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The role of non-state actors in standard setting processes for US-foreign policy: the example of the International Religious Freedom Act

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Dear audience ... I have been invited to talk about the role of nonstate actors in US foreign policy standard-setting processes, and to do so I have chosen the example of the *International Religious Freedom Act*. This enables me to talk about two things: first, about a manner of policy deliberation and interaction between state and nonstate actors in US politics which is commonly used, and which indeed reflects the pluralistic and democratic society the United States is. And secondly, I take it as a chance to talk about the current role of religious organizations, in particular of evangelical organizations, in US politics, which - since the mid-nineties - have successfully lobbied for quite a number of their political goals. Altogether this presentation will be a good sketch of what is meant by the US ideal of "a government for and by the people".

In order to do so my presentation contains the following parts: firstly, I give an introduction to the official steps that led to the adoption of the Act, and describe the contents of the Act; secondly, I compare the provisions of the Act with traditional human rights policy in foreign affairs to better assess the particular impact of the new Act; thirdly, I take a look at the nonstate actors who have had and still have an important role in initiating and implementing the new legislation. It does not really seem necessary to make it clear that in this case religious actors are the key stakeholders, but that not all of them are equally engaged. Rather, the initiative was mainly supported by Western Christian denominations, in particular by the Evangelical sector. Fourthly, I give an overview on the religious groups that stay at the margins of the processes taking place around the *International Religious Freedom Act*. Finally, I point out some political implications of the growing impact of Evangelicals in US foreign policy and summarize the key factors that brought about the act as a success of their lobby efforts.

Official processes preceding the International Religious Freedom Act of 1998

First, I want to briefly describe the formal institutional settings that preceded the *International Religious Freedom Act*¹ (henceforth "the Act"). The official actors mainly involved in the development of this new standard in US foreign policy were Congress, in particular the committees responsible for international affairs in both chambers, and the State Department (DOS). Nonstate actors played a crucial role in the preparation, in formulating contents and political aims, as well as in the monitoring of the Act. Their impact on this new legislation was, and still is, based on their lobby work in Congress, in their advisory role for the State Department, and in their political weight as voter mobilizers for elections.

Initiatives in Congress started in September 1996, when House and Senate released resolutions shaming the US government for its lacking commitment to protecting persecuted Christians around the world, and requiring the President to take action.² As demanded, a little later, in December 1996, the Clinton administration established the *Advisory Committee on Religious Freedom Abroad* (ACRFA) within the Department of State. I call it hereafter the "DOS's advisory committee". The DOS's advisory committee's task was to support the State Department in developing and implementing measures that adequately help to protect people around the world that suffer from religious persecution.

The DOS's advisory committee existed for two years. It was chaired by the then-Assistant Secretary of the State Department's *Bureau of Democracy, Human Rights and Labor*, John Shattuck, and consisted of twenty more members of - mainly religiously affiliated - civil society leaders. It prepared three major reports: the first places its focus on the worldwide persecution of Christians (1997), including the discrimination of Christian sects in Western Europe; the following interim (1998) and final report (1999) address the situation of all major faiths

¹ Pub. Law 105-292, 105th Congress, October 27, 1998, 112 Stat. 2787; 22 United States Code (USC) 6401.

² S. Con. Res. 71, September 17, 1996 and H. Res. 515, September 24, 1996, both 104th Congress, 2nd Session.

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(Christians, Muslims, and Buddhists) in certain countries.³ But in contrast to the first one, the second and third reports barely provide a global picture of persecution of other religions. They are more about setting focuses, developing general policies, and reflecting on theoretical, legal, and institutional issues. Finally, consultations within the State Department and parallel processes in Congress resulted in October 1998 in new foreign policy legislation concerned with religious persecution in general.

Provisions of the Act and divided opinions about it

The *International Religious Freedom Act* of 1998 has a great deal of institutional and legal stipulations, some of which are similar to existing human rights legislation in foreign affairs, and some of which are unique. The Act itself is not exclusively on the persecution of Christians, but mentions it quite often. What is particularly remarkable about the new legislation are the major institutional innovations, as seen in the following.

Firstly, a range of organizational changes took place within the State Department. The position of an *Ambassador at Large* was created in the State Department, who is exclusively concerned with international religious freedom. He is the principal advisor to the President and to the Secretary of State on religious matters abroad. He heads the (also newly-established) *Office on International Religious Freedom*, which is located within the State Department's *Bureau of Democracy, Human Rights, and Labor*. Further duties of the *Ambassador at Large* and his office include diplomatic relations with foreign governments and international organizations with regard to religious issues; assistance with the portions of the State Department's annual *Human Rights Report* that are related to religious freedom; the preparation of an additional annual *Report on International Religious Freedom*; and finally – of particular relevance to the question of public-private relations in international politics – it is the office's task to maintain and expand the State Department's relations with religious nongovernmental actors, abroad as well as at home. Additionally, training sessions are introduced to sensitize the Departments'

officials abroad and in the headquarters towards religious persecution.⁴

Secondly, the Act establishes an independent *United States Commission on International Religious Freedom* (USCIRF) that I call hereafter the "Commission". It has a purely advisory function, comparable to the DOS's advisory commission, but additionally reports to Congress and to the President. Of its nine members, three are respectively appointed by the President, the Senate, and the House of Representatives. The State Department's *Ambassador at Large* serves as a non-voting member of the Commission.⁵

