

## **AGIA SOPHIA: A HOLY SITE VIOLATED**

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Mr. Chairman, I am grateful for this opportunity to speak to the Human Rights Caucus about the legal context within which the campaign to free the Cathedral of Agia Sophia should be seen, understood, and supported. You have already heard in eloquent terms of the significance of the Church to Orthodox Christians, and indeed to all believers. You have heard of its long and storied history, and of its architectural magnificence. My goal is to explain, if briefly, the legal dimension of the effort to have Agia Sophia reconsecrated as a place for Christian worship.

I will attempt to do this by emphasizing three sources of law: human rights treaties binding on the Turkish state, the customary international law of human rights also constituting legal obligations for Turkey, and the particular requirements of the Treaty of Lausanne, accepted by the founders of modern Turkey after the end of the First World War.

Contemporary international human rights treaties enshrine the duty of all states to permit the free exercise of religious belief. The International Covenant on Civil and Political Rights – the ICCPR – imposes an obligation on signatories to honor the right to freedom of thought, and therefore freedom of religion. “This right,” according to Article 18(1) of the ICCPR, includes not only the freedom to have a religion, or not, but also the freedom “either individually or in community with others and in public or private, to manifest [one’s] religion or belief in worship, observance, practice, and teaching.”

Special care must be taken, according to the ICCPR, to protect minority faiths, whose numbers of adherents in a given nation may be small. States are specifically admonished in Article 27 that such minority communities “shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

At least implicit here is an obligation on states to defer to the sanctity of religious places. Otherwise, the freedom to share religious witness with fellow members of the group would mean little. Otherwise, the freedom to worship in communion would have to be exercised by secretly celebrating mass in walk-up apartments, as did generations of Catholic worshippers in places behind the Iron Curtain, and as untold numbers of Chinese do now. The historical record is filled with examples of rulers demonstrating their contempt for a faith, and their efforts to suppress it, first by desecrating its holy sites. What those examples have in common is that, for all their brutality, they always fail. And the birth and maturity of human rights law mark the hope that humanity has moved

beyond such barbarity, recognizing that the right to worship according to the tenets of religious tradition is a fundamental human right.

To acknowledge this is not, of course, to deny governments the right to exercise legitimate police powers over territories subject to their jurisdiction. It is not to suggest that states are powerless to protect themselves against criminal activity that may hide itself behind the walls of religious institutions, just as it sometimes does within inviolable diplomatic premises. It is not to suggest that governments may not regulate in the interest of public order.

I am not defending a technical legal proposition about sovereignty, or about proprietary rights. The issue, rather, is about respect. It is about respect for those few places on Earth that each major religion considers to be cloaked in the greatest sanctity. In those places, while the obligations of states to honor freedom of religion must be reconciled with sovereignty and property, the expression of religious devotion has to be protected.

Turkey is a state party to the ICCPR. It is also a member of the Council of Europe, and therefore a party to the European Convention on Human Rights and Fundamental Freedoms. Modeled on the Universal Declaration of Human Rights, adopted by the United Nations General Assembly without dissent in December 1948, the European Convention reiterates international recognition of the freedom of religious belief, while restricting the derogations that states may be permitted. The freedom to practice religion, says the Convention in Article 9(2), shall be subject **only** “to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Like all members of the international community, Turkey’s legal obligations include not only those imposed by treaty, but the full body of customary international law as well. Custom is just as reliable, and just as significant, a source of law as conventions. And developments in the customary international law of human rights, especially in the latter half of the last century, leave little doubt that states’ obligations with respect to protection of basic human rights no longer turn on interpretations of specific language of specific treaties.

Rather, those duties reflect the increasing consensus of the world community that the freedom of religion is fundamental and non-derogable. It requires the respect of all states, even those that may have accepted it grudgingly, with reservations, or not at all. If the transformation of aspirations into law during the twentieth century meant anything, it marked the confidence with which members of the human family may rely on the simple fact of their humanity as sufficient support for the assertion that they are free to believe, to pray, or not to, in the confidence that their decision is the exercise of enforceable legal rights.

And in the specific case of Turkey and Agia Sophia, any discussion of the current legal situation must include reference to the Treaty of Lausanne, signed on July 24, 1923, following what is generally called the Turkish War of Independence. This Treaty

imposed affirmative obligations on Turkey to protect religious and ethnic minorities who would remain subject to its sovereignty. In the Treaty of Lausanne, the Turkish state accepted that certain very specific responsibilities owed to its own nationals were a matter of international law. According to Articles 38, 40, and 41:

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

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Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, **any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.**

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**The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities.** All facilities and authorization will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

These provisions of the Lausanne Treaty, therefore, may be read as providing a specific substantive basis for challenging the manner in which the Turkish Government respects, or rather fails to respect, the religious character of such sites as Agia Sophia, holy to Orthodox Christians.

Treaties enshrine solemn commitments made by states, enforceable as a matter of law. In this particular case, the Treaty of Lausanne simply spells out some of the specific obligations to which Turkey pledged its honor some 84 years ago. Those duties have now come to be incorporated into the customary and conventional international law of human rights.

Mr. Chairman, my purpose today has been to complement the presentations of Mr. Spirou and the others who have spoken to you movingly about their own religious faith and the significance of Agia Sophia to that faith. International law has evolved dramatically in our own times, and with it has come the increasing recognition that states bear

international legal obligations to respect the rights and freedoms of individual human beings.

That evolution of the law has been a great accomplishment of humankind, but like most such breakthroughs, it entails along with the broadening of legal rights an acceptance of new legal responsibilities. The case for the reconsecration of Agia Sophia, the epochal masterpiece of the Emperor Justinian, the Mother Church of Orthodoxy and the place that for believers symbolizes God's Holy Wisdom, is not only a moral case, but it is a solidly grounded legal case as well.

Mr. Chairman, thank you for your attention to my testimony, and for your support and that of your staff in making this briefing possible. Thanks to you, the case for freeing Agia Sophia, and for redressing a wrong of ancient standing, now takes its rightful place in the world's agenda for the promotion of international law.

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