic*, LIBRARY OF CONG., § 1, pt. 1, ¶ 1 (July 23, 2010), www.loc.gov/exhibits/religion/rel01.html.

3. See International Religious Freedom Act of 1998, 22 U.S.C. § 6401 (1998), amended by Pub. L. No. 106-55, 113 Stat. 401 (1999). For the Public Law version of the International Religious Freedom Act of 1998 (“IRFA”), see Pub. L. No. 105-292, 112 Stat. 2787 (1998).

4. 22 U.S.C. § 6401 (1998).

5. International Religious Freedom Act of 1998, Pub. L. No. 105-292, § 201 (1998).

6. *Id.* at § 202.

7. *Id.* at § 402.

8. Universal Declaration of Human Rights, G.A. Res. 217 (XVIII), U.N. Doc. A/RES/217 (XVIII) (Dec. 10, 1948).

9. International Covenant on Civil and Political Rights, G.A. Res. 2200

and egregious violations. Article 18 of the UDHR says: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."¹⁰ Article 18 of the ICCPR goes further: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."¹¹

By using international standards specified in IRFA, USCIRF does not impose American values or laws on other nations, but rather examines the actions of foreign governments against these universal standards that most governments of the world have freely committed to uphold.

A. Religious Freedom Globally

I would like to spend just a minute touching on the status of religious freedom globally. Unfortunately, religious discrimination and persecution remains alive and well today.

USCIRF reports annually on more than twenty-five countries where the most serious religious freedom problems exist.¹² While the Middle East is getting significant international media attention these days, there are other countries in the world where severe violations take place routinely.

The governments of North Korea, Burma, and China in East Asia are among the world's worst abusers of religious freedom. For example, Uighur Muslims, Tibetan Buddhists, and the Falun Gong in China all suffer discrimination and persecution at the hands of the Chinese government. In East Africa, the religious freedom situation in Eritrea is grave, particularly for Jehovah's Witnesses and members of other smaller religious groups such as Evangelical and Pentecostal Christians, as well as dissident Muslims. In Pakistan, discriminatory legislation negatively impacts both Ahmadi Muslim and non-Muslim minorities and fosters an atmosphere of intolerance and violent extremism. In addition, sectarian violence and religiously-motivated killings, in many cases with impunity, have continued in recent years in India, Indonesia, Nigeria, and Sudan, to name a few.

USCIRF has identified three themes that run through many of the government actions or inactions in countries with severe violations:

First, there is state-sponsored hostility toward and repression of

(XXI)A, U.N. Doc. A/RES/2200 (XXI) (Dec. 16, 1966).

10. Universal Declaration of Human Rights, G.A. Res. 217 (XVIII).

11. International Covenant on Civil and Political Rights, G.A. Res. 2200 (XXI)A.

12. For the latest USCIRF annual report, see <http://www.uscifr.gov>.

religion;

Second, there is state-sponsorship of, or support for, extremist ideology and/or intolerant education systems, and;

Thirdly, there is state failure to prevent and punish religious freedom violations, also known as impunity.¹³

A number of these countries also have authoritarian regimes in power that keep a tight clamp on individual rights and do not respect or adhere to the rule of law. Regarding impunity, USCIRF has found time and time again that the absence of accountability breeds lawlessness, which encourages individuals to attack, and even kill others who dissent from or fail to embrace their own religious views, particularly members of religious minority communities. Countering impunity and promoting respect for the rule of law are among the most significant challenges that the United States and international community face as they develop policies to effectively promote and protect freedom of religion or belief around the world.

B. Events in the Middle East Today

I have been asked to speak to you today about my perspectives on growing concerns for religious freedom in the Middle East and North Africa. Fast-moving developments in the region in recent weeks make the topic all the more timely. So let me start by making a few personal observations about what we are witnessing in the Middle East today.

Since the beginning of this year alone, the trajectory for the Middle East has shifted markedly. We have seen the people of Egypt pull off one of the most stunning human rights victories of our time through a peaceful, popular uprising. While there is much uncertainty ahead, I am cautiously optimistic that genuine democracy and the rule of law could actually take root. We have seen the people take to the streets in Tunisia and successfully oust the president from the country after twenty-three brutal years in power; we have seen demonstrations in Jordan, which have forced Jordan's King to fire his entire cabinet and bring in a new one promising political reform; in Yemen, the people continue to call for the president to step down even though he pledged not to run again after more than thirty years in power and has committed to make economic and political concessions; unrest and demonstrations in Algeria are forcing the government to lift a state of emergency that has been in place for nearly twenty years. And further protests continue this week in Iran, Bahrain, Libya,

13. *Frequently Asked Questions*, U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (2010), <http://www.uscifr.gov/about-uscifr/frequently-asked-questions.html>.

and Yemen. Some of the protestors have been met with lethal force by government authorities over the past few days. No doubt more protests and demonstrations are yet to come, thanks in large part to the bravery of the everyday citizen and the instrumental role of social networking and other websites, such as Facebook, Twitter, and YouTube, to help people communicate and mobilize.

