

**Dissent from Vice Chair Zogby
On IRFA Implementation Section of 2017 Annual Report**

In 2013, and again in 2015, President Barack Obama appointed me to the U.S. Commission on International Religious Freedom (USCIRF). It has been an honor to have served as a Commissioner these past four years. During this time, I have participated in ongoing discussions about religious freedom in several countries and how to make the work of our Commission contribute to improving religious freedom around the world.

As this is my final year of service, I am taking this opportunity to dissent in order to make clear some of my concerns with the Commission, its reporting and, in general, the way USCIRF has interpreted its mandate and mission.

Let me begin by noting that, as a Maronite Catholic with family and friends in the Middle East, a PhD in Comparative Religion, and over 40 years of work experience throughout the Arab World, the issues of religious freedom are deeply personal for me. There is no question that in many parts of the world, including the Middle East, vulnerable religious communities are facing threats to their very survival. In other instances, there are states that favor one religion over others and/or impose restrictions on the religious practices or beliefs of others, creating serious problems of discrimination and dispossession. In situations such as these, USCIRF ought to be able to play a constructive role, making policy recommendations that would help protect vulnerable communities and support efforts to advance religious freedom.

The sad truth is that, by any objective measure, the state of international religious freedom has worsened in the almost two decades since Congress passed the International Religious Freedom Act of 1998 (IRFA). The questions we should ask are why have we not made a difference and what can we do to become more effective.

I believe that part of the reason why we have not been able to contribute to improving the situation of vulnerable faith communities is because of how we have interpreted our mandate. Instead of serving as a bipartisan group of experts making informed recommendations to the Administration and Congress - as was envisioned by IRFA - we have acted more like a Congressionally-funded NGO that issues a variety of materials "naming and shaming" countries that violate religious freedom.

I believe that instead of using our limited resources to produce opinion pieces, press releases, and a lengthy and duplicative annual report, and acting as a "critic" of the Executive Branch, USCIRF should consider new and constructive approaches to its work in order to more effectively promote international religious freedom. Instead of simply making do with "naming and shaming" the many countries that violate religious freedom, we should develop a more focused approach that involves making an in-depth study of a few targeted countries so that we might be in a position to provide the Administration and Congress with creative problem-solving ideas where improvements in religious freedom can be made.

IRFA mandates that USCIRF should comment on the Department of State's (DOS) annual Religious Freedom and Human Rights Reports and make recommendations to the Administration and Congress. Instead of doing this, we spend the better part of each year writing and editing our own report. Granted that the DOS report is a bit dated by the time we receive it, but it is wrong that Commissioners never actually consider this report or comment on its

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findings. This is especially troublesome since the DOS: has invested significant resources in preparing their report; has a greater on-the-ground capacity than we have at USCIRF; and because we are called to consider the DOS reports by the very legislation that created our body.

Absent the staff and resources of the DOS, the Commission's staff is forced to write their drafts based largely on secondary sources or accounts from advocacy groups or the results of a few 3 or 4 day trips Commissioners take each year to some of the countries on which we report. After receiving the draft, Commissioners are then asked to review and comment on chapters dealing with countries, many about which we know very little. This process is broken and should be reexamined.

There are still other concerns I have raised with my fellow Commissioners regarding our approach to promoting religious freedom.

In too many instances, we have failed to distinguish between actual violations of religious freedom and sectarian, regional, or tribal struggles for political power. Too often, in the past, some have engaged in reductionist analysis - seeing everything as a nail, because the only tool we wield is a hammer. In failing to understand the complexity and non-religious underpinnings of conflicts, like those in Nigeria, Iraq, or the Central African Republic, our analysis and recommendations sometimes miss the mark. Religious conflict is not the cause of tension in these countries and, therefore, religious freedom is not the solution to their problems.

Some have expanded this reductionism to extreme and even absurd lengths, claiming that if, as they maintain, religious freedom is "the first freedom," then all else flows from it. They correctly observe a correlation between religious freedom and prosperity and democracy in some countries, but then mistakenly attribute the latter to the former. In fact, a more convincing case can be made that prosperity and democracy are the prerequisites for religious freedom. In other instances, they have attempted to make the case that religious extremism only originates in countries that violate religious freedom. This patently false conclusion ignores the reality of home-grown extremist religious movements in Western Europe or the US.

"Naming and shaming" has a role to play in confronting violators of human rights. But in order to have an impact, the party that "names and shames" has to have credibility with the party being accused. Unfortunately, this fact has never been recognized or appreciated by some of my colleagues. As a result, our condemnations oftentimes not only fall on deaf ears, they may even make a bad situation worse. This issue of credibility is especially important now that we have an Administration that includes individuals who hold shockingly Islamophobic views. If we are to be credible, we need less hubris and more humility. And we need to recognize the importance of the charge we were given in our authorizing legislation to consider the impact of our work, both positively and negatively.

For these reasons, I feel the Commission needs a new and more focused strategy that enables us to better understand the conditions in fewer countries - especially those where we can make a difference. Such a strategy might involve: convening hearings (a power we have, but have rarely used); engage former US diplomats and regional experts to advise us on circumstances in each country and what changes are possible in each instance; and examine how civil society entities

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may be engaged in countries we are examining and how we might involve US NGO's groups (especially those with roots in countries of concern) as advocates for change and promoters of religious freedom. Should such a strategy be followed I believe we would add value to our advocacy efforts and be in a better position to provide the Administration and Congress with informed recommendations that might make a difference.

