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## The United States and Turkmenistan: Striking a Balance between Promoting Religious Freedom and Fighting the War against Terrorism

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# COMMENTS

## THE UNITED STATES AND TURKMENISTAN: STRIKING A BALANCE BETWEEN PROMOTING RELIGIOUS FREEDOM AND FIGHTING THE WAR AGAINST TERRORISM

Christina M. Kelly\*

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## I. INTRODUCTION

In August 2002, the United States Commission on International Religious Freedom ("USCIRF") recommended to President George W. Bush that Turkmenistan should be included on the administration's list of countries of particular concern.<sup>1</sup> Turkmenistan has a troubling human rights record, specifically regarding religious freedom.<sup>2</sup> Since 1997, the government of Turkmenistan officially has allowed the practice of only two religions: Sunni Islam and Russian Orthodox Christianity.<sup>3</sup> Those who are of a different religious persuasion are subjected to rather severe treatment.<sup>4</sup> The police and the National Secur-

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<sup>1</sup> See Press Release, U.S. Comm'n on Int'l Religious Freedom, Commission Recommends 12 Nations for Designation as 'Countries of Particular Concern' (Sept. 30, 2002), <http://uscirf.gov/prPages/pr0137.php3> (last modified Nov. 22, 2002) [hereinafter USCIRF Recommends 12 Nations]. A "country of particular concern" is a country which tolerates or engages in particularly severe violations of religious freedom. 22 U.S.C. S § 6442(a)(1)(A) (2000).

<sup>2</sup> See generally U.S. Comm'n on Int'l Religious Freedom, *U.S. Comm'n on Int'l Religious Freedom Report and Recommendations for U.S. Policy on Turkmenistan* (March 7, 2002), <http://uscirf.gov/reports/07Mar02/Turkmenistan.php3> (last modified Mar. 14, 2002) [hereinafter USCIRF, Turkmenistan]; Amnesty Int'l, *Turkmenistan: Harassment and Imprisonment of Religious Believers* (Mar. 24, 2002), <http://web.amnesty.org/ai.nsf/index/EUR610072000?OpenDocument&of=COUNTRIES\TURKMENISTAN> [hereinafter Amnesty Int'l]; Human Rights Watch, *Human Rights Watch World Report 2002: Turkmenistan* (last visited Feb. 10, 2003), at <http://www.hrw.org/wr2k2/europe20.html> [hereinafter Human Rights Watch].

<sup>3</sup> See Human Rights Watch, *supra* note 2.

<sup>4</sup> See *id.* See also Amnesty Int'l, *Amnesty Int'l is Calling For the Release of Longstanding Possible Prisoner of Conscience Mukhametkuli Aymuradov* (June 7, 2002), at <http://web.amnesty.org/ai.nsf/index/EUR610022002?OpenDocument&of=COUNTRIES\TURKMENISTAN> (detailing the arrest and imprisonment of a Jehovah's Witness for refusing to serve in the military).

ity Committee intimidate and interrogate non-sanctioned religious worshipers, confiscate their literature, and in some cases, expel them from Turkmenistan.<sup>5</sup> Despite such flagrant abuses, the Bush Administration refused to include Turkmenistan on its list of countries of particular concern.<sup>6</sup>

Religious freedom is a fundamental right deeply rooted in American sensibilities.<sup>7</sup> Religious freedom is essential to a free and open society.<sup>8</sup> It is contemporaneous with other inalienable rights such as the freedom to assemble and the freedom of expression.<sup>9</sup> Religious freedom also opens the door to political organizations, labor movements, and human rights advocates.<sup>10</sup>

Recognizing that religious freedom is fundamental and that this freedom has deteriorated abroad, the United States passed the International Religious Freedom Act ("Act").<sup>11</sup> The Act requires the President to promote religious freedom by negotiating with, withholding aid from, and sanctioning those countries that violate such freedom.<sup>12</sup> The Act's greatest weakness can be seen in the example of Turkmenistan: it is not enforced.<sup>13</sup>

<sup>5</sup> See *Human Rights Watch*, *supra* note 2.

<sup>6</sup> See USCIRF Recommends 12 Nations, *supra* note 1.

<sup>7</sup> See T. Jeremy Gunn, *A Preliminary Response to Criticisms of International Religious Freedom Act of 1998*, B.Y.U. L. Rev. 841, 846 (2000); See also U.S. Dep't of State, Annual Report on International Religious Freedom (Oct. 7, 2002), <http://www.state.gov/g/drl/rls/irf/2002/13607pf.htm> (stating that religious freedom is "the first freedom," and is "the lynchpin of democracy.") [hereinafter State Dep't Report]; 22 U.S.C.A. §6401 (a)(1) (2003).

<sup>8</sup> See State Dep't Report, *supra* note 7, at 2 (stating that promoting religious freedom is connected to promoting other human and civil rights, as well as the growth of democracy); See also John D. Negroponte, Remarks at the Seminar on Religious Life Sponsored by the Appeal of Conscience Foundation Foreign Service Institute, Arlington, VA (Nov. 13, 2002), *available at* <http://www.state.gov/p/io/rls/rm/2002/15200pf.htm> (stating that where religion is not protected, a battleground for fierce political conflict emerges).

<sup>9</sup> See Allen D. Hertzke and Daniel Philpott, *Defending the Faiths*, THE NATIONAL INTEREST, Fall 2000, at 74.

<sup>10</sup> See *id.*

<sup>11</sup> International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (codified as 22 U.S.C.A. § 6401 (1988)).

<sup>12</sup> 22 U.S.C.A. §§6441- 6445 (2003) (listing the President's specific powers and responsibilities).

<sup>13</sup> See Christy Cutbill McCormick, *Exporting the First Amendment: America's Response to Religious Persecution Abroad*, 4 J. INT'L LEGAL STUD. 283, 331 (1988) [hereinafter McCormick].

Today, religious freedom is very much a part of American foreign policy.<sup>14</sup> Since the events of September 11, 2001, the importance of religious freedom abroad is paramount.<sup>15</sup> Vigorously promoting religious freedom may prove to be a valuable tool in fighting the war on terrorism.<sup>16</sup> The Bush Administration has been careful not to categorize the war on terrorism as a war on Islam.<sup>17</sup> By combating religious persecution and promoting open, stable societies at home and abroad, the United States Government can curb religion-based violence and avoid "a potential clash of civilizations."<sup>18</sup>

This paper will discuss the Act and its applicability to Turkmenistan. Part II will discuss the political and religious landscape of Turkmenistan. Part III will explore the Act itself and the United States application of the Act. Part IV analyzes why the United States should designate Turkmenistan as a country of particular concern and the policy implications of the Administration's refusal to act.

## II. TURKMENISTAN

### A. *Background*

Turkmenistan is a republic in Central Asia, bordering the Caspian Sea and Iran to the west.<sup>19</sup> Turkmenistan is south of Russia and north of Afghanistan, which makes its geographic location useful to the United States.<sup>20</sup> In 2002, Turkmenistan allowed the United States and international organizations to

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<sup>14</sup> See State Dep't Report, *supra* note 7, at 2. The State Department recognizes that "[i]t is the policy of the United States Government to promote religious freedom worldwide" and although not all foreign governments likewise promote such freedom, it is "the birthright of every human being." *Id.*

<sup>15</sup> See State Dep't Report, *supra* note 7, at 2.

<sup>16</sup> See *id.*

<sup>17</sup> See President George W. Bush, Address to a Joint Session of Congress and the American People (Sept. 20, 2001), <http://usinfo.state.gov/usa/islam/s092001.htm>. "The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists. . . ." *Id.*

<sup>18</sup> State Dep't Report, *supra* note 7, at 2.

<sup>19</sup> See Central Intelligence Agency, The World Factbook 2002: Turkmenistan, at <http://cia.gov/cia/publications/factbook/print/tx.html> (last visited Oct. 18, 2002) [hereinafter CIA Factbook]. (last visited Oct. 18, 2002) [hereinafter CIA Factbook].

<sup>20</sup> See Sabrina Tavernise, *Show Trials Like Stalin's in Turkmenistan*, N.Y. TIMES, Jan. 27, 2003, at A6 [hereinafter Tavernise, *Show Trials*] (stating that the U.S. uses Turkmenistan's airspace for flights into Afghanistan).

transport humanitarian aid across its borders into Afghanistan.<sup>21</sup>

### 1. *Natural Resources and Economic Development*

Turkmenistan has the fifth largest natural gas reserves in the world.<sup>22</sup> Turkmenistan has also been described as the "Kuwait of the Caspian"<sup>23</sup> because it has an estimated six to eight billion tons of oil reserves.<sup>24</sup> The world's third largest sulfur deposits are found in Turkmenistan's Kara-Kum Desert.<sup>25</sup> In addition, Turkmenistan is one of the world's top ten cotton producers.<sup>26</sup>

Turkmenistan's primary export activity is directed at Russia, its northern neighbor, who in turn exports to other former Soviet Republics.<sup>27</sup> The other export alternative is Turkmenistan's southern pipeline which connects to Iran.<sup>28</sup> Iran's demand, however, has been low, and payment is usually a problem.<sup>29</sup>

Turkmenistan is well aware that the key to economic development is Western investment.<sup>30</sup> As a result, Turkmenistan's

<sup>21</sup> See CIA Factbook, *supra* note 19. See also Tavernise, *supra* note 20.