Thirdly, legislation mandates a *Special Advisor on International Religious Freedom* for the influential United States *National Security Council*.⁶

Fourthly, by means of the law Congress provides the president with a detailed list of 15 measures which he can choose from to punish foreign governments that are found to be guilty of religious persecution. These options for presidential actions range from diplomatic measures such as private or public condemnations to the suspension of US foreign aid and security assistance, economic sanctions, and commensurate US lobbying within international organizations, in particular in international financial institutions.⁷

Finally, the Act makes it a duty of the president not only to oppose religious persecution, but also to actively promote religious freedom abroad. To do so, US government is advised to conduct international conferences on the topic, to fund exchange programs between religious civil society actors, and to disseminate information on religious freedom by means of an internet platform, print media, radio and TV programs. Furthermore, with the aim to improve information exchange, and to support local actors and networks in their political struggles, the chiefs of US missions abroad are responsible for keeping and expanding contacts with religious leaders and nongovernmental organizations.⁸

Taken in its entirety, the law seems to offer appropriate measures for fostering an international conscience on religious freedom and for the growth of a global network pushing forward the new foreign policy priority. The US is obviously keen to demonstrate international leadership through its voting patterns in international financial insti-

³ ACRFA: United States Policies in Support of Religious Freedom. Focus on Christians; DOS, Bureau of Democracy, Human Rights, and Labor Affairs, July 22, 1997; www.state.gov/www/global/human_rights/970722_relig_rpt_christian.html (download: 20.12.2006).

ACRFA: Interim Report to the Secretary of State and to the President of the United States; DOS, Bureau of Democracy, Human Rights, and Labor, January 23, 1998; www.state.gov/www/global/human_rights/980123_acrfa_interim.html (download: 20.12.2006).

ACRFA: Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States; DOS, Bureau for Democracy, Human Rights, and Labor, May 17, 1999; www.state.gov/www/global/human_rights/990517_report/index.html (download: 20.12.2006).

⁴ Pub. Law 105-292, Title I: Department of State Activities, Oct. 27, 1998, 112 Stat. 2791-2797.

⁵ Pub. Law 105-292, Title II: Commission on International Religious Freedom, Oct. 27, 1998, 112 Stat. 2797-2800.

⁶ Pub. Law 105-292, Title III: National Security Council, Oct. 27, 1998, 112 Stat. 2800.

⁷ Pub. Law 105-292, Title VI: Presidential Actions, Oct. 27, 1998, 112 Stat. 2800-2810.

⁸ Pub. Law 105-292, Title V: Promotion of Religious Freedom, Oct. 27, 1998, 112 Stat. 2811.

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tutions, and through its rigorous institutional reforms of its foreign policy apparatus.

The new Act and its provisions were applauded by many religious groups in the US, and in particular the evangelical Baptist Church celebrated it as a success of their good lobby work and coalition building. Proponents argued that such a law recognizes the new challenges of international security in the post-Cold War world, which they regard as dominated by cultural, ethnic, and religious conflicts. From their point of view the law ultimately adjusts US foreign policy to today's realities. Furthermore, conservatives in Congress and in civil society underscored the great achievement of bringing US foreign policy in conformity with American values, and emphasised the importance of the First Amendment for US history and society.⁹

In contrast, the opposing camp expresses two critics, which are of normative relevance too. Firstly, there exist concerns that the Act takes religious freedom more seriously than other human rights, and secondly, that (some) religious groups may take advantage of it as a state-backing for missionary activities.¹⁰ These concerns have to be seen in the wider context of an ongoing domestic debate about the separation of state and church, and the role of religion within US society.¹¹ To be brief, there is a religious shift in domestic politics that even includes congressional initiatives to foster the role of religion by means of constitutional amendments.¹² But what some regard as ending the discrimination of reli-

⁹ First Amendment of the Bill of Rights, 1789: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

¹⁰ For critical voices and arguments see for example the former US ambassador Newsom, David D.: Religion and Foreign Affairs; in: Christian Science Monitor (CSM), Mai 26, 1999, www.csmonitor.com/1999/0526/p8s3.html; the famous Washington writer on foreign affairs Holt, Pat M.: Good Cause, bad Legislation; in: CSM, December 02, 1998, www.csmonitor.com/1998/1202/120298.opin.letters.1.html; and the staff writer of CSM Marquand, Robert: Cry Is Heard to Fight for Freedom of Faith; in: CSM, December 24, 1996, www.csmonitor.com/1996/1224/122496.intl.global.1.html; (downloads: 20.11.2006).

¹¹ See for example Guinness, Os: Religion in the Civil Public Sphere; in: Eberly, Don E. (Ed.) Building a Community of Citizens, University Press of America, Lanham: 1994, p. 271-292.

¹² House-Report 105-543, to accompany House Joint Resolution 78: Proposing an Amendment to the Constitution of the United States Restoring Religious Freedom, May 19, 1998; Further, the Subcommittee on the Constitution [of the House Committee on Judiciary] held five days of hearings on "Religious Liberty and the Bill of Rights" on June 8, 10, and 23, and July 10 and 14, 1995; a hearing on "Legislation to Further Protect Religious Freedom" on July 23, 1996; and a hearing on H.J. Res. 78: "Proposing an Amendment to the Constitution of the United States Restoring Religious Freedom" on July 22, 1997 (ibid. p. 16).

gious liberty and organizations in US politics is to others an "unprecedented assault on our Constitution and our civil liberties [...] to mandate that government fund religion in the same manner it funds secular activities, paving the way for public support of [...] religious causes."¹³ Without deepening the domestic context, the investigation of these two allegations – the creation of a hierarchy of human rights and the promotion of special interests of some private actors by means of a universal law – lies at the core of the remaining presentation. It directly relates to the question of interaction between state and nonstate actors in shaping foreign policy priorities.