Unfortunately, new Congressional legislation described in this section does not propose a new strategy. Instead, it doubles down on the failed approaches of the past. Micro-managing how the Administration organizes its foreign policy apparatus; establishing a false hierarchy of human rights; adding new staff, creating new mandates, and requiring more reporting - will not make change. These measures will only serve to add confusion to an already dysfunctional system.

And so I dissent because I believe we can and must do better.

In addition to these reservations about the way USCIRF has operated, I am also dissenting, not because I disagree with the selection of many of the countries that have been included, but because of the continuing and glaring refusal of some Commissioners to even allow for a consideration of religious freedom in Israel and the Occupied Palestinian Territories. I believe we have an obligation to consider Israel's use of religion to discriminate against both its own citizens and Palestinians living in the occupied territories, as well as its violations of a range of freedoms of Christians, Muslims, and non-Orthodox Jews.

This year the Commission received two important letters urging us to consider Israeli practices and policies. The first of these was signed by leaders representing 11 major U.S. religious communities (including the National Council of Churches, the Committee on International Justice and Peace of the U.S. Conference of Catholic Bishops, the Episcopal Church, and the United Church of Christ, among others) and 34 Christian groups from the West Bank, Gaza, and Jerusalem.

Their letter noted that the Commission had "never reported on religious freedom in Israel and the occupied territories" calling this a "conspicuous gap." They argued that Israel has established "the dominant privileged position of Jewish Israelis in a manner that discriminated against the Christian and Muslim Palestinian population in Israel and the occupied territories...[while] also negatively affecting non-Orthodox and secular Jews." They cited "discriminatory laws that impact the freedom to marry, family unification, discrimination in housing and land ownership, the freedom of movement, and the right to worship and to main holy site."

The letter closed by urging USCIRF to conduct "a comprehensive review of religious freedom in Israel and the occupied Palestinian territories, consistent with the principles it has established with respect to other states."

To support its claims, the letter was accompanied by a detailed 192-page report that was compiled by Palestine Works - an association of attorneys working in Israel and the Occupied Palestinian Territories.

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The Commission also received a letter from the Chair and President of Hiddush, "an organization of Israeli and North American Jewish leaders...who work to promote religious freedom and diversity in Israel." Their letter cited a broad range of concerns, including the "freedom to worship (such as...women's worship rights in the Western Wall plaza...), discrimination in State funding for religious services,...prohibition of public transport on the Sabbath, obstacles to non-religious and non-Orthodox burials" and "the excessive power of the Orthodox religious parties over the rights and dignity of the population as a whole."

The Hiddush letter closed by requesting that USCIRF "conduct a serious review of religious freedom issues in Israel... [and] that the standards and principles used to monitor religious freedom issues throughout the world be used as you study and review these issues in Israel."

I am including this matter in my dissent, not only because consideration of both letters was rejected by a slim majority of Commissioners, but because it was clear from the way the debate took place that there could be no rational discussion of this issue. The level of vehemence that greeted the receipt of these letters was so great that some Commissioners expressed concern that if we were to adopt these requests to conduct a review of Israeli policy it would consume the Commission in endless rancorous debate, paralyzing us for the rest of the year. The upshot of all this was that these appeals were dismissed and the Commission failed in its responsibility to impartially examine and report on religious freedom concerns of Christians, Muslims, and non-Orthodox Jews. We were, in effect, bullied into silence.

This was not the first time during my tenure that the Commission rejected an appeal of this sort. In 2014, we were visited by His Eminence Fouad Twal, then-Latin Patriarch - the Roman Catholic Bishop of Jerusalem. He raised four concerns, asking for our help: the impact of the Wall which Israel was building to separate its settlements from Palestinians, citing, in particular, its impact on a Catholic convent and monastery - threatening irreparable damage to the operations of both; the hardships imposed on Palestinians as a result of Israel's refusal to allow family unification in East Jerusalem; restrictions on the freedom of movement of clergy; and Israel's efforts to create a "Christian ID" that would divide the Palestinian citizens of Israel by religion.

The Patriarch was treated so harshly that he left our meeting shaken by the hostility he had encountered. When I raised the Patriarch's concerns at a later meeting I was asked why I was singling Israel out for criticism. In response I noted that I wasn't singling Israel out for criticism, I simply could not accept that Israel be singled out as the one country that could not be criticized.

My concern in all of this is threefold. By refusing to examine Israeli behavior, we are saying to Palestinian Christians and Muslims, and non-Orthodox or secular Jews in Israel that we will not defend their freedoms and rights. We are also contributing to Israel's sense of impunity. And we are exposing the Commission to the charge that we have a double standard - that we will criticize every other country, but never Israel. In fact, many of the behaviors we cite in our criticisms of other countries (for example, Turkey in Cyprus or Russia in Crimea) are replicated by Israel in the occupied territories.

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[In this context, we should consider the findings of the annual Pew Study of religious freedom in countries around the world. In its most recent study, Pew gives Israel the world's fifth worst score on its "Social Hostilities Index". On Pew's "Government Restriction Index", Israel's score is worse than many of the countries we examine.]

The charge that USCIRF has a double standard particularly undermines our ability to effectively advocate for religious freedom in Arab countries, the leaders of which can ignore the substance of USCIRF's critique of their record and instead dismiss us as hypocritical.

And so I dissent because I value religious freedom and cannot turn a blind eye from any victim community and because I know that our refusal to be balanced in our assessment of religious freedom concerns reduces our stature and calls into question our credibility.