<sup>22</sup> See Bureau of European and Eurasian Affairs, Background Note: Turkmenistan (Nov. 2002), at <http://www.state.gov/r/pa/ei/bgn/2866pf.htm> (last visited Feb. 10, 2003) [hereinafter Bureau of European and Eurasian Affairs]; See also Mark Berniker, *Turkmenistan's Rights Record Doesn't Outweigh International Investment Interest*, EURASIANET, (May 30, 2003), at <http://www.eurasianet.org/departments/business/articles/eav053003.shtml>. [hereinafter Berniker]

<sup>23</sup> Brian O'Shea, *Out of Gas in Turkmenistan: The Stalled Commercial Law Reform of a Post-Soviet State*, 35 INT'L LAW. 1051, 1052 [hereinafter O'Shea]; See also Amotz Asa-El, *Meanwhile, Back in Turkestan*, THE JERUSALEM POST, Aug. 1, 2003, 2003 WL 4523672.

<sup>24</sup> See O'Shea, *supra* note 23, at 1052 (citing Irina Begjanova, U.S. Embassy, Ashabat, Turkmenistan, Oil and Gas Sector in Turkmenistan, (Sept. 1999), at <http://www.bisnis.doc.gov/bisnis/country/9909txEnergy.htm>).

<sup>25</sup> See Bus. Info. Serv. For the Newly Independent States, U.S. DEP'T OF COMMERCE, Turkmenistan: BISNIS Commercial Overview (Mar. 2000), at <http://www.bisnis.doc.gov/bisnis/country/Turkmenistan.htm>.

<sup>26</sup> See CIA Factbook, *supra* note 19.

<sup>27</sup> See O'Shea, *supra* note 23, at 1053.

<sup>28</sup> See *id.* See also Michael Lelyveld, *Turkmenistan: Ashgabat Overstating Gas Exports*, EurasiaNet, (Sept. 7, 2002), at <http://www.eurasianet.org/departments/business/articles/eav090702.shtml> [hereinafter Lelyveld].

<sup>29</sup> See Lelyveld *supra* note 28.

<sup>30</sup> The United States is visible in Turkmenistan as a foreign investor. For example, Coca Cola invested approximately 25 million US dollars. See The Business Information Service for the Newly Independent States, Turkmenistan: 2002

legislative body has written laws to accommodate such investment.<sup>31</sup> The United States, together with Turkmenistan, worked to facilitate negotiations between commercial partners and the governments of Turkmenistan, Georgia, Azerbaijan, and Turkey to build a pipeline under the Caspian Sea in order to export Turkmenistan's natural gas to the Turkish domestic energy market.<sup>32</sup> The United States Caspian Basin Energy Initiative stalled in 2000 when Turkmenistan demanded multi-million dollar "pre-financing."<sup>33</sup>

On September 27, 2002, however, President Niyasov met with an executive from Caterpillar, an American machine manufacturer, to discuss the natural gas pipeline.<sup>34</sup> In December, President Niyasov met with President Hamid Karazi of Afghanistan and Prime Minister Jamali of Pakistan to sign a framework agreement to build a 910-mile pipeline through Afghanistan.<sup>35</sup>

Turkmenistan's economic future promises to be less bleak than its Central Asian neighbors. The Asian Development Bank ("ADB") estimates that the Turkmen economy could grow 7.5 percent in 2003 and 2004 due to foreign need for its natural resources.<sup>36</sup> Beyond 2004, the economy is projected to expand from its current natural gas exports to Russia and to markets in South Asia via the Trans-Afghan pipeline.<sup>37</sup> In addition, Turkmenistan will more than double its liquefied gas exports over

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Investment Climate Statement, (Aug. 16, 2002), at <http://www.bisnis.doc.gov/bisnis/isa/020819txics.htm>.

<sup>31</sup> See O'Shea, *supra* note 23, at 1056. (The Law on Foreign Investment, amended in 1993, applies only to foreign investors owning an average of at 20 percent of capital in a company throughout the calendar year. The 1997 Law on Hydrocarbon Resources governs investment in Turkmenistan's natural resources.) See Turkmenistan: 2002 Investment Climate Statement, *supra* note 30. (Turkmen laws concerning foreign investment have been notoriously inconsistently or ineffectively implemented.).

<sup>32</sup> See Bureau of European and Eurasian Affairs, *supra* note 22.

<sup>33</sup> *Id.*

<sup>34</sup> Roger N. McDermott, *Eurasia Insight: Shake-up in Turkmen Spy Agency Hints at Pending Crisis*, EurasiaNet, (Sept. 30, 2002), at [http://www.eurasianet.org/departments/insight/articles/eav093002\\_pr.shtml](http://www.eurasianet.org/departments/insight/articles/eav093002_pr.shtml). [hereinafter McDermott].

<sup>35</sup> See *3 Nations Pushing For Afghan Pipeline*, N.Y. TIMES, Dec. 27, 2002, at A8.

<sup>36</sup> See Berniker, *supra* note 22.

<sup>37</sup> See *id.*

the next seven or eight years.<sup>38</sup> The United States is poised and eager to profit from Turkmenistan's natural riches.<sup>39</sup> Parker Drilling signed a three year contract with Calik Energy, a Turkish firm, to supply on-shore drilling rigs to Turkmenistan.<sup>40</sup>

Nothing, however, takes place within a vacuum. Although Turkmenistan's natural resources set the stage for an attractive investment opportunity, Turkmenistan's political and social factors must be considered.

## B. *Political Overview*

### 1. *The National Security Committee*

Turkmenistan's intelligence network, the National Security Committee ("KNB"), is a carryover and the equivalent of the Soviet-era KGB.<sup>41</sup> In addition to intelligence gathering, one of the KNB's primary duties is military counter-intelligence.<sup>42</sup> The KNB assesses the loyalty to Turkmenistan of each of its armed forces' senior officers.<sup>43</sup> The KNB is also President Niyasov's muscle and means for carrying out political oppression by the suppression of political and religious activism.<sup>44</sup>

The KNB, however, has seen sweeping change in recent months.<sup>45</sup> Niyasov fired Colonel General Poran Berdiev, Chairman of the KNB, in September 2002.<sup>46</sup> Niyasov also fired and arrested the chief of the KNB for drug trafficking, abuse, and corruption charges.<sup>47</sup> More than sixty KNB officials have been arrested and jailed.<sup>48</sup> On July 23, 2002, the People's Council<sup>49</sup> in Ashgabat reported that Niyasov would completely overhaul

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<sup>38</sup> See *Turkmen Liquefied Gas Exports set to More Than Double*, BBC MONITORING CENT. ASIA, July 31, 2003, 2003 WL 58938203.

<sup>39</sup> Robert L. Parker, president of Parker Drilling stated that "[w]e are very keen to develop strong, mutually beneficial and productive relations with . . . the Turkmenneft state concern, which will provide us with a long-term operation in the region." Justin Burke, *U.S., Turkish Firms to Supply Drilling Rigs to Turkmenistan*, TURKMENISTAN DAILY DIGEST, (Aug. 7, 2003), <http://www.eurasianet.org/resource/turkmenistan/hypermail/news/0003.shtml>

<sup>40</sup> See *id.*

<sup>41</sup> See McDermott, *supra* note 34. See also CIA Factbook, *supra* note 19.

<sup>42</sup> See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> See *id.*

<sup>45</sup> See *id.*

<sup>46</sup> See McDermott, *supra* note 34.

<sup>47</sup> See *id.*

<sup>48</sup> See *id.*



the country's law enforcement agencies and would redefine the "rights and responsibilities" of security chiefs.<sup>50</sup>

Niyasov targeted the KNB in an attempt to secure his own power.<sup>51</sup> His firing of top KNB officials coincided with an attempt by the former Foreign Minister to garner support to unseat him as president.<sup>52</sup> Niyasov's spies abroad have unearthed the possibility of internal political defections.<sup>53</sup> By tightening his grip on Turkmenistan's spy-network, Niyasov was clearly sending a message: no opposition will be tolerated.<sup>54</sup>

## 2. *President Saparmurat Niyasov*

Saparmurat Niyasov was appointed President of the Turkmen Soviet Socialist Republic in October 1990.<sup>55</sup> He was elected President in the Republic's first presidential election in June 1991, although he ran uncontested.<sup>56</sup> In October 1991, Turkmenistan declared independence under Niyasov's direction.<sup>57</sup> He won the presidential election in June 1992.<sup>58</sup> In January 1994, a referendum extended term limits for the office of the executive to ten years<sup>59</sup> notwithstanding a general five year term limit.<sup>60</sup> On December 28, 1999, the Assembly<sup>61</sup> voted to

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<sup>49</sup> The People's Council is a unicameral parliamentary body (one of two parliamentary bodies) established by the 1992 Constitution and is, in theory, the highest representative organ of popular power. There are more than 100 seats in the People's Council, some elected by popular vote, some are appointed. The People's Council meets infrequently and is controlled by the Democratic Party of Turkmenistan or "DPT", as all other political parties are outlawed. See CIA Factbook, *supra* note 19. See also TURK. CONST. sec. III, ch. II, arts. 48-53.

