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# CONGRESSIONAL TESTIMONY

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“International Human Rights and the Closing Civic Space”

Testimony before

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My name is Emilie Kao. I am the Director of the DeVos Center for Religion and Civil Society at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Chairwoman Bass, Ranking Member Smith, and other distinguished members of the subcommittee, thank you for this opportunity to speak in observance of Human Rights Day on the topic of “International Human Rights and the Closing Civic Space.” The civic space is indeed closing for people in many parts of the world. I will offer observations as to how and why this is happening, what the U.S. Congress can do to support those seeking to keep public squares open, and why the protection of freedom of expression and freedom of thought, conscience, and religion are important to our counterterrorism and national security strategy.

The birth of the international human rights movement was a monumental achievement. After the staggering human toll of World War

II and horrors of the Holocaust, the nations of the world recognized the need to protect human rights beyond their own borders. They understood that a state which threatened the freedoms of its own people also constituted a threat to international peace and security. The Universal Declaration of Human Rights (UDHR) recognized the relationship between human rights and peace and security in its opening statement which describes “The inherent dignity and the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice and peace in the world.”

This remarkable consensus on the importance of human rights was forged by First Lady Eleanor Roosevelt who led the drafting committee. She brought about the watershed agreement among representatives from all over the map, geographically and ideologically. Their beliefs about human rights were shaped by diverse philosophies and religions including Confucianism, Islam, Judaism, Hinduism, and Christianity.

They grounded the UDHR in the universal truth that everyone everywhere shares a unique human dignity. Article 1 pointed to our endowment with reason and conscience as evidence of this unique dignity. Human dignity is the foundation for all thirty human rights in the UDHR and the two rights that are most closely related to our endowment with reason and conscience are protected in articles 18 and 19. They protect the individual's freedom of thought, conscience, and religion and freedom of opinion and expression respectively.<sup>1</sup> Princeton Professor Robert P. George has described human beings as "conscientious truth-seekers" and these two articles work together to protect our ability to seek the truth and live according to our consciences.

However, eighteen years after the UDHR, the U.N. General Assembly took a step backwards when it adopted the International Covenant on Civil and Political Rights. Though it protected freedom of expression in Article 20, it qualified this protection with a provision that permitted states to prohibit "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." The U.S. Senate entered a reservation stating that it could not require legislation or other action that would restrict the right of free speech and association protected by the Constitution.<sup>2</sup>

Mrs. Roosevelt presciently warned that Article 20 was "extremely dangerous" and "would encourage governments to punish all criticism under the guise of protecting against religious or national hostility." Today, growing government censorship is proving that Mrs.

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<sup>1</sup> Article 18 states that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." Article 19 states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media

Roosevelt's instincts were correct. A variety of governments are justifying censorship on the grounds that it is hostile, insulting, or hateful to a nation, a religion, a protected class of people or even to a particular viewpoint. Some governments do so to maintain a monopoly on political power. Others governments seek to enforce religious orthodoxy. And yet other governments do so in a misguided attempt to "keep the peace." But, perhaps most surprisingly, the United Nations now endorses the idea that governments should limit speech that offends or insults.

The freedom to seek the truth and live according to conscience is under increasing attack in closed societies like the People's Republic of China. Last week, a court in Hong Kong sentenced pro-democracy activists Joshua Wong and Agnes Chow and Ivan Lam to prison for their role in organizing protests against a new extradition law that would have allowed citizens of Hong Kong to be sent to the mainland for prosecution on criminal charges. The Chinese Communist Party (CCP) justifies punishment of its critics on the grounds that they are committing political crimes against China. But in China's one party state, everything is treated as a political act.

In the name of state security and combatting extremism, the CCP has enacted draconian restrictions on religious freedom seeking to eradicate it from the public square entirely. The Party even forbids children from entering houses of worship. Today, the CCP illegally detains over 1 million Uighur Muslims in political reeducation camps, keeps Catholic

and regardless of frontiers." Universal Declaration of Human Rights, [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf).

<sup>2</sup> U.S. reservations, declarations, and understandings, International Convention on the Elimination of All Forms of Racial Discrimination, 140 *Congressional Record* S7634-02 (daily edition, June 24, 1994), <http://hrlibrary.umn.edu/usdocs/racialres.html>

bishops in prison, and has forcibly removed crosses from Protestant churches. China shows that a government which can silence one citizen to maintain its monopoly on power can eventually silence everyone.

