

# RUTGERS JOURNAL OF LAW & RELIGION

-NOTE-

*EMPTY THREATS AND SABER RATTLING: WHY THE INTERNATIONAL RELIGIOUS FREEDOM ACT  
PROVIDES A BETTER SOLUTION TO COMBATING TERRORISM AND PROMOTING STABILITY IN  
PAKISTAN*

*Chris Markos<sup>1</sup>*

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<sup>1</sup> Rutgers School of Law - Camden, Candidate for J.D., 2010. The author wishes to thank the many eyes, student and professor, for their help refining this note, and former President George W. Bush for its inspiration. Hi mom!

“Soldiers and diplomats are, in the end, trying to do the same thing . . .”<sup>2</sup>

## I. INTRODUCTION

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .”<sup>3</sup> So begins the First Amendment to the Constitution of the United States,<sup>4</sup> signaling to the world something most already knew: that religious freedom is a fundamental aspect of a free and democratic society. As most American students are taught, the tradition of religious freedom on this continent goes back much further than the Founding Fathers. For instance, in the 1657 Flushing Remonstrance, over two-dozen colonists, in what was then still New Amsterdam, wrote to Governor Stuyvesant to protest his ban on Quaker worship:

The law of love, peace and liberty in the states extending to Jews, Turks and Egyptians, as they are considered sons of Adam, which is the glory of the outward state of Holland, soe love, peace and liberty, extending to all in Christ Jesus, condemns hatred, war and bondage. And because our Saviour sayeth it is impossible but that offences will come, but woe unto him by whom they cometh, our desire is not to offend one of his little ones, in whatsoever form, name or title hee appears in, whether Presbyterian, Independent, Baptist or Quaker, but shall be glad to see anything of God in any of them, desiring to doe unto all men as we desire all men should doe unto us, which is the true law both of Church and State; for our Saviour sayeth this is the law and the prophets.<sup>5</sup>

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<sup>2</sup> ROBERT COOPER, *BREAKING OF NATIONS* 84 (2003).

<sup>3</sup> U.S. CONST. amend I.

<sup>4</sup> See, e.g., Edmond Cahn, *The Firstness of the First Amendment*, 65 *YALE L. J.* 464, 474 (1956) (arguing that jurists like Justice Hugo Black assert that the First Amendment is first because of its primacy, rather than for any arbitrary reason). According to James Madison, no matter the order of the other Amendments, “the freedoms embodied in the First Amendment must always secure paramouncy.” *Id.* at 473.

<sup>5</sup> The Flushing Remonstrance, Dec. 27, 1657, available at <http://www.nyym.org/flushing/remons.html>. The Dutch colonists who signed the Flushing Remonstrance refused to follow Governor Stuyvesant’s order banning Quaker worship not only because it was contrary to their conception of their religious duties, but because it was contrary to the law of New Amsterdam. *Id.* As a haven of religious freedom, these colonists could not reconcile Governor Stuyvesant’s order.

The Flushing Remonstrance was a substantive foundation for the First Amendment.<sup>6</sup> Over the next few hundred years, the centrality of religious freedom to Americans has not waned, but its focus has expanded, encompassing a concern for the state of religious freedom all over the world. Assertions about the significance and importance of the right to religious freedom similar to those in the Flushing Remonstrance can also be found in the congressional findings that precede the substantive portions of the International Religious Freedom Act of 1998.<sup>7</sup>

The state of international religious freedom informs many of today's headlines: Sunnis and Shiites in Iraq, Uighurs held at Guantánamo and the Taliban in Afghanistan, to name just a few. Further, the religious and religious freedom undertones implicated by the war on terror are impossible to ignore.

Lately, the newest frontier in the war on terror is Pakistan, where many believe members of Al Qaeda are hiding, along with the ousted Afghani Taliban.<sup>8</sup> Each day, violent clashes with Taliban-led or affiliated forces in bordering Afghanistan perpetuate civil unrest in both

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<sup>6</sup> Kenneth T. Jackson, *A Colony With a Conscience*, N.Y. TIMES, Dec. 27, 2007, available at <http://www.nytimes.com/2007/12/27/opinion/27jackson.html>; see also Harrop A. Freeman, *A Remonstrance for Conscience*, 106 U. PA. L. REV. 806, 807 (arguing that the Flushing Remonstrance should be recognized as a foundational document for freedom of religious conscience).

<sup>7</sup> "The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution." 22 U.S.C. § 6401(a)(1). See also *id.* at § 6401(a)(2)-(3) (discussing the status of the right to religious freedom as a fundamental human right, as evidenced by various international instruments).

<sup>8</sup> Mark Mazzetti, *C.I.A. Chief Says Qaeda is Extending its Reach*, N.Y. TIMES, Nov. 13, 2008, at A12, available at <http://www.nytimes.com/2008/11/14/washington/14intel.html>.

countries.<sup>9</sup> At a time when the American military is stretched to its limit, the need for diplomatic alternatives to military might is more relevant than ever.

This note will explore America's commitment to promoting religious freedom internationally. It will examine the tension between the enforcement of the International Religious Freedom Act of 1998 (IRFA) and the global war on terror, and primarily focus on how this tension has played out in Pakistan. Part II will discuss the history and background of the International Religious Freedom Act, including the structure of the IRFA, the role of the United States Commission on International Religious Freedom (USCIRF), and the authority the IRFA draws from international law. Part III will discuss and analyze the reports on international religious freedom specifically in Pakistan-- particularly the current social and political climate of Pakistan-- and the recommendations made and actions taken to promote religious freedom in Pakistan. Part IV will argue that the recommendations of the USCIRF should be followed and offer suggestions for implementing those recommendations using diplomatic and other avenues.<sup>10</sup> Because of the relationship between religious freedom and stability, Part IV will finally offer suggestions aimed at promoting stability in Pakistan and the surrounding region that go beyond the IRFA.

## II. HISTORY AND BACKGROUND

### A. THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998

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<sup>9</sup> See Jonathan S. Landay and John Walcott, *New Intelligence Report says Pakistan is 'on the edge'*, MCCLATCHY, Oct. 14, 2008, <http://www.mcclatchydc.com/251/story/53926.html> (reporting that Pakistan is inching toward social collapse).

<sup>10</sup> This note will use the phrase "war on terror" without the connotation of endorsing or criticizing the foreign policy of the Bush Administration. Rather, the note presumes the perpetuity through the foreseeable future of what is referred to as the "war on terror."

### i. THE ACT'S HISTORICAL CONTEXT

The story behind the IRFA begins with Michael Horowitz, a former general counsel for the Office of Management and Budget under President Reagan.<sup>11</sup> In 1995, Horowitz wrote an article in the Wall Street Journal calling on the United States to promote human rights for Christians.<sup>12</sup> The inspiration for Horowitz's article was a man named Getanah Metafriaah Getanah, a refugee from Ethiopia who Horowitz had taken in and sponsored for citizenship.<sup>13</sup>

Getanah was an Ethiopian Christian who was imprisoned and tortured by the Communist rulers of Ethiopia for talking about Jesus.<sup>14</sup> Eventually he went into exile in Djibouti until the Communists lost control of Ethiopia.<sup>15</sup> Getanah then tried to return to Ethiopia, but was arrested in the airport and informed that he was to be tried before an Islamic court for converting Muslims to Christianity.<sup>16</sup> Getanah managed once again to flee, this time to America, where he met Michael Horowitz.<sup>17</sup>

Horowitz's article did not catch the attention of many in the government, but did manage to help start a grassroots movement to publicize religious persecution abroad.<sup>18</sup> In 1996, one arm of this grassroots movement, the National Association of Evangelicals, met with President Clinton to urge him to deliver a speech tying religious persecution to U.S. trade and foreign

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<sup>11</sup> Steven Wales, comment, *Remembering The Persecuted: An Analysis of the International Religious Freedom Act*, 24 HOUS. J. INT'L L. 579, 584 (2002).

<sup>12</sup> *Id.* at 585.

<sup>13</sup> *Id.* at 584.

<sup>14</sup> *Id.* Getanah was arrested and tortured four times. *Id.* His torturers poured hot oil and boiling water on his feet and whipped him with metal cables. *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Wales, *supra* note 11, at 584.

<sup>18</sup> *Id.* at 585. The grassroots movement consisted of an inter-faith alliance that inundated Congress with letters and phone calls. *Id.*

aid.<sup>19</sup> Although Clinton declined to make this speech, the movement's message began to catch on with members of Congress.<sup>20</sup>

The House of Representatives held hearings on the persecution of Christians and Jews worldwide.<sup>21</sup> Congress adopted resolutions on religious persecution in Iran.<sup>22</sup> Then, in 1997, in part due to the efforts of Horowitz, Senator Arlen Specter and Representative Frank Wolf introduced the "Freedom From Religious Persecution Act."<sup>23</sup> The bill had many opponents, especially due to the automatic sanctions it would require, and in response Senator Don Nickles introduced the International Religious Freedom Act.<sup>24</sup> Nickles' bill passed both Houses unanimously in 1998.<sup>25</sup>

## ii. THE ANATOMY OF THE INTERNATIONAL RELIGIOUS FREEDOM ACT (IRFA)

The IRFA incorporates concern for global religious freedom into the foreign policy of the United States.<sup>26</sup> The IRFA's stated purposes for shaping foreign policy vis-à-vis religious freedom include: condemning religious persecution, promoting religious freedom, and implementing diplomatic, political, commercial, charitable, educational, and cultural tools and

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<sup>19</sup> *Id.* at 585-86.

<sup>20</sup> *Id.* at 586-87.

<sup>21</sup> *Id.* at 588.

<sup>22</sup> *Id.*

<sup>23</sup> Wales, *supra* note 11, at 588.

<sup>24</sup> International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (codified as 22 U.S.C. § 6401 (1998)).