<sup>50</sup> See McDermott, *supra* note 34.

<sup>51</sup> See *id.*

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See Library of Congress, Turkmenistan, at [http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID™m0056\)](http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID™m0056)) (last visited Oct. 18, 2002) [hereinafter Library of Congress].

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

<sup>59</sup> See Library of Congress, *supra* note 55.

<sup>60</sup> See TURK. CONST., *supra* note 49, at § III, ch. III, art. 56.

<sup>61</sup> The Assembly is the second unicameral parliamentary body and the highest governmental power in Turkmenistan. The Assembly consists of 50 seats. Members are elected to five year terms and are not paid. The Assembly is controlled by DPT and all members must be pre-approved by President Niyasov. See

extend Niyasov's executive term indefinitely.<sup>62</sup> In effect, Niyasov became president for life.<sup>63</sup>

President Saparmurat Niyazov has built up a cult personality that rivals even the most charismatic of autocratic leaders.<sup>64</sup> He renamed the months of the year after a few of his favorite things such as the Turkmen flag and himself.<sup>65</sup> Niyasov honored his mother by renaming the month of April after her and declaring the year 2003 dedicated to her memory.<sup>66</sup> After celebrating his sixty-second birthday, he dyed his hair black and declared that old age officially begins at eighty-five.<sup>67</sup> Ashgabat, Turkmenistan's capital, features a twelve meter high statue of Niyasov which revolves on an engine so as to perpetually face the sun.<sup>68</sup> In addition, he initiated bank holidays such as Horse Day (April 27), Melon Day (July 10), and A Drop of Water is a Grain of Gold Day (April 6).<sup>69</sup>

Against this backdrop of apparent lunacy is a far more troubling picture.<sup>70</sup> Niyasov eradicated the free press and declared that only the President could control the newspapers.<sup>71</sup> Every newspaper issue asserts an oath of loyalty to Niyasov, and his head is perpetually present in the upper right corner of every Turkmen television screen.<sup>72</sup> He closed the Academy of

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TURK. CONST., *supra* note 49, at sec. III, ch. I, arts. 46, 49. See also CIA Factbook, *supra* note 19, at 4.

<sup>62</sup> See CIA Factbook, *supra* note 19.

<sup>63</sup> See *id.* Niyasov had announced that he would resign from office in 2010. However, he recently assumed the position as chairman for life of the Supreme People's Council. This tactical maneuver guarantees his lifetime control of Turkmenistan as the future "president" will become nothing more than Niyasov's puppet. See *Russian Paper Views Leader's Life Chairmanship of Top Legislative Body*, BBC MONITORING, Aug. 22, 2003, available in Lexis News File.

<sup>64</sup> See generally Caitlin Moran, *Turkmenistan- a land full of melons with a real banana as its President*, THE TIMES (Aug. 20, 2002), at [http://iicas.org/english/enlibrary/libr\\_20\\_08\\_02.htm](http://iicas.org/english/enlibrary/libr_20_08_02.htm) [hereinafter Moran].

<sup>65</sup> See *id.*

<sup>66</sup> See *Year of Turkmen's Mother*, N.Y. TIMES, Jan. 19, 2003, at A10.

<sup>67</sup> See Moran, *supra* note 64.

<sup>68</sup> See *id.*

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See Rachel Denber, *Looking Behind Turkmenistan's Cult*, EurasiaNet, (Oct. 9, 2002), at [http://www.eurasianet.org/departments/rights/articles/eav100902\\_pr.shtml](http://www.eurasianet.org/departments/rights/articles/eav100902_pr.shtml) [hereinafter Denber]; See also *Analysis: Central Asian Media Far From Free*, RFE/RL Conference Finds, BBC MONITORING, April 24, 2003, available at 2003 WL 19628710. (Niyasov is the official founder of all state-owned newspapers.)

<sup>72</sup> See *Central Asian Media Far From Free*, *supra* note 71.

Sciences, the opera, the ballet, and the Philharmonic Orchestra.<sup>73</sup> Niyasov even closed the circus, all in the name of building a stronger Turkmenistan.<sup>74</sup> All Non-Turkmen cultural organizations were forbidden.<sup>75</sup> As a result of Niyasov's initiatives, if a Turkmen citizen wishes to marry a non-Turkmen citizen, he now must pay a fee of \$50,000.<sup>76</sup>

On November 25, 2002, a gunman opened fire on President Niyasov in an apparent assassination attempt.<sup>77</sup> Niyasov blamed Russia,<sup>78</sup> Turkey,<sup>79</sup> and Turkmen businessmen.<sup>80</sup> Niyasov also blamed opposition leaders living in exile for the assassination attempt.<sup>81</sup> Many questioned whether the assassination attempt was staged by Niyasov himself in order to eliminate his opposition.<sup>82</sup> Since the incident, Niyasov has arrested more than one hundred people.<sup>83</sup>

Leonid Komarovskiy, a Russian born American known for his screenplays and journalism, was among those initially arrested.<sup>84</sup> He was arrested while in Turkmenistan on a business trip,<sup>85</sup> and remains in detention.<sup>86</sup>

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<sup>73</sup> See Denber, *supra* note 71. See also Press Release, Amnesty International, *Turkmenistan: Turkmen Leader Should Mark Birthday By Introducing Rule of Law*, Feb. 18, 2003, available at <http://web.amnesty.org/library/print/ENGEUR610052003>.

<sup>74</sup> See *id.*

<sup>75</sup> See Debner, *supra* note 65.

<sup>76</sup> See *id.*

<sup>77</sup> See Steven Lee Myers, *Turkmen Leader Unhurt in Attack by Gunman*, N.Y. TIMES, Nov. 26, 2002; See also *Na prezidenta Turkmene soversheno pokusheniye*, LENTA, (Nov. 25, 2002), at <http://lenta.ru/world/2002/11/25/turkmenbashi/>

<sup>78</sup> See Steven Lee Myers, *Turkmenistan Accuses Russia in Attempt on Its President's Life*, N.Y. TIMES, Nov. 27, 2002, 2002 WL 103089269. Niyasov accused Russia of supporting and harboring exiled Turkmen opposition leaders who allegedly organized the attack. See *id.* See also *Moskva nazvala obveneniya v pokushenii na Niyazova "absurdnyye" y "nastorazyvajuscimye"*, Izv.inf, (Nov. 26, 2002), at <http://main.isv.info/politic/news32247#2>.

<sup>79</sup> See *Asia: Turkmenistan: 'Mercenaries' Blamed in Plot*, N.Y. TIMES, Dec. 5, 2002, 2002 WL 106244660.

<sup>80</sup> See *id.*

<sup>81</sup> See Vitaly Ponomarev, *Turkmen Ruler Targeted By His Own Secret Services: Russian Expert*, AGENCE FRANCE-PRESSE, Nov. 28, 2002, 2002 WL 23660141.

<sup>82</sup> See Tavernise, *Show Trials*, *supra* note 20.

<sup>83</sup> See *Arrest in Turkmenistan*, N.Y. TIMES, Dec. 27, 2002, 2002 WL 104480490.

<sup>84</sup> See Sabrina Tavernise, *Turkmenistan: U.S. Citizen Is Suspect In Attack*, N.Y. TIMES, Dec. 4, 2002, 2002 WL 103945464.

<sup>85</sup> See *id.*

<sup>86</sup> See Tavernise, *Show Trials*, *supra* note 20.

Human rights organizations have called the trials reminiscent of Stalin-era show trials.<sup>87</sup> Trials are quick, and the results are known beforehand.<sup>88</sup> To date, fifty six people have been convicted.<sup>89</sup> Among those convicted were Boris Shikhmuradov, former deputy prime minister of Turkmenistan, and Khudaiberdi Orazov, head of Turkmenistan's Central Bank.<sup>90</sup> Confessions are feared to be elicited through torture and abuse.<sup>91</sup> The confession of Mr. Shikhmuradov was broadcast in Ashgabat on a movie screen.<sup>92</sup> Members of the audience demanded that the plotters be stoned to death.<sup>93</sup> One man demanded that they die in a way "more agonizing than by firing squad."<sup>94</sup>

### C. Religious Freedom

Niyasov's despotism is most felt in his approach to religious freedom.<sup>95</sup> The Constitution of Turkmenistan, adopted in 1992,<sup>96</sup> provides for religious freedom and does not designate any official religion.<sup>97</sup> Article 11 of the Constitution provides:

The government guarantees freedom of religion and faith and the equality of religions and faiths before the law. . . Everyone has the right independently to determine her or his own religious preference, to practice any religion alone or in association with others, to practice no religion, to express and disseminate beliefs related to religious preference, and to participate in the performance of religious cults, rituals, and ceremonies.<sup>98</sup>

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<sup>87</sup> See Tavernise, *Adding to Convictions*, *supra* note 84.

<sup>88</sup> See Tavernise, *Show Trials*, *supra* note 20.

<sup>89</sup> See Sabrina Tavernise, *Turkmenistan: Adding to Convictions List*, N.Y. TIMES, Feb. 1, 2003, 2003 WL 10855280 [hereinafter Tavernise, *Adding Convictions*].