Is religious freedom better off? Comparison with traditional human rights standards in US-foreign policy

To address the question of the current predominance of religious freedom in US human rights politics I will briefly compare the new provisions with the much older Human Rights provisions. Human Rights standards, as one must be aware, have guided US foreign policies since as early as the 1970s. In this period Congress pushed them forward in order to gain more control over US politics abroad. The actual reason was the revelation of CIA involvement in upheavals, civil wars, and the overthrow of democratically elected governments in foreign countries. Faced with these realities of the war against Communism, Congress was keen to develop standards which attached security-biased US foreign policy to US values and ideals. US values and ideals in these times meant "human rights". The main tool for carrying this out was legislation concerning the budget. In 1974 foreign aid and in 1976 security assistance were tied to human rights concerns.¹⁴ USAID and State Department were obliged to report on the human rights situation in giving aid to countries; for the first time the State Department had a *Coordinator of Human Rights*, who in 1977 was upgraded to the position of an *Assistant Secretary*.¹⁵ The same year human rights were put on the agenda of US representatives in international financial institutions, which were advised to advocate the cause of human rights with "voice and vote".¹⁶ This meant that if a multilateral bank was in the process of lending money to a government violating human rights, then the US tried to block the

¹³ House-Report 105-543, 1998, p. 21. There were even religious groups opposing the proposed amendment, amongst them also the American Baptist Churches.

¹⁴ Pub. Law 93-559, Foreign Assistance Act, Sec. 46, December 30, 1974, 88 Stat. 1815 (see also Senate Bill 3394, 93rd Congress) and Pub. Law 94-329, International Security Assistance and Arms Exports Control Act, Title III, Sec.301(a), June 30, 1976, 90 Stat. 748.

¹⁵ See 22 USC, Chapter 32, Subchapter II, Part I, Sec. 2304, Human Rights and Security Assistance, Notes, Amendments 1977.

¹⁶ 22 USC 262d, Human Rights and United States Assistance Policies With International Financial Institutions, 262d(a) und (d); see also Pub. Law 95-118, Title VII, Sec. 701, October 3, 1977, 91 Stat. 1069.

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loan. Additionally, since 1977 Congress also approved an annual budget for actively promoting human rights through development cooperation programs. But from their beginnings human rights conditionalities in US foreign policy were always accompanied by so-called waiver provisions, which enabled the president to surpass human rights clauses in the case of national security concerns. Therefore human rights standards in US foreign politics always played an important role, but were never applied in a consistent manner, which led to the often-criticized double standards. From the beginning, all reporting agencies (State Department, USAID, Treasury) had to take into account independent findings of appropriate international and nongovernmental organisations (such as UNHCR, or the Red Cross).

Compared to the traditional human rights agenda the dimension of international religious freedom enjoys certain kinds of privileges. For example, since 1995 the long-established human rights report of the State Department already covers violations of religious liberty. However, reporting requirements are much more extensive. Together with human trafficking, religious persecution is the only dimension of human rights violations for which the State Department has to prepare an extra report. Further, it is the only human rights dimension for which an independent commission was established, which has to prepare a report of its own. Additionally (and not related to the Act) the nongovernmental organization *Freedom House*, which is 70 to 80 percent funded by the US-government, prepared a millennium report on *Religious Freedom in the World*. Moreover, the new law not only provides for an advisor within the State Department who directly reports to the Secretary of State and the President, but also for a special advisor in the *National Security Council*, which is quite remarkable. Altogether, international religious freedom can therefore indeed be seen as currently being the best-institutionalized human rights dimension in the US foreign policy system. However, it does include waivers in case of national security concerns, as did the traditional human rights legislation.

Standard-setting always has to do with the formulation of definitions. We will therefore be taking a closer look at the definition of the violation of international religious freedom which is the basis for monitoring, reporting, and imposing sanctions against the comportment of foreign governments. The Act differentiates between "particularly severe violations of religious freedom" and (less gross) "violations of religious freedom". The first one, "particularly severe violations", is defined along the current definition of "gross violations of internationally recognized human rights". The term includes "torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of

the right to life, liberty, or the security of person".¹⁷ The definition of "violations of religious freedom" is also derived from international human rights agreements, and includes "arbitrary prohibitions on, restrictions of, or punishment of" the positive rights to assemble for religious purposes, to freely speak about one's belief, to raise one's children according to one's religious choice, to change religious affiliations, and to possess and distribute religious material. Beyond international standards the Act further specifies the definition of violation of religious freedom as including "detention, interrogation, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, forced religious conversion, beating, torture, mutilation, rape, enslavement, murder, and execution" on grounds of the religious convictions of the affected individuals.¹⁸ The Act also differs from the international treaties in its language regarding to the duties and political options of foreign governments: Article 18(3) of the *International Covenant on Civil and Political Rights* (CCPR) states that the "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others". In comparison, the wording of the US act is much stricter regarding national regulations of religious freedom. It states that "governments have the responsibility to protect the fundamental rights of their citizens and to pursue justice for all. Religious freedom is a fundamental right of every individual, regardless of race, sex, country, creed, or nationality, and should never be arbitrarily abridged by any government."

