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## Legislative Focus: The International and Religious Freedom Act of 1998

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## LEGISLATIVE FOCUS

## The International Religious Freedom Act of 1998

by Thomas Lynch\*

The International Religious Freedom Act of 1998 (the Act), which President Clinton recently signed, incorporates concern for religious freedom into U.S. foreign policy. The Act rests on the premise that the United States, through its constitution and international agreements, has an obligation to support religious freedom around the world by fighting religious intolerance in countries that limit the religious rights of their people. Under the Act, the United States will investigate allegations of religious persecution worldwide and take diplomatic, cultural, or economic measures against states where religious discrimination is found.

**Religious Persecution Around the World**

By passing the Act, the U.S. Congress responded to growing concern about religious persecution in today's world. Certain governments openly sponsor and tolerate restrictions on their citizens' rights to practice, observe, study, or associate with other members of their religious faiths. Some governments even restrict people's choice to change religion.

The former assistant secretary of state for democracy, human rights, and labor, John Shattuck, cited specific countries that fail to recognize the fundamental right of religious freedom. In Sudan, the ruling party's intolerance of opposing religions is fueling a bloody civil war. Chinese Catholic and Protestant groups battle government repression, and the Chinese government tightly regulates religious practices in the regions of Tibet and Xianjiang. Evangelical Christians and *Bahá'í* face discrimination in Iran, while members of Burma's *Rohingya* Muslim minority are forced to seek refuge in neighboring Bangladesh. In Europe, several countries, including Austria, Belgium, and Germany, have created "black lists" of minority faiths. These lists define a wide array of minority religions as cults, and inclusion on these lists greatly restricts basic religious rights for these faiths. Russia's new religion law, which inhibits new religious communities' ability to own property, publish literature, or operate schools, could potentially discriminate against minority religions.

The Act recognizes this broad range of religious intolerance. It finds that over one-half of the world's population lives under regimes that severely restrict or pro-

hibit basic religious freedoms. Title VII of the Act notes that some regimes engage in persecution that includes subjecting people of certain faiths to detention, torture, beatings, forced marriage, rape, imprisonment, enslavement, mass resettlement, and death. As Senator Don Nickles (R-OK) stated in an October 2, 1998, speech to Congress, "[t]his is an important aspect of the bill. If the definition of religious persecution were limited to only torture, imprisonment, or death, . . . [the Act] would only cover about a few countries, and would not include about 80 to 85% of the religious persecution that takes place in the world . . . ."

**History of the Act**

Representative Frank Wolf (R-VA) first introduced the Act as H.R. 2431 to the House of Representatives on September 9, 1997. Senator Arlen Specter (R-PA) concurrently introduced the Senate version of the bill, S. 772. The House passed Wolf's legislation on May 14, 1998, by a vote of 375-41, and subsequently sent it to the Senate. While under consideration in the Senate, Senator Nickles offered an amendment in the nature of a substitute to H.R. 2431 that made certain modifications to the Wolf-Specter bill.

The primary modification of the Nickles bill, introduced as S. 1868 on March 26, 1998, was that it offered the president more flexibility in responding to countries that violated the Act. The original Wolf-Specter bill imposed mandatory sanctions on countries supporting religious persecution, while the Nickles bill offered the president a waiver provision if he feels it would further the goal of the bill or promote the interests of U.S. national security to not impose measures on a designated country. The Senate agreed to the Nickles bill and, on October 9, 1998, approved H.R. 2431 as amended by a vote of 98-0.

President Clinton welcomed the legislation as a "responsible addition to our ongoing efforts [to promote religious freedom]." He commended the bill's "effective remedies" and, in a different speech, praised the effect the bill would have on all religions, "whether Muslim, Christian, Jewish, Buddhist, Hindu, Taoist, or any other faith." President Clinton signed the Act into law on October 27, 1998.

**Substance of the Act**

Under the Act, Congress and the president are obligated to consider issues of religious freedom when developing U.S. foreign policy. Title I of the bill establishes a bureaucratic infrastructure for religious issues by creating the Office of International Religious Freedom within the U.S. State Department, to which the president will appoint an ambassador-at-large, whom the Senate must approve. The ambassador-at-large shall primarily be responsible for investigating countries that deny religious freedom and suggesting possible U.S. responses. The ambassador will also act as a policy advisor to the president on religious issues. Title I allows the president and secretary of state to empower the ambassador-at-large to represent the United States on matters pertaining to international religious freedom. The Act requires the ambassador at large to produce an annual report on international religious freedom, which will include an executive summary. This summary will highlight foreign countries in which the United States is working on behalf of religious freedoms as well as countries taking significant steps towards advancing religious tolerance.

Title I also directs the U.S. government to increase awareness of religious persecution. Section 103 directs the ambassador-at-large, along with the U.S. State Department, to create an internet site that provides basic religious freedom documents, the annual report on international religious freedom, the annual report's executive summary, and other pertinent information. Section 104 amends the Foreign Service Act of 1980 to mandate the training of all foreign service personnel in aspects of international religious freedom. Section 107 directs the State Department to allow U.S. citizens seeking to conduct religious activities access to U.S. diplomatic missions or consular posts. Section 108 calls for the creation of prisoner lists, containing the names of individuals in other countries allegedly detained for religious reasons, when appropriate and when prisoners' presence on the list will not threaten their safety.