In Islamic theocracies, rulers justify censorship in the name of protecting “religious feelings.” In the Middle East and North Africa, 65% of countries impose their interpretation of Islam as orthodoxy by making blasphemy a crime, even punishable by death.<sup>3</sup> Governments that support blasphemy laws argue that they help “keep the peace,” by protecting Muhammed and his followers from insult.

But according to the research of Prof. Nilay Saiya, blasphemy laws exacerbate social hostilities rather than prevent them. His analysis of 51 Muslim-majority states with blasphemy laws during the period from 1991–2013, found that they are more likely to suffer from Islamist terrorism than countries that do not criminalize blasphemy.<sup>4</sup> Amjad Mahmood Khan warns that blasphemy laws create a sense of religious duty among Muslims to silence those who are perceived as (even indirectly) threatening the reputations of Muhammed, Islam, or Islamic governments. In Pakistan, the local branch of the Taliban has made combatting blasphemy its “raison d’etre.”

Unfortunately, global counter-terrorism efforts rarely acknowledge the relationship between blasphemy laws and terrorism. This missed connection leaves religious minorities and

reformers more vulnerable to terrorist attacks. For them, the safest space is in a free society.

Even open societies in the West are becoming more interested in enforcing speech restrictions. They do so in the hopes that silencing speech will reduce terrorism, although the facts do not bear this out. Eight European countries have blasphemy laws and 36 have laws against the “defamation of religions” according to a 2011 Pew study.<sup>5</sup> And since 2008, European Union law has required the criminalization of “hate speech.”<sup>6</sup> Unlike Islamic theocracies, Western countries are motivated to enforce speech restrictions to protect the vulnerable. Nonetheless, this approach is misguided.

In 2011, the European Court of Human Rights (ECHR) upheld a verdict by an Austrian court that sentenced a woman to pay a fine for violating the criminal code’s prohibition on disparaging religious precepts. The woman speculated about Mohammed’s motives for marrying a young girl. In rejecting her appeal, the ECHR found that the Austrian court appropriately balanced her right to freedom of expression with “the right of others to have their religious feelings protected, and served the legitimate aim of preserving religious peace in Austria.”<sup>7</sup> In the prior year, Denmark found that a Muslim imam violated its criminal code by making statements about sexual orientation which is a protected legal category.<sup>8</sup>

<sup>3</sup>Id.

<sup>4</sup> Nilay Saiya, *Blasphemy and terrorism in the Muslim world*, *Terrorism and Political Violence*, 29:6, 1087–1105, DOI: [10.1080/09546553.2015.1115759](https://doi.org/10.1080/09546553.2015.1115759) (2017).

<sup>5</sup> Brian J. Grim, *Laws Penalizing Blasphemy, Apostasy and Defamation of Religion are Widespread*, Pew Research Center (Nov. 21, 2012), available at <https://www.pewforum.org/2012/11/21/laws-penalizing-blasphemy-apostasy-and-defamation-of-religion-are-widespread/>.

<sup>6</sup> Jacob Mchangama, “Lessons from Europe on Free Speech,” *Cato’s Letter*, 2018,

<https://www.cato.org/sites/cato.org/files/pubs/pdf/catos-letter-v16n3.pdf>.

<sup>7</sup> European Court of Human Rights, *E.S. v. Austria*, 38450/12, Judgment 25.10.2018 [Section V], [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%2202-12171%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%2202-12171%22]}).

<sup>8</sup> AP, “Imam in Denmark Gets Suspended Sentence for Anti-Gay Remarks,” *Business Insider*, (<https://www.businessinsider.com/ap-imam-in-denmark-gets-suspended-sentence-for-anti-gay-remarks-2017-11>).

Europe's example shows how quickly restrictions on speech can escalate and narrow the scope of public discourse for all. The ACLU once compared censorship to poison gas calling it a powerful weapon that can harm you when the wind shifts. They concluded "Freedom of expression for ourselves requires freedom of expression for others."<sup>9</sup>

All speech should exemplify civility and respect for others, but some speech is rooted in ignorance and motivated by prejudice or even hatred. The best way to promote the truth of human dignity and equality is not to silence those who are in error, but to expose their error through persuasive counterspeech.

