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RSCAS 2012/41

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RELIGIOWEST

MAKING FREEDOM OF RELIGION
OR BELIEF A TRUE EU PRIORITY

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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
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Abstract

The Council of the European Union recently released its Strategic Framework on Human Rights and Democracy, which included freedom of religion or belief in a list of 36 desired outcomes. The timing is good, as countries around the world are grappling with religion/state questions and the role of religious freedom for minority religious communities and dissenting members of the majority faith. Freedom of religion or belief stands at the crux of these issues, yet the Strategic Framework risks losing the religious freedom among the list of other worthy issues. By learning from the experience of the United States in its decade of religious freedom work, the European Union can jump start its efforts and ensure they have impact during this time of global transition

Keywords

“freedom of religion or belief” “United States” “European Union” “IRFA” “religious freedom ambassador”

RELIOGIOWEST is publishing a series of working papers falling into different categories: works in progress by members of the project, documents that are useful for the debate, essays by actors (in politics, law, religious groups, etc.), academic papers, and case studies. The aim is to provide an access for the public to the project and to show the first results of the research before the completion of the project.

Introduction*

In a welcomed move, the Council of the European Union recently released its Strategic Framework on Human Rights and Democracy,¹ which included an emphasis on freedom of religion or belief. With the Arab Awakening, never has religious freedom been more relevant. Countries around the world, but especially in the Maghreb, are grappling with questions of separation of mosque and state and the freedoms of minority religious communities and dissenting members of the majority faith. Freedom of religion or belief stands at the crux of these issues.

However, the Strategic Framework lists religious freedom as one of 36 desired outcomes set forth in 96 steps, which risks losing the issue among other worthy causes or diluting the efforts. This raises serious questions about the EU's approach, as half measures that merely check a box, while easy and politically expedient, will not be impactful. How will the guidelines on religious freedom within the framework inform EU policy towards Egypt as it drafts a new constitution that may limit freedom of religion or belief? How will the EU press repressive regimes, such as Eritrea, on their ongoing repression of religious activity? By learning from the experience of the United States and applying those lessons in its own context, the European Union can jump start its efforts.

The unique value of religious freedom

Notwithstanding the unfolding transitions in the Middle East, freedom of religion or belief has always mattered in a unique way. There is a strong global legal consensus on the many aspects of this multifaceted right. Foremost, Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights enshrine freedom of thought, conscience, religion and belief as a nonderogable human right.² Specifically to the European context, Article 10 of the European Charter of Fundamental Rights declared:

Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

Other international instruments echo this standard, including Article 9 of the Council of Europe's Convention on Human Rights, the various OSCE commitments following the Helsinki Final Act, Article 12 of the American Convention on Human Rights of the Organization of American States, and Article 8 of the African Charter on Human and People's Rights from the African Union. With these, the global community has agreed that individuals have unlimited freedom to believe or not to believe,

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¹ Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, Luxembourg, 25 June 2012. Available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948; UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966.

to change religion, as well as the freedom to worship, either alone or in community with others, subject to only the narrowest of limitations.

This is not the first time the Council of the European Union has spoken to religious freedom. In November 2009, the Council recognized the importance of freedom of religion or belief when it underlined “the strategic importance of freedom of religion or belief and of countering religious intolerance, and reaffirms its intention to continue to give priority to the issues as part of the European Union’s human rights policy.”³ The European Parliament has become increasingly vocal. Its resolution on the Annual Report on Human Rights in the World went so far as to call upon “the competent institutions to closely cooperate with the U.S. Commission on International Religious Freedom in bilateral and multilateral fora” (which is where I work).⁴

Part of the energy fueling this trend is an increasing level of concern by citizens in European countries about freedom of religion or belief for coreligionists abroad. All persons, regardless of their creed, have the fundamental right to believe what they want and to act on those beliefs in peaceful and non-coercive ways. Yet what makes religious freedom unique is that to be fully enjoyed, it stands upon other rights, such as speech, assembly, and property rights. More than just religious worship, the bundled nature of freedom of religion with other rights makes it a basic building block of a progressive nation. What is found in its absence? Limitations and repression that lead to human rights abuses, societal instability, extremism, and violence.