<sup>90</sup> See Tavernise, *Show Trials*, *supra* note 20.

<sup>91</sup> See *id.* The State Department states that it has received "credible reports of torture and abuse of suspects." *Id.* See also Amnesty International, *Turkmen Leader Should Mark Birthday by Introducing Rule of Law*, *supra* note 73.

<sup>92</sup> See Tavernise, *Show Trials*, *supra* note 20.

<sup>93</sup> See *id.*

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

<sup>95</sup> See generally Amnesty Int'l, *supra* note 2; Human Rights Watch, *supra* note 2; State Dep't Report, *supra* note 7; USCIRF, *Turkmenistan*, *supra* note 2.

<sup>96</sup> See Library of Congress, *supra* note 55.

<sup>97</sup> See TURK. CONST., *supra* note 49, at sec. I, art. 11.

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

The Constitution makes it the responsibility of the government to protect this right of freedom of religion.<sup>99</sup> In 1991, the government passed the Law on Freedom of Conscience and Religious Organizations ("Law") which also guaranteed freedom of religion but required religious groups to register with the government.<sup>100</sup>

The provision of the Law pertaining to registration, however, was amended in 1997.<sup>101</sup> In order to be legally registered with the government, a religious group is required to have at least 500 members over the age of eighteen in the city where the group seeks to be registered.<sup>102</sup> The Law as amended effectively established two religions as the official religions of Turkmenistan: Sunni Islam and Russian Orthodoxy.<sup>103</sup> Religious minority groups were deregistered due to the new registration requirements.<sup>104</sup> For example, Baptists, Jehovah's Witnesses, and Baha'is all were deregistered.<sup>105</sup> The new requirements have made it nearly impossible for non-sanctioned religious groups to re-register.<sup>106</sup> Hare Krishnas in the Mary community successfully collected 500 signatures, but they were nonetheless denied registration because some of their members lived in the Mary region but not in the town of Mary.<sup>107</sup>

The Council on Religious Affairs ("Council") directly reports to President Niyasov.<sup>108</sup> The principle purpose of the Council is to mediate between the government and registered religious groups.<sup>109</sup> In practice, however, the Council "acts as an arm of the state," overseeing and controlling the activities of the two

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<sup>99</sup> See TURK. CONST., *supra* note 49, at sec. I, art. 3 which states, "[t]he government is responsible to the citizen and ensures conditions for the free development of the personality and protects life, honor, dignity, freedom, individual inviolability, and the natural and inalienable rights of the citizen."

<sup>100</sup> See State Dep't Report, *supra* note 7. See also USCIRF, Turkmenistan, *supra* note 2, at 3.

<sup>101</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3.

<sup>102</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3. See also Amnesty Int'l, *supra* note 2, at 2.

<sup>103</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3-4.

<sup>104</sup> See *id.*

<sup>105</sup> See *id.* at 4. See also State Dep't Report, *supra* note 7, at 14.

<sup>106</sup> See USCIRF, Turkmenistan, *supra* note 2, at 4.

<sup>107</sup> See Amnesty Int'l, *supra* note 2, at 3.

<sup>108</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>109</sup> See *id.*

registered religious groups.<sup>110</sup> The Council is made up of the Iman of the Goek Tepe Mosque, the Mufti of Turkmenistan, the head of the Russian Orthodox Church in Turkmenistan, and a government representative.<sup>111</sup>

The Law on Public Associations<sup>112</sup> is not applicable to religious gatherings.<sup>113</sup> However, the government routinely applies the Law on Public Associations in order to prohibit gathering, disseminating religious materials, and conducting religious activities.<sup>114</sup> Government officials, for example, entered the Baha'i Center in Ashgabat and warned members not to distribute religious materials.<sup>115</sup> Violators of the Law on Public Associations receive fines or are arrested.<sup>116</sup> In many cases, violators are subject to criminal prosecution.<sup>117</sup>

### 1. *Destruction of Religious Property*

In addition to prohibiting religious minorities from gathering and worshiping, the state has closed places of worship.<sup>118</sup> In February 2001, officials sealed the last remaining Baptist church.<sup>119</sup> The following month, officials broke the seals in order to strip the church of anything valuable.<sup>120</sup> All of the country's Baha'i Sunday schools were shut down in April 2002, even though these schools had long been permitted to operate.<sup>121</sup>

Turkmenistan was the first country in the former Soviet Union to physically destroy a place of worship.<sup>122</sup> In August

<sup>110</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>111</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>112</sup> The Law on Public Associations requires all religious congregations to register with the Turkmen government. A congregation must have at least 500 members in one locality over the age of 18. See State Dep't Report, *supra* note 7, at 14.

<sup>113</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>114</sup> See *id.*

<sup>115</sup> See Amnesty Int'l, *supra* note 2, at 3.

<sup>116</sup> See *id.*

<sup>117</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>118</sup> See USCIRF, Turkmenistan, *supra* note 2, at 4.

<sup>119</sup> The Baptist community had been denied re-registration under the new 1997 Law. See USCIRF, Turkmenistan, *supra* note 2, at 4.

<sup>120</sup> See *id.* at 5.

<sup>121</sup> See State Dep't Report, *supra* note 7, at 15.

<sup>122</sup> See USCIRF, Turkmenistan, *supra* note 2, at 4 (citing International Helsinki Federation for Human Rights, *Religious Intolerance in selected USCE Countries in 2000*, Report to the Seminar on Freedom of Religion or Belief in the USCE Region, The Hague, June 26, 2001, at 28).

1999, government officials destroyed a Hare Krishna temple.<sup>123</sup> The Helsinki Federation for Human Rights reported that government officials bulldozed a Seventh-Day Adventist Church, ostensibly in the name of road-building.<sup>124</sup> The road, however, was never built.<sup>125</sup>

## 2. Arrest and Maltreatment

National Security officers detained two Jehovah's Witnesses for allegedly holding a Bible study group.<sup>126</sup> KNB held them for three days and then sentenced them to fifteen days administrative detention.<sup>127</sup> The KNB reportedly beat them during their detention.<sup>128</sup> A Baptist community in western Turkmenistan states that KNB officers remove their children from school, question them, and threaten them with arrest if they attend Baptist church services.<sup>129</sup>

The story of Ramil Galimov, a Jehovah's Witness, is far more disturbing.<sup>130</sup> In September 1999, Galimov traveled to the Turkmen city of Gyzylarbat to serve as legal counsel for Yazmammed Annamammedov.<sup>131</sup> KNB arrested Annamammedov, physically abused him, and sentenced him to detention.<sup>132</sup> After having requested documents pertaining to Annamammedov's case, Galimov was arrested while exiting the

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<sup>123</sup> See *id.*

<sup>124</sup> See USCIRF, Turkmenistan, *supra* note 2, at 4 (citing International Helsinki Federation for Human Rights, *Religious Intolerance in Selected OSCE Countries in 2000*, Report of the Seminar on Freedom of Religion or Belief in the OSCE Region, The Hague, June 26, 2001 at 28). See also Amnesty Int'l, *supra* note 2, at 2.

<sup>125</sup> See USCIRF, Turkmenistan, *supra* note 2, at 4 (citing International Helsinki Federation for Human Rights, *Religious Intolerance in Selected OSCE Countries in 2000*, Report of the Seminar on Freedom of Religion or Belief in the OSCE Region, The Hague, June 26, 2001 at 28).

<sup>126</sup> See Amnesty Int'l, *supra* note 2, at 2.

<sup>127</sup> See *id.*

<sup>128</sup> See *id.*

<sup>129</sup> See *Turkmen Baptists Complain Their Children are being Intimidated*, BBC MONITORING, April 17, 2003, 2003 WL 18865358.

<sup>130</sup> See *Statements of the Baptists Persecuted in Turkmenistan*, Free Turkmenistan, Sept 17, 2002, at <http://erkin.net/English.html>. [hereinafter Free Turkmenistan].

<sup>131</sup> Yazmammed Annamammedov, a Jehovah's Witness, was arrested and sentenced to detention. He had been a court translator in other detention hearings involving Jehovah's Witnesses. See Free Turkmenistan, *supra* note 131.

<sup>132</sup> See Free Turkmenistan, *supra* note 131.

court house.<sup>133</sup> In prison, Galimov stated that "[National Security] began to beat me seriously. First. . .with their hands, then with a big club hitting my head and damaging my hearing. . .During the beating [a National Security officer] tried to force me to take my trousers off so he could rape me."<sup>134</sup> After several more beatings, one of which led to a heart attack,<sup>135</sup> Mr. Galimov was sent to a prison for political activists and espionage suspects and sentenced to hard labor.<sup>136</sup> Finally, Mr. Galimov was sent to Russia (he is a citizen of both Turkmenistan and Russia) as his "religious views are not acceptable in Turkmenistan."<sup>137</sup>

### 3. *Forced Deportations and Internal Relocations*

For those who are not Turkmen citizens, and even for those who are, membership in a non-sanctioned religious group can mean forced deportation.<sup>138</sup> For example, KNB officials deported Ramil Galimov, who held dual citizenship in Russia and Turkmenistan, back to Russia after having detained him.<sup>139</sup> He arrived in Saratov, Russia without documentation, as the KNB had confiscated his passport and identification.<sup>140</sup> On December 16, 1999, at eleven p.m., fifteen KNB agents raided the home of Vladimir Chernov, a Baptist minister.<sup>141</sup> The following day, he and his wife were arrested, and on December 23, KNB officials deported them to Kiev.<sup>142</sup> Both Mr. Chernov and his wife had held legal residency in Turkmenistan.<sup>143</sup>

For those religious activists who are Turkmen citizens, the government restricts movement within the country and enforces residence permits.<sup>144</sup> The Protestant minister, Shokhrat Piriyeu, was sent back to Turkmenabad from Ashgabat after

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<sup>133</sup> See *id.*

<sup>134</sup> See Free Turkmenistan, *supra* note 131.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.*

<sup>137</sup> *Id.*

<sup>138</sup> See generally Amnesty Int'l, *supra* note 2 at 7.