American law treats speech as an end in itself, not the means to an end, even a noble one, like "religious peace." Our Founders recognized that religious freedom allows an individual to discharge a duty owed to the Creator that is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. As James Madison wrote, this duty "can be directed only by reason and conviction, not by force or violence." The opinions of men can depend "only on the evidence contemplated by their own minds [and] cannot follow the dictates of other men."<sup>10</sup>

Laws against blasphemy, defamation of religions, and hate speech are all fatally flawed because they compel individuals to follow the dictates of other men. They place the state in the role of supervising a person's conscience and speech. Even the wisest government official or judge should not be empowered to overrule the conscience of another human being. But, laws that limit individual

conscience or speech to protect others' feelings do exactly that and violate inalienable human rights.

As Europe continues to wrestle with Islamist terror attacks, most recently the murder of a French schoolteacher who showed cartoons of Mohammed, it should preserve both the freedom of thought, conscience, and religion and the freedom of opinion and expression. In the face of these tragedies and threats to national security, governments may be tempted to impose tighter restrictions, even on peaceful religious practices, but this has been shown to be counterproductive to fighting terrorism.

Pew Research Center's 195-country cross-national comparison found that restrictions on freedom of religion or belief by the government or civil society were correlated with more violent religious persecution.<sup>11</sup> Conversely, protecting freedom of thought, conscience, and religion and speech allows for the competition of ideas in the public square. A robust civil society where disagreement can be expressed publicly and where citizens can openly live according to their religious beliefs and political convictions is the lifeblood of democracy.

Now, a new challenge to free speech is emerging from unexpected quarters. In an effort to meet the challenges of rising violent attacks on houses of worship (including synagogues, churches, and mosques) and the rapid dissemination of information through the Internet, the U.N. announced in 2019 that it would fully mobilize the U.N. system to tackle "hate speech."<sup>12</sup> The U.N. Secretary General's Global Strategy and Action Plan on Hate Speech encourages states and private

<sup>9</sup> ACLU, "Censorship: Spotlight on Film,"

<https://www.aclu.org/other/censorship-spotlight-film>.

<sup>10</sup>James Madison, Memorial and Remonstrance, 1785, [morallaw.org/resources/key-documents/james-madisons-memorial-and-remonstrance/](http://morallaw.org/resources/key-documents/james-madisons-memorial-and-remonstrance/).

<sup>11</sup> Brian Grim and Roger Finke. "Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?," *American*

*Sociological Review*, Vol. 72, No. 4 (2007), pp. 633–658, <https://www.jstor.org/stable/25472482?seq=1>.

<sup>12</sup> United Nations Strategy and Action Plan on Hate Speech, <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>.

companies to cooperate in limiting offensive speech.<sup>13</sup> There is no universally agreed legal definition of “hate speech,” but this strategy has been endorsed by both European nations and by Muslim-majority countries.

As previously explained, Europe seeks to restrict speech in a misguided effort to reduce discord. Many Muslim-majority countries view it as a prelude to a global blasphemy law. The Organization of Islamic Cooperation (OIC) uses the terms blasphemy, defamation of religions, and “hate speech” interchangeably, to justify censorship. At a 2019 meeting of the OIC in Mecca, Pakistani Prime Minister Imran Khan told members that in forums like the United Nations and the European Union, “we must explain to them that they cannot hurt the sentiments of 1.3 billion people under garb of freedom of expression.”<sup>14</sup>

Prime Minister Khan is mistaken. The best way to protect Muslims is through robust protection of freedom of thought, conscience, and religion and freedom of speech. This is particularly true in societies with a dominant religious belief system. It is true for Muslims in Communist China, Hindu-majority India, and Buddhist-majority Myanmar. It is true for Jews and Christians in Muslim-majority nations. And it is true for Muslims, Jews, and Christians and people of other faiths in an increasingly secular Europe.

The U.S. has led international efforts to protect universal human rights since 1948, particularly at the U.N. As Secretary of State Michael Pompeo’s Commission on Unalienable Human Rights recently observed, America did not invent the idea of human rights, but no nation more closely incorporates those ideals into its

founding and character. The notion that all men are created equal and are endowed by God with inherent, natural rights that precede government was present at the very birth of our nation as expressly stated in the Declaration of Independence. The robust protection of freedom of religion and freedom of speech is in our country’s DNA.