<sup>25</sup> Wales, *supra* note 11, at 589. The key change in the substance of the two bills, according to Horowitz, was that Nickles' version put greater emphasis on fact-finding and less emphasis on sanctions. *Id.* Nevertheless, while the sanctions that the Nickles' bill authorizes might be "softer" than those in the Specter-Wolf bill, Nickles' still *requires* the president to take action. *Id.* at 589-91. Both bills were primarily championed by social and economic conservatives in Congress. *Id.* Once passed, many religious and human rights groups lauded the act as well. *Id.* at 592.

<sup>26</sup> Eugenia Relaño Pastor, *The Flawed Implementation of the International Religious Freedom Act of 1998: A European Perspective*, 2005 B.Y.U.L. REV. 711, 718 (2005).

channels of United States foreign policy to promote religious freedom in, and the respect of, foreign governments.<sup>27</sup>

Much of the main force of the IRFA is effectuated via the fact-finding obligations it imposes. The IRFA establishes an Office of International Religious Freedom within the State Department and is headed by an Ambassador at Large for International Religious Freedom who is appointed by the President.<sup>28</sup> The Ambassador is charged with preparing an annual report describing the status of religious freedom, or the violations against it, in every foreign nation.<sup>29</sup> The IRFA provides specific guidelines as to what constitutes a violation of religious freedom. Examples of violations of religious freedom include: persecution of one religious group by another, religious persecution by governmental and nongovernmental entities, persecution targeted at individuals, particular denominations, or entire religions, and government policies violating religious freedom, including limiting or prohibiting the availability of openly organized religious services or forcing religious conversion of minor citizens of the United States who have been abducted or illegally removed from the United States.<sup>30</sup> Other examples of violations of

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<sup>27</sup> *Id.* at 719; 22 U.S.C. § 6401(b).

<sup>28</sup> 22 U.S.C. § 6411(a), (c)(2).

<sup>29</sup> 22 U.S.C. § 6412. The Ambassador prepares the report in conjunction with the Secretary of State's Human Rights Reports. Additional roles of the Ambassador include advancing religious freedom abroad, denouncing violations of religious freedom, and making recommendations to the United States government when such violations occur. 22 U.S.C. § 6411(c)(1). For other responsibilities of the Ambassador at Large for International Religious Freedom, see 22 U.S.C. § 6411(c). The State Department has consistently delivered the annual report since 1999. Pastor, *supra* note 26, at 724. As well as describing the state of religious liberty and violations against it, the report includes an Executive Summary that describes the actions already taken during the previous year in promotion of religious freedom. 22 U.S.C. § 6412(b)(1)(F). While the State Department has been diligent in fulfilling its duty to issue the report annually, the same cannot be said of the United States as a whole in fulfilling its obligations under the IRFA. After the publication of the 1999 and 2000 reports, no sanctions had been enacted against countries home to violations of religious freedom. Wales, *supra* note 11, at 615. There are obvious implications to even the threat of sanction, and foreign governments took their treatment in the reports seriously, sometimes criticizing their characterization in the report. *See id.* at 610 (quoting the Iranian Foreign Ministry Spokesman's outrage at the "double standard" that the United States was using).

<sup>30</sup> 22 U.S.C. § 6412(b)(1)(B).

religious freedom include arbitrary prohibitions, restrictions on, or punishments for: peacefully assembling for religious activities, speaking freely about one's religious beliefs, changing one's religious beliefs or affiliation, possessing and distributing religious material, or raising one's children in the religious teachings and practices of one's choice.<sup>31</sup> The IRFA prohibits the detention, interrogation, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, forced religious conversion, beating, torture, mutilation, rape, enslavement, murder, or execution if undertaken on account of an individual's religious belief or practice.<sup>32</sup>

The IRFA also created the United States Commission on International Religious Freedom (USCIRF), which consists of nine members and makes policy recommendations to the President, the Secretary of State and Congress regarding international religious freedom.<sup>33</sup> The USCIRF plays an important role in the State Department's fact-finding process.<sup>34</sup>

Once a determination is made that there are violations of religious freedom in a foreign country, the IRFA obliges the President to take certain actions:

- (1) A private demarche.
- (2) An official public demarche.
- (3) A public condemnation.
- (4) A public condemnation within one or more multilateral fora.
- (5) The delay or cancellation of one or more scientific exchanges.
- (6) The delay or cancellation of one or more cultural exchanges.
- (7) The denial of one or more working, official, or state visits.
- (8) The delay or cancellation of one or more working, official, or state visits.

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<sup>31</sup> 22 U.S.C. § 6402(13).

<sup>32</sup> *Id.* These sub-sections use the word "including," so these lists should not be considered exhaustive. *Id.* at § 6412(b)(1)(B), § 6402(13).

<sup>33</sup> 22 U.S.C. § 6411(c)(1), 6431(a).

<sup>34</sup> The USCIRF's primary responsibility is to review the State Department's annual report and make policy recommendations to the President, the Secretary of State, and Congress. 22 U.S.C. § 6432(a).

- (9) The withdrawal, limitation, or suspension of United States development assistance in accordance with section 2151n of this title.
- (10) Directing the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the Trade and Development Agency not to approve the issuance of any (or a specified number of) guarantees, insurance, extensions of credit, or participations in the extensions of credit with respect to the specific government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442 of this title.
- (11) The withdrawal, limitation, or suspension of United States security assistance in accordance with section 2304 of this title.
- (12) Consistent with section 262d of this title, directing the United States executive directors of international financial institutions to oppose and vote against loans primarily benefiting the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442 of this title.
- (13) Ordering the heads of the appropriate United States agencies not to issue any (or a specified number of) specific licenses, and not to grant any other specific authority (or a specified number of authorities), to export any goods or technology to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442 of this title, under--
- (A) the Export Administration Act of 1979;
  - (B) the Arms Export Control Act;
  - (C) the Atomic Energy Act of 1954; or
  - (D) any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.
- (14) Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period to the specific foreign government, agency, instrumentality, or official found or determined by the President to be responsible for violations under section 6441 or 6442 of this title.
- (15) Prohibiting the United States Government from procuring, or entering into any contract for procurement of, any goods or services from the foreign government, entities, or officials found or determined by the President to be responsible for any violations under section 6441 or 6442 of this title.<sup>35</sup>

Additionally, the IRFA provides the President some discretion in choosing a course of action, allowing him to take any action commensurate with (1) - (15) or to negotiate and enter into a

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<sup>35</sup> 22 U.S.C. § 6445(a)(1)-(15).

binding agreement obligating a foreign government to take substantial steps toward addressing violations of religious freedom.<sup>36</sup> However, the President is not required to take any action if there is an important national interest at stake.<sup>37</sup> Further, the President's discretion is ensured by insulation from judicial review.<sup>38</sup> For all the discretion that the President is offered by the act, he is not given the discretion not to act.<sup>39</sup>

The President is also authorized to determine when a foreign government “has engaged in or tolerated *particularly severe* violations of religious freedom,” and to designate the offending country as a country of particular concern, or CPC.<sup>40</sup> The President's options in taking action against a CPC are more limited than with other countries.<sup>41</sup>

### iii. THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

The USCIRF is a bi-partisan body composed of nine members: three appointed by the President, three appointed by the President pro tempore of the Senate (with two appointees from a different party than the President and one from the same party) and three appointed by the Speaker of the House (under the same conditions as those appointed by the President pro

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<sup>36</sup> 22 U.S.C. § 6445(b)-(c).

<sup>37</sup> 22 U.S.C. § 6447(a)(3).

<sup>38</sup> 22 U.S.C. § 6450. This section of the IRFA strips courts of jurisdiction to review any Presidential determination or agency action under the Act. *Id.*

<sup>39</sup> 22 U.S.C. § 6441(a)(1)(B).

<sup>40</sup> 22 U.S.C. § 6442(a)(2)-(b)(1)(A) (emphasis added). “Particularly severe violations” refer to systematic, ongoing, and egregious violations. 22 U.S.C. § 6402(11).

<sup>41</sup> See 22 U.S.C. § 6442(c) (limiting the President's options to actions (9) - (15) in § 6445(a)). The President may also take commensurate action or enter into a binding agreement. 22 U.S.C. § 6443(b)(1)(A). Before action is taken, the President must first request a consultation with the CPC. *Id.* The President may also choose to coordinate an international response and hold this requisite consultation in a multilateral forum. 22 U.S.C. § 6443(b)(1)(B)(2). The President is also required to consult with humanitarian, religious, and domestic organizations to assess the potential impact of his actions. 22 U.S.C. § 6443(c)-(d). Again, the President can defer action to an important national interest. 22 U.S.C. § 6447(a)(3). In fact, the President may entirely overlook religious violations when other relationships, such as trade, are more beneficial. Pastor, *supra* note 26, at 724.

tempore of the Senate).<sup>42</sup> The USCIRF does most of the substantive work, at least preliminarily, of focusing the United States' foreign policy on religious freedoms. The USCIRF is responsible for reviewing the facts and circumstances of religious freedom violations in the State Department's annual reports.<sup>43</sup> The USCIRF is also responsible for making policy recommendations to the President, the Secretary of State and Congress regarding promoting religious freedom in places it is lacking.<sup>44</sup> The USCIRF also has authority to hold hearings or meetings with foreign officials or diplomats.<sup>45</sup> The President is effectively bound to consider the recommendations of the USCIRF before taking any action.<sup>46</sup>

#### **b. INTERNATIONAL LAW**

The claim in the IRFA that religious freedom is a fundamental right does not come from whole cloth.<sup>47</sup> The Congressional findings that begin the IRFA incorporate several international human rights instruments.<sup>48</sup> Most significantly, the United States is a State Party to the

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<sup>42</sup> 22 U.S.C. § 6431(b)(1)(B).

<sup>43</sup> Pastor, *supra* note 26, at 724.

