

Codifying Religious Freedom as a U.S. Foreign Policy Priority

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KEY TAKEAWAYS

Religious freedom is a hallmark of a free society, and the Trump Administration has made the promotion of religious freedom a top diplomatic priority.

It is in America's long-term interests for more countries to respect freedom of religion, therefore promoting religious freedom should be a policy priority.

There are numerous legislative mechanisms Congress can adopt to codify religious freedom and ensure the longevity of U.S. advocacy of religious freedom.

Religious freedom is a bipartisan issue. Whether Republican or Democrat, a person of faith or of no faith, all can agree that all persons have a right to carry out their closely held beliefs according to their conscience. Religious freedom is, in fact, a hallmark of a free society.

The Trump Administration has made the promotion of religious freedom a top diplomatic priority. Ambassador-at-Large for International Religious Freedom Sam Brownback has revolutionized his job as head of the Office of International Religious Freedom at the U.S. Department of State by spear-heading efforts to get leaders from countries all across the globe involved in promoting religious freedom. The capstone of this achievement has been the Ministerial to Advance Religious Freedom (MARF).¹ This meeting, which has happened annually since 2018, is a game-changer that builds on pre-existing State Department efforts to advance religious freedom.

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The Ministerial was held for the second time this year and drew more than 1,000 government and civil society leaders from across the globe.² Just holding the Ministerial is a remarkable feat. However, if the Ministerial is to have lasting impact, Congress and the executive should consider ways to generate deliverables from the gathering and ensure its long-term position as the premier forum for advancing freedom of religion or belief.

The History of U.S. Advocacy of Religious Freedom

Congress has played an historical role in advancing religious freedom. The creation of the International Religious Freedom Office at the State Department is mandated by the International Religious Freedom Act (IRFA), passed by Congress in 1998.³ The Office is headed by an Ambassador-at-Large for International Religious Freedom who is tasked with ensuring that religious freedom is advocated throughout U.S. foreign policy. The IRFA also created the annually released International Religious Freedom report, which evaluates countries' domestic efforts to promote religious freedom. Countries that fail to make significant efforts to promote religious freedom are designated as "countries of particular concern."⁴ If designated, countries may face sanctions.⁵

The IRFA codified religious freedom as an area of focus in U.S. foreign policy. Due to the annual reporting requirements, an individual at every U.S. embassy around the globe handles religious freedom as a part of his or her portfolio. The U.S. government has regularly hosted training, often through public-private partnership arrangements,⁶ to better equip foreign governments with the tools to advance religious freedom and quell inter-religious tension in their countries. Beyond this, religious freedom is often integrated into U.S. programming, principally led by the U.S. Agency for International Development (USAID) and the State Department, that seeks to advance human rights around the globe.⁷

The IRFA also established an additional, quasi-non-governmental agency, the U.S. Commission on International Religious Freedom (USCIRF), that issues its own international religious freedom report and seeks to hold the U.S. government accountable in its promotion of religious liberty. USCIRF has congressional- and executive-appointed commissioners.⁸ Commissioners are appointed by the Speaker of the House, the Senate Majority Leader, and the President, which often ensures bipartisan representation on the Commission.

There can be no question that religious freedom has long been a priority of the U.S. government. Each Ambassador-at-Large has handled the position

differently. The first Ambassador-at-Large, Robert A. Seiple, was tasked with convincing the State Department bureaucracy that religious freedom was an important foreign policy priority, while leading the Office to produce the first religious freedom report and make the first Country of Particular Concern (CPC) designations.⁹ John V. Hanford negotiated the removal of Vietnam as a CPC and had a special focus on China.¹⁰ Suzan Johnson Cook spearheaded the institution of regular roundtables with civil society.¹¹ Rabbi David Saperstein was critical to the Obama Administration's decision to issue a determination that ISIS committed genocide in Iraq and Syria.¹² Each brought a unique focus to the religious freedom debate and exercised key leadership to ensure that values were representative in U.S. foreign policy.