Altogether, the new legislations' definitions are fairly within the frame of internationally recognized human rights and US human rights policies. This may seem to be a matter of course, but it isn't. Rather, the initial definition of the "manifesto" of the civic "movement against religious persecution", which demanded for legislation, was much broader and rather arbitrarily formulated, interpreting it "in general [as] the denial of any of the rights of religious freedom".¹⁹ Debates about the broadness of the definitions was therefore one of the main points of discussion. However, with regard to foreign governments, the rhetoric of the new US standard is much more urgent and aggressive than the wording of the CCPR. Different from the international covenant it seems to leave no room at all for regulating the religious sphere of country. Further, the existence of the Act as such prioritizes religious freedom. With regard to the international system, the US tries to extend its own

¹⁷ 22 USC 32, Subchapter II, Part I, Sec. 2304, Human Rights and Security Assistance.

¹⁸ For the definitions see Pub. Law 105-292, Sec. 3, October 27, 1998, 112 Stat. 2790-2791.

¹⁹ Senate-Hearing 105-591: S. 1868. The International Religious Freedom Act of 1998. Hearings before the Committee on Foreign Relations of the United States Senate, 105th Congress, 2nd Session; May 12 and June 17, 1998, p. 85.

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system of sanctions by using the mechanisms of the international lending institutions, and seeks to push forward religious freedom as a priority of the international community as a whole. Taken this into account, it can be said that although the definition is not as broad as initially intended, US religious groups were very successful in feeding their norms and interests into official and even into world politics. But who are these religious groups?

US Religious groups and their supporters as driving forces

As already mentioned above religious groups, and in particular Christians, applauded the Act, and regarded it as their achievement. I therefore now wish to take a closer look at the network of private actors behind it, and at the interests which they have at stake.

One of the main figures in lobbying US government is Dr. Richard Land, President of the *Ethics and Religious Liberty Commission* (ERLC), which functions like a think tank and lobby arm of the *Southern Baptist Convention*. It was in June 1995 when the *Southern Baptist Convention* (SBC / over 16 million members) adopted a *Resolution on Religious Liberty and World Evangelization* that mandated the ERLC and other Baptist organizations to carry out public awareness campaigns, and to do lobbies on the issue.²⁰ At this time the focus of the SBC was on Christians, in particular on Evangelicals. And, as the title of the resolution already indicates, they not only feared persecution as such but additionally cared about the "freedom to evangelize", which they regard as the "first liberty".²¹

Probably the most important milestone for the formation of a broader movement against religious persecution was the *Conference on Global Persecution of Christians* in January 1996 in Washington. This conference was sponsored by the program on religious freedom of *Freedom House* and its *Center for Religious Freedom*. The director of the center, Nina Shea, accompanied the *International Religious Freedom Act* from its beginnings until today.²² The conference that she hosted gathered

around 100 top Christian leaders together to address the issue. Subsequently, the *National Association of Evangelicals* (NAE), an evangelical umbrella organization representing 27 million members and affiliated to the radio and television network of the *National Religious Broadcasters*, published a statement concerning worldwide religious persecution.²³ Additionally, the NAE, together with ERLC, initiated the *International Day of Prayer for the Persecuted Church*, which was launched for the first time on September 29, 1996, and which enjoyed great support from the proponents in Congress.²⁴ This day of prayer is anchored at the level of the *World Evangelical Alliance*, a worldwide network of evangelical denominations. It has been repeated every year since to mobilize fellow evangelicals worldwide for the issue of religious persecution.²⁵

The statement of 1996 as well as the conference at Freedom House and the international day of prayer still exclusively dealt with the persecution of Christians, but meant a significant mobilization of religious leaders and citizens. In 1997 the NAE endorsed its August 29th letter signed by 80 religious leaders, asking Congress to enact legislation "directed against regimes formally condemned by the 104th Congress for anti-faith persecutions and containing mechanisms to deal with all regimes".²⁶ At this time the rhetoric of the debate had already changed, and commitments to be concerned of the plight of all faiths are commonly used. Dr. Argue, former President of the NAE and witness at the subsequent hearing of the House's *Committee on International Relations* at September 10, 1997 is quite frank about his favoured time schedule and institutional obligations in public relations: He wants "hearings on such omnibus anti-religious persecution legislation to begin no later than September, 1997. Floor action on legislation to take place by early November, since the Day of Prayer for the Persecuted

Conference on Global Persecution of Christians, which took place January 23, 1996 in Washington, "a long needed wake-up" (see: Freedom from Religious Persecution Act of 1997, Hearing Before the Committee on International Relations, Part II, 1997.

²³ National Association of Evangelicals: 1996 Statement of Conscience Concerning the Worldwide Religious Persecution; Policy Documents,

www.nae.net/index.cfm?FUSEACTION=editor.page&pageID=48&IDCategory=9 (download: 13.12.2006). The NAE statement was subsequently endorsed by the Southern Baptist Convention, the Executive Council of the Episcopal Church, and the General Assembly of the Presbyterian Church, USA (Senate Con. Res. 71, 104th Congress, p.2).