<sup>44</sup> 22 U.S.C. §§ 6411(c)(1), 6431(a), 6432(a).

<sup>45</sup> United States Commission on International Religious Freedom Frequently Asked Questions, [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=337&Itemid=44](http://www.uscirf.gov/index.php?option=com_content&task=view&id=337&Itemid=44) (last visited Jan. 12, 2010). These meetings must be coordinated with the State Department. *Id.* While not a specific duty of the USCIRF, these hearings represent the significant fact-finding the Commission engages in independent of the State Department.

<sup>46</sup> See Wales, *supra* note 11, at 591 (quoting Michael Horowitz); Pastor, *supra* note 26, at 724 (noting that the President's duty under the IRFA to take certain actions obliges him to consider the USCIRF's recommendations). The USCIRF is not a feckless government organization, or one with a mere figurehead status. See generally United States Commission on International Religious Freedom - Frequently Asked Questions, [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=337&Itemid=44](http://www.uscirf.gov/index.php?option=com_content&task=view&id=337&Itemid=44) (last visited Jan. 5, 2010) (discussing the various accomplishments of the USCIRF).

<sup>47</sup> 22 U.S.C. § 6401(a)(1).

<sup>48</sup> See 22 U.S.C. § 6401(a)(2) (referencing the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Helsinki Accords, the Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief, the United Nations Charter, and the European Convention for the Protection of Human Rights and Fundamental Freedoms).

Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), both of which are discussed at length in the Congressional findings.<sup>49</sup>

The reference to international human rights instruments in the IRFA is significant for several reasons. For one, it adds legitimacy to the bill and authority for the United States to create policies regarding religious freedom abroad which might be questionable without the international instruments. Because the United States is a State Party to the Universal Declaration of Human Rights and the ICCPR, it has an interest in seeing that other countries are complying with their commitments.<sup>50</sup> Similarly, these references indicate the specific source of authority for the IRFA's passing and enforcement. Second, it de-politicizes the IRFA. While various conservative factions in Congress initially championed the IRFA, the reference to international law also appeals to liberal constituencies.<sup>51</sup> Similarly, this cuts against any argument that the

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<sup>49</sup> 22 U.S.C. § 6401(a)(3). "Article 18 of the Universal Declaration of Human Rights recognizes 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.' Article 18(1) of the International Covenant on Civil and Political Rights recognizes that '[e]veryone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.' Governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government." *Id.*

<sup>50</sup> The United States is a State-Party to both documents, but this is, unfortunately, a limited commitment. The Universal Declaration, like the Declaration of Independence, is deeply significant and important but carries little or no legal authority, *per se*. The ICCPR does carry legal authority, but its legal status in the United States is complicated. While the Senate has ratified the ICCPR, it has not been implemented by legislation. 138 Cong. Rec. S4781-01, \*S4784 (1992). Nevertheless, the prevalence of protections of religious freedom in international human rights instruments speaks to the emergence of the right as a part of customary international law. In *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), the Second Circuit determined that a violation of the law of nations under the 28 U.S.C. § 1350 ("The Alien Tort Claims Act"), could be determined by examining "the sources from which customary international law is derived the usage of nations, judicial opinions, and the works of jurists." *Id.* at 884. The Supreme Court affirmed the jurisprudence of *Filartiga* in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004). Thus, regardless of the complicated statute of the ICCPR and other instruments, the prevalence of the right is evidence of its fundamental importance globally.

<sup>51</sup> See *supra* note 25.

IRFA is a piece of neo-conservative legislation, exporting a specifically American version of freedom on foreign countries, because of the broad coalition the IRFA fosters.<sup>52</sup>

### III. WHAT IS GOING ON IN PAKISTAN?

In order to discuss the status of religious freedom anywhere, it is necessary to look beyond the relatively narrow category of religious freedom and instead take into account the broader social, political, and economic spectra. Even in our own country, and others in which there is also an official separation of Church and State, religion is intertwined with the various other elements of society by virtue of its role in the life and identity of a population. Consequently, promoting religious freedom in particular promotes more stable societies in general.<sup>53</sup>

#### a. POLITICAL STRIFE IN PAKISTAN

Pakistan dominated headlines and the attention of the international community through much of 2007. In March of that year, President General Pervez Musharraf suspended the Chief Justice of Pakistan.<sup>54</sup> Later, in November, Musharraf declared emergency rule across all of Pakistan. In doing so, Musharraf suspended the Pakistani Constitution, fired the Chief Justice,

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<sup>52</sup> The IRFA is not a victory that can be claimed by any single political faction because of its broad appeal. Similarly, the USCIRF is a bi-partisan group. See 22 U.S.C. § 6431(b)(1)(B) (mandating that the composition of the USCIRF be made up of both Democrats and Republicans).

<sup>53</sup> See generally, Christina M. Kelly, Comment, *The United States and Turkmenistan: Striking a Balance between Promoting Religious Freedom and Fighting the War Against Terror*, 15 PACE INT'L K. REV 481 (2003) (arguing that promoting religious freedom in turn necessarily promotes social stability).

<sup>54</sup> Wikipedia, Pervez Musharraf, [http://en.wikipedia.org/wiki/Pervez\\_Musharraf](http://en.wikipedia.org/wiki/Pervez_Musharraf) (last visited January 12, 2010). The suspension of Pakistan's Chief Justice sparked outrage in the country's legal community and hundreds of Pakistani lawyers took to the streets to protest Musharraf's action. *Id.* The Chief Justice was later reinstated in July of that year. *Id.*

and in a move tantamount to declaring martial law, filled the streets of Pakistan's capital, Islamabad, with police officers.<sup>55</sup> In the midst of the crisis, former Prime Minister Benazir Bhutto returned to Pakistan, for the first time in eight years, to lead the opposition movement against Musharraf.<sup>56</sup> Bhutto's return to Pakistan was planned with help from the Bush Administration.<sup>57</sup> At the end of the year, just weeks before a scheduled general election in which she was a leading opposition candidate, Bhutto was assassinated in a suicide attack as she was leaving an election rally.<sup>58</sup> Al Qaeda is believed by some to have been behind the attack.<sup>59</sup>

#### **b. SOCIAL STRIFE IN PAKISTAN**

An American intelligence report in October 2008 described Pakistan as a country "on the edge."<sup>60</sup> The report cited "a growing Al-Qaeda-backed insurgency, combined with the Pakistani army's reluctance to launch an all-out crackdown, political infighting and energy and food shortages" as reasons for the country's growing instability.<sup>61</sup> The 2008 USCIRF Annual Report

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<sup>55</sup> David Rohde, *Pakistani Sets Emergency Rule, Defying the U.S.*, N.Y. TIMES, Nov. 4, 2007, available at <http://www.nytimes.com/2007/11/04/world/asia/04pakistan.html>. Just before Musharraf declared a State of Emergency, the Pakistan Supreme Court was expected to rule within a matter of days on the legality of Musharraf's re-election the month before. *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *See id.* ("Ms. Bhutto returned to Pakistan on Oct. 18 for the first time in eight years under a plan that the Bush administration had hoped would bring a democratic sheen to the country. . . .").

<sup>58</sup> *Benazir Bhutto Killed in Attack*, BBC, Dec. 27, 2007, [http://news.bbc.co.uk/2/hi/south\\_asia/7161590.stm](http://news.bbc.co.uk/2/hi/south_asia/7161590.stm).

<sup>59</sup> *See* Carlotta Gall, *Pakistan Asserts Link to Al Qaeda in Bhutto Death*, N.Y. TIMES, Dec. 29, 2007, <http://www.nytimes.com/2007/12/29/world/asia/29pakistan.html?scp=3&sq=bhutto%20assassination&st=cse> (reporting that the government of Pakistan had linked Al Qaeda to Bhutto's assassination). *But see* Khalid Qayum, *Bhutto's Party Rejects Al-Qaeda Claim as Riots Spread*, BLOOMBERG, Dec. 29, 2007, <http://www.bloomberg.com/apps/news?pid=20601087&sid=aWpSJGDLZJYQ&refer=home> (reporting that Bhutto's party had rejected the determination of the Pakistani government that Al Qaeda was linked to the assassination). The role of the United States in Bhutto's return to Pakistan and election bid is at least indicative of a viable motive for possible Al Qaeda involvement.

<sup>60</sup> *Supra* note 9.

<sup>61</sup> *Id.* Conclusions in the intelligence report represent the consensus of all of America's intelligence agencies. *Id.*

noted that sectarian and religiously motivated violence continued that year, especially against Shi'a Muslim, Ahmadi, Christian, and Hindu targets.<sup>62</sup>

Pakistan's legal regime is another source of strife, both generally and with particular regard to religious freedom. The country's Hudood Ordinances -- Islamic decrees introduced in 1979 -- call for harsh punishments for violations of Islamic law.<sup>63</sup> There are a number of laws that restrict the Ahmadi community, as well as laws against blasphemy, which often result in either imprisonment based on religious belief, or violence against the accused, or both.<sup>64</sup> The USCIRF Annual Report directly blames the Government of Pakistan for the country's history of violations of religious freedom:

Discriminatory legislation, promulgated in previous decades and persistently enforced, has fostered an atmosphere of religious intolerance and eroded the social and legal status of members of religious minorities, including Shi'a Muslims, Ahmadis, Hindus, and Christians. Government officials do not provide adequate protections from societal violence to members of these religious minority communities, and perpetrators of attacks on minorities are seldom

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<sup>62</sup> United States Commission on International Religious Freedom, 2008 Annual Report 146, *available at* [http://www.uscirf.gov/images/AR2008/annual report 2008-final edition.pdf](http://www.uscirf.gov/images/AR2008/annual%20report%202008-final%20edition.pdf) (hereinafter "USCIRF Annual Report"). Violence against Hindus included attacks on Hindu temples, as well as the murder of a Hindu factory worker by dozens of co-workers in April 2008. *Id.* at 148. Non-Muslims, including Ahmadis, comprise just two-percent of the population of Pakistan. *See* U.S. Department of State, International Religious Freedom Report 2008, *available at* <http://2001-2009.state.gov/g/drl/rls/irf/2008/108505.htm> (hereinafter "State Department Report"). Women as a group have also been targeted in acts of religiously-motivated violence, although the USCIRF Annual Report seems to gloss over this. *See* USCIRF Annual Report at 149, 150, 151; *see also* Kristoff, *infra* note 134.