You will recall that the current wave of revolt and discontent started just weeks ago when a young Tunisian man set himself on fire in December to protest mistreatment by authorities. This act was replicated in several countries in the region and day after day we have been watching a series of events unfold that have opened a new chapter in the history of the region.

There are several indicators that explain the discontent in the region: high unemployment, extremes of wealth and poverty, gender inequality, inadequate health care and education, corruption, and government restrictions on universally recognized human rights. These inequities serve as huge impediments to freedom and good governance throughout the region. For those who have been following developments in the region for several years, this does not come as a surprise.

In 2002, the United Nations Development Program (UNDP) began publishing a series of little known reports, the Arab Human Development Reports, which are authored by a diverse group of independent intellectuals and scholars from the Arab world.¹⁴ Their early reports identified each of the indicators I just mentioned and warned that until there is genuine and measurable progress in each of these areas, there would be increasing discontent. The 2009 report summed it up best: "Human security is a prerequisite for human development, and its widespread absence in Arab countries has held back their progress."¹⁵

Obviously the tipping point has already been achieved in several countries in the region. But there is another important development that should be noted. For the better part of the twentieth century, governments in the region have argued that a combination of colonialism, the formation of the state of Israel and the ongoing conflict, U.S. interference in the region, and other external forces were to blame for the social, political, and economic stagnation and turbulence that existed in these countries. What we are seeing is that the people are refusing to buy this argument anymore. Recent Gallup polling data shows that the majority of people in several countries in the region want greater

14. U.N. Development Programme, Regional Bureau for Arab States, *Arab Human Development Reports* (2002, 2003, 2004, 2005, 2009), available at <http://www.arab-hdr.org>.

15. U.N. Development Programme, Regional Bureau for Arab States, *Arab Human Development Report 2009: Challenges to Human Security in the Arab Countries*, 1 (2009).

democratization, freedoms, and the rule of law.¹⁶ They are chanting “bread, social justice, and freedom” in the streets, not “down with America and Israel.”¹⁷ They are saying that the authoritarian regimes have had ample opportunity to address the challenges and produce results, and they have come up way too short. In fact, evidence is showing that a number of the former leaders in the region not only have stolen from the people but have squandered wealth and resources through rampant corruption and cronyism.

With this backdrop in mind, let us move to my views on the state of religious freedom in the Middle East.

C. *Religious Demography in the Middle East and North Africa*

To understand the status of religious freedom in the region, it is important to get a sense of the religious demography. The U.S. Department of State identifies the region as the Near East and North Africa, which includes the countries of the Levant (Jordan, Syria, Lebanon, Israel, and the Palestinian Territories); North Africa (Algeria, Egypt, Libya, Morocco, Tunisia, and Western Sahara); and the Gulf states (Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, and Yemen).¹⁸ The only non-Arab nations among these countries are Israel and Iran. Sunni Islam predominates in all the countries of the region with the exception of Israel, Iran, Iraq, and Bahrain. Iran, Iraq, and Bahrain have majority Shiite Muslim populations, and, of course, Israel has a majority Jewish population.

Egypt has the largest overall population in the region, with more than eighty million people, as well as the largest non-Muslim religious minority community of approximately eight to twelve million Christians. Besides Israel, Lebanon has the largest non-Muslim population percentage-wise, with thirty-five to forty percent of the total population adhering to various Christian denominations.

The social and legal structures of Middle Eastern societies have contributed over the years to a clear-cut compartmentalization of religious communities in the Middle East. Today, states in the Middle East have differing approaches to their religious minorities. Christian political participation in Syria and Jordan, for example, is based on individual involvement, whereas minorities in Israel, Lebanon, and Iran participate through a

16. Anthony Shadid, *In One Slice of Egypt, Daily Woes Top Religion*, N.Y. TIMES, Feb. 16, 2011, <http://www.nytimes.com/2011/02/16/world/middleeast/16islam.html?pagewanted=all>.

17. *Id.*

18. For more detail on the breakdown of countries in the region, see *Near Eastern Affairs: Countries and Other Areas*, U.S. DEPT OF STATE, <http://www.state.gov/p/nea/ci/index.htm>.

quota system based on affiliation to a religious or ethnic community. For example, in Iran five seats in the parliament are reserved for recognized religious minorities: two for Armenian Christians, one for Assyrian Christians, and one each for Jews and Zoroastrians.