²⁴ S. Con. Res. 71, September 17, 1996, p. 4 and H. Res. 515, September 24, 1996, p. 5, both 104th Congress.

²⁵ House-Hearing: Freedom from Religious Persecution Act of 1997, Hearing Before the Committee on International Relations, Part II, 1997; 45-691 CC - 1998; see witnesses Land and Argue.

²⁶ Dr. Donald Argue, President NAE, Witness of House Hearing: Freedom from Religious Persecution Act of 1997, Hearing Before the Committee on International Relations, Part II, 1997; 45-691 CC - 1998.

²⁰ House-Hearing: Freedom from Religious Persecution Act of 1997, Hearing Before the Committee on International Relations, Part II, Private Witnesses, 105th Congress, 1st Session, September 10, 1997, 45-691 CC - 1998;

http://commdocs.house.gov/committees/intirel/hfa45691.000/hfa45691_0f.htm (download: 13.12.2006). The SBC sought to act in union with the Christian Life Commission, the Foreign Mission Board, the Interfaith Witness Department of the Home Mission Board, and the Baptist World Alliance (www.sbc.net/resolutions/amResolution.asp?ID=958, download: 13.12.2006).

²¹ Southern Baptist Convention: Resolution on Religious Liberty and World Evangelization; June 20-22, 1995, Atlanta, Georgia; www.sbc.net/resolutions/amResolution.asp?ID=958 (download: 13.12.2006).

²² United States Commission on International Religious Freedom: Annual Report, May 1, 2004, p. 100. Dr. Land calls the

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Church will be conducted in tens of thousands of American churches on November 16, 1997.²⁷

The efforts of the Evangelicals are supported by activists with affiliations in well known think tanks and even in the administration. Three persons particularly worth mentioning are all currently senior fellows of the Hudson Institute: Michael Horowitz, a former official of the Reagan administration, and famous for his neo-conservative activism, was involved in "bringing together what was until recently a fragmented movement, prodding [...] Christian leaders into action". He even called Christians "the Jews of the 21st Century";²⁸ Paul Marshall, at this time at Freedom House, wrote the book "Their Blood Cries Out" which Senator Lieberman called the "manifesto" of the movement;²⁹ and finally the already mentioned Nina Shea, director of the Center for Religious Freedom within Freedom House. Acting in concert with these professional activists, Evangelicals even managed to gain positive media coverage in the New York Times, the daily newspaper of the liberal left.

Although evangelicals and their backers are obviously the driving force behind international religious freedom policies, it would be wrong to look at them as the only interested party. The second most important actor is the Catholic Church, which is the second strongest denomination in the United States, and which welcomed the act warm-heartedly. Moreover, the Act was supported by the *Christian Coalition*, which calls itself the "largest and most active conservative grassroots political organization in America", and which unites evangelicals, Catholics, and other Christian denominations.³⁰

The Christian predominance in the movement for religious freedom is also reflected in the resolutions Congress adopted during 1996 (104th Congress), which mainly complain about the persecutions of Christians. Exceptions are the situation of the Baha'is in Iran, and to a certain degree the situation of the Tibetans in China, both of which have comparatively effective lobbies in the United States. During the whole process of developing legislation Jewish organization were additionally invited and consulted, mainly for two reasons: firstly because of their experience with regard to their successful *Campaign for Soviet Jews* during the Cold War, and secondly because of the rise of new anti-Semitism.

²⁷ Ibid.

²⁸ Hertzke, Allen D. / Daniel Philpott: Defending the Faiths; in: *The National Interest*, Fall 2000, 74-81, p. 75f.

²⁹ Senate-Hearing 105-591: S. 1868. The International Religious Freedom Act of 1998. Hearings before the Committee on Foreign Relations, 105th Congress; May 12 and June 17, 1998, p. 85.

³⁰ Christian Coalition of America: <http://www.cc.org/about.cfm> (download 13.12.2006).

Marginalized groups in the process of standard setting and subsequent monitoring

The dominance of the Evangelicals and Catholics raises the question when other important denominations, in particular Muslims and Orthodox churches, were included to make the law on international religious freedom a law for all religions. Here, it is apparently the State Department that played a certain role in integrating these actors into the process. At least during the congressional hearings, no Muslims or Orthodox representatives were heard. By contrast, the State Department included them into its advisory commission committee until it expired at the beginning of 1999. When the States Department's commission was to be replaced by the independent *United States Commission on International Religious Persecution* (USCIR) its officials objected that the number of members in the new commission would not be sufficient to represent all important denominations.³¹

The State Department proved to be right, as from its beginning onwards not one Orthodox representative was nominated to join the USCIR. Why is that? As far as the documents show, the Greek Orthodox have enjoyed some congressional support until today in its concerns about the Orthodox theological school of Halki in Turkey. However, none of the related resolutions introduced since 1995 has ever been adopted.³² This indicates that the Greek Orthodox Church is simply not influential enough to get its interest put through, although it even lauded President G.W. Bush with its *Athenagoras Human Rights Award* in 2002.³³

With regard to the Russian Orthodox Church, the relationship is even tense. In September 1997 the Russian parliament adopted legislation that privileged the Russian Orthodox Church and placed restrictions on other denominations. The US Senate was outraged and passed a resolution to condemn this measure, because it jeopardized religious freedom and – inter alia – "restricts foreign missionary work in Russia".³⁴ In contrast, the Orthodox Church in America was much more cautious in its judgement. Although aware of the restrictive characteristics of the Russian law it also acknowledged the "risk of chaos and deep divisions provoked by insensitive and aggres-

³¹ Senate-Hearing 105-591: S. 1868. The International Religious Freedom Act of 1998; May 12 and June 17, 1998, p. 78.