<sup>63</sup> USCIRF Annual Report, *supra* note 62 at 148. Such punishments include amputation and death by stoning. *Id.* Under the Hudood Ordinances, rape victims are at risk of being charged with adultery, for which death by stoning is a possible sentence. *Id.* at 149. In 2006, then-President Musharraf signed a law which curtailed the scope of the Hudood Ordinances with regard to rape charges by moving the charge from the Hudood Ordinances to the country's penal law. *Id.* at 150. In neighboring Afghanistan, the Constitution adopted in 2004 provides that no law shall be contrary to the beliefs of Islam, and the minimal individual freedoms provided may be superseded by ordinary legislation. *Id.* at 189.

<sup>64</sup> *Id.* at 146. Laws in Pakistan prevent Ahmadis from unencumbered practice of their faith. *Id.* at 148. Although Ahmadis identify themselves as Muslims, Pakistani law prevents them from associating with Muslims, gathering in Muslim mosques, and calling their own places of worship "mosques." *Id.* There are similar restrictions in Afghanistan vis-à-vis the Baha'i religion. *Id.* at 192. In May 2007, the Baha'i religion was declared distinct from Islam and a form of blasphemy. *Id.* One implication for the Baha'i community is that their status could have the effect of invalidating their marriages to Afghan Muslims. *Id.*

brought to justice.<sup>65</sup>

Violations of blasphemy laws in Pakistan can be punished by life imprisonment or execution.<sup>66</sup>

Often, simple allegations of blasphemy lead to lengthy detentions, in part because of the fear of mob violence and retaliation against the accused.<sup>67</sup>

In some cases, the Government of Pakistan has gone as far as to directly incite religious intolerance.<sup>68</sup> In March 2006, the Government dropped leaflets on the regions bordering Afghanistan to persuade the people living there not to support Islamic militants by claiming that they were fighting “in connivance with Jews and Hindus.”<sup>69</sup> The Annual Report further faults the Government of Pakistan for failing to control madrassas.<sup>70</sup> According to the Report, the madrassas “provide ongoing ideological training and motivation to those who take part in violence targeting religious minorities in Pakistan and abroad.”<sup>71</sup> Although the Government has taken nominal steps to control and regulate madrassas, the Report argues that these steps have had little (if any) affect, noting that there has been virtually no affect on the schools’ curricula or

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<sup>65</sup> *Id.* at 147. The Annual Report does concede that in some instances the government, under Musharraf, has taken action against extremists, particularly the operation against the Red Mosque in Islamabad in July 2007. *Id.*

<sup>66</sup> *Id.* at 148. No one in Pakistan has been executed for blasphemy, but some have been sentenced to death. *Id.* at 149. Similar laws have been passed in Afghanistan, where the state’s legal structure is modeled on Islamic law. *Id.* at 189. In January 2008, an Afghani court issued the death penalty for blasphemy. *Id.* at 190. In March 2006, an Afghan citizen was arrested for apostasy -- conversion from Islam to another religion -- and threatened with the death penalty, but his case was dropped subsequent to the outcry from the international community. *Id.* These laws extend to journalists and other members of the media. *Id.* at 191. The current media law in Afghanistan prohibits and publication or broadcast insulting to Islam or other religions. *Id.* The Annual Report notes that “insulting” is so vaguely defined that it could easily be misappropriated and used to limit freedom of the press and to intimidate journalists. *Id.*

<sup>67</sup> *Id.* at 149. Often during blasphemy trials, Islamic militants pack courtrooms and make threats in public about the consequences of acquittal. *Id.* See also State Department Report, *supra* note 62 (reporting that the law which allows monetary restitution or physical retribution for crimes affect religious minorities considerably more harshly than Muslims).

<sup>68</sup> USCIRF Annual Report, *supra* note 62 at 147. In 2007, a draft bill in Pakistan would have made apostasy a capital crime. *Id.* at 151.

<sup>69</sup> *Id.* at 147.

<sup>70</sup> *Id.* Madrassas are religious schools. *Id.*

<sup>71</sup> *Id.*

funding.<sup>72</sup> Generally, the country's efforts to ameliorate systemic religious persecution and injustice are frustrated by religious militant groups who are represented in Parliament and are members of state security and police forces, and are capable of coercive pressure on the judiciary.<sup>73</sup>

Finally, the Annual Report faults the Pakistani Government for becoming "a significant exporter of religious intolerance and religiously motivated militant violence."<sup>74</sup> The Annual Report specifically blames the Pakistani Government for harboring and providing sanctuary for the Taliban.<sup>75</sup> Similarly, some suspect that the militants behind the terrorist attacks in Mumbai in December 2008 had ties to the Pakistani Government.<sup>76</sup> Additionally, in March 2007, a Pakistani delegate to the U.N. Human Rights Council presented a resolution to curb the "defamation of religions."<sup>77</sup> The Annual Report notes that such defamation laws are generally only applied to speech about or against a *particular* religion, and are generally contrary to

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 151.

<sup>74</sup> *Id.* at 150-51.

<sup>75</sup> *Id.* at 151. The Taliban has made a resurgence in parts of Afghanistan which has destabilized, or altogether erased, the central authority of the government under President Karzai. *Id.* at 192. Many believe that the Taliban's resurgence is at least partially attributable to having an effective sanctuary provided by the government of Pakistan. *Id.* In some areas of Afghanistan, it is reported that there is a "parallel Taliban state." *Id.* In January 2009, President Obama urged that "there is no answer in Afghanistan that does not confront the al-Qaeda and Taliban bases along the border [in Pakistan]." Aryn Baker and Omar Waraich, *Pakistan: A Mounting Problem for Obama*, TIME, Jan. 26, 2009, available at <http://www.time.com/time/world/article/0,8599,1873902,00.html>.

<sup>76</sup> See Eric Schmitt, Mark Mazzetti, and Jane Perlez, *Pakistan's Spies Aided Group Tied to Mumbai Siege*, N.Y. TIMES, Dec. 8, 2008, at A1, available at <http://www.nytimes.com/2008/12/08/world/asia/08terror.html> (suggesting that the group behind the attacks was able to gain strength with the aid of Pakistan's main spy agency). See also Jane Perlez and Somini Sengupta, *Mumbai Attack is Test for Pakistan on Curbing Militants*, N.Y. TIMES, Dec. 4, 2008, at A1, available at <http://www.nytimes.com/2008/12/04/world/asia/04pstan.html> (reporting that according to Indian police, the one gunman who survived the terrorist attacks told his interrogators that he trained during a year and half in at least four camps in Pakistan). In February 2009, Pakistan announced that it had arrested six people in connection with the attacks on Mumbai, including the alleged leader, and further admitted that the attack had been planned on its soil. Somini Sengupta, *India Presses Pakistan to do More on Terror*, N.Y. TIMES, Feb. 14, 2009, at A11, available at <http://www.nytimes.com/2009/02/14/world/asia/14india.html>.

<sup>77</sup> USCIRF Annual Report, *supra* note 62, at 151.

principles of international law including freedom of thought, conscience, and religion.<sup>78</sup>

**c. THE BROADER SCOPE OF THE RELATIONSHIP BETWEEN THE WAR ON TERROR AND RELIGIOUS FREEDOM**

It is certainly no stretch to say that the annual reports of the USCIRF and the State Department, taken together, provide a dismal image of life in Pakistan. Various violations of religious freedom, in both Pakistan and neighboring Afghanistan, have fostered often religiously-motivated social and political strife. The return of the Taliban should be of particular concern to anyone concerned with religious freedom, general human rights, and international security. Not only are the Taliban frequent violators of human rights,<sup>79</sup> but they also represent a paradigm of religious intolerance that fosters violence, strife, and unrest, both domestically and abroad.<sup>80</sup> It is further evident that the problem of stability in Pakistan also lies in the fact that a repressive and intolerant legal and social climate promotes cyclical patterns of violence.

Certainly a major roadblock to progress was the 2007 political crisis in Pakistan.<sup>81</sup> The turmoil of the 2007 crisis points to the necessity of political and social stability on an international level for success in the war on terror. Further, this represents a broad problem for United States foreign policy, and one for which the military cannot be relied upon to solve. As

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<sup>78</sup> *Id.* As of the date of publication of the Annual Report, the resolution introduced by Pakistan had passed the Council. H.R.C. Res. 7/19, U.N. Doc A/HRC/RES/7/19 (March 27, 2008).

<sup>79</sup> *See id.* at 191 (noting that the Taliban “enforce[s] its strict religious codes through public beatings, imprisonment, torture, and execution, including stoning to death.”).

<sup>80</sup> According to statements issued by the Bush Administration, the effective safe haven that the Taliban provided Al Qaeda was a predicate for the invasion of Afghanistan in 2001. *See Afghanistan Wakes After Night of Intense Bombings*, CNN, Oct. 7, 2001, <http://archives.cnn.com/2001/US/10/07/gen.america.under.attack>.