D. Government Restrictions on Religion

Among the most severe human rights restrictions imposed by governments in the region are on the individual's right to freedom of thought, conscience, and religion. Over the years, I have learned it is a safe bet to conclude that if religious freedom is restricted by a government, most other fundamental rights are affected as well. To many religious believers in the region, religious practice is both personal and public at the same time. If this right is infringed upon, then the state is likely limiting or restricting other rights such as freedom of speech, assembly, the press, and the rights of women, among others.

A December 2009 study by the Pew Research Center's Forum on Religion in Public Life in Washington, D.C. found that the Middle East and North Africa region has by far the highest instances of: (1) government restrictions on religion; and (2) social hostility toward religious communities than any other region in the world.¹⁹

The study found that three countries from the Middle East made the top five with the most severe government restrictions on religion: Saudi Arabia and Iran rank one and two, respectively, and Egypt ranked number five.²⁰ (Uzbekistan and China ranked three and four, respectively). I want to be clear. While there are several countries in the region where religious freedom concerns exist, today I will be focusing on those countries in the region where religious freedom is under assault, and in some cases, people's lives are at stake because of systematic and egregious abuses. Let us first take a look at Saudi Arabia.

*1. Saudi Arabia*²¹

Saudi Arabia's self-proclaimed constitution is the Islamic holy book, the Koran. Yet, the Saudi government persists in severely restricting all forms of public religious expression, other than the government's interpretation of its version of Sunni Islam and also

19. The Pew Forum on Religion & Pub. Life, *Global Restrictions on Religion*, PEW RESEARCH CTR. 1, 2 (2009), <http://pewforum.org/Government/Global-Restrictions-on-Religion.aspx>.

20. *Id.* at 2.

21. For a more detailed discussion of the status of religious freedom in Saudi Arabia, see USCIRF, ANNUAL REPORT 2010 1, 123-38 (2010), available at <http://www.uscifr.gov/images/annual%20report%202010.pdf>.

interferes with private religious practice.²² This policy violates the human rights of large, indigenous communities of Muslims, including significant populations of Sunni Muslims who follow variant schools of thought, Shi'a and Ismaili Muslims, as well as both Muslim and non-Muslim expatriate workers. The government enforces its tight controls by heavily restricting the religious activity it permits and suppressing the religious views of Saudi and non-Saudi Muslims who do not conform to official positions. In addition, the Saudi government continues its systematic practices of short-term detentions without trial of minority Muslims, particularly Shi'a Muslims, for religious observance not in accordance with the government's interpretation of Islam.

Almost ten years since fifteen Saudi nationals and four others from Middle Eastern countries attacked the United States on September 11, the Saudi government has failed to implement a number of promised reforms, including those related to religious tolerance and extremism. Despite the King undertaking some reform measures and promoting interreligious dialogue in international fora in recent years, members of the government-funded Commission to Promote Virtue and Prevent Vice (CPVPV) continue to commit abuses, overstep their authority with impunity, and are not subject to judicial oversight.²³ In addition, the government continues to publish textbooks with intolerant content and incitement to violence.²⁴ The government is reported to still be involved in supporting activities globally that promote an extremist ideology, and, in some cases, violence toward non-Muslims and disfavored Muslims.²⁵ As recently as last year, there continued to be reports, including those from the State Department, of virulently anti-Semitic sentiments expressed in the official media and in sermons delivered by clerics, who in some cases continue to pray for the death of Jews and Christians, despite having been disciplined for preaching extremist views.²⁶

To this day, the Saudi government uses criminal charges of apostasy, blasphemy, and criticizing the nature of the regime to suppress discussion and debate and to silence dissidents.²⁷ Promoters of political and human rights reforms, as well as those seeking to debate the appropriate role of religion in relation to the state, its laws, and society, are typically the target of such charges. One case is worth mentioning. An Ismaili Muslim, Hadi Al-Mutif, remains in prison today after originally being sentenced to death for apostasy in 1994 for an offhand remark he made as a teenager

22. *Id.* at 124.

23. *Id.* at 125.

24. *Id.* at 130.

25. *Id.* at 131.