<sup>139</sup> See Amnesty Int'l, *supra* note 2, at 7.

<sup>140</sup> See Free Turkmenistan, *supra* note 131.

<sup>141</sup> See Amnesty Int'l, *supra* note 2, at 8.

<sup>142</sup> See *id.*

<sup>143</sup> See *id.*

<sup>144</sup> See *id.* "Residence Permits" allow Turkmen Citizens to live in a Turkmen city. See Amnesty Int'l, *supra* note 2, at 8.



KNB agents raided his home and confiscated religious material, his passport, and identification.<sup>145</sup> He was arrested for failing to have proper identification.<sup>146</sup>

#### 4. *Regulation of Sanctioned Religious Groups*

Sanctioned religious groups- i.e., Russian Orthodoxy and Sunni Islam- do not fare much better in Turkmenistan.<sup>147</sup> Both groups are heavily regulated and operate under close scrutiny.<sup>148</sup> Although unconfirmed, there have been credible reports that security officials have prevented Orthodox Christians from practicing their faith despite prior registration with the government.<sup>149</sup>

The number of mosques within Turkmenistan is restricted.<sup>150</sup> Every village must have at least one mosque, which is to be financially supported by the local citizenship.<sup>151</sup> In order to build a mosque, villagers must get permission from government officials, obtain land from local authorities, and provide for its funding and construction.<sup>152</sup>

Islamic clergy members are also highly regulated.<sup>153</sup> Turkmenistan's Council for Religious Affairs controls the selection, promotion, and dismissal of all Sunni Muslim *mullahs*.<sup>154</sup> The government instructs *Imams* to follow each daily prayer with an oath of loyalty to the "fatherland."<sup>155</sup> Hoja Orazgylych, an elderly *Imams* who criticized Niaysov's religious policies, was arrested and charged with economic crimes in February 2000.<sup>156</sup> He had also provided a Turkmen translation of the Quran that

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<sup>145</sup> See *id.*

<sup>146</sup> See Amnesty Int'l, *supra* note 2, at 8.

<sup>147</sup> See generally *id.*; State Dep't Report, *supra* note 7.

<sup>148</sup> See Amnesty Int'l, *supra* note 2, at 8.

<sup>149</sup> See State Dep't Report, *supra* note 7, at 15-16.

<sup>150</sup> State Dep't Report, *supra* note 7, at 16.

<sup>151</sup> See *id.* at 15.

<sup>152</sup> See State Dep't Report, *supra* note 7, at 15.

<sup>153</sup> See *id.*

<sup>154</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3 (citing International Helsinki Federation for Human Rights, *Religious Intolerance in Selected OSCE Countries in 2000*, Report to the Seminar on Freedom of Religion or Belief in OSCE Region, The Hague, June 26, 2001, at 28).

<sup>155</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3.

<sup>156</sup> See *id.*

Turkmen authorities found "questionable." Subsequently, KNB officials burned all copies of this translation.<sup>157</sup>

The government also tightly controls access to Islamic education.<sup>158</sup> In 1997, the government began restricting *Imams* from teaching Islam to students.<sup>159</sup> The government also closed the *madrasah*<sup>160</sup> in Dashoguz, eliminating all but one *madrasah* in Turkmenistan (the theological facility at the Turkmen State University in Ashgabat).<sup>161</sup> President Niyasov stated that such closures were necessary because he strongly opposes "education that confuses children."<sup>162</sup> Acknowledging the problems inherent in his country's educational system, Niyasov opted for a harsh, "paternalistic" remedy.<sup>163</sup>

"If a member of a family breaks the law, we cut one year of gas and electricity delivery. We must educate young people. Ibn Sina [Islamic scholar] said that if one wants to educate a child well, one must beat him. It is like fertilizer in agriculture. . . our educational system is bad."<sup>164</sup>

The President also announced that future classes would be limited to between fifteen and twenty students and that the government would control the curriculum of Islamic instruction.<sup>165</sup>

The government also controls the annual pilgrimage to Mecca, or the *Hajj*.<sup>166</sup> Only 187 pilgrims were allowed to attend in December 2001.<sup>167</sup> But in 2002, all exit visas were abolished; in theory all could participate, but in reality the government closely screened travelers.<sup>168</sup>

<sup>157</sup> See *id.*

<sup>158</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3. See also *Allah's Shadow*, THE ECONOMIST, July 26, 2003.

<sup>159</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>160</sup> A "*madrasah*" is an Islamic institute for higher learning. See THE HANS WEHR DICTIONARY OF MODERN WRITTEN ARABIC 1054 (4th ed. 1994).

<sup>161</sup> See State Dep't Report, *supra* note 7, at 15.

<sup>162</sup> See USCIRF, Turkmenistan, *supra* note 2, at 3.

<sup>163</sup> Antoine Blua, *Turkmen Leader Optimistic on State of Country, But Others Have Doubts*, EURASIANET, (Aug. 12, 2002), at <http://www.eurasianet.org/departments/business/articles/pp081202.shtml>.

<sup>164</sup> *Id.*

<sup>165</sup> See State Dep't Report, *supra* note 7, at 15.

<sup>166</sup> See *id.*

<sup>167</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>168</sup> See *id.*

### III. THE INTERNATIONAL RELIGIOUS FREEDOM ACT

#### A. Overview

The International Religious Freedom Act of 1998<sup>169</sup> asserts core values and freedoms explicit in our American Nation's history.<sup>170</sup> The Act states that religious freedom "undergirds the very origin and existence of the United States. . . [the Nation's Founders] established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion."<sup>171</sup> The Act further asserts that religious freedom is a "universal human right and fundamental freedom" and that "[g]overnments have the responsibility to protect the fundamental rights of their citizens."<sup>172</sup>

The Act creates an Office of International Religious Freedom within the State Department, headed by an Ambassador-at-Large for International Religious Freedom.<sup>173</sup> The Ambassador is responsible for preparing an annual report detailing religious freedom in each nation and examining what has been done and what will be done in order to promote religious freedom in suspect nations.<sup>174</sup>

The Act mandates specific action by the President where a country is in clear violation of its citizens' religious freedom.<sup>175</sup> The President must act "as expeditiously as practicable."<sup>176</sup> The Act allows the President some discretion when choosing how to respond.<sup>177</sup> The Act, however, does not give the President discretion to do nothing in the face of a violation.<sup>178</sup>

The President may choose from fifteen specific actions, or may choose an action that would not be inconsistent with these fifteen actions, or, alternatively, he may negotiate a binding agreement.<sup>179</sup> In electing not to act, the President first must

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<sup>169</sup> International Religious Freedom Act of 1998, Pub. L. No. 105-292, 112 Stat. 2787 (codified as 22 U.S.C.S. § 6401 (1988)).

<sup>170</sup> 22 U.S.C.S. § 6401(a)(1).

<sup>171</sup> 22 U.S.C.S. § 6401(a)(1).

<sup>172</sup> 22 U.S.C.S. § 6401(a)(2)-(3).

<sup>173</sup> 22 U.S.C.S. § 6411(a).

<sup>174</sup> 22 U.S.C.S. § 6411(c)(1).

<sup>175</sup> See 22 U.S.C.S. § 6411(b)(1).

<sup>176</sup> *Id.*

<sup>177</sup> See, e.g., 22 U.S.C.S. §§ 6441(a)(2), 6442(c)(1), 6442(c)(2)(A).

<sup>178</sup> See 22 U.S.C.S. § 6441(a)(1)(B).

<sup>179</sup> See 22 U.S.C.S. § 6441(b)(1)(A)-(B).

tailor his response narrowly in order to “minimize any adverse impact on (A) the population of the country whose government is targeted by the Presidential action or actions; and (B) the humanitarian activities of the United States and foreign nongovernmental organizations in such country.”<sup>180</sup> Second, the President must designate any country with proven religious freedom violations as a “country of particular concern” (“CPC”).<sup>181</sup>

§ 6445(a) lists the actions from which the President must choose:

1. A private demarche.<sup>182</sup>
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.
9. The withdrawal, limitation, or suspension of United States development assistance. . .
10. Directing the Export-Import Bank of the United States, the Overseas Private Investment Corp., or the Trade and Development Agency not to approve the issuance of any guarantees, insurance, [or] extensions of credit. . .
11. The withdrawal, limitation, or suspension of United States security assistance. . .
12. [D]irecting the United States executive directors of international financial institutions to oppose. . . loans.
13. Ordering the heads of the appropriate. . . agencies not to issue any specific licenses, and not to grant. . . authority. . . to export any goods or technology to the specific foreign government. . . responsible for violations.
14. Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period. . .
15. Prohibiting the United States Government from procuring, or entering into any contract for the procurement of any goods or

<sup>180</sup> 22 U.S.C.S. § 6441(c)(2)(A)-(B).