<sup>81</sup> *See* Griff Witte, *Pakistan Seen Losing Fight Against Taliban and Al-Qaeda*, WASHINGTON POST, Oct. 3, 2007, at A1, available at [http://www.washingtonpost.com/wp-dyn/content/article/2007/10/02/AR2007100202211\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/10/02/AR2007100202211_pf.html) (reporting that the Pakistani government had put off any efforts to combat Al Qaeda and Taliban forces within its territory until after President Musharraf resolved the 2007 political crisis).

the 2007 crisis in Pakistan demonstrates, turmoil and instability obstruct efforts to fight the war on terror by forcing the government to concentrate on ensuring its own perpetuation and ignoring dangerous fringe elements.<sup>82</sup> The same is evident in the initial rise of the Taliban in Afghanistan. The Taliban emerged in a power vacuum created by the war with the Soviet Union in the 1980's and a subsequent civil war.<sup>83</sup>

Another problem with the political chaos of the tribal areas of Pakistan that border Afghanistan is that those tribal areas are of particular importance to the war on terror and the ongoing conflict in Afghanistan. The Khyber region in the tribal areas of Pakistan is a transit route between Pakistan and Afghanistan for NATO forces and convoys.<sup>84</sup> The Taliban and their allies in the region have organized tribal killings, and the general lack of security should be of great concern to NATO, as it threatens its safe passage between Pakistan and Afghanistan.<sup>85</sup>

**d. RECOMMENDATIONS OF THE USCIRF AND THE STATE DEPARTMENT REGARDING PROMOTING RELIGIOUS FREEDOM IN PAKISTAN**

The USCIRF has called for numerous actions over the years in Pakistan to support religious freedom and other individual rights. The USCIRF issued a statement in January 2008 urging the United States government to put pressure on Pakistan to end vigilante violence and to

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<sup>82</sup> See *id.* (quoting a Pakistani official as saying that the government “is busy with its problem of legitimacy.”). See also Jane Perlez, *Taliban Leader Flaunts Power Inside Pakistan*, N.Y. TIMES, June 2, 2008, <http://www.nytimes.com/2008/06/02/world/asia/02pstan.html> (noting the effective freedom from Pakistani authority and control of a Taliban leader in the South Warzistan tribal area. The article further indicates that the Pakistani government’s impunity toward this leader and reluctance to capture him stems from the fact that the government considers him an ally. *Id.*

<sup>83</sup> See The New York Times Staff, *Taliban*, N.Y. TIMES, <http://topics.nytimes.com/topics/reference/timestopics/organizations/t/taliban/index.html> (last visited Jan. 5, 2010) (indicating that the Taliban came to power in the wake of the war with the Soviet Union and a civil war).

<sup>84</sup> Perlez, *supra* note 82.

<sup>85</sup> *Id.*

protect human rights defenders during times of political unrest.<sup>86</sup> In 2007, the USCIRF issued a statement opposing the imposition of martial law and noting the increasingly dangerous political influence of militant groups.<sup>87</sup> The USCIRF has also been proactive in opposing the detention of U.N Special Rapporteur on the Freedom of Religion or Belief and in voicing opposition and concern over blasphemy and apostasy laws.<sup>88</sup>

The USCIRF has offered several recommendations for U.S. foreign policy vis-à-vis Pakistan. These recommendations call upon the United States government to urge the Pakistan government to (1) reinforce the rule of law, (2) combat religious extremism and address political alliances between the itself and Islamic political parties, (3) actively end both direct and indirect toleration of the Taliban in the mountainous border regions, (4) end its practice of introducing defamation of religion resolutions at the United Nations, (5) decriminalize blasphemy and provide more procedural safeguards while that process takes place, (6) prevent sectarian violence, and (7) repeal laws targeting Ahmadis.<sup>89</sup> The USCIRF also calls upon the United States Government to expand political contacts beyond the central Pakistani Government for an open and transparent dialogue with other political groups, including those critical of the

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<sup>86</sup> Press Release, United States Commission on International Freedom, USCIRF Urges Protection of Human Rights Defenders (Jan. 4, 2008), *available at*

[http://www.uscifr.gov/index.php?option=com\\_content&task=view&id=32&Itemid=46](http://www.uscifr.gov/index.php?option=com_content&task=view&id=32&Itemid=46)

<sup>87</sup> Press Release, United States Commission on International Religious Freedom, USCIRF Gravely Concerned about the Future of Democracy in Pakistan, Threat to Human Rights, Including Religious Freedom (Nov. 21, 2007), *available at* [http://www.uscifr.gov/index.php?option=com\\_content&task=view&id=66&Itemid=47](http://www.uscifr.gov/index.php?option=com_content&task=view&id=66&Itemid=47).

<sup>88</sup> Press Release, United States Commission on International Freedom, USCIRF Deplores Pakistan's Treatment of UN Special Rapporteur (Nov. 7, 2007), *available at*

[http://www.uscifr.gov/index.php?option=com\\_content&task=view&id=73&Itemid=47](http://www.uscifr.gov/index.php?option=com_content&task=view&id=73&Itemid=47); *see also* Press Release, United States Commission on International Freedom, USCIRF Decries Abuse of Blasphemy Laws, Apostasy Bill (June 11, 2007), *available at*

[http://www.uscifr.gov/index.php?option=com\\_content&task=view&id=180&Itemid=47](http://www.uscifr.gov/index.php?option=com_content&task=view&id=180&Itemid=47).

<sup>89</sup> USCIRF Annual Report, *supra* note 62, at 152-53. The USCIRF does not unanimously agree on whether military aid should be diminished as an effective sanction for the effective sanctuary the Pakistani government has provided the Taliban. *Id.* at 153.

Government, to provide greater aid and assistance to democratic institutions, and to promote reform in the state schools.<sup>90</sup> The ultimate conclusion of the USCIRF in its Annual Report has been to designate Pakistan as a Country of Particular Concern (CPC).<sup>91</sup> Problematically for the USCIRF, the State Department has not designated any country as a CPC since 2006 and, as such, Pakistan has never been designated as a CPC.<sup>92</sup>

Since the USCIRF issued its report, the State Department nevertheless has responded positively to several of the USCIRF's observations and recommendations. The State Department report notes that United States Ambassadors have directed their attention to various elements of Pakistani society - that is, not exclusively the government - with an aim to reform the blasphemy laws, the Hudood Ordinances, and curriculum reform in both public schools and madrassas.<sup>93</sup> Other actions include working to improve the treatment of religious minorities and to generally improve religious freedom.<sup>94</sup>

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<sup>90</sup> *Id.* The Annual Report specifically notes that, according to the State Department, textbooks used in schools “present religious intolerance as acceptable and include derogatory statements about religious minorities, particularly Jews and Hindus.” *Id.*

<sup>91</sup> *Id.* at 152. The President, with the advice of the Secretary of State, makes CPC designations. 22 U.S.C. § 6442(b). CPC designation obligates the President to take actions against the country with the aim of promoting religious freedom. *See supra* note 41; *see also infra* section IV.b (arguing that political obstacles should not stand in the way of CPC designation).

<sup>92</sup> Press Release, United States Commission on International Religious Freedom, USCIRF Names 11 Countries of Particular Concern, Keeps Vietnam on List (May 2, 2008), *available at* [http://www.uscirf.gov/index.php?option=com\\_content&task=view&id=2191&Itemid=1](http://www.uscirf.gov/index.php?option=com_content&task=view&id=2191&Itemid=1). In a May 2008 letter to Secretary of State Rice, the USCIRF urged the State Department to comply with its obligations under the IRFA and make the first CPC designations since 2006, against Burma, Democratic People's Republic of Korea (North Korea), Eritrea, Iran, Pakistan, People's Republic of China, Saudi Arabia, Sudan, Turkmenistan, Uzbekistan, and Vietnam. *Id.* The President can defer action against a CPC because of important national interests such as trade. *See supra* note 41.

<sup>93</sup> State Department Report, *supra* note 62. The United States has committed \$100 million to education reform in Pakistan. *Id.*

<sup>94</sup> *Id.*

#### IV. WHAT TO DO ABOUT PAKISTAN

In principle, promoting religious freedom in places such as Pakistan where it does not fully exist should have the effect of promoting civil associations and decreasing sectarian violence, as well as fostering a broader culture of respect for human rights. By promoting a more stable society, many of the underlying causes of the war on terror, as well as the effects, may be undermined and diminished. As a result, a more free social order is the greatest weapon to fighting terrorism and supporting international order and stability.

##### a. PRIOR ACTIONS

To date the United States has taken few, essentially powerless, steps toward achieving progress in Pakistan. In 2007, the House of Representatives passed a Resolution “Calling for the protection of human rights and the restoration of rule of law in Pakistan.”<sup>95</sup> Prior to that, in 2002, the House of Representatives passed House Resolution 348, calling upon then-President Musharraf to remedy many of the violations of religious freedom the USCIRF 2008 Annual Report cited.<sup>96</sup>

While House Resolution 348 is nominally a step in the right direction, it is hardly sufficient to promote religious freedom in Pakistan. First, House Resolutions are not effective foreign policy tools. In their own words, they “express the sense of the House of Representatives.”<sup>97</sup> Second, in response to an argument that these can be effective, the fact that House Resolution 348 cites many of the same violations of religious freedom as in the 2008 USCIRF Annual

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<sup>95</sup> H.R. Res. 840, 110th Cong. (2007).

<sup>96</sup> H.R. Res. 348, 107th Cong. (2002).

<sup>97</sup> *Id.*

Report -- such as blasphemy laws and laws discriminating against Ahmadis -- demonstrates that, at least with respect to Pakistan, these House Resolutions have had little, if any, effect.<sup>98</sup>

According to the 2008 State Department Report, much of the work toward promoting religious freedom in Pakistan is undertaken by embassy officials.<sup>99</sup> Again, the persistence of obstacles to religious freedom in Pakistan suggests the ineffectiveness of these measures. First of all, the State Department Report is vague as to the scope and intensity of the efforts of embassy officials in Pakistan.<sup>100</sup> The State Department Report is also unclear about whom the embassy officials are actually in contact with, and offers no indication as to either the success or effectiveness of their efforts. The overall lack of progress is further evidence of the State Department's ineffectiveness.