26. *Id.*

27. *Id.* at 126.

that was deemed blasphemous by the government.²⁸ Lawyers and experts familiar with the case have said that the judge was strongly biased against Ismaili Muslims and that Al-Mutif's trial was neither fair nor transparent and fell way short of international standards of due process. Al-Mutif has alleged physical abuse and mistreatment during his seventeen years of incarceration and has attempted suicide on numerous occasions. He is also reported to be suffering from physical and psychological health problems. Despite numerous requests by our Commission and others to release him on humanitarian grounds, he remains in prison.²⁹

2. Iran

Now let me turn to Iran, ranked number two on the Pew Forum list. Since the June 2009 disputed elections, human rights and religious freedom conditions have regressed to a point not seen since the early days of the Islamic revolution over thirty years ago. The government of Iran continues to engage in egregious violations, including prolonged detention, torture, and executions based primarily or entirely upon the religion of the accused.³⁰ Iran is a constitutional, theocratic republic that discriminates against its citizens on the basis of religion or belief. Iran's religious freedom record continues to deteriorate, especially for religious minorities, particularly Baha'is, as well as Christians, and Sunni and Sufi Muslims. Physical attacks, harassment, detention, arrests, and imprisonment have intensified. Even the recognized non-Muslim religious minorities—Jews, Christians, and Zoroastrians—protected under Iran's constitution face increasing discrimination and repression.

The Iranian government imposes harsh prison sentences on prominent reformers from the Shi'a majority, many of whom have been tried on criminal charges of "insulting Islam," criticizing the Islamic Republic, and publishing materials that allegedly deviate from Islamic standards. Dissidents increasingly have been subject to abuse and a growing number have been sentenced to death and even executed for the capital crime of *moharebeh* ("waging war against God").³¹ Heightened anti-Semitism and repeated Holocaust denials by senior government officials have increased fear among Iran's Jewish community. Since the 1979 Iranian revolution, members of religious minority communities have fled Iran in significant numbers for fear of persecution.³²

For example, the Baha'i community numbered more than

28. *Id.*

29. *See id.* at 123-38.

30. *Id.* at 54.

31. *Id.* at 55.

32. *Id.* at 54.

350,000 until a few years ago.³³ Today, the Baha'i International Community estimates the numbers are closer to 300,000. Part of the reason for the decrease is that Iran has a policy of eradicating from the country its Baha'i community, the country's largest non-Muslim religious minority. The government has gone to great lengths to make it nearly impossible for Baha'is to make a living and function in society. Baha'is are barred from universities and the military, and are denied government jobs and pensions as well as the right to inherit property.³⁴ Their marriages and divorces are not recognized, and they have difficulty obtaining death certificates.³⁵ Baha'i cemeteries, holy places, and community properties are often seized or desecrated and many important religious sites have been destroyed. In recent years, Baha'is have faced increasingly harsh treatment, including mounting numbers of arrests and detentions and violent attacks on private homes and personal property. Individual Baha'i property has been confiscated or destroyed and hundreds of Baha'is have been harassed, interrogated, detained, imprisoned, or physically attacked.

Today, there are more than fifty Baha'is in Iranian prisons solely because of their religious beliefs. Authorities continue to hold seven Baha'i leaders, who were convicted last year of a number of baseless, trumped-up capital charges and sentenced to twenty years in prison. These sentences were reduced orally to ten years in prison just a few months ago. And just this week, they were again moved to a section of the prison that holds brutal murderers where unsanitary conditions are the norm.³⁶

E. Societal Hostility by Non-State Actors

When it comes to social hostility by non-state actors targeting religious believers, Iraq and Egypt are among the worst in the region.

The October 2010 violent attack on a Catholic Church in Baghdad, Iraq, during Sunday mass, and the New Year's Day bombing of a Coptic Church as worshippers were emerging from a service in Alexandria, Egypt, came as a surprise to many, but, unfortunately, not to others. Nearly sixty Christians were killed in Iraq and approximately twenty-five in Egypt in these two separate attacks. Scores were injured.

For more than two years, there has been a dramatic upsurge in attacks by extremist elements against Coptic Christians in Egypt, while in Iraq, churches have been targeted at least since 2004. And while the violence in Iraq has decreased in recent years,

33. *Id.* at 58.

34. *Id.* at 57.

35. *Id.*

36. *Id.* at 54-66.

attacks against Christians have not. Just a few months ago, an al-Qaeda group explicitly linked the Christian communities of Iraq and Egypt in its threats to kill Christians in the region.

The governments of both countries have failed to adequately protect their religious minorities, particularly the Christian communities which have been in Egypt and Iraq for nearly two thousand years.

1. Iraq

The plight of Iraq's smallest religious minorities, including Christians, Sabean Mandaeans, and Yazidis, remains a desperate one. Victimized by discrimination, marginalization, displacement, and violence, they do not receive adequate protection and justice from the state and lack the militia or tribal structures necessary to defend themselves in the absence of government protection. As a result, these small religious minorities have been emigrating in mass numbers, while those remaining in Iraq fear for their safety.³⁷

USCIRF found that the attacks launched against Christians resemble the continued atrocities against Iraq's Shi'a Muslims.³⁸ Those responsible for the violence are Sunni extremists. The difference is in the goal of these attacks. The purpose of the attacks against the Shi'a majority is to cause civil unrest and bring down the government. The goal of the attacks against Iraq's non-Muslim minorities is to isolate their members and rid the nation of their presence.