Our Supreme Court articulated the standard that free speech protections would not extend to advocacy of imminent lawless action in *Brandenburg v. Ohio*.<sup>15</sup> Rather than focusing on subjective standards like feelings of offense and insult or accusations of phobias, the Court established a clear, objective standard that protects public safety while also preserving individual liberty. In the face of multiple efforts to close civic spaces around the world, the U.S. should commit new resources and energy to protect the right to seek the truth and to live according to one’s conscience in thought, word, and deed.

This commitment should be reflected in our counterterrorism and national security strategy as well as in our human rights policy. Opening up the public square in closed societies gives reformers, moderates, and minorities a space to advocate for freedom. When they can live, speak, and act according to their consciences, pluralism thrives. Protecting the freedom to discuss, debate, and disagree weakens the ability of terrorists to dominate discourse with toxic narratives of exclusion. In an open society, they must contend with the truth that all human beings have inherent dignity and are created equal.

At the U.N., the U.S. should continue to explain to human rights officials and other

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<sup>13</sup> See also OHCHR, “Promotion and protection of the right to freedom of opinion and expression,” Report to the 74th U.N. General Assembly, A/74/486, October 9, 2019, <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>.

<sup>14</sup> *Gulf News*, “Imran Khan Tells OIC to Act Against Blasphemy, Islamophobia,” June 1, 2019, <https://gulfnews.com/world/asia/pakistan/imran-khan-tells-oic-to-act-against-blasphemy-islamophobia-1.64327026>.

<sup>15</sup> 395 U.S. 444 (1969).

member states that hateful speech is best fought through persuasive counter speech. The U.N. was founded in the shadow of Hitler’s atrocities and the UDHR was adopted to ensure that his crimes against humanity would never be repeated. Therefore, it is worth remembering that in the 1940s, Germany’s Weimar Republic used laws against “insulting religious communities” to prosecute Nazi agitators. But, the Nazis turned those prosecutions for hate speech to their advantage, presenting themselves as political victims and whipping up public support among aggrieved sections of German society. Far from halting Nazism, hate speech legislation assisted it.<sup>16</sup>

International organizations like the U.N. should support the efforts of citizens around the world to keep the civic space open. Censorship cannot reverse hate. Holding governments accountable to protect speech that dissents and viewpoints that are unpopular empowers the marginalized and marginalizes the extremists. By protecting the peaceful expression of disagreement in the public square, governments can prevent their societies from going down the path of violence and terror. This facilitates efforts to resolve disagreement through discussion, not violence, within nations and contributes to international peace and security. If international organizations fail to protect freedom, the U.S. and its allies should continue to hold them accountable.<sup>17</sup>

Here are three recommendations:

1. The United States should proactively urge the U.N. to rescind its Strategy and Plan of Action on Hate Speech, increase efforts to protect free speech

and religious freedom, and adopt the “imminent lawless action” standard for limiting speech. Censorship cannot reverse hate. The best way to empower minorities and human rights advocates is to ensure they have the freedom to combat hatred through counter speech and the promotion of pluralism.

2. Both H.Res. 512 (which passed the House) and S.Res. 458 call upon the U.S. government to oppose blasphemy, apostasy, and defamation of religion laws. Congress should also encourage the President and Secretary of State to oppose international efforts to enact “hate speech” restrictions that fall short of the imminent lawless action test
3. America’s global counter-terrorism efforts and the National Security Strategy should reflect the relationship between speech restrictions (like blasphemy laws) and terrorism.

As we commemorate Human Rights Day, let us be aware of the new and gradual encroachments upon freedom as well as the all too familiar ones that led to the adoption of the UDHR seventy-two years ago. Our inherent dignity and equality as human beings requires the protection of the freedom to seek the truth and to live and speak according to our consciences. Respecting this freedom will solidify the foundation for justice and peace in the world.

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<sup>16</sup> Brendan O’Neill, “How a Ban on Hate Speech Helped the Nazis,” *The Australian*, March 28, 2014, <https://www.theaustralian.com.au/national-affairs/opinion/how-a-ban-on-hate-speech-helped-the-nazis/news-story/cb199a0aae4d42a54164f3c9463745f9>.

<sup>17</sup> U.S. Statement on U.N. Strategy and Plan of Action on Hate Speech, June 18, 2019, <https://usun.usmission.gov/u-s-statement-on-un-strategy-and-plan-of-action-on-hate-speech/> (December 6, 2020).

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