Altogether, little has actually been accomplished with any direct aim toward promoting religious freedom in Pakistan. The few actions that have been taken are of questionable value and effectiveness, as evident in the lack of progress much maligned so far in this note.

#### **b. A CRITIQUE OF THE BUSH ADMINISTRATION'S FOREIGN POLICY AND A CASE FOR THE USCIRF**

Foreign policy under President Bush compromised the United States' commitment to international human rights in the name of the war on terror.<sup>101</sup> Ironically, however, in the 2002

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<sup>98</sup> *Id.*

<sup>99</sup> State Department Report, *supra* note 62.

<sup>100</sup> *Id.* The State Department Report uses the phrase "maintained a dialogue" to describe their efforts to promote the progress of religious freedom. *Id.*

<sup>101</sup> See generally Kathleen Roberts, *The United States and the World: Changing Approaches to Human Rights Diplomacy Under the Bush Administration*, 21 BERKELEY J. INT'L L. 631 (2003) (arguing that the Bush Administration's approach to the war on terror has compromised human rights where a more diplomatic approach to international security and a more deferential approach to human rights priorities would actually be advantageous to the administration's efforts to combat international terrorism).

International Religious Freedom Report the State Department noted that promoting a policy of international religious freedom is itself “a means of fighting the war on terrorism.”<sup>102</sup>

Nevertheless, since 1999, and thus throughout both of President Bush’s terms, the United States has oscillated between reticence and negligence in enforcing the principles of international religious freedom that the United States committed itself to in passing the IRFA.<sup>103</sup>

A crucial step in promoting religious freedom in Pakistan, under the current IRFA framework, is for the United States to adopt the recommendation of the USCIRF for the President to declare Pakistan a CPC. As noted above, CPC status is sometimes not a politically or economically viable option.<sup>104</sup> Such an argument against designating Pakistan as a CPC, however, carries little weight. Although some might argue that it would be politically damaging to label an ally in the war on terror a CPC, it should be noted that that status is actually currently held by Saudi Arabia.<sup>105</sup> And while it is certainly true that the support of the Islamic community is important, Pakistan has the advantage - vis-à-vis United States foreign policy - of being outside the region of the Middle East and of a pre-existing alliance with the United States.<sup>106</sup> Thus it is unlikely that CPC designation would cause an irreparable rift in the relations between the United States and Pakistan.<sup>107</sup>

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<sup>102</sup> See U.S. Department of State, International Religious Freedom Report 2002, available at <http://www.state.gov/g/drl/rls/irf/2002/13607.htm>.

<sup>103</sup> Pastor, *supra* note 26, at 725. Pastor criticizes the United States for failing to take action to vindicate violations of religious freedom if the violating nation holds economic or strategic value to the United States, and where some other potential benefit exists the United States generally buries its head in the sand, ignoring known violations. *Id.* In fact, action under the IRFA usually amounts to either public criticism or special visits. *Id.* at 728.

<sup>104</sup> See *supra* note 41.

<sup>105</sup> U.S. Department of State, Countries of Particular Concern, available at <http://www.state.gov/g/drl/irf/c13281.htm> (last visited Jan. 5, 2010).

<sup>106</sup> Kelly, *supra* note 53, at 507-08.

<sup>107</sup> This seems even more apparent in light of the foreign aid Pakistan has received from the United States since 9/11. See *infra* notes 109, 110, and accompanying text.

Some also argue, perhaps more poignantly, that CPC designation is an empty, toothless, and futile act.<sup>108</sup> There is a response to this critique as well. CPC designation, even if not strictly enforced or enforceable, has powerful symbolic meaning.<sup>109</sup> It is telling that the designation alone is a cause of concern and complaint for those countries that are so designated: both China and North Korea denounced their treatment in the 2001 report.<sup>110</sup> The designation of any country as a CPC, even without a strict regime or procedure for enforcement, is an important foundational step for realization of religious freedom in that country.<sup>111</sup>

The benefits of CPC designation outweigh the drawbacks. Under the IRFA, CPC designation would obligate the President to take action prescribed by the IRFA or action commensurate with the statutory scheme.<sup>112</sup> The sanctions provided in the IRFA should effectively force Pakistan to take action on its own initiative. Since 9/11, the United States has provided \$7.89 billion in military aid to Pakistan,<sup>113</sup> and it is unlikely that a multi-billion dollar financial vacuum would fail to prompt Pakistan to take action toward promoting religious freedom in all regions of the country. Further, to the extent that the effective sanctuary for the

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<sup>108</sup> Pastor argues that the enforcement of the IRFA is “deeply flawed” because actions taken have been limited at best. Pastor, *supra* note 26, at 741- 42

<sup>109</sup> In 1999, a representative of the USCIRF said that year’s list of CPC-designates, which included China and Sudan, would “send the strongest possible signal. . . .” Wales, *supra* note 11, at 610.

<sup>110</sup> *Id.* at 636, 637. China was already a CPC in 2001, but this was the first year that North Korea received the dubious distinction. *Id.* at 609- 35.

<sup>111</sup> Legal positivists, for instance, maintain the position that for a claim to be termed a right, it must be legally enforceable. Phillip Harvey, *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, 33 COLUM. HUM. RTS. L. REV. 363, 382 (2002). However, the recognition of a right without complete or immediate protection is not uncommon. *Id.* The holding of *Brown v. Board of Education*, 347 U.S. 483 (1954), is illustrative of this point: while segregated public schools were held unconstitutional, there was no immediate order for desegregation. Harvey, *supra*. In the context of the IRFA and CPC designations, the designation serves a similar purpose by recognizing violations of a right--religious freedom--and laying a foundational framework for that right to be vindicated.

<sup>112</sup> See *supra* note 41.

<sup>113</sup> *U.S. Aid to Pakistan by the Numbers*, CENTER FOR AMERICAN PROGRESS, [http://www.americanprogress.org/issues/2008/08/pakistan\\_aid\\_numbers.html](http://www.americanprogress.org/issues/2008/08/pakistan_aid_numbers.html) (last visited Jan. 5, 2010).

Taliban in the Pakistani tribal areas is the result of political reluctance, rather than willful indifference, a CPC designation could prove to be the very incentive needed to prompt a more proactive approach to how Pakistan deals with the Taliban and more general civil unrest in the tribal areas.<sup>114</sup>

Pakistan has also received billions in non-military aid since 9/11.<sup>115</sup> Here, the issue of aid is more difficult to rectify. Cutting off American aid to Pakistan altogether could actually push Pakistan further from the progress toward religious freedom that CPC status is designed to achieve.<sup>116</sup> Further, the President is required to limit the adverse impact of his actions on the target civilian population.<sup>117</sup>

However, the commensurate action provision affords the President a degree of flexibility in choosing an alternative response to sanctions. Taking into account the relationship between the United States and Pakistan and the security interests at stake, commensurate action is a more viable option for the President. Overall, it is a more appealing option.<sup>118</sup> One recommendation would be the conditioning of aid as a loan throughout the term of CPC designation.<sup>119</sup> Ensuring a stable social order is integral to securing religious freedom, so aid is essential. But for Pakistan, which has done little to keep up its end of the bargain, specifically with regard to its

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<sup>114</sup> The need to urge Pakistan to take a more proactive approach to security in the tribal regions is clear. According to one diplomat, “[i]t appears that unless the militants are attacking Pakistani forces, the army doesn’t consider them a problem.” Baker and Waraich, *supra* note 75.

<sup>115</sup> *Id.* \$3.1 billion has been allocated to Pakistan in economic and development assistance. *Id.*

<sup>116</sup> Sanctions can undermine foreign policy by creating an adverse reaction by the population of the targeted country because they often affect the civilian population to its detriment rather than protect it. See Kelly, *supra* note 53, at 509 (citing Wales, *supra* note 11, at 589).

<sup>117</sup> 22 U.S.C. § 6441(c)(2).

<sup>118</sup> See *supra* text accompanying notes 108, 110, 111.

<sup>119</sup> That is, the loan could be forgiven, and retroactively converted to aid, if there is affirmative action taken and results achieved regarding Pakistan’s (hypothetical) CPC designation.

inaction against the Taliban, a stricter regiment of aid is called for.<sup>120</sup> Similarly, the ineffective measures adopted by the United States to promote religious freedom and other human rights necessitate stronger diplomacy.<sup>121</sup>

Another suggestion is to make aid contingent upon Pakistan's commitment to develop and implement a co-operative military strategy that promotes security in the Federally Administered Tribal Areas.<sup>122</sup> This option would allow greater control for the securing of U.S. strategic interests as well as increased assurance that actions are in fact taken and results are in fact achieved. What makes this suggestion even more attractive is that it represents a break from the generally unilateral nature of most courses of action provided for in the IRFA.<sup>123</sup> To that end, a co-operative military strategy would ameliorate whatever discord might potentially be caused by

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<sup>120</sup> According to Horowitz, the IRFA is not about sanctions per se, but rather about putting conditions on foreign aid. Kelly, *supra* note 53, at 509-10 (citing Wales, *supra* note 11, at 589).

<sup>121</sup> In its 2008 letter to Secretary of State Rice, the USCIRF urged that the failure of the State Department to make CPC designations "undermines IRFA's statutory scheme, and may send the unfortunate signal that the U.S. government is not sufficiently committed to the IRFA process, including by seeking improvements from the most severe religious freedom violators." United States Commission on International Religious Freedom, *supra* note 92.

<sup>122</sup> This is, admittedly, an odd suggestion in the context of this note. However, it must be conceded that some issues are beyond the scope of diplomacy in the short-term, as it is unlikely that diplomacy alone is going to make the Afghanistan-Pakistan border region more stable in the short term. There is, nevertheless, a diplomatic element to this solution, as it aims to actually improve relations and dialogue between the United States and Pakistan and moves beyond unilateralism.