<sup>181</sup> 22 U.S.C.S. § 6442(b)(1)(A).

<sup>182</sup> A “demarche” is a change in policy or a new course of action. See WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 482 (2d ed. 1983).

services from the foreign government. . . responsible for violations.<sup>183</sup>

This list is by no means exhaustive, as the President has two final options.<sup>184</sup> First, the President may take alternative action if it is "commensurate in effect" to the substituted action and furthers the United States' commitment to religious freedom.<sup>185</sup> Second, he may negotiate a binding agreement that requires "such government to cease, or. . . to address and phase out, the act, policy, or practice constituting the violation of religious freedom."<sup>186</sup>

In cases where a country has severely violated religious freedom, the President shall designate the country as a "CPC."<sup>187</sup> United States policy requires opposition to "severe violations of religious freedom that are or have been engaged in or tolerated by the governments of foreign countries."<sup>188</sup> In order to promote religious freedom in foreign countries that are severe violators, the President must take action.<sup>189</sup> Specifically, the President must choose between actions described in paragraphs (9) through (15) of section 6445(a).<sup>190</sup> Alternatively,

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<sup>183</sup> 22 U.S.C.S. § 6445(a).

<sup>184</sup> See 22 U.S.C.S. § 6445(a).

<sup>185</sup> 22 U.S.C.S. § 6445(b).

<sup>186</sup> 22 U.S.C.S. § 6445(c).

<sup>187</sup> 22 U.S.C.S. § 6442(b).

<sup>188</sup> 22 U.S.C.S. § 6442(a)(1)(A).

<sup>189</sup> 22 U.S.C.S. § 6442(a)(1)(B).

<sup>190</sup> 22 U.S.C.S. § 6442(c)(1)(A). These actions include:

(9) The withdrawal, limitation, or suspension of United States development assistance. . .

Directing the Export-Import Bank of the United States, the Overseas Private Investment Corp., or the Trade and Development Agency not to approve the issuance of any guarantees, insurance, [or] extensions of credit. . .

The withdrawal, limitation, or suspension of United States security assistance. . .

[D]irecting the United States executive directors of international financial institutions to oppose. . . loans.

Ordering the heads of the appropriate. . . agencies not to issue any specific licenses, and not to grant. . . authority. . . to export any goods or technology to the specific government. . . responsible for the violations.

Prohibiting any United States financial institution from making loans or providing credits totaling more than \$10,000,000 in any 12-month period. . .

the President may choose any action commensurate in effect to those actions described in paragraphs (9) through (15).<sup>191</sup>

The President may also delay action for a ninety day period.<sup>192</sup> This delay may be necessary for the continuation of negotiations with the violating country that have already commenced concerning the efforts to end religious violations.<sup>193</sup> The President may also request additional time in order to continue multilateral negotiations to bring about an end to religious persecution in the violating country.<sup>194</sup> The President may wish to review corrective action taken by the foreign country<sup>195</sup> or anticipate that the country will take corrective action.<sup>196</sup>

#### B. *Historical Development of the International Religious Freedom Act*

The genesis of the International Religious Freedom Act is largely due to Michael Horowitz.<sup>197</sup> In 1995, Horowitz sponsored Getanah Metafria Getanah for United States citizenship.<sup>198</sup> Getanah, who is Ethiopian, was repeatedly arrested and tortured for his Christian beliefs, first by the Communist government in Ethiopia, then by the Muslim authorities who replaced the Communists.<sup>199</sup> Horowitz, angry because of the United States government's indifference to Getanah, wrote an article for the Wall Street Journal.<sup>200</sup> He called upon the United States government to recognize the religious persecu-

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Prohibiting the United States Government from procuring, or entering into any contract for the procurement of any goods or services from the government. . . responsible for violations. 22 U.S.C.A. § 6445(a).

<sup>191</sup> 22 U.S.C.S. § 6442(c)(1)(B).

<sup>192</sup> 22 U.S.C.S. § 6442(c)(3).

<sup>193</sup> 22 U.S.C.S. § 6442(c)(3)(A).

<sup>194</sup> 22 U.S.C.S. § 6442(c)(3)(B).

<sup>195</sup> 22 U.S.C.S. § 6442(c)(3)(C)(i).

<sup>196</sup> 22 U.S.C.S. § 6442(c)(3)(C)(ii).

<sup>197</sup> See Steven Wales, *Remembering the Persecuted: An Analysis of the International Religious Freedom Act*, 24 Hous. J. INT'L L. 579, 583 (2002) [hereinafter Wales]. Michael Horowitz was general for the Office of Management and Budget in the Reagan Administration. See *id.*

<sup>198</sup> See *id.* See also Jacob Heilbrunn, *Christian Rights: The Next Big Conservative Issue*, NEW REPUBLIC, July 7, 1997, at 19 [hereinafter Heilbrunn].

<sup>199</sup> See Steven Wales, *supra* note 198, at 583. See also McCormick, *supra* note 13, at 285-86.

<sup>200</sup> See Michael Horowitz, *New Intolerance Between Crescent and Cross*, WALL ST. J., July 5, 1995, at A8 [hereinafter Horowitz].

tion of Christians.<sup>201</sup> He also called upon American Jews<sup>202</sup> and American Christians<sup>203</sup> to aid in his crusade, but received no response.<sup>204</sup>

Horowitz wrote to missionary organizations, clergy, and activists.<sup>205</sup> In 1996, Jewish, Catholic, and Protestant leaders wrote a "Statement of Conscience" which reflected their concerns about religious persecution abroad.<sup>206</sup> This statement was later adopted by the National Association of Evangelicals ("NEA").<sup>207</sup> The United States government, however, remained indifferent.<sup>208</sup> The NEA met with President Clinton asking that he issue a policy statement tying religious persecution to foreign aid and United States trade.<sup>209</sup> The President "was sympathetic but declined to take on the issue."<sup>210</sup>

Reports of religious persecution abroad flooded the United States,<sup>211</sup> and in 1996, Congress decided to act.<sup>212</sup> The International Operations and Human Rights Subcommittee of the House of Representatives held hearings on the religious persecution of Christians and Jews worldwide.<sup>213</sup> Because of increasing public concern over religious persecution, members of

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<sup>201</sup> *See id.*

<sup>202</sup> Horowitz, who is Jewish, states that "[F]or American Jews who owe our very lives to the open door of the 'blessed land,' silence should not be an option in the face of persecutions eerily parallel to those committed by Adolf Hitler." McCormick, *supra* note 13, at 288.

<sup>203</sup> Horowitz also states that American Christians were not interested in protecting fellow Christians with quite the same zeal with which they defended Soviet Jews. *See* Wales *supra* note 189, at 583. *See also* McCormick, *supra* note 13, at 286.

<sup>204</sup> *See* Heilbrunn, *supra* note 199, at 19.

<sup>205</sup> *See* McCormick, *supra* note 13, at 286.

<sup>206</sup> *See id.* at 285-86.

<sup>207</sup> *See id.* at 286.

<sup>208</sup> *See* Wales, *supra* note 198, at 586.

<sup>209</sup> *See* McCormick, *supra* note 13, at 287.

<sup>210</sup> *Id.* "While the [Clinton] Administration is changing federal policy to create new categories of political asylum for victims of spousal abuse and gays and lesbians, it has viewed religious persecution with indifference." *But see* Heilbrunn, *supra* note 199, at 19.

<sup>211</sup> For example, reports surfaced concerning Christian children in the Sudan being sold into slavery, churches burned in Pakistan, and Christians again forced underground in Russia. *See* McCormick, *supra* note 13, at 283-84.

<sup>212</sup> *See* Gunn, *supra* note 7, at 842.

<sup>213</sup> *See id.*

Congress gradually came to believe that the State Department should get involved.<sup>214</sup>

In May 1997, Senator Arlen Specter and Congressman Frank Wolf introduced the "Wolf-Specter" bill, also known as the "Freedom from Religious Persecution Act."<sup>215</sup> The bill would have established an office of Religious Persecution Monitoring and would have provided for the "imposition of sanctions against countries engaged in a pattern of religious persecution."<sup>216</sup> The Clinton Administration, along with several members of Congress, rejected the requirement that would automatically impose sanctions.<sup>217</sup>

Don Nickles, a Republican Senator from Oklahoma, introduced another version of the bill, the "International Religious Freedom Act".<sup>218</sup> This bill also met with opposition.<sup>219</sup> "Social conservatives" were concerned about protecting religious freedom, but "economic conservatives" wanted to protect free trade.<sup>220</sup> After much debate and compromise, President Clinton signed the bill into law on October 27, 1998.<sup>221</sup>

## C. *The United States' Application of the International Religious Freedom Act*

### 1. *The 2002 Report on International Religious Freedom*

The Introduction to the State Department's Report ("Introduction") lists four reasons for United States promotion of relig-

<sup>214</sup> Gunn, *supra* note 7, at 842.

