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Global Human Rights: International Religious Freedom Policy

Introduction

For decades U.S. policymakers have sought to promote religious freedom abroad, reflecting both support for human rights in U.S. foreign policy as well as the particular emphasis on freedom of religion in U.S. domestic law and political culture. Protection of religious freedom is also affirmed in international law through the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and other international instruments. Congress has been a strong advocate for international religious freedom issues and has sought to ensure U.S. support for religious freedom as a focus of U.S. foreign policy primarily through passage of the International Religious Freedom Act of 1998.

Legislative Background

The International Religious Freedom Act (IRFA) of 1998 (P.L. 105-292) is the foundational legislation for U.S. international religious freedom (IRF) policy. Recognizing religious freedom as a “universal human right,” IRFA created various government mechanisms aimed at cementing IRF as a key foreign policy priority of the United States. Most significantly, the law

- created an Office on International Religious Freedom within the State Department headed by an Ambassador at Large (AAL) for IRF;
- required that the Secretary of State issue an annual report on the status of international religious freedom around the world;
- mandated that the President identify “countries of particular concern” (CPCs) and prescribed punitive actions in response to violations of religious freedom, subject to presidential waiver authority; and
- created an independent U.S. commission on international religious freedom.

Congress has subsequently strengthened IRFA via amendment, most notably through the Frank R. Wolf International Religious Freedom Act (Wolf IRFA; P.L. 114-281), which became law in December 2016. The major provisions of the law

- called for the AAL for IRF to have a greater role within interagency policy processes and to report directly to the Secretary of State;
- mandated designation of a “special watch list” of countries with severe violations of religious freedom but that did not meet CPC criteria;
- mandated designation of nonstate entities of particular concern (EPCs); and
- included within the scope of religious freedom the right “not to profess or practice any religion.”

The State Department’s Role

The State Department leads the federal government’s efforts to promote international religious freedom. The

AAL for IRF heads the Office on International Religious Freedom (IRF Office), which is situated within State’s Bureau of Democracy, Human Rights, and Labor (DRL). Per IRFA, the AAL integrates IRF policies into U.S. foreign policy efforts and is to participate in any interagency processes in which the promotion of IRF “can advance United States national security interests.” The AAL and the IRF Office lead the drafting of the annual international religious freedom report and advise the Secretary of State on the designation of CPCs. The IRF Office also provides policy guidance for IRF foreign assistance programs. Former Senator and Kansas Governor Sam Brownback, confirmed by the Senate in January 2018, serves as the current AAL.

The State Department also has a number of other senior positions related to religious freedom. These include the congressionally mandated positions of Special Envoy for Monitoring and Combating anti-Semitism (vacant as of November 2018) and Special Advisor for Religious Minorities in the Near East and South/Central Asia (held by Knox Thames), as well as the Special Representative for Religion and Global Affairs (vacant) and the Special Representative to Muslim Communities (vacant).

Proposed Legislation (115th Congress) on the Special Envoy for Monitoring and Combating anti-Semitism

H.R. 1911 and S. 1291, if passed, would make the Special Envoy for Monitoring and Combating anti-Semitism an Ambassador-ranked position appointed by the President with the advice and consent of the Senate. H.R. 1911 passed the house in September 2018. Under current law, the Secretary of State has authority to appoint the Special Envoy. The position has been vacant since January 20, 2017.

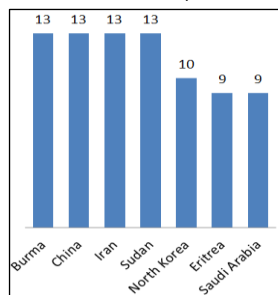
International Religious Freedom Report

By law, the Secretary of State is required to transmit to Congress an annual report on international religious freedom (IRF report). The IRF report, which the Wolf IRFA has mandated be completed by May 1 each year, covers developments in each country during the prior calendar year and includes information on the status of religious freedom, violations of religious freedom, and relevant U.S. policies. The IRF reports are the official U.S. government account of religious freedom conditions abroad, and are a primary information source for the Secretary of State’s CPC designations. The reports covering calendar year 2017, available on the Department of State website, were released on May 29, 2018.