<sup>123</sup> Several commentators have criticized the IRFA for being overly unilateral, and thus undermining its own effectiveness because multilateral solutions would be ideal. See, e.g., Pastor, *supra* note 26; Nichol Jeannette Starr, Note, *Who Asked You?: The Appropriateness of U.S. Leadership in Promoting Religious Freedom Worldwide*, 33 Vand. J. Transnat'l L. 987 (2000); Christy Cutbill McCormick, Comment, *Exporting The First Amendment: America's Response to Religious Persecution Abroad*, 4 J. INT'L LEGAL STUD. 283 (1998); Peter G. Danchin, *U.S. Unilateralism and the International Protection of Religious Freedom: The Multilateral Alternative*, 41 COLUM. J. TRANSNAT'L L. 33 (2002); Matthew L. Fore, Note, *Shall Weigh Your God and You: Assessing the Imperialistic Implications of the International Religious Freedom Act in Muslim Countries*, 52 DUKE L.J. 423 (2002).

Admittedly, the multilateral options provided by the IRFA to the President are limited. See 22 U.S.C. § 6445(a)(4) (providing for the option of "A public condemnation within one or more multilateral fora."). Note that, because this is subsection (4), this provision is not even included in the list of actions the President is obligated to choose from once a country receives CPC designation.

unilateral military action by the United States within Pakistan's borders.<sup>124</sup>

A further suggestion is to condition aid on allowing Non-Governmental Organizations (NGOs) access throughout Pakistan. This suggestion can take many forms. Access to the more urban regions of Pakistan would help check, deter, or even prevent abuses of religious freedom and other human rights violations. To the extent that any of these violations can be attributed to the Pakistani government, either because of affirmative action or its neglect, the presence of NGOs will serve to publicize these violations, which in turn would put pressure on the government to improve human rights generally. Ultimately, this could lead to enhanced transparency and accountability of the Pakistani government. Further, NGO access to the tribal and border areas could serve to increase the prevalence of democratic government in the area, as well as publicize oppression and violations of human rights. The NGO option is attractive because that United States' interests are served while its resources are reserved.

Because action commensurate with the statutory scheme of the IRFA is authorized when a President makes the CPC designation,<sup>125</sup> the President has somewhat broad authority to act within the scope of the IRFA, and this action need not be economic in nature.<sup>126</sup> One option is for the President to issue public statements addressing specific violations of religious freedom in

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<sup>124</sup> See Michael Falcone, *Obama Takes Heat On Pakistan*, THE CAUCUS BLOG, Aug. 3, 2007, <http://thecaucus.blogs.nytimes.com/2007/08/03/obama-takes-heat-on-pakistan/>. During his presidential campaign, then-Senator Obama indicated that he would consider military strikes against terrorists hiding in Pakistan if the Pakistani Government did not take action itself, much to the displeasure of Pakistani officials. *Id.* Later it was revealed that President Bush had authorized covert military strikes, again to the displeasure of Pakistani officials. Eric Schmitt and Mark Mazzetti, *Bush said to give orders allowing raids in Pakistan*, INTERNATIONAL HERALD TRIBUNE, Sep. 11, 2008, available at <http://www.ihf.com/articles/2008/09/11/america/11policy.php>.

<sup>125</sup> 22 U.S.C. § 6445(b).

<sup>126</sup> "Commensurate action" has not been interpreted to encompass any particular limitations, though it seems reasonable that action would have to be consistent, at least in spirit, with the specific options provided in the act in order to be authorized by 22 U.S.C. § 6445(a)(15).

Pakistan.<sup>127</sup> This would also have the effect of providing the Pakistani government with an incentive to take proactive measures to improve conditions in the country.<sup>128</sup>

A more favorable solution, in light of the shortcomings of a public critique,<sup>129</sup> would be more co-operative in nature. Some options here might be aimed at improving religious freedom only collaterally, and more directly improving political accountability, for instance. For example, the United States could provide administrative and oversight support in Pakistani elections.<sup>130</sup> Alternatively, the United States might garner influence in Pakistan through open interactions between the two nations. This could include federally subsidized student exchange programs.

An option more immediately aimed at religious freedom includes establishing a new diplomatic post: a Religious Freedom Ambassador.<sup>131</sup> The Religious Freedom Ambassador's purpose would be to promote religious freedom, and in doing so would provide access to justice for victims of violations of religious freedom.<sup>132</sup> The Religious Freedom Ambassador would also be in charge of implementing policies and actions taken pursuant to the IRFA and maintaining communications regarding religious freedom with pertinent Pakistani government

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<sup>127</sup> The speech need not be limited to religious freedom or persecution; it could, and should, include a broader scope of human rights violations.

<sup>128</sup> Admittedly, there is the potential for backlash from such an approach. The United States looks like a name-caller and finger-pointer, and hypocritical because it derides Pakistan's inaction in spite of its own inaction. Further, this could strain diplomacy rather than improve it. *See supra* text accompanying notes 108, 110, 111 (explaining the drawbacks and benefits of CPC designation).

<sup>129</sup> *Id.*

<sup>130</sup> The United States has the advantage of its symbolic democratic pedigree.

<sup>131</sup> This proposal is conceived as a supplement to the United States Ambassador to Pakistan, serving beneath or even alongside him or her, and it could be implemented in other nations as well. Also, this position is envisioned as an element of the diplomatic envoy to a particular country, and thus is not meant to conflict with or supercede the role of the Ambassador at Large for International Freedom.

<sup>132</sup> The Religious Freedom Ambassador can provide victims of religious persecution and intolerance with access to justice by advocating for them in international fora, or even facilitate access to United States courts. *See supra* note 50.

officials. Other functions could include the occasional oversight of USCIRF activities in Pakistan and organizing forums and symposiums between American and Pakistani leaders to address violations of religious freedom. Of course, the primary objectives of the Religious Freedom Ambassador would be to improve conditions of religious freedom, so the duties of this position would not be limited to the suggestions above. Most importantly, a Religious Freedom Ambassador would allow the United States to move beyond unilateral, or even bilateral, options because the Ambassador could act as a conduit for multilateral actions and agreements.

### **c. BEYOND THE IRFA: MULTILATERALISM AND INTERNATIONAL COOPERATION**

Promoting religious freedom is just a first step toward securing human rights and political, economic, and social stability in Pakistan. While promoting religious freedom is one means to the end of broader stability, it is certainly not the only tool. Human rights abuses in Pakistan go beyond *religious* persecution.<sup>133</sup> In a November 2008 column, New York Times op-ed writer Nicholas Kristoff documented brutal crimes against women in Pakistan and Afghanistan involving “flinging acid on a woman’s face to leave her hideously deformed.”<sup>134</sup> Such attacks are not, at least ostensibly, religiously motivated. They do, however, highlight the need for a broader approach to securing stability in the region and to realization of individual rights and freedoms recognized under international human rights law. It is questionable that even a comprehensive diplomatic effort aimed at improving conditions of religious freedom would have had the effect of preventing a situation similar to what Pakistan experienced when former

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<sup>133</sup> In 2008, over 8,000 people died in Pakistan as a result of suicide attacks, terrorist bombings, Predator drone attacks and military operations against militants. Baker and Waraich, *supra* note 75.

<sup>134</sup> Nicholas Kristoff, *Terrorism That’s Personal*, N.Y. TIMES, Nov. 20, 2008, available at <http://www.nytimes.com/2008/11/30/opinion/30kristof.html>.

President Musharraf suspended the constitution.<sup>135</sup> Thus, solutions to improving social, economic and political conditions - as well as individual freedoms and liberties - must extend beyond the IRFA.

The IRFA constricts the options of the president in acting against a CPC-designee. They are limited to sanctions, conditioned aid, and commensurate action.<sup>136</sup> While the goals of the IRFA and their implementation are admirable, the act by its very nature - affirming and implementing a commitment to promoting international religious freedom by just one country, the United States - is limiting. The importance of an international effort cannot be understated.

Many adherents of Christianity - who reside emphatically in the West - and of Islam believe their respective religions control geographic “spheres of influence” and are thus wary of encroachment into and erosion of their religions’ spheres of influence.<sup>137</sup> Perceived encroachments, even if unintended, can lead to violent clashes.<sup>138</sup> While the United States is generally associated with the Christian West, the foundational importance of, and constitutionally provided for, separation of church and state gives the United States an opportunity to reassert its religious independence. As a religiously neutral state, and only by being perceived as such, the United States would position itself as an intermediary between these two spheres of influence. Additional actions by the United States, provided the United States can change its perception among Islamic populations as ostensibly Christian, would not

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<sup>135</sup> *Supra* note 55 and accompanying text. It is arguable, however, that over a period of time, a foreign policy limited to promoting religious freedom would make a national environment less and less conducive to despotic rule because of the inherent democratic underpinnings of a scheme of religious freedom.

<sup>136</sup> *Supra* notes 36, 41.

<sup>137</sup> Daveed Gartenstein-Ross, *No Other Gods Before Me: Spheres of Influence In The Relationship Between Christianity and Islam*, 33 DENVER J. INT’L L. & POL’Y 223, 224 (2005). These views, however, are not universal among Christians and Muslims and are not exclusive to Christianity and Islam. *Id.*

<sup>138</sup> *Id.*

necessarily be perceived as encroachments into a foreign sphere of influence.

The United States could accomplish this by increasing the religious diversity of the USCIRF, of the diplomatic corps in the Islamic world, and of the population of those in the legislative and executive branches. Creating roles for Muslim-Americans abroad, with increased visibility, could bring about change in the dynamic between perceived Christian and Islamic spheres of influence, leading gradually to a broad sense of mutual respect, understanding, and cooperation. Arab-American envoys to the Middle East would indicate that the United States is changing its approach to that region. A multi-cultural American diplomatic officer operating in a similar capacity could work within a foreign sphere of influence without the appearance of an encroachment, and even signal the United States' desire to foster religious freedom through dialogue and diplomacy and its genuine appreciation for a variety of beliefs and traditions.