<sup>215</sup> See Wales, *supra* note 198, at 588.

<sup>216</sup> *Id.*

<sup>217</sup> See Gunn, *supra* note 7, at 843. The term "sanctions" meant that all exports to offending countries would be prohibited, with limited exceptions such as humanitarian aid and refugee assistance. H.R. REP. 105-480 (II) at 6 (1998), reprinted in 1998 U.S.C.C.A.N. 602.

<sup>218</sup> See Tony Carnes, *Religious Persecution Bill Encounters Stiff Resistance*, CHRISTIANITY TODAY, Oct. 5, 1998, at 26. Nickles was concerned that the Wolf-Specter bill would never pass the Senate. *Id.* Nickles also was concerned that required sanctions would negatively affect relationships between missionaries and indigenous Christians. See *id.*

<sup>219</sup> See *id.*

<sup>220</sup> *Id.*

<sup>221</sup> Gunn, *supra* note 7, at 843. See also Carnes, *supra* note 210, at 26 (noting that one reason for the unanimous passage of the bill and the President's acceptance of the bill is that no one would want to be seen as an opponent of helping the religiously persecuted).



ious freedom.<sup>222</sup> First, religious liberty is an "integral part of American history."<sup>223</sup> Second, religious freedom is an "unalienable right" reflected in both the Declaration of Independence and International Law.<sup>224</sup> Third, religious freedom is intertwined with other human and civil rights, as well as with the growth of democracy.<sup>225</sup> Finally, promoting religious freedom is a way to fight the war on terrorism.<sup>226</sup>

The Executive Summary of the Report lists five categories of governments that permit religious persecution.<sup>227</sup> The first category deals with totalitarian or authoritarian regimes that seek to control religious belief and practice because such belief or practice threatens the autocratic ideology.<sup>228</sup> Countries falling within this category include Burma, China, Cuba, Laos, North Korea, and Vietnam.<sup>229</sup>

The second category encompasses those governments exhibiting hostility toward minority religions.<sup>230</sup> Governments which fall into this category are not, according to the State Department, determined to control minority religions, but seek to implement policies designed to deter believers from practicing.<sup>231</sup> Turkmenistan falls into this category, as do Iraq, Pakistan, and Saudi Arabia.<sup>232</sup>

Third, some countries neglect persecution by failing to act against violations of religious freedom.<sup>233</sup> These include Egypt, Indonesia, India, and Nigeria.<sup>234</sup> Fourth, some governments

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<sup>222</sup> State Dep't Report, *supra* note 7, at 1.

<sup>223</sup> *Id.*

<sup>224</sup> *Id.* The Introduction cites the 1948 Universal Declaration of Human Rights, which states "all human beings are born free and equal in dignity and rights" and have the right to enjoy "freedom of thought, conscience and religion." *Id.* The Act itself points to International agreements, not the First Amendment, in its language. 22 U.S.C.S. § 6401(a)(2)-(3).

<sup>225</sup> *Id.*

<sup>226</sup> See State Dep't Report, *supra* note 7, at 1. The Introduction states that the attack by Al Qaeda demonstrated "that people can and do exploit religion for terrible purposes, in some cases manipulating and destroying other human beings as mere instruments."

<sup>227</sup> State Dep't Report, *supra* note 7, at 1.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> State Dep't Report, *supra* note 7, at 5.

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> State Dep't Report, *supra* note 7, at 6.

implement legislation that favors one religious group to the disadvantage of another group.<sup>235</sup> Countries such as Israel, Russia, and Turkey fall into this category.<sup>236</sup> Finally, countries in Western Europe (France, Belgium, and Germany) wrongfully designate certain religious groups as "sects" or "cults," thereby stigmatizing these groups.<sup>237</sup>

## 2. Reaction to the Report

Both at home and abroad, the Report has engendered much debate and in some cases, outrage.<sup>238</sup> Foreign governments assailed the apparent policing and judging of their internal affairs.<sup>239</sup> Sun Yuxi, a spokesman for the Chinese Foreign Ministry, reacted to the 2001 Report which named China as a country of particular concern by saying that the Report was "a grave violation of international laws and international relations and a gross interference in China's internal affairs."<sup>240</sup> China also called such interference "finger-pointing"<sup>241</sup> and "another blow to U.S.-China relations."<sup>242</sup> North Korea called the report "mud-slinging."<sup>243</sup>

At home, critics accused the Bush Administration of codding allies useful in the war against terrorism.<sup>244</sup> The Washington Post published an article that accused the United States of "sparing anti-terrorism allies such as. . . Turkmenistan."<sup>245</sup> Congressman Christopher Smith stated that the rationale behind not designating certain violating countries as CPCs is "fear of offending our new partners in this war against ter-

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<sup>235</sup> See *id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> See Wales, *supra* note 198, at 636-40.

<sup>239</sup> See Wales, *supra* note 198, at 636.

<sup>240</sup> *China Fumes at 'Irresponsible' U.S. Religious Freedom Report*, AGENCE FRANCE PRESSE, Oct. 30, 2001, WL 25050318.

<sup>241</sup> *Id.*

<sup>242</sup> *China "Deeply Resents," "Firmly Opposes" U.S. Report on Religious Freedom*, BBC MONITORING, Oct. 31, 2001, 2001 WL 29654467 [hereinafter *China "Deeply Resents"*].

<sup>243</sup> *NK Blasts U.S. Over Religion*, KOREA TIMES, Nov. 1, 2001, 2001 WL 25565652.

<sup>244</sup> See Wales, *supra* note 198, at 638.

<sup>245</sup> Steven Mufson, *U.S. Cites 6 Nations in Report on Religious Intolerance*, WASH. POST, Oct. 27, 2001, at A28.

ror.”<sup>246</sup> He further opined that a “trend in U.S. foreign policy that is of great concern [is] a willingness to allow religious freedom and other human rights to suffer in order to combat terrorism abroad.”<sup>247</sup>

The State Department countered these criticisms by stating that the United States “did not pull any punches to avoid disturbing the anti-terrorism coalition.”<sup>248</sup> For example, China and Sudan were both designated as CPCs, despite their help in the war against terrorism.<sup>249</sup> Regarding Turkmenistan, Congressman Christopher Smith stated “the harassment of unregistered religious groups has continued and, in fact, some say intensified there, but we didn’t feel that they met the standard to be designated this year.”<sup>250</sup>

#### IV. TURKMENISTAN IS A COUNTRY OF PARTICULAR CONCERN AND SHOULD BE SO DESIGNATED

According to the International Religious Freedom Act, the President has an affirmative duty to act against countries with “particularly severe violations of religious freedom”<sup>251</sup> by designating those countries as countries of particular concern for religious freedom.<sup>252</sup> Those countries must have “engaged in or tolerated particularly severe violations of religious freedom.”<sup>253</sup>

Turkmenistan has engaged in particularly severe violations of religious freedom in a continuous and systematic fashion.<sup>254</sup> Moreover, government officials actively have destroyed religious property, specifically, a Hare Krishna temple<sup>255</sup> and a Seventh - day Adventist church.<sup>256</sup> Government officials me-

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<sup>246</sup> Christopher H. Smith, *Religious Freedom, A Casualty of War?; Human Rights Violators Jump Into America's Anti-Terror Coalition*, WASH. TIMES, Nov. 27, 2001, at A15.

<sup>247</sup> *Id.*

<sup>248</sup> Norman Kempster, *7 Nations Labeled Oppressors of Faith Policy*, L.A. TIMES, Oct. 27, 2001, at A18.

<sup>249</sup> *See id.*

<sup>250</sup> *Id.*

<sup>251</sup> 22 U.S.C.S. § 6442(a).

<sup>252</sup> 22 U.S.C.S. § 6442(b).

<sup>253</sup> 22 U.S.C.S. § 6442(A)(2).

<sup>254</sup> *See generally*, Amnesty Int'l, *supra* note 2.

<sup>255</sup> *See* USCIRF, Turkmenistan, *supra* note 2, at 4.

<sup>256</sup> *See id.*

thodically closed religious organizations<sup>257</sup> and looted churches.<sup>258</sup>

KNB officials have arrested and tortured members of minority (and thus outlawed) religious groups.<sup>259</sup> The Turkmen government has also engaged in and tolerated gross violations of religious freedom such as rape,<sup>260</sup> severe beatings,<sup>261</sup> imprisonment,<sup>262</sup> and forced deportation.<sup>263</sup> These restrictions on religious freedom reflect the government's desire to control political ideology within the country, believing that religious organization leads inescapably to liberal political dissent.<sup>264</sup>

Turkmenistan, as evidenced by its disregard for religious freedom, is worthy of the 'CPC' designation, and the United States should recognize it as such.<sup>265</sup> In addition, the United States government is a *de facto* world power which has engaged in international policing.<sup>266</sup> To designate some countries, such as China, Iraq, and North Korea, as CPCs while ignoring such gross violators as Turkmenistan points to a flaw in United States foreign policy: namely, the United States favors actual and potential anti-terrorism allies at the expense of human rights and religious freedom.<sup>267</sup> The United States government's failure to designate Turkmenistan as a CPC, especially considering the United States' avowed commitment to religious freedom,<sup>268</sup> reduces the effectiveness of United States efforts to promote such religious freedom.<sup>269</sup>

Considering the outrage of foreign governments who do receive the designation of country of particular concern,<sup>270</sup> the United States has good reason to be wary of backlash from Turkmenistan. This is especially so in light of the fact that Is-

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<sup>257</sup> See State Dep't Report, *supra* note 7, at 14.