Ambassador Sam Brownback, the current Ambassador-at-Large for International Religious Freedom, inaugurated the Ministerial to Advance Religious Freedom. The MARF has elevated the importance of religious freedom. In large part due to his advocacy, religious freedom has been integrated into broader regional foreign policy strategies, for example, in the Administration's free and open Indo-Pacific strategy.¹³ In addition to the MARF, Ambassador Brownback has held sometimes weekly meetings with civil society leaders to close the feedback loop between government and civil society efforts to advance religious liberty.¹⁴ Sometimes, it has even seemed like Ambassador Brownback was a lone voice advocating for human rights.

It is often said that in Washington, people are policy. This is true and, in this case, Ambassador Brownback's leadership has transformed religious freedom advocacy. As such, many of the ideas he has implemented should be carefully evaluated and integrated into long-term policy to advance religious freedom.

Historical Challenges to Advancing Religious Freedom

Given the amount of attention the Trump Administration has given to religious freedom and the bipartisan nature of its cause, this would be a good moment to strengthen the tools available for advancing religious freedom, especially the IRF report and the long-term viability of the MARF.

The IRF Report

The IRF report was a brainchild of Congress, and it was passed during an era when human rights and values were more at the forefront of U.S. foreign policy. In fact, the IRFA passed around the same time as the

Trafficking Victims Protection Act that established the Office to Monitor and Combat Trafficking in Persons and the Trafficking in Persons (TIP) report in 2000.

The two reports, however, are structured differently. These reports are important diplomatic tools of leverage that countries around the globe take very seriously. This is particularly true of the TIP report, which ranks countries according to their compliance with minimum standards for eliminating human trafficking from best to worst in four categories: Tier 1, Tier 2, Tier 2 Watch List, and Tier 3.¹⁵ Countries' rankings can change on a yearly basis, and countries that stay on, for example, the Tier 2 Watch list for more than two years, are eligible for two waivers, and then are automatically downgraded to Tier 3 for failure to undertake significant efforts to comply with minimum standards.¹⁶ This system is multi-faceted and complex, but since the minimum standards continue to be refined, it has created a more objective and tiered system for ranking countries' efforts to comply. The TIP report has its problems—including past politicization of the report.¹⁷ However, the tier ranking system and the ongoing efforts to increase the objectivity in application of the minimum standards¹⁸ makes it a superior form of measuring countries' efforts to improve on human rights.

The IRF report, in contrast, initially had only one designation: countries of particular concern. In 2016, this was altered slightly through congressional legislation that created a Special Watch list for countries with concerning track records that did not quite qualify as a CPC.¹⁹ This system allows for very few shades of gray. A country either has concerning religious freedom practices, or it does not. This makes measuring improvements difficult, and makes for a dramatic shift when a country's designation is removed—which may not exactly reflect reality.

One such example is Vietnam. Vietnam was designated a CPC from 2004 until 2006.²⁰ Due to significant improvements, Vietnam was removed from the CPC list, a change in status that was merited due to the significant strides the Vietnamese government at the time took to improve religious freedom conditions in the country. However, since that time, efforts to promote religious freedom have waned and threats to religious freedom proliferated—although, admittedly, conditions inside the country are not as bad as they were when Vietnam was originally designated a CPC.²¹ Due to the black and white nature of the designation—Vietnam either is or is not a CPC—there is no middle ground to place countries whose track records are checkered, but improving. Furthermore, once a country is upgraded, it is viewed within the State Department bureaucracy as a so-called success story, and there is often an unwillingness to acknowledge that success was

declared prematurely. Therefore, getting a country re-designated is often difficult without an external force mandating the downgrade.