For instance, Brian Grim and Roger Finke’s book *The Price of Freedom Denied* utilizes empirical evidence to illustrate how efforts “restricting religions perceived as dangerous frequently leads to violent religious persecution.”⁵ According to their research, “the higher degree to which governments and societies ensure religious freedoms for all, the less violent religious persecution and conflict along religious lines there will be.”⁶ Similarly, the Pew Forum for Religion and Public Life’s study on “Global Restrictions on Religion” found that “64 nations – about one-third of the countries in the world – have high or very high restrictions on religion.” Considering the population of those countries, “nearly 70 percent of the world’s 6.8 billion people live in countries with high restrictions on religion.”⁷

Scholars Monica Duffy Toft, Daniel Philpott, and Timothy Shah go a step further in *God’s Century: Resurgent Religion and Global Politics*. They posit that religious based conflicts are more intractable than those with a secular motivation or cause, and religious terrorism stands out because it is “more deadly” and interacts with “worldwide trends of globalization, democratization, and modernization.”⁸ Thomas F. Farr, the first director of the Office of International Religious Freedom at the U.S. Department of State, stated that it is religious freedom protections that can “stem the flow of

³ Council of the European Union, *Council Conclusions on Freedom of Religion or Belief*, 2973rd General Affairs Council Meeting, Brussels, 16 November 2009, p. 2. Available at <http://www.consilium.europa.eu/uedocs/cmsUpload/111190.pdf>.

⁴ *Report: 30 March 2012*, European Parliament
<<http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0086&language=EN>>.

⁵ B. Grim et al., *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century*, Cambridge: Cambridge UP, 2010, pp. 2, 205-209. See also Brian Grim and Roger Finke’s statistical analysis of the effect of regulation on religious freedom in causing social conflict in “Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Economics?,” *American Sociological Review*, 2007, Vol. 72, pp. 633-658.

⁶ *Ibid.*, p. 3.

⁷ Pew Forum on Religion and Public Life, *Global Restrictions on Religion*, December 2009, p. 1. Available at <http://pewresearch.org/pubs/1443/global-restrictions-on-religion>.

⁸ See M. Duffy Toft et al., *God’s Century: Resurgent Religion and Global Politics*, New York: Norton, 2011, pp. 122, 121-173.

future terrorists by facilitating the growth of liberal systems.”⁹ I have also argued that from a security perspective religious freedom has value in combating extremism.¹⁰ The full protection of religious freedom within a rule-of-law environment can counter extremist voices by providing the civic space needed for the peaceful discussion of theological and societal issues, thereby empowering others to denounce violent interpretations. There is also practical value in engaging countries on religious freedom issues aggressively, so as to prevent depredations from escalating to a crisis level.

Because of religious freedom’s unique role as a bundled human right, one that also serves to combat extremism, it must not be lost among the other goals in the Strategic Framework. At this turning point in world history, the European Union has an opportunity to help advance religious freedom and related human rights for generations. But is it fulfilling its commitment to make the issue a “priority” by listing it as one of 36 concerns? From my own experience in government, there is legitimate concern that the issue will be shunted to the bottom of long lists of human rights concerns and forgotten.

The experience of others

The Strategic Framework provides initial guidance for how the European External Action Service (EEAS), the Council, and Member states are to advance this critical human right. With this document, the EU joins other nations and organizations with a dedicated emphasis, such as the UN with the Special Rapporteur on Freedom of Religion or Belief,¹¹ the OSCE and its Advisory Panel of Experts,¹² as well as the United States, Canada,¹³ the Netherlands, the United Kingdom,¹⁴ and Italy.¹⁵ Brussels should look to the experience of others to learn from their mistakes and avoid wasting time trying to reinvent the wheel.

Of all these, it is the United States with the longest and most developed system for promoting religious freedom. In 1998, the American Congress passed the International Religious Freedom Act that established the protection and promotion of religious freedom as a foreign policy priority. To carry out this mandate, a special ambassador-at-large position was created within the State Department to lead this effort, supported by the Office of International Religious Freedom.¹⁶ The State Department office is responsible for issuing a report on the status of religious freedom in every

⁹ Thomas F. Farr, *World of Faith and Freedom: Why International Religious Liberty is Vital to American National Security*, New York: Oxford, 2008, p. 263.

¹⁰ See Knox Thames, “Attaining Sustainable Security through Civic Space for Religious Actors,” *Small Wars Journal*, 5 January 2012, Vol. 8, No. 1. Available at <http://smallwarsjournal.com/jrnl/art/attaining-sustainable-security-through-civic-space-for-religious-actors>.

¹¹ *Special Rapporteur on Freedom of Religion or Belief*, United Nations Office of the High Commissioner for Human Rights <<http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FreedomReligionIndex.aspx>>.

¹² *Freedom of Religion or Belief*, Office for Democratic Institutions and Human Rights, Organization for Security and Co-operation in Europe <<http://www.osce.org/odihr/44455>>.