³² H. Con. Res. 50 and S. Con. Res. 25, 1995: Concerning the protection and continued livelihood of the Eastern Orthodox Ecumenical Patriarchate.

³³ Greek Orthodox Archdiocese of America: Ecumenical Patriarch Bartholomew To Present Athenagoras Human Rights Award To President George Bush and First Lady Barbara Bush; March 4, 2002; <http://www.goarch.org/en/news/NewsDetail.asp?id=65> (download 13.12.2006).

³⁴ S. Con. Res. 58, 105th Congress, 1st Session, November 9, 1997, p.2. The Senate Concurrent Resolution was not adopted in the House of Representatives.

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sive methods of religious mission and proselytism.”³⁵ It seems likely that positions and interests were simply too distant for further cooperation between Congress and the Orthodox Church of America.

With regard to Muslim representatives the situation shows a kind of similarity. It was the State Department that integrated them into its advisory commission, choosing from the liberal and women-supporting spectrum of US Muslim organizations. Until mid-2002 the *Muslim Women's League* was even present in the USCIRF. This changed with the attacks of 9/11, although it is not clear who sought distance first, the government or the Muslim representatives. However, in contrast to the elections campaign of 2000 the *Muslim Public Affairs Council* and others did not support G.W. Bush any longer in the 2004 elections, and did not recommend him for voting.³⁶ US Muslims were clearly upset by the harassments of Muslim charities and constraints of their civil liberties. In 2006 relationships were worse than ever. Congressional sanctions on Palestine, and US cooperation with the Israeli secret service regarding Muslim charities in the US left a deep gap.³⁷ In other words, Bush lost the Muslim movement. However, the Muslim issue was too important to be left out of the USCIRF work. Therefore, since 2004 Dr. Khaled M. About El Fadl, a famous academic expert on national security law and Islamic law, was nominated to the USCIRF by President Bush.³⁸

Secular human rights organisations such as Amnesty International or Human Rights Watch did not attend the DOS advisory commission either, nor the independent commission. At least Amnesty was heard before Congress in 1998. Its representative did not argue directly against highlighting religious freedom, but was concerned about the potential burden it meant for the protection of other human rights – or to put it more bluntly – the AI representative was concerned about funds and immigration quotas being diverted from persons persecuted for other reasons.³⁹ Reasons for the reluctant criticism

may be found in the movements' attack against secular human rights organizations as such. They complained that in the past secular human rights organizations as well as government agencies have ignored the plight of religious people. They suspect that this happened because of uneasy or even hostile feelings towards religion, and in particular towards Christianity, given its past crusades against other denominations, its association with Western predominance and imperialism, and long-lasting domestic struggles for the separation of state and church in Western societies. This criticism has to be seen in the context of general emotional debates in the US public about the discrimination of religious organizations and its fellows by secular segments of US society and the state itself. Probably as a result, Amnesty International and in particular Human Rights Watch incorporated religious persecution more consciously into their subsequent work, although they still do not take part in the USCIRF.

Political implications and developments

As pointed out at the beginning, at least from a human rights perspective there is no logic in highlighting the sufferings of religious fellows and setting them apart from human beings who are discriminated and tortured for other reasons. Therefore it is true that the International Religious Freedom Act implicates a hierarchy of human rights, and pushes religious freedom to its top. Proponents, Evangelicals as well as Catholics, defend this step by arguing that the new legislation privileges religious freedom on the grounds that in practice it was disadvantaged so far, and that it ultimately recognizes religious persecution as a consistent pattern of the post-Cold War world. But beyond this they indeed consciously go counter to the human rights logic in their statements. Instead of regarding religious freedom as part of the universal human rights agenda, they prefer to look at it as the “source and shield” of all other human rights, as Pope J. Paul II expressed it, and as they see it to be proved in the American experience.⁴⁰ Dr. Land even regards the violation of religious freedom as a main indicator or the “canary in the coal mine” for the violation of other human rights.⁴¹

Furthermore, it is obvious that influential sections of religious and political leaders share point of views regarding the global political situation. With the end of the Cold

³⁵ Orthodox Church in America: Statement on Religion Law in Russia; October 3, 1997; <http://www.oca.org/news.asp?ID=22&SID=19> (download: 13.12.2006).

³⁶ Muslim Public Affairs Council: MPAC Decides No Endorsement for Presidential Election; October 21, 2004; <http://www.mpac.org/article.php?id=77> (download: 13.12.2006).

³⁷ Noman Bajwa: House Vote Sanctioning Palestinians Is Wrong; Muslim American Society, May 25, 2006; www.masnet.org/views.asp?id=3339; Muslim Public Affairs Council: Letter to President Bush Questioning the Use of Foreign Intelligence against US-based Charities; June 21, 2006; www.mpac.org/article.php?id=368, (downloads: 13.12.2006).

³⁸ United States Commission on International Religious Freedom: Annual Report, May 1, 2004, p. 103f.