There were more than one million Christians in Iraq prior to the 2003 war. Today, only half of the Iraqi Christian community is believed to remain in the country, with Christian leaders warning that the result of this flight may be "the end of Christianity in Iraq."³⁹

Sabean Mandaeans—followers of John the Baptist who combine elements of Islam, Judaism, Christianity, and Gnosticism—report that more than eighty-five percent of their small community either has fled Iraq, or been killed.⁴⁰ Less than five thousand remain in the country.⁴¹ Mandaean leaders, refugees, and asylum seekers have said they do not see any future for Mandaeans in Iraq and have asked that the group be collectively resettled to a third country so that their religion, language, and culture can survive. This ancient religious community is at risk of imminent extinction.

The Yazidi religious community—another small, non-Muslim

37. *Id.* at 68.

38. *Id.* at 70.

39. *Id.* at 68.

40. *Id.*

41. *Id.*

minority—now numbers approximately 500,000, down from some 700,000 in 2005.⁴² The Mandaean and Yazidi communities are particularly vulnerable because a person must be born into these religions, not convert or marry into them, and they do not proselytize or seek new adherents. Additionally, Mandaeans are prohibited under their religion from using weapons and therefore cannot defend themselves. Many have fled to neighboring countries and are not returning to Iraq.

Members of Iraq's smallest religious minorities continue to make up a disproportionately high percentage of the refugees registered with the UN High Commissioner for Refugees (UNHCR) in neighboring countries, approximately fifteen percent, although they comprised only three percent of Iraq's pre-2003 population.⁴³ UNHCR is concerned about continuing threats to the smallest religious minorities in Iraq and continues to recommend they be given *prima facie* refugee status.

The U.S. government and international community must engage in speedy processing of vulnerable Iraqi refugees who wish to be resettled in the United States and elsewhere. The Iraqi government must also take steps to enhance security at places of worship, particularly in areas where religious minorities are known to be at risk.⁴⁴

2. *Egypt*

The government in Egypt too often fails to punish non-state actors for committing violent acts. This failure to bring perpetrators to justice has fostered a climate of impunity, making further attacks likely.

For many years, Egypt's only response to the murder and massacres of Christians has been to conduct "reconciliation" sessions between Muslims and Christians in order to ease tensions and resolve disputes.⁴⁵ In its 2009 annual human rights report on Egypt, the State Department concluded that these sessions not only "prevented the prosecution of perpetrators of crimes against Copts and precluded their recourse to the judicial system for restitution," but also "contributed to a climate of impunity that encouraged further assaults."⁴⁶ Egypt must discontinue these counterproductive "reconciliation" sessions, which act as a bypass for promptly investigating violence against Christians and other vulnerable religious minorities, and begin vigorously bringing the perpetrators to justice while compensating the victims.

The 2011 New Year's Day bombing in Alexandria—the worst

42. *Id.*

43. *Id.* at 73.

44. *Id.* at 67-69.

45. *Id.* at 230.

46. *Id.*

sectarian attack targeting Christians in more than a decade—led to President Obama’s call to bring the attackers “to justice for this barbaric and heinous act.”⁴⁷ Even in the midst of a transition in Egypt, it is important that the U.S. government follow through on the President’s words and press Cairo to hold all those who were involved accountable.

Christians also face discriminatory government laws that stoke the flames of sectarianism. Christians cannot build new churches, or for that matter repair an existing church, without getting government approval.⁴⁸ This is not the case for mosques. As a result, sometimes Muslims take things into their own hands and attack or vandalize churches or Christian properties, which they believe are being repaired without government permission. In fact, even when authorities approve repair permits, local security services often obstruct or stop these repairs from taking place.

During this transition period, the Egyptian government should heighten security at Christian and other non-Muslim places of worship, particularly in the current climate where religious minorities are vulnerable to extremist attacks.

Baha’is and Jehovah’s Witnesses are banned in Egypt. Until a ruling a few years ago that allowed Baha’is to put a “dash” in the religious affiliation section, identification documents permitted registration in only one of the three officially approved faiths—Islam, Christianity, or Judaism⁴⁹—thereby effectively preventing Baha’is from gaining the official recognition necessary to have access to numerous public services, and without which it is illegal to go out in public. Muslim converts to Christianity also cannot change their religious affiliation on identification cards. Dissident Muslims, like the Koranists, Ahmadis, and Shi’a Muslims, are routinely targeted for having beliefs outside the government-approved version of Sunni Islam. These groups report discrimination in employment and continue to suffer from harassment and surveillance by security services. Members of these groups have been harassed, arrested, and detained for periods of time, all without charge. Some are even prevented from leaving the country by authorities.⁵⁰

F. Christians and Jews in the Middle East

Even before the recent attacks in Iraq and Egypt, Pope Benedict called on the governments of the region to better protect

47. Press Release, Office of the Press Sec’y, Statement by the President on the Terrorist Attacks in Egypt and Nigeria (Jan. 1, 2011), *available at* <http://www.whitehouse.gov/the-press-office/2011/01/01/statement-president-terrorist-attacks-egypt-and-nigeria>.