¹³ See Bettina Krause, “At Religious Liberty Dinner, Canadian Foreign Minister Promotes ‘Bedrock’ Human Right,” *Adventist News Network*, Seventh-Day Adventist Church, 29 May 2012 <<http://news.adventist.org/en/archive/articles/2012/05/29/10th-annual-religious-liberty-dinner-promotes-bedrock-human-right>>.

¹⁴ *Freedom of Religion or Belief*, Foreign and Commonwealth Office, United Kingdom <<http://www.fco.gov.uk/en/global-issues/human-rights/equality/freedom-religion/>>.

¹⁵ See “Italy Established Observatory on Religious Freedom,” *Forum for Religious Freedom Europe*, Ed. Peter Zoehrer, 6 July 2012 <<http://foref-europe.org/2012/07/06/italy-established-observatory-on-religious-freedom/>>.

¹⁶ *Religious Freedom*, Department of State, United States of America <<http://www.state.gov/j/drl/irf/>>.

country in the world.¹⁷ To ensure a robust U.S. effort, an independent watchdog entity was created, the U.S. Commission on International Religious Freedom,¹⁸ to monitor U.S. engagement and offer policy recommendations on how the United States can more effectively promote religious freedom.

The Act also created a special list of the worst violators of religious freedom called “Countries of Particular Concern,” who are found to perpetrate or permit systematic, ongoing, and egregious violations of religious freedom. The current State Department list of designations includes: Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan.¹⁹ The Commission, through its own research, agrees with those designations but has concluded an additional eight countries meet the threshold: Egypt, Iraq, Nigeria, Pakistan, Tajikistan, Turkey, Turkmenistan, and Vietnam.²⁰

Issuing reports, while useful as an advocacy tool, will not alone move governments to act. The International Religious Freedom Act has “teeth” to encourage reforms, as the U.S. government is empowered to take action against countries designated as a CPC. In my experience, the threat of breaking diplomatic relations or sanctions can create political will where none previously existed. For instance, the CPC designation, or the threat thereof, is credited with providing the leverage to move recalcitrant countries to act, such as with Vietnam and Turkmenistan.²¹

Observations from an American perspective

While the EU approach will differ from the United States’ unique mechanisms, there are lessons to be learned from the American experience a decade-plus into its effort.

Appoint and empower: For the EU effort to succeed, there needs to be a czar on religious freedom within the EEAS. Ideally, this would be the same level as other EU Special Representatives, though this may be unrealistic given that the EUSR on Human Rights was just established.²² Yet a hybrid position, like the former Personal Representative on Human Rights, would give the issue prominence and access to key European and foreign officials. Whatever the title, there should be a point person of ambassadorial rank with dedicated staff, enabling the individual to liaise with allies and raise concerns with violators.

A high-level position with a robust staff would enable the EU to better coordinate religious freedom promotion efforts by EU members, a number of whom are showing increased interest in the issue. Furthermore, an ambassador rank position could work more effectively with non-EU entities, such as the U.S. Department of State and its Ambassador-at-Large for International Religious Freedom, the U.S. Commission on International Religious Freedom, and the announced Canadian

¹⁷ The State Department does not report on the United States, but the Federal Bureau of Investigation issues a national report on hate crimes and the Department of Justice litigates when there are infringements on religious freedom.

¹⁸ *United States Commission on International Religious Freedom*, United States Commission on International Religious Freedom, United States of America <<http://www.uscirf.gov/>>.

¹⁹ *Frequently Asked Questions: IRF Report and Countries of Particular Concern*, Department of State, United States of America <<http://www.state.gov/j/drl/irf/c13003.htm>>.

²⁰ U.S. Commission on International Religious Freedom, *U.S. Commission on International Religious Freedom Annual Report 2012*, March 2012, p. 3. Please note that USCIRF’s decision to recommend Turkey as a Country of Particular Concern was reached by a split vote of USCIRF’s commissioners. The full report is available at [http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf).

²¹ Maryann Cusimano Love, *The Vietnam Dilemma*, Georgetown University Institute for the Study of Diplomacy <<http://www.uscirf.gov/images/stories/pdf/maryann%20love%20vietnam%20case%20study.pdf>>; Maryann Cusimano Love, *Taking on Turkmenistan*, Georgetown University Institute for the Study of Diplomacy <<http://www.uscirf.gov/images/stories/pdf/maryann%20love%20turkmenistan%20case%20study.pdf>>.

²² Catherine Ashton, High Representative of the EU for Foreign Affairs and Security Policy, *Statement on Salafranca Report—EUSR on Human Rights*, European Union, Strasbourg, 12 June 2012. Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130891.pdf.

ambassador with the same focus. Practically, how can the EU effectively represent its positions abroad on such an important issue without a point person of an appropriate rank and support staff?