Title II of the Act creates the Commission on International Religious Freedom. The commission will have nine members, in addition to the ambassador-

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at-large, and will be responsible for policy review with respect to religious freedom. The commission will gauge the effect that countries' policies have on religious groups and, if necessary, it will hold Congressional hearings to educate Congress and the public about religious persecution around the world. Finally, the commission will submit an annual report to the president setting forth its findings and U.S. policy recommendations.

Title III creates a special advisor to the president on international religious freedom within the National Security Council (NSC). This advisor will work within the NSC, and his primary responsibility will be to analyze and formulate possible U.S. reactions to religious persecution in light of U.S. national security interests.

The crux of the International Religious Freedom Act lies in Title IV. Title IV details the possible actions of the president in response to states that violate the Act. Under Section 401(b)(1), the president shall identify specific countries that the Commission on International Religious Freedom designates as having obstructed religious freedom. The president must then, in consultation with the secretary of state, the ambassador-at-large, the NSC special advisor, and the commission, design a response to those countries.

Section 402 sets standards for categorizing countries as "particularly severe" violators of religious freedom, thereby subjecting them to the more punitive sanctions listed in section 405. Particularly severe violators must have committed acts such as torture, prolonged detention, disappearance, or flagrant denial of life and liberty. Remedial actions against countries that do not fall within the "severe" category of Section 402 are generally handled under Section 405. Under Section 405, the president, subject to certain exceptions, must either enter into a binding agreement with the designated country to end religious persecution, or choose from the remedial options outlined in Section 405. Section 405 offers the president 15 options to exercise against countries engaging in religious persecution. These include a private or public demarche; a private or public condemnation; the delay or cancellation of scientific or cultural exchanges; the denial, delay, or cancellation of working, official, or state visits; the withdrawal, limitation, or suspension of some forms of U.S. aid; direction to public and private international financial institutions to deny assis-

tance; and sanctions prohibiting the U.S. government from entering into import or export agreements with the designated government.

Another key provision of the Act, developed from the Nickles amendment, provides a presidential waiver under Section 407 of Title IV. This provision allows the president, if he feels it is in the interest of religious freedom or U.S. national security, to waive punitive measures. The waiver authority allows the president to balance the objectives of the bill with other U.S. foreign policy interests because, at times, a U.S. rebuke of a foreign nation may jeopardize "the complex range of U.S. interests." Section 410 precludes judicial review of any presidential determination under the Act, which essentially provides the president unchecked autonomy when deciding how to respond to evidence of religious persecution abroad.

Title V of the Act promotes religious freedom abroad through international media broadcasts, exchanges, and foreign service awards for work promoting human rights. Title VI amends the Immigration and Nationality Act to provide training for Immigration and Naturalization Service officials, including immigration officers and judges, regarding the internationally recognized right of freedom of religion. The final provision of the Act, Title VII, contains miscellaneous provisions, including 701, which urges transnational corporations to adopt codes of conduct sensitive to the right of freedom of religion.

#### Legal Basis for the Act

The U.S. Congress justifies the Act based on constitutional and international law principles. Several sponsors of the bill have spoken out about the need to remember that the United States was born out of the desire for religious freedom and that this principle was codified in the First Amendment of the U.S. Constitution. The First Amendment explicitly states, among other rights, the right to freedom of religion. The argument is made, therefore, that the United States has the duty to uphold this fundamental right. During an October 9, 1998, speech about the Act, Senator Joseph Lieberman (D-CT), stated that the founding fathers were drawn to America because of "a belief that no government has the right to tell people how to worship and certainly not the right to discriminate against them or persecute them for the way in which they choose to express their faith in God." Lieberman believes that by supporting this Act, U.S. citizens can honor the country's founders for creating the First Amendment.

Principles of international law were incorporated into the Act to clarify its commitment to promote religious freedom. Religious freedom is one of the fundamental human rights outlined in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 18 of the UDHR states that "[e]veryone 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." All members of the United Nations, including the United States, have adopted the UDHR by virtue of their UN membership and are pledged to uphold its provisions. Article 18(1) of the ICCPR, which the United States ratified with reservations in April 1992, also includes a freedom of religion clause that is similar to the UDHR's. The principles in these international law documents, according to the Act, create a responsibility in governments to protect the freedom of religion, which the Act does by exercising the United States' ability to choose to limit its dealings with countries that violate religious freedom.

#### Conclusion

The International Religious Freedom Act of 1998 pledges the United States to respect and promote religious freedom around the world. The Act is a needed response to widespread religious persecution in today's world and establishes a valuable precedent that other countries can follow. The justification for this Act rests on the guaranty of freedom of religion found in the U.S. Constitution and in principles of international law. Based on the protections of religious freedom contained in international law, more countries should move towards preventing religious persecution, both domestically and abroad. ☉

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