48. ANNUAL REPORT 2010, *supra* note 21, at 232.

49. *Id.* at 229.

50. *Id.* at 227-40.

their Christian minorities. In October, the Vatican held a Synod for the Middle East to help stem the tide of increasing Christian emigration from the Middle East. The Synod found that the main causes of this phenomenon were “economic and political situations,” the rise of extremism, and the “restriction of freedoms and equality.”⁵¹ The Christian population in the Middle East numbered some twenty percent in the early twentieth century, but today they account for less than ten percent.

Another tragic story that is not widely known is the plight of Jewish communities in the region and the fact that they are near extinction in several countries. There used to be tens of thousands of Jews living in a number of countries in the Middle East; today there are many countries where there are approximately one hundred members or less. There are one hundred Jews remaining in Egypt, Algeria, and Syria, forty in Bahrain, and ten or so in Iraq. Historically, Jews inhabited many of these lands before there were any Christians or Muslims. While there was a large exodus soon after the state of Israel was formed in 1948, in some cases, Jews in the Middle East suffered severe persecution before and after the formation of the state of Israel. In addition, virulent anti-Semitism continues to be found in government-controlled and private media, mosques, and in government textbooks in some countries in the region.

When human rights experts in the West talk about religious persecution in the Middle East, we most often hear about the plight of non-Muslim religious minority communities. This is the case because it is these minorities who often have the fewest protections by law, and who are routinely scapegoated by rogue governments.

G. Impact on Muslims and Dissidents

In addition to violations against non-Muslim religious minorities, the facts clearly show that minority and majority Muslim communities in these societies are also adversely impacted. In fact, the vast majority of those who are killed or injured as a result of Islamist terrorist activity and sectarian violence in the region are Muslims. This is no more evident than in Iraq where Sunni-Shi'a tensions remain high.

In past years, many serious sectarian abuses in Iraq were attributed to actors from the Shi'a-dominated government entities and by armed Shi'a groups with ties to the Iraqi government. More recently, hundreds of Shi'a worshippers have been killed or injured

51. Holy See Press Office, *Special Assembly for the Middle East of the Synod of Bishops*, SYNODUS EPISCOPORUM BULL., Oct. 24, 2010, http://www.vatican.va/news_services/press/sinodo/documents/bollettino_24_sp eciale-medio-oriente-2010/02_inglese/b17_02.html.

by terrorist attacks primarily perpetrated by Sunni extremist groups, in many cases with impunity.⁵² Just last week, a suicide bombing targeted a bus full of Shi'a pilgrims. More than fifty were killed and at least eighty were wounded.

Beyond the violence and bloodshed, Muslim dissidents suffer in other ways. For example, in Iran and Saudi Arabia, authorities regularly detain and harass activists, reformers, journalists, and bloggers who write or say anything critical of Islam or the government.⁵³ Pending legislation in Iran would make the creation of blogs promoting "corruption, prostitution, and apostasy" punishable by death.⁵⁴ After his conviction in 2007, a Turkish barber in Saudi Arabia was sentenced to death for blasphemy after police received complaints from a neighbor that he swore at God during an argument. In 2009, after more than two years in prison, the barber was pardoned by the King. He was denied any access to legal counsel.

H. Blasphemy Laws

It is not just Iran and Saudi Arabia that punish people for blasphemy.⁵⁵ Egyptian law prohibits blasphemy through Article 98(f) of its penal code, which prohibits citizens from "ridiculing or insulting heavenly religions or inciting sectarian strife."⁵⁶ This provision has been applied to detain and prosecute members of religious groups whose practices deviate from mainstream Islamic beliefs or whose activities are alleged to insult the three "heavenly religions": Judaism, Christianity, and Islam. In Algeria, Article 144 of the penal code punishes individuals for "blaspheming the name of the Prophet Muhammad and Islam" with up to five years imprisonment and fines.⁵⁷

Not only are these blasphemy laws incompatible with international human rights standards, but human rights groups have found that they are used to achieve a number of insidious goals:

First, these laws are used by governments to stifle public discussion and dissent, thereby preventing peaceful expression of political and religious views. The media typically suffers most from these laws;

52. ANNUAL REPORT 2010, *supra* note 21, at 71.

53. *Id.* at 56.