The United States would similarly benefit from deferring to NGOs and the United Nations to carry out these goals. The less "Christian" the organization is, or at least seems, and similarly the more diverse its makeup, the less likely it is to be observed as an encroachment by one sphere of influence into another. This approach is more likely to be seen as multilateral and should avoid unilateral and imperialistic implications of a go-it-alone approach.<sup>139</sup>

British diplomat Robert Cooper's thesis of an evolving international order of states offers yet another salient approach to bringing about greater stability in Pakistan that necessarily goes beyond the scope of the IRFA.<sup>140</sup> Extrapolating Cooper's argument provides a framework for bringing security and stability to Pakistan in particular, and that region in general.

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<sup>139</sup> See *supra* note 124.

<sup>140</sup> See generally COOPER, *supra* note 2. Cooper argues that there are three forms of states: lawless pre-modern states, modern states, and postmodern states. Pre-modern states are those like Somalia and Afghanistan, and it is from pre-modern states that non-state actors like Al Qaeda emerge. *Id.* at 16, 18.

According to Cooper, a path to stability in Pakistan lies in bringing the nation into the larger international, and particularly European, fold.<sup>141</sup> The common elements of this international order are the necessary ingredients for a more stable Pakistan. Such elements include mutual transparency, openness, and vulnerability,<sup>142</sup> de-emphasizing sovereignty and distinctions of foreign and domestic,<sup>143</sup> an enhanced moral conscious in international relations and domestic affairs<sup>144</sup> and the rule of law.<sup>145</sup> An international order with these characteristics is more open, fluid, transparent and accountable than what currently exists, but even more importantly, it is more co-operative.<sup>146</sup>

The rules of this international order are self-enforcing.<sup>147</sup> Each individual state has an interest in making the collective system of states work.<sup>148</sup> The system is fueled by a sense that peace and prosperity replace power and prestige as the member states' common foreign policy objectives; war is something to be avoided.<sup>149</sup>

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<sup>141</sup> "The third part of the international system may be called the postmodern element. Here the state system of the modern world is also collapsing, but . . . it is collapsing into greater order rather than disorder." COOPER, *supra* note 2, at 26.

<sup>142</sup> *Id.* at 28, 30.

<sup>143</sup> *Id.* at 27. Sovereignty over foreign affairs and security is limited, so interference in "the domestic aspect of foreign affairs" of another state is permissible. *Id.* at 29. Further, within this order the distinction between foreign and domestic affairs erodes. *Id.*

<sup>144</sup> *Id.* at 31.

<sup>145</sup> *Id.* at 30.

<sup>146</sup> Pakistan might also find itself compelled by necessity to avail itself to this new international order. National security and foreign policy expert Robert Kagan has argued that the inability of the Pakistani government to make progress toward security in stability would justify declaring the region a threat to international security, which would in turn justify intervention in the area. Robert Kagan, *Can Pakistan Stop Militants?*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, Dec. 3, 2008, available at <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=22501&prog=zgp&proj=zusr>. This would certainly be consistent with much of the foreign policy of the Bush Administration, but it remains to be seen whether President Obama would pursue such a strategy. This is also consistent with Cooper's notion of a double-standard in international relations, whereby European security is underwritten by American power. COOPER, *supra* note 2, at 61-62.

<sup>147</sup> COOPER, *supra* note 2, at 30.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 85.

Cooper offers five maxims that illustrate how we can move toward a greater realization of this new international order. The first is to understand foreigners better.<sup>150</sup> This maxim closely comports with the requisite transparency that this international order entails. The second maxim is to recognize that, even in an age of globalization, individuals and their countries' politics will "remain stubbornly local."<sup>151</sup> Thus, in order to bring about co-operation between disparate social orders, and to bridge the gap created by such stalwart and distinct spheres of influence, foreign policy has to catch on in a domestic population. In this respect, ideas and policies will begin to grow organically.<sup>152</sup> Cooper's third maxim is that foreigners are difficult to influence.<sup>153</sup> Money talks, but when the money runs out the silence is deafening. Changes brought by forceful military intervention are easily erased when the military leaves because the ideas were not organically rooted.<sup>154</sup> The fourth maxim is that change can only be secured by moving beyond a dialogue that is limited to negotiating over national interests.<sup>155</sup> This entails engaging in dialogue that concerns the fundamental essence of national identities, because that is what often generates national interests in the first place.<sup>156</sup> The fourth maxim leads to the fifth: permanent solutions require redefining identities.<sup>157</sup> A broad and cooperative international community must be founded on a broad, mutually understood, and respected identity.<sup>158</sup>

Cooper's fifth maxim is most pertinent to this discussion. Rephrased, this maxim says

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<sup>150</sup> *Id.* at 86.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> COOPER, *supra* note 2, at 87. In the context of the Cold War, Cooper says "[S]o long as the two sides spoke of 'East' and 'West' and, indeed, so long as they thought of themselves as two sides, the best that could be achieved was a ceasefire and stalemate." *Id.* at 146.

<sup>154</sup> *Id.* at 87.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* Cooper derives this idea from Jean Monnet, a key figure in the creation of the European Union. *Id.* at 158.

<sup>158</sup> *Id.* at 87.

“when you have a problem you cannot solve, enlarge the context.”<sup>159</sup> The solutions already offered in this note are a narrow example of enlarged context.<sup>160</sup> The United Nations and the Bretton Woods institutions were early attempts to “enlarge the context” in Europe; the European Union is a more current example.<sup>161</sup> The example of the European Union is particularly instructive for developing an approach to Pakistan: economics is the lynchpin of integration and interstate relationships.<sup>162</sup>

As such, economic integration is a force for peace and stability, and thus for security.<sup>163</sup> While some conflicts are ended by the creation of a single state,<sup>164</sup> often permanent peace is founded by the development and expansions of a broad sense of community.<sup>165</sup>

The community’s exact identity remains largely irrelevant, it only matters that it exists<sup>166</sup> Cooper indicates that before “expanding the context” becomes an instrument of foreign policy, it must first be an individual experience.<sup>167</sup> This depends on a community that is grown organically, not imposed; thus it remains important that such change is brought about by multilateral cooperation.

Cooper’s vision of broad foreign policy and international relations-based approach to

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<sup>159</sup> COOPER, *supra* note 2, at 138. Cooper attributes this to Jean Monnet.

<sup>160</sup> *Id.* “Every kind of linkage -- sanctions, trade-offs, bargain (explicit or implicit) or broad alliances -- all of these involve some kind of enlargement of the context.” *Id.*

<sup>161</sup> *Id.* at 141, 35.

<sup>162</sup> *Id.* at 142.

<sup>163</sup> Economic integration as a tool to “widen the context” necessarily involves paradigm shifts in national identities. *Supra* notes 155-59 and accompanying text. According to Cooper, a lasting solution to the dilemma of Israel and Palestine requires a transformation of the identity of each. COOPER, *supra* note 2, at 144. Economic integration would be one means to this end.

<sup>164</sup> *See id.* at 145 (citing Scotland and England, and Bavaria and Saxony, as examples).

<sup>165</sup> *Id.*

<sup>166</sup> *See id.* at 151 (suggesting that what the community itself is is less important than that it exists).

<sup>167</sup> *See id.* (“Before we can begin to construct a foreign policy, we have to ask ourselves not only what sort of world we want to live in, but also who are We?”).

problems is particularly salient in the context of promoting international religious freedom.

While promoting religious freedom in Pakistan, the United States might, over time, bring about a more stable order an order that is capable of being its own vigilant guardian of religious freedom.

## V. CONCLUSION

Just as religious freedom is of primal importance to Americans,<sup>168</sup> its status in international human rights law is also paramount.<sup>169</sup> The United States had noble intentions in enacting the IRFA, the USCIRF and statutory mechanisms necessary to promote international religious freedom. However, such a commitment had largely lapsed under President Bush's watch. While pursuing the war on terror, President Bush's foreign policy unnecessarily sacrificed promoting and protecting human rights.<sup>170</sup> The irony of this is that a policy of promoting religious freedom has direct and immediate advantages to combating international terrorism and promoting international security.<sup>171</sup>

Pakistan has emerged as a particularly important country vis-à-vis United States foreign policy for a number of reasons. A striking example of the relevance of Pakistan to the United States' foreign policy is its well-documented problems with religious freedom and persecution, whether permitted or directly encouraged by the government. Religious freedom has wider implications for the stability of Pakistani society and for the war on terror because of the lawlessness perpetuated in the tribal areas where the Taliban is believed to be hiding and

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<sup>168</sup> *Supra* note 4.

<sup>169</sup> *Supra* notes 48-50 and accompanying text.

<sup>170</sup> *Supra* note 102 and accompanying text.

<sup>171</sup> *See supra* note 103 and accompanying text.

regrouping.

The IRFA provides a powerful framework by which to improve the situation in Pakistan, but only when it is actually enforced. In spite of powerful arguments for more proactive action by the United States, the Bush Administration never followed the advice of the USCIRF to designate Pakistan a CPC. This would have been a first step toward improving religious freedom and stability in Pakistan, and the IRFA would have provided the Bush Administration with many means to bring about these ends. Ultimately, the problem of stability goes beyond an approach that is focused solely on religious freedom. Incorporation into the progressive international order functions to promote stability, and this in turn will promote religious freedom and other human rights.

The Obama Administration is now in a position to make progress where the Bush Administration was entirely reticent. This note has offered several suggestions by which the new President might approach the problem of religious freedom in Pakistan, starting with CPC designation. This list is certainly not exhaustive. Whatever the President decides to do, it is clear that action is necessary. After years of empty threats, it falls on President Obama to show the world that religious freedom is not unique to the American social order, but is a paramount right of the international order.