A clear strategy: The creation of EU guidelines on freedom of religion or belief answers a longstanding request from Brussels-based NGOs. Despite coming four years after the creation of most other guidelines, this will clearly signal that religious freedom is an EU priority. But to be effective, the guidelines need to be practically focused on helping EU representatives and member states promote this important and oftentimes sensitive issue for Christians, Muslims, and members of any other faith community being persecuted or harassed, including Baha'is, Hindus, Sikhs, and others. Straightforward elements promoting religious freedom must go beyond freedom to worship, and include the broader elements of religious freedom, such as the right to religious observance, practice, expression (including by dress), and teaching; the right to keep or to change one's religion or belief without coercion; and the right to seek to persuade others to change their religion voluntarily.²³ Hopefully the guidelines will provide this direction.

Fund it well: The EU is the world's largest aid donor and it is active in supporting human rights, but a specific emphasis should be created for religious freedom. The European Instrument for Democracy and Human Rights (EIDHR) and the European Neighbourhood and Partnership Instrument (ENPI) are two obvious sources. Despite specific offices and institutions created in the United States, the State Department only recently started funding nongovernmental projects on promoting religious freedom. During my previous time at the State Department, I designed and oversaw the first U.S. government grant process focused on international religious freedom. There were many remarkable proposals, but not enough money to fund them all. Those receiving grants have carried out unique and valuable work.²⁴ The EU should make this a specific and well-resourced priority. Steps should be taken to coordinate direct funding by EU members to ensure limited resources are utilized efficiently and effectively.

Engage government and society: To be effective, there must be a coordinated top-down and bottom-up approach that engages both governments and societies. Oftentimes, one is favored at the expense of the other. Interfaith dialogue is important and can support a broader religious freedom effort, but can become an end in itself. I have seen it lead to an abdication of interest, placing the burden on religious groups to sort out their deep differences with each other and repressive governments. The EU, working with religious communities and other civil society actors, needs to avoid this temptation and actively encourage governments to promote tolerance, keep the peace, and punish perpetrators of violence.

EU demarches and declarations backed by consequences can change the political calculations of resistant governments. Engagement with carrots *and* sticks is key, not looking to overly praise or punish, but rewarding improvements and providing consequences for inaction. Weaving these concerns into EU bilateral country agreements, with specific emphasis on religious freedom, would be a place to start. Indicating that punitive actions are a possibility can create political will, changing the calculations of regimes that would otherwise continue abusing human rights.

Keep your own house in order: European Union member countries are grappling with the role of religion in the public sphere, especially for Muslims, with some countries passing laws that inappropriately limit Islamic religious dress.²⁵ Also, recently enacted registration laws discriminate against newer religious communities simply because they have not existed in the country for a

²³ "International Standards for Constitutional Religious Freedom Protections," *Yale Journal of International Affairs*, 10 December 2011 <<http://yalejournal.org/2011/12/international-standards-for-constitutional-religious-freedom-protections/>>.

²⁴ See, e.g. *U.S. Commission on International Religious Freedom Annual Report 2012*, p. 27-28.

²⁵ See, e.g. Jennie Ryan, "Belgium Burqa Ban Takes Effect," *Jurist*, 24 July 2011 <<http://jurist.org/paperchase/2011/07/belgium-burqa-ban-takes-effect.php>>.

sufficient (and often arbitrary) amount of time.²⁶ Addressing these limitations is critical, first to ensure EU members respect human rights, but for practical reasons – countries with much worse records will quickly point out shortcomings. To address both, the European Parliament and the Commission need to engage their members. In addition, the EU Agency for Fundamental Rights must be active on religious freedom issues within the Union, going beyond its racism/xenophobia and minority approach that does not address religious freedom fully.

Conclusion

Through its specified commitment to religious freedom, the EU has a unique opportunity to address issues at the forefront of human rights and foreign policy. Yet the enunciated approach risks losing the issue among a host of other human rights concerns. While not wanting to create a hierarchy of rights, policymakers in Brussels should consider the uniqueness of freedom of religion or belief and plan accordingly. Unlike other human rights, when it religious freedom is absent, a host of other core freedoms are lost. Emphasizing freedom of religion or belief is therefore practical, as it supports other issues of concern and is a core building block of stable societies and progressive nations. Making it a priority would give EU human rights policy a real relevancy during the unfolding events of the Arab Awakening, where issues of religion and religious freedom are intertwined into discussion about how to establish functional democracies with rule of law protections for all.

²⁶ See, e.g. Howard Friedman, “Hungary Again Passes Restrictive Religion Law,” *Religion Clause*, 2 January 2012 <<http://religionclause.blogspot.com/2012/01/hungary-again-passes-restrictive.html>>.

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