54. *Id.*

55. See HUMAN RIGHTS FIRST, BLASPHEMY LAWS EXPOSED: THE CONSEQUENCES OF CRIMINALIZING "DEFAMATION OF RELIGIONS" (2010), available at http://www.humanrightsfirst.org/wp-content/uploads/Blasphemy_Cases.pdf (this report discusses the abuse of national laws that criminalize the defamation of religions and enable governments to target individuals for the peaceful expression of political or religious views).

56. *Id.* at 21.

57. *Id.* at 13.

Second, these laws spur on violent action by groups or individuals. Even though not in the regional context, a recent case in Pakistan that received international media attention serves as a good example. A Pakistani Governor in Punjab was killed by his security guard because the Governor had been critical of the country's blasphemy laws. In his appearance before a judge this week on murder charges, the guard told the judge that he did not consider his actions illegal because he had dealt with an "apostate" as required by Islamic law;

Third, these laws are used to violate the freedom of religion or belief. In particular, they create problems for members of minority faiths that are deemed heretical by the government or state-supported religious establishments. A good example here is the situation of Baha'is in Iran;

Fourth, these laws are often used as a vehicle or tool to settle private disputes between individuals. The Turkish barber in Saudi Arabia is a good example because it was a private individual who reported to police that the barber allegedly blasphemed during an argument.⁵⁸

I. "Defamation of Religions" Efforts by the OIC at the UN

Over the past decade, countries from the Organization of the Islamic Conference ("OIC"), led primarily by Pakistan and Egypt, have been working through the United Nations system to advance the idea that there should be laws against the so-called "defamation of religions."⁵⁹ The irony is that both countries have harmful blasphemy laws that have been used to target Muslim and non-Muslims minorities. Although billed as a solution to the serious problems of religious persecution and discrimination, the OIC-sponsored UN resolutions on this issue instead provide justification for governments to restrict religious freedom and free expression. They also provide international legitimacy for existing national laws that punish blasphemy or otherwise ban criticism of a religion, which often have resulted in human rights violations. These resolutions deviate sharply from universal human rights standards by seeking to protect religious institutions and interpretations, rather than individuals, and could help create a new international anti-blasphemy norm.

Since 2008, support at the UN for these flawed resolutions has been declining thanks to increased advocacy and greater awareness by UN member states. The United States and other member states that make protecting human rights an important

58. FREEDOM HOUSE, POLICING BELIEF: THE IMPACT OF BLASPHEMY LAWS ON HUMAN RIGHTS 1, 13 (2010), available at http://www.freedomhouse.org/uploads/special_report/95.pdf.

59. For a more detailed discussion of defamation of religions, see ANNUAL REPORT 2010, *supra* note 21, at 336-39.

objective should now increase their efforts to defeat these resolutions at the 2011 Human Rights Council next month and the General Assembly sessions later this year.

II. CONCLUSION

Now let me try to put things in a nutshell for you. You have heard about the kinds of methods used by some governments in the region to severely restrict religious freedom; you have heard about how non-state actors can adversely impact religious freedom and how some governments fail to protect victims and/or prosecute perpetrators; you have heard about the grim situation for religious minority communities and how some of these groups are decreasing in number, even near the point of extinction, in part, because of the rise of extremism and harsh government restrictions; you have heard that Muslims are impacted most when it comes to sectarian violence and extremist activity, and that Muslim communities and dissidents often suffer at the hands of certain governments because of discriminatory laws and practices; and that specific laws, in particular blasphemy laws, are incompatible with international standards and are used to punish both religious minorities and dissidents.

How does all this impact the bigger picture with the region going through unprecedented changes? Let us go back to 2005.

Specifically, in June 2005, then-Secretary of State Condoleezza Rice made a bold statement while speaking at the American University in Cairo. She said:

For 60 years, my country, the United States, pursued stability at the expense of democracy in this region, here in the Middle East, and we achieved neither . . . When we talk about democracy, we are referring to governments that protect certain basic rights for all their citizens—among these, the right to speak freely. The right to associate. The right to worship as you wish . . .⁶⁰

What happened later that year, and in early 2006, completely derailed this shift in rhetoric. First, members of the Muslim Brotherhood in Egypt ran as independents and won some twenty percent of the parliamentary seats, and Hamas, a U.S.-designated terrorist organization, won a decisive majority in the Palestinian elections. Both the United States and European Union subsequently withdrew financial support for the Palestinians at the time. Put simply, these election outcomes contributed to the United States government reevaluating and significantly pulling back its democracy promotion agenda in the Middle East.