<sup>258</sup> See USCIRF, Turkmenistan, *supra* note 2, at 4.

<sup>259</sup> See generally Amnesty Int'l, *supra* note 2; USCIRF, Turkmenistan, *supra* note 2.

<sup>260</sup> See Free Turkmenistan, *supra* note 122.

<sup>261</sup> See generally Amnesty Int'l, *supra* note 2.

<sup>262</sup> See *id.*

<sup>263</sup> See *id.*

<sup>264</sup> See State Dep't Report, *supra* note 7, at 15.

<sup>265</sup> See Gunn, *supra* note 7, at 863.

<sup>266</sup> See Mufson, *supra* note 246.

<sup>267</sup> See McCormick, *supra* note 13, at 286.

<sup>268</sup> See *id.*

<sup>269</sup> See *id.*

<sup>270</sup> See China "Deeply Resents, *supra* note 243.

lamic support in that region is critical during the war on terrorism and the occupation of Iraq.<sup>271</sup> However, promoting religious freedom abroad is essential in fighting terrorism,<sup>272</sup> especially when one the religions suppressed is Islam.<sup>273</sup> In Turkmenistan, only Sunni Islam is tolerated, albeit under heavy regulations.<sup>274</sup> Such regulation and suppression contributes to the rise of extremist organizations,<sup>275</sup> which could ultimately prove more hazardous to United States efforts to keep terrorism in check.<sup>276</sup>

#### A. *United States Efforts Are Not Working*

The United States should designate Turkmenistan as a 'CPC' because United States efforts thus far have not curbed the religious persecution in Turkmenistan.<sup>277</sup> Despite communication between the United States and Turkmen governments in an attempt to promote religious freedom, abuses continue.<sup>278</sup> President Niyasov wrote to President Bush in March 2002 and committed himself to cooperating in expanding religious freedom.<sup>279</sup>

It should be noted that the United States has cooperated with international organizations in working toward achieving religious diversity in Turkmenistan.<sup>280</sup> The Organization for Security and Cooperation in Europe ("OSCE") met in Ashgabat to discuss promoting religious freedom.<sup>281</sup> European Union am-

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<sup>271</sup> See Wales, *supra* note 198, at 638.

<sup>272</sup> See State Dep't Report, *supra* note 7, at 1.

<sup>273</sup> See Jane Lampman, *Who's On, Who's Off?*, CHRISTIAN SCI. MONITOR, Nov. 1, 2001, at 14.

<sup>274</sup> See Amnesty Int'l, *supra* note 2, at 8.

<sup>275</sup> See State Dep't Report, *supra* note 7, at 1. While Islam in Turkmenistan is harshly reigned in, the genesis of radical Islamic groups in neighboring Central Asian countries namely, Uzbekistan and Tajikistan, has occurred in response to authoritarianism. See *Allah's Shadow*, *supra* note 158.

<sup>276</sup> "The irony is that getting too close to countries that crush religious freedom may be more dangerous for America now" Lampman, *supra* note 274, at 14 (quoting Tom Malinowski of Human Rights Watch).

<sup>277</sup> See State Dep't Report, *supra* note 7, at 17. The State Department issued a press release stating that Turkmenistan should take "concrete steps" to pursue religious freedom and "spiritual expression." Press Release, U.S. Dep't of State, Amb. Stephan Minikes to OSCE Permanent Council (July 30, 2003).

<sup>278</sup> See State Dep't Report, *supra* note 7, at 17.

<sup>279</sup> See *id.* at 16.

<sup>280</sup> See *id.*

<sup>281</sup> See *id.*

bassadors urged the Turkmen government to ease religious restrictions and comply with OSCE commitments to religious freedom.<sup>282</sup>

Abuses continue, in Turkmenistan, superficial improvements notwithstanding.<sup>283</sup> By not designating Turkmenistan as a 'CPC,' the United States runs the risk of implicitly allowing religious persecution and human rights abuses to continue.<sup>284</sup> After the release of the 2001 Report, the Commission expressed concern that "some new, less-than-savory allies in the war on terrorism might now feel they have license to continue violating religious freedom."<sup>285</sup> Countries who commit particularly egregious violations may receive the impression that promising to promote religious freedom and making superficial attempts at promoting that freedom are enough to satisfy the United States.<sup>286</sup>

#### B. *Alternative to sanctions*

To many United States government officials and foreign policy advisors, "sanctions" is a dirty word.<sup>287</sup> Senator Don Nickles fears sanctions would only aggravate religious persecution.<sup>288</sup> Another fear expressed by many is that sanctions would undermine United States foreign policy by creating anti-American backlash from the targeted country.<sup>289</sup> Humanitarian leaders oppose the use of economic sanctions because sanctions affect the very civilian populations they were implemented to protect.<sup>290</sup> Horowitz himself opposes sanctions, stating that the International Religious Freedom Act "is not

<sup>282</sup> See *id.*

<sup>283</sup> For example, the Turkmen ambassador hosted an Iftar dinner to celebrate the breaking of the fast at Ramadan. The Turkmen Ambassador also met with members of religious minorities to discuss their experiences and ways to remedy their suffering. See State Dep't Report, *supra* note 7, at 16.

<sup>284</sup> See Wales, *supra* note 198, at 639.

<sup>285</sup> Lee Davidson, *Allies' Stand on Religion Questioned*, DESERET NEWS, Nov. 27, 2001, at A1.

<sup>286</sup> See Wales, *supra* note 198, at 639.

<sup>287</sup> See Carnes, *supra* note 210, at 27.

<sup>288</sup> See *id.*

<sup>289</sup> See Wales, *supra* note 198, at 589.

<sup>290</sup> See *id.*

about sanctions. It is only about putting some conditions on the foreign aid the United States sends other Nations.”<sup>291</sup>

The International Religious Freedom Act, however, does not mandate economic sanctions.<sup>292</sup> It lists a number of actions the President may take,<sup>293</sup> as well as any action commensurate in effect.<sup>294</sup> Consistent with the International Religious Freedom Act, President Bush may direct United States financial institutions not to make any loans to Turkmenistan<sup>295</sup> or forbid Turkmenistan from extending credit.<sup>296</sup>

The purpose of the International Religious Freedom Act is to protect religious freedom.<sup>297</sup> The effect of the Act is not intended to be punitive.<sup>298</sup> Practical actions, however, speak louder than words.<sup>299</sup> These practical actions need not include sanctions. The United States should be concerned that fear of economic sanctions may lead to ignoring certain human rights abuses in order to avoid implementing such sanctions.<sup>300</sup> The United States would not be compelled to levy sanctions against Turkmenistan in the event that it designated Turkmenistan a ‘CPC.’<sup>301</sup> Such designation, however, would send a clear message to Turkmenistan that its gross religious rights record must be improved.<sup>302</sup>

## V. CONCLUSION

When the United States adopted the International Religious Freedom Act, the United States undertook to affirmatively promote religious freedom abroad and take action against violations of religious freedom. In order to maintain the integrity of the Act, the United States must respond uniformly and unabashedly when faced with gross violations. The country of particular concern designation is one such response. Reserved for

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<sup>291</sup> Wales, *supra* note 198, at 589.

<sup>292</sup> 22 U.S.C.S. § 6554(a).

<sup>293</sup> 22 U.S.C.S. § 6442(c)(1)(A).

<sup>294</sup> 22 U.S.C.S. § 6442(c)(1)(B).

<sup>295</sup> 22 U.S.C.S. § 6445(a).

<sup>296</sup> 22 U.S.C.S. § 6445(a).

<sup>297</sup> 22 U.S.C.S. § 6401(a)(1). *See also* Gunn, *supra* note 7, at 859.

<sup>298</sup> *See* Gunn, *supra* note 7, at 859.

<sup>299</sup> *See* Wales, *supra* note 198, at 643.

<sup>300</sup> *See id.* at 644.

<sup>301</sup> *See id.*

<sup>302</sup> *See id.*

the worst violators of religious freedom, the designation carries much weight both at home and abroad.

Turkmenistan has systematically developed a program of religious intolerance. Religious minorities are subject to arrest, torture, rape, detention, and deportation. President Niyasov initiates this persecution in order to discourage political dissent. The United States should respond to these abuses by designating Turkmenistan as a country of particular concern.

The United States needs allies in the war on terrorism and in its posture toward Iraq. However, the search for allies should not come at the expense of human rights and religious freedom. By designating Turkmenistan as a country of particular concern, the United States explicitly states that the importance of religious diversity and freedom are paramount. Ultimately, a strong commitment to religious freedom abroad may prove more beneficial to the United States in its position against terrorism than if the United States simply ignores religious persecution.