Countries (and Entities) of Particular Concern

IRFA mandates that the President, using information from the IRF report and other sources, designate “particularly severe” religious freedom violators as “countries of particular concern” (CPCs). The law defines particularly severe violations as systematic, ongoing, and egregious. Reflecting broader debates over human rights in U.S. foreign policy, disagreement exists over the wisdom of officially designating the worst religious freedom violators. Proponents argue that this concretely signals U.S. support for religious freedom and creates diplomatic pressure on governments to improve. Critics contend that it damages relations and thus may hamper pursuit of other U.S. interests. Poor religious freedom practices that are linked to sensitive domestic political issues may be resistant to change from outside advocacy. CPC designations have been largely consistent over the years; once designated, countries have rarely been removed from subsequent CPC lists.

Figure 1. Countries Most Often Designated as CPCs
By Number of Times on CPC List (out of 13 lists since 1999)



Source: USCIRF 2018 Annual Report, p. 11.

The Wolf IRFA mandated an additional “special watch list” of countries with severe religious freedom violations but that do not reach the threshold of systematic, ongoing, and egregious. In recognition of religious freedom abuses carried out by the Islamic State and other nonstate actors, Wolf IRFA also added a new requirement that the President designate entities of particular concern (EPCs) and, “when practicable,” take actions to address severe violations of religious freedom committed by EPCs.

Actions in Response to Religious Freedom Violations

IRFA prescribes a list of U.S. government actions that may be exercised in response to religious freedom violations. Suggested actions include diplomatic measures such as demarches and public condemnations. For CPC countries, sanctions of varying severity are suggested, including suspension of foreign assistance, trade restrictions, or loan prohibitions. However, the law provides the executive branch significant discretion in determining which, if any, punitive actions to take. Administrations can apply “commensurate substitute action” in lieu of IRFA’s suggested measures, exempt a country from new sanctions by referring to already existing human rights-related sanctions against that country, or waive sanctions by citing U.S. national interest. In practice, Administrations have generally either referred to sanctions already in place against CPC countries or issued waivers instead of implementing sanctions under IRFA.

The most recent CPC designations and accompanying government actions were announced in January 2018 (see table below). In addition, Pakistan was placed on the special watch list. The first EPC designations, announced in March 2018, included al-Nusra Front, Al Qaeda, Al Qaeda in the Arabian Peninsula, al-Shabab, Boko Haram, the Islamic State, the Islamic State-Khorasan, and the Taliban. IRFA calls for new CPC designations within 90 days of the IRF Report’s annual release; the State Department has not yet announced designations following the May 2018 report.

Table 1. CPC Countries and U.S. Actions

Country	Action
Burma (Myanmar)	Referred to preexisting sanctions
China	Referred to preexisting sanctions
Eritrea	Referred to preexisting sanctions
Iran	Referred to preexisting sanctions
North Korea	Referred to preexisting sanctions
Saudi Arabia	Issued national interest waiver
Sudan	Referred to preexisting sanctions
Tajikistan	Issued national interest waiver
Turkmenistan	Issued national interest waiver
Uzbekistan	Issued national interest waiver

Source: U.S. State Department (January 2018).

U.S. Commission on International Religious Freedom

IRFA established the U.S. Commission on International Religious Freedom (USCIRF), an independent federal commission tasked with monitoring IRF conditions, reviewing U.S. government policy, and making policy recommendations. USCIRF is bipartisan, with commissioners appointed by a mix of House and Senate leadership and the President. Commissioners are appointed to two-year terms and are composed of distinguished individuals in fields relevant to religious freedom. The AAL for IRF also serves as a nonvoting member. The current USCIRF Chair is Dr. Tenzin Dorjee, an associate professor of human communication studies at California State University, Fullerton, and a scholar and advocate on behalf of the Tibetan community.

USCIRF produces its own annual report with policy recommendations for promoting religious freedom abroad. USCIRF has used the report to make general policy recommendations, recommend countries for designation as CPCs, and name additional “Tier 2” countries according to criteria roughly analogous to the new official special watch list. USCIRF’s country lists are typically more expansive than the official lists designated by the State Department. In its report covering calendar year 2017 (released in April 2018), USCIRF recommended that six additional countries be added to the official CPC list, named 12 Tier 2 countries, and recommended the Islamic State, the Taliban, and al-Shabab as EPCs.

Additional resources and references are available upon request.

Michael A. Weber, Analyst in Foreign Affairs

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