These challenges could be, at least partially, remedied by instituting a tier system. In fact, alterations have already been made to the TIP report's tier-ranking system to correct for the latter problem identified in the Vietnam case in the IRF report.²² For example, when a country is on the Tier 2 Watch List in the TIP report, it can only remain on the Watch List for two years. It may receive a waiver for another two years based on the President's discretion, and then it is required to be downgraded to Tier 3. That alleviates the possibility of ultimate politicization from the only designation that would potentially trigger consequences, i.e., possible sanctions for being on Tier 3.

Consequences for Being a Country of Particular Concern

The IRF report, while useful, carries with it few, if any, tangible consequences to being designated a country of particular concern. In theory, a country is supposed to receive unique non-humanitarian, non-trade-based sanctions for its designation as a country of particular concern and failures to advance religious freedom.²³ In practice, few countries feel any effects.

Current countries of particular concern include Burma, China, Eritrea, Iran, North Korea, Pakistan, Saudi Arabia, Sudan, Tajikistan, and Turkmenistan.²⁴ Additionally, the U.S. has listed Comoros and Uzbekistan as Special Watch list countries.²⁵ According to the 2019 USCIRF report, of the 10 countries designated as CPCs, four received national security waivers, and the remaining six have sanctions that are "double-hatted."²⁶

Double-hatting happens when a nation is already heavily sanctioned, so rather than place new, unique sanctions on the country, sanctions for religious freedom are subsumed under other, pre-existing sanctions authorities. To be clear, double-hatting does not happen because there is no other possible means of sanctioning that country, but merely because it is more convenient to subsume them under a pre-existing authority. In North Korea, for example, the IRF sanctions are double-hatted under Jackson–Vanik sanctions authorities.²⁷ To put a finer point on it, no country designated as a CPC presently receives unique sanctions for committing religious freedom violations.

It is common for countries to face no unique sanctions for human rights violations, unlike sanctions instituted on so-called national security grounds. It is also common, in less heavily sanctioned countries, for the President to exercise his national security waiver authority; therefore, no

sanctions are instituted. If sanctions levied on human rights grounds are repeatedly waived, it calls into question the U.S. government's prioritization of these issues. Of course, there are some circumstances where a waiver may be necessary due to other diplomatic priorities. However, this authority should be exercised cautiously and rarely.

After Congress passed the Global Magnitsky Act, and the Department of the Treasury later re-issued it as an executive order, the U.S. possessed its first exclusively human rights-oriented targeted financial sanctions authorities.²⁸ Global Magnitsky sanctioning authorities enable the Treasury to target individuals and entities on human rights and corruption grounds. This represented a significant step in which the U.S. deployed a traditionally national security-oriented tool for the purposes of addressing human rights violations.

With the introduction of Global Magnitsky authorities, more countries are likely to face unique sanctions for human rights violations. This new authority should have implications for previous sanctions regimes, like those related to international religious freedom and human trafficking, for example, by increasing the number of instances in which countries face unique sanctions—*not* double-hatted sanctions—for human rights violations. A failure to enforce laws related to human rights could potentially send the wrong signal that the U.S. prioritizes the enforcement of laws related to national security challenges over human rights ones.

Limited Action-Oriented Deliverables from MARF

The Ministerial has proven an excellent opportunity for leaders around the world to convene in Washington, DC—the capital of the free world—to raise the profile of religious freedom, exchange notes on best practices for advancing religious liberty, and connect leaders in government and civil society with one another to refine and collaborate to promote values.

At the Ministerial's inaugural meeting in 2018, the Potomac Declaration was put forward.²⁹ This Declaration lays out the fundamentals of what religious freedom is, why it matters, and how best to promote it. The Potomac Declaration was released in conjunction with a Potomac Plan of Action, which outlined areas to prioritize the promotion of religious freedom, including atrocity prevention, preserving cultural heritage, and defending religious freedom as a human right, among other areas of focus.³⁰ In spite of the document's strength, there were few tangible deliverables or mechanisms in place to ensure future action to advance religious freedom.

For the Ministerial to have long-term impact and be seen as of continued value to the U.S. government, it should place a heavier emphasis on practical deliverables and serve as a convening ground where countries commit to taking steps to advance religious liberty.