60. For Former Secretary of State Condoleezza Rice's full remarks, see Secretary Condoleezza Rice, Remarks at the American University in Cairo (June 20, 2005) (transcript available at <http://2001-2009.state.gov/secretary/rm/2005/48328.htm>).

I cite this example to illustrate that despite the United States and international community expressing a desire to support democracy and freedom in the Middle East, two so-called “democratic lapses” within weeks of each other succeeded in Western governments reverting to the age-old policy of pursuing stability over freedom. At the end of the day, the policy of selectively supporting authoritarian regimes in the name of security is what has contributed to anti-American and anti-Western sentiment among the population in the region, including fears of Western intervention and dependency.

Now let us fast forward four years to June 2009, when President Barack Obama delivered a historic speech in Cairo addressing the Muslim world. Among the prominent issues he raised was the importance of democracy and religious freedom. This is part of what he said:

[T]here are some who advocate for democracy only when they're out of power; once in power, they are ruthless in suppressing the rights of others. . . you must respect the rights of minorities, and participate with a spirit of tolerance and compromise; you must place the interests of your people and the legitimate workings of the political process above your party. Without these ingredients, elections alone do not make true democracy. . . . Governments that protect these rights are ultimately more stable, successful and secure. People in every country should be free to choose and live their faith based upon the persuasion of the mind and the heart and the soul. This tolerance is essential for religion to thrive, but it's being challenged in many different ways. Among some Muslims, there's a disturbing tendency to measure one's own faith by the rejection of somebody else's faith.⁶¹

Again, this is powerful rhetoric, but it must be followed by clearly articulated policies that are not abandoned because of other possible “lapses” in countries with newly-born democratic institutions. The United States has a unique opportunity to help in the formation of these institutions as well as to become more consistent in its defense and protection of individual human rights in the region.

III. RECOMMENDATIONS

There are a number of things the United States and international community can do in terms of policy actions to raise the profile of religious freedom violations in the region in both bilateral and multilateral settings. Let me mention just a few:

61. For President Barack Obama's full remarks, see President Barack Obama, Remarks by the President on a New Beginning (June 4, 2009) (transcript available at <http://www.whitehouse.gov/the-press-office/remarks-president-cairo-university-6-04-09>).

- The United States and its allies must, at the highest levels, speak out and demand the release of individuals in prison because of religion or belief. This does not occur nearly as often as it should. The West has been hesitant to speak out on behalf of religious believers in the past and is more comfortable seeking the release of reformers and other kinds of activists seeking democracy and other freedoms. The more awareness and profile, the less chance those in prison solely on account of their religion will be forgotten;
- The international community must do more to engage governments in the region to address incitement to violence and discrimination against disfavored Muslims and non-Muslims. Whether it comes from government officials, clerics, or is found in schoolbooks, it must be dealt with either in courts or by dismissing officials who spew this kind of vitriol;
- Where the United States and/or its allies have strong relations with countries in the region, they should urge the governments to lift legal bans on minority faiths;
- The international community must engage governments in the region to take all appropriate steps to prevent and punish acts of anti-Semitism when they occur;
- The United States and its allies should urge those governments that include religious affiliation on identity documents to remove this affiliation. This can only serve as a pretext for discrimination and persecution;
- On Iran, the United States should urge the European Union to impose travel bans and asset freezes on those Iranian officials responsible for human rights and religious freedom abuses similar to what the United States did in September of last year. The United States should go further and name additional Iranian officials known to have committed abuses on the basis of religion or belief;
- The United States and international community should also continue to support an annual UN General Assembly (UNGA) resolution condemning severe violations of human rights in Iran, and press for a resolution condemning severe violations of human rights and religious freedom at the UNGA and UN Human Rights Council;
- As to Saudi Arabia, the United States must lift a waiver in place as a consequence of CPC designation.

Even though Saudi Arabia has been named a CPC since 2004, no formal action has been taken because of the waiver. It is time that the United States engage the Saudis and push for genuine, measurable reforms;

- In the case of Egypt, I mentioned some things the United States could do during this transitional period. There is a real opportunity for the United States and international community to engage the transitional government. We hope a new elected civilian government will dismantle some of the laws and policies in place that impact all Egyptian citizens, Muslim, and non-Muslim alike.

The United States must use the unfolding events in the Middle East by offering unwavering support to nascent democratic institutions in the region while aggressively leading the way in defending the universally recognized rights of all people, including the right to freedom of religion or belief.

Until the fundamental rights of people in the Middle East are guaranteed, true stability can never be achieved. The people in the region have come way too far for genuine human rights protections to take a backseat to security concerns.

Thank you for your patience and attention. I will be happy to entertain any questions you might have.