³⁹ Stephen Rickard (Amnesty International), Witnesses: Freedom from Religious Persecution Act of 1997, Hearing Before the Committee on International Relations, Part II, 1997, 45–691 CC – 1998.

⁴⁰ Similar and complementary arguments of Richard John Neuhaus (Institute on Religion and Public Life), Robert Land (ECRL), Dew Christiansen (Jesuit Office of International Justice and Peace / United States Catholic Conference); Witnesses: Freedom from Religious Persecution Act of 1997, Hearing Before the Committee on International Relations, Part II, 1997.

⁴¹ Strode, Tom: Land says religious persecution signals other abuses. American leadership necessary to address situation; Florida Baptist Witness, November 17, 2005; www.floridabaptistwitness.com/5180.article (download: 20.12.2006).

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War the main lens with which to analyse conflicts was lost, and the ever-growing number of civil wars and ethnic conflicts provoked a proliferation of interpreting these conflicts as culturally and religiously motivated. This type of conflict analysis is already a common perspective in Congress, while formulating the preceding bills of the International Religious Freedom Act.⁴² Following 9/11 and subsequent changes in security politics this argument enjoys even more support. For example, Dr. Land (ECRL) states that nowadays ethnic and religious conflicts are “replacing power or economics as primary motivators behind wars and terrorist attacks.” And in a kind of exaggeration of Huntington he argues, “if the 20th century was a century of ideology, the 21st century is shaping up to be the century of religion.” Such rhetoric fits well with President Bush’s “war on terrorism”. Therefore, Land is not even shy to associate protection of religious freedom with the fight against terrorism by stating that “countries that don’t [protect religious liberty] tend to breed terrorism.”⁴³ Therefore, it need surprise nobody that Evangelicals were also at the forefront of supporting President Bush in his “just war” against Iraq and in his uncritical support for Israel.

But in particular the Evangelicals’ engagement to act in concert with its then-conservative government seems to go beyond the common American patriotism in times of emergency. There is some evidence indicating that Evangelicals are aggressively proselytizing in other parts of the world, thereby provoking tensions.⁴⁴ The retreat of the Orthodox American Church from international religious freedom policies seems to be partly motivated by these kinds of conflict. Even a Christian-friendly think tank is concerned that “buoyed by successes across the globe, Western Evangelicals are talking seriously about spreading their faith within the heartlands of Islam” and recommends more mutual respect.⁴⁵ Evangelicals themselves are openly proud of their successful missionary activities advanced by the technological progresses since the beginning of the 1990s.⁴⁶

Indeed their perspective on missionary activities fits in a certain sense very well into the liberal ideology of competition. They are self-confident about their comparative advantage regarding other religions and “understand that a free marketplace of ideas favors the most truthful [that means their own (JS)] arguments.”⁴⁷ Taking all of this into account it seems that Evangelicals – beside all lip service to seeking protection for all religions – have a special interest in this legislation. Notwithstanding generalized formulations, such laws function as a kind of protective legal environment and political backing for their own aims.

Keeping this in mind it seems worrisome that in December 2002 President G.W. Bush issued an executive order to introduce the *Faith-based and Community Initiative* into the United States Agency for International Development. That means making its public funds accessible to a broad spectrum of religious organizations, which was a controversial step because of questions regarding state-church separation. At USAID they are particularly pushing on in the fight against the HIV disease. Moreover, the US\$ 15 billion which President and Congress provided for the *Global AIDS Initiative* in 2003 to fight AIDS in Africa and the Caribbean over the next five years is partly designed to satisfy the special needs and wishes of FBOs. The person publicly honoured for convincing President Bush of the initiative was his speechwriter Michael Gerson, a committed Evangelical.⁴⁸ Further, the corresponding act about US leadership in combating AIDS frequently mentions abstinence- and morally-based programs as an important component of the US engagement. Indeed, 33 percent of the funding for preventive programs, which is equal to some US\$ 1 Billion, is tied to these abstinence-based programs.⁴⁹ This is exactly the line of funding the Evangelical lobby regards as its particular success for its members, who are interested in the work abroad. As morally-based education by Christian actors and missionary work are greatly overlapping tasks this kind of funding obviously establishes a grey zone for state-financed proselytism.

⁴² H. Res. 515, 104th Congress, September 24, 1996; S. Con. Res. 71, 104th Congress, 17, September 1996; Senate Bill 772, 105th Congress, May 21, 1997; Senate Bill 1868, 105th Congress, March 26, 1998.

⁴³ Florida Baptist Witness: Land discusses religion’s role in U.S. foreign policy; October 13, 2005.

www.floridabaptistwitness.com/5007.article (download: 20.12.2006).

⁴⁴ Marquand, Robert: Cry Is Heard to Fight for Freedom of Faith; in: CSM, December 24, 1996.

www.csmonitor.com/1996/1224/122496.intl.global.1.html; (download: 20.11.2006).

⁴⁵ Jenkins, Philip: Globalization and Transformation of Christianity; Foreign Policy Institute, Watch on the West, Volume 3, Number 1 January 2002;

www.fpri.org/ww/0301.200201.jenkins.globalizationtransformchristianity.html (download: 20.12.2006).

⁴⁶ Ranking, Jerry: Technologically savvy missionaries strategize to reach all people; Florida Baptist Witness, Point of View; December 1, 2005;

<http://www.floridabaptistwitness.com/5234.article> (download: 14.12.2006).