Next Steps for Prioritizing Religious Freedom

Religious freedom is an enduring value that has transcended place and time. It is relevant to people regardless of party affiliation and regardless of faith tradition (or having no faith at all). Without religious freedom it is impossible to call a society free. It is in long-term U.S. interests to operate in a world where more countries respect freedom of religion or belief; therefore, promoting religious freedom should continue to be a foreign policy priority.

Congress should consider the following next steps to strengthen the overall apparatus for advancing religious freedom:

- **Codify the Ministerial to Advance Religious Freedom as an annual event to coordinate international efforts to advance religious liberty.** The Ministerial emerged as the brainchild of the State Department under the Trump Administration but should continue as important bipartisan efforts to advance religious freedom and human rights. The annual hosting of the meeting ensures that human rights challenges are discussed in a regular forum and viewed as a broader part of U.S. efforts to advance freedom and values around the globe. It is valuable as a convening platform and for coordinating tangible efforts to advance freedom. Codifying it in law would ensure it continues beyond the Trump Administration.
- **Make the Ministerial to Advance Religious Freedom more action-oriented.** Without deliverables, the Ministerial risks becoming another bureaucratic meeting that fails to move the ball forward in advancing a critical foreign policy issue. To make it more action-oriented the U.S. should:
 - Require the U.S. Department of State and the U.S. Department of Treasury to issue a report listing individuals and entities recommended for sanctioning under Global Magnitsky or other relevant authorities for religious freedom violations;

- Coordinate the timing and release of the IRF report with the Ministerial; and
- Establish a theme each year, and require countries that attend to make commitments to ensure that this aspect of religious freedom is advanced in policy.
- **Reform the International Religious Freedom report.** The U.S. Congress should consider modifying the IRFA to institute a tier-ranking system (similar to the TIP report) that would rank countries according to their efforts to comply with minimum standards for eliminating religious-freedom violations. In accordance with this, minimum standards should be reviewed and evaluated for objectivity. This would do away with the somewhat ambiguous CPC designations that allow for no gray areas in evaluating countries' relative efforts to address threats to religious freedom.
- **Ban “double-hatting” of religious freedom sanctions.**³¹ Countries should receive unique sanctions if they are designated a country of particular concern or placed on Tier 3 of a newly revised IRF report that includes tier rankings. No country should get off consequence-free if they rank among the worst violators of religious freedom.³² Sanctions should be targeted—not broad-based or trade-based—and should focus on holding specific individuals and entities accountable, perhaps through application of Global Magnitsky sanctions.
- **Refrain from instituting onerous or cumbersome regulations on USCIRF.** Congress has intermittently considered reforms to USCIRF that might unduly regulate the body and prevent it from performing its original role. USCIRF is prized for its agility that enables it to respond quickly to pressing threats to religious freedom around the globe. Rather than serve as a policing mechanism for religious practice, it has been able to respond to severe threats to religious freedom quickly and to identify steps the U.S. government should take to stem the tide of religious freedom violations. Rather than reform USCIRF, the U.S. government should strengthen its pre-existing mandate and Congress should reauthorize it.

- **Encourage private sector and civil society collaboration with the IRF Office.** One of the strengths of Ambassador Brownback's tenure has been his connectedness with civil society. The Trump Administration has been better able to respond to the demands of domestic groups advocating on behalf of international religious freedom causes because of the weekly or semi-weekly religious freedom roundtable meetings. The next person to hold the mantle should continue these meetings to better close the feedback loop between civil society and government.

Conclusion

Religious freedom should continue to be a key priority in U.S. foreign policy. To ensure its resilience as one of many values advocated through U.S. diplomatic efforts, Congress should consider legislative mechanisms for codifying religious freedom in the U.S. government's toolkit. By implementing the recommendations outlined above, Congress and the executive branch can ensure the longevity of U.S. advocacy of values and advance freedom of religion for all.

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