⁴⁷ Florida Baptist Witness: Doctrinal conference affirms Baptist view of religious liberty; October 6, 2005; www.floridabaptistwitness.com/4972.article (download: 14.12.2006).

⁴⁸ The Economist: Foreign policy In the world of good and evil; Sep 14th 2006; http://www.economist.com/world/na/displaystory.cfm?story_id=7912626 (download: 20.12.2006).

⁴⁹ United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003; PL 108-25, Sec. 402(b)(3), May 27, 2003, 117 Stat. 746. The Baptist press exaggerated greatly the lobbying successes of the religious conservatives by stating that one third of the total amount would be spent for abstinence-based programs (see Florida Baptist Witness: Pro-family Elements in Congress’ AIDS Bill; June 5, 2003; <http://www.floridabaptistwitness.com/1017.article> (download: 12.12.2006).

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In the meanwhile the Evangelicals have reached recognizable successes in other areas of foreign policy too. They are regarded as important actors in the alliances to combat human trafficking and inhuman treatment of women and children, to fight the genocide in Sudan, and are at the forefronts of charging states such as China, North Korea, Sudan and Iran because of their human rights violations, in particular of religious rights. The US Government is fine with this as long as the countries concerned are those it wants to see under pressure. Furthermore, the Evangelicals have also been very successful in voting Evangelicals into office. As widely known, they accounted for 40 percent of President Bush's vote. In addition to this, Congress in 2004 consisted of 25 percent of self-identified Evangelicals, in contrast to 10 percent in 1970.⁵⁰

Conclusions

Although more details of the process and the network behind it still need to be analyzed, it seems very likely that the *International Religious Freedom Act* is mainly the result of evangelical ambitions in foreign policy, and that the act serves their interests more than that of any other denomination. Their political impact and the Act as its result were and are strongly dependent on the following:

- Their successful mobilization of their fellow Christians in order to gain the critical mass to be taken as a serious political factor and actor;
- Their cooperation with like-minded neo-conservative think tanks and professional activists with campaigning skills and valuable contacts in the political sphere;
- The backing which they gained from Congress, which since 1994 until recently was dominated by the Republican party in both chambers;
- broadening their initial agenda step by step to make it attractive to other religious leaders too, thereby able to build forceful coalitions;
- a general public debate within the United States that portrays religious actors as discriminated compared with secular actors, and that already helped to foster their role as domestic political actors;
- a foreign policy debate that already focused on cultural and religious factors as possible guiding stars for future policy programming;
- finally, the 2000 elections brought a change of government, and a government that was even more keen to give them political pay-back by making more and more public funds accessible to faith-based organizations, including those of USAID.

Evangelicals are a powerful force in US politics that is already recognized by distinguished foreign policy experts such as Walter Russell Mead, who recommends

regarding Evangelicals as valuable partners for a foreign policy with a moral impetus, even as potential partners for cooperation with Muslims. For those who do not share this optimistic view about some kind of domestication of the missionary ambitions of Evangelical denominations, but who are worried about an alliance between a president and its voters, both propagating a foreign policy with religious connotations, for those I wish to close this presentation by quoting Henry Kissinger: "What foreign critics often describe as America's arrogant striving for hegemony is very often the reaction to domestic lobbies that are able to draw attention to key issues".⁵¹

The United States are one of the main actors who promote standards and laws at the international level, and – via their foreign aid – in developing countries. Usually the US-Government (USG) is not doing this on its own, but consults with US-Congress and with selected experts and representatives of US-civil society.

The presentation discusses the International Religious Freedom Act as one of the latest examples of this phenomenon, which was the result of a consultation process over several years. The result is (1) a set of standards how a foreign government should treat religious groups, (2) new institutional arrangements and mechanisms to monitor, whether foreign states comply with these standards, (3) sufficient funding to finance this monitoring that is carried out with the help of interested non-state actors, and (4) tools to promote the issue internationally, e.g. through annual reports of the State Department, setting up a web-site, and international diplomacy. This mechanism follows the same model that is used for the human rights agenda of the USG, the agenda against human trafficking, or the maybe coming agenda on standards for treatment of non-governmental organizations (NGOs).

The line between state and non-governmental actions seems to be blurred more and more in these standard setting processes. First, the subject is usually one, where US-civil society actors are seeking some kind of international regulation themselves. Second, USG absorbs very frankly the inputs of its own civil society. Third, USG is using US-NGOs and their local partners as an integral part of its monitoring system. Fourth, USG is supporting US-civil society and its partners also financially to participate in the monitoring of the agreed standards.

The presentation provides opportunity to reflect the interplay between state and non-state actors in setting standards of international relevance and to discuss them with regard to the political context. It is based on the research for my thesis on "The Politics of Civil Society Building of the United States of America".

⁵⁰ Mead, Walter Russel: God's Country? Evangelicals and Foreign Policy; Foreign Affairs, September / October 2006, www.foreignaffairs.org/20060901faessay85504/walter-russell-mead/god-s-country.html (download: 20.12.2006).

⁵¹ Kissinger, Henry: Die Herausforderung Amerikas. Weltpolitik im 21. Jahrhundert; 2. Auflage Taschenbuchausgabe, Ullstein Verlag: 2003, S. 20; Original edition: *Does America Need A Foreign Policy?*, Simon & Schuster: New York 2001.