Statement by The Rev. Dr. D.-M. A. Jaeger, O.F.M. - Nov. 15, 2005

**STATEMENT BY**

**(The Rev. Dr.) DAVID-MARIA A. JAEGER, O.F.M.**

**ISRAELI CATHOLIC PRIEST**

**BEFORE**

**THE SUBCOMMITEE ON AFRICA, GLOBAL HUMAN RIGHTS and INTERNATIONAL OPERATIONS**

**OF**

**THE COMMITTEE OF INTERNATIONAL RELATIONS**

**U.S. HOUSE OF REPRESENTATIVES**

**NOVEMBER 15, 2005**

**IN SUPPORT OF *THE 2005 INTERNATIONAL RELIGIOUS FREEDOM REPORT***

Mr. Chairman, Ranking Member Payne, and distinguished Members of the Subcommittee, thank you for the great privilege of the opportunity to express support for *The 2005 International Religious Freedom Report*, released by the Bureau of Democracy, Human Rights, and Labor, of the U.S. Department of State, as well as appreciation for the leadership and support you are showing by way of this hearing, and, at the same time, to comment on, and contribute to discussion of, elements of the *Report* that concern the Stae of Israel - with particular (though far from exclusive) reference to the Catholic Church.

This I have the honour to do as a Catholic priest who has been closely involved in these matters since 1977 - first as a layman and then as a clergyman - in service equally to the cause of securing religious freedom for Christian believers and their churches, and to that of helping achieve and safeguard the noble ideal and explicit promise of "complete religious freedom" enshrined in Israel's own *Declaration of Independence* (1948), the State's founding charter.

So as not to burden the record with excessive autobiographical details, let me simply state here that my on-going service to this cause has included, among other things, providing leadership on the issue at the United Christian Council in Israel (1977-1981), and serving as the legal adviser on the Catholic team that drafted, together with our counterparts for the State of Israel, the historic international treaty titled: ***The Fundamental Agreement between the Holy See and the State of Israel*** (30 December 1993), which begins with the affirmation of the human right to freedom of religion and conscience, defined first of all in terms of the *Universal Declaration of Human Rights* (and recalling Israel's own *Declaration of Independence*). My academic and professional specialisation is, in fact, the doctrine and practice of the relationship between Church and State, including most importantly the

fundamental human right to freedom of religion and conscience.

Personally, academically and professionally I have always held up the U.S. Bill of Rights - most particularly, the First Amendment - as the most perfect extant constitutional guarantee known to me of the human right to freedom of religion and conscience, and have advocated, with successive generations of my Israeli government interlocutors, its adoption as the model for translating the ideal and promise of Israel's *Declaration of Independence* into binding norms - when Israel reaches the stage of endowing itself with a written Constitution. I consider it indeed one of the United States' greatest contribution to humanity.

This contribution is significantly further enhanced in our own day by the admirable work of the Bureau of Democracy, Human Rigths, and Labor, of the U.S. Department of State - and it has been my privilege in recent years to meet several of the outstanding public servants engaged in its work - as publicly represented in a particular way by the *International Religious Freedom Report 2005* (and its predecessors).

Turning now to the same *Report*, as it concerns Israel, one is truly impressed by its thoroughness and by the very great care that has evidently been lavished on putting it together. I hope it will not be out of place to remark, that it also renders a great service to the close friendship between the United States and the State of Israel , effectively helping Israel to continuously develop its awareness of the many implications, ramifications, and consequences of its noble founding commitment to complete religious freedom.

Unaided in this task by a written Constitution, and burdened with the legal heritage - or perhaps, the inherited legal débris - of far too many centuries when the territory that is now Israel was ruled by very different kinds of legal systems that were unacquainted with democracy or human rights, and that were especially uninformed on the right to religious freedom, Israel could only benefit from such help from its friends in the United States of America, particularly since the United States, in its own *Bill of Rights*, long anticipated the proper articulation of the right to religious freedom internationally, or indeed in practically any other nation. As the *Report* does in fact note, in its preamble (and confirms repeatedly elsewhere), "The U.S. Government discusses religious freedom issues with the Government [of Israel] as part of its overall policy to promote human rights."

At this point, may I be permitted to add some respectful comments in the margins of the *Report*, drawing on my expertise and experience, and thereby make a modest contribution to the discussion. These are my comments, following the order in the *Report* itself:

1. It is significantly - and entirely correctly - reported, right at the beginning of the preamble, that, in the absence of a [written] constitution, "the law provides for freedom of worship." Since "freedom of worship" is only one element of religious freedom, the implication might be that no such provision exists for religious freedom as a whole (even though Section II, right at the start, puts it differently). Indeed, given the significant legal measures inherited from previous régimes that are not compatible with religious freedom (such as Ottoman-era "personal status" laws compelling persons classified by the State as belonging to a certain religion to submit themselves

in matters of marriage and its dissolution to that religion's rules, and to the tribunals that administer those rules, whether or not those persons even profess that religion - a matter helpfully discussed further on in the *Report*), it would appear that religious freedom could be fully guaranteed only through a future constitutional provision overriding those outdated laws and promoting instead Israel's own values as set forth in its *Declaration of Independence*. Nonetheless, in reality, it is the case that, on the whole, in its own geographical area, in the Eastern Mediterranean, and in comparison with many other polities too, Israel stands out for its actual respect for so very many essential elements of religious freedom. I believe that, in fairness to Israel, this must always be acknowledged and proclaimed appreciatively, even as further improvements and developments are being promoted - as interim steps towards the hoped-for proper constitutional guarantee that Israel's own founding values deserve. Israel, I believe, should never be made to feel that its considerable merits with regard to religious freedom - relative to too many other States - are insufficiently appreciated, nor should such appreciation be mistaken for discouragement of further progress. This is a delicate task, and I believe that the *Report* carries it out extremely well.

2. (With reference to *Section I, last paragraph*): Concerning the description of the State of Israel - by the *Basic Law on Human Dignity and Liberty* - as a "Jewish" and "democratic" State, it must be clarified that, referring back to the *Declaration of Independence* - especially read within the development up till then of the modern Jewish national movement, and in its proper historical context, and whether truly strictly construed, or even otherwise interpreted - "**Jewish**" here properly refers to **nationality**, in the sense that the State was intended to be the Jewish "nation-state,"- and **not to** (any particular) **religion**. That this description of the State is nowadays sometimes taken to be a religious reference, as if the State as such were constitutionally identified with a particular religion (or even just a particular denomination of a particular religion), is cause for concern, and calls for some definitive clarification. Certain significant problem areas identified throughout the *Report* would not be such were the original, proper meaning to be safeguarded. At this point, it seems worthy of note that there are indeed Israelis who are Jewish by nationality, fully identified with their own Jewish nation in their own national State, even as they are Christian by their religious faith and affiliation. There are others too whose nationality is Jewish, and who belong to no particular religion. It must be said that there are no legal disabilities involved when an Israeli citizen who is a Jew by nationality becomes, e.g., a Christian - his human and civil rights are intact. Yet the fact remains that the State, which continues to classify persons by nationality in the civil register, deprives converts from Judaism of their national identity, and they are instead classified as being of an unknown or "unregistered" nationality. While, again, not involving actual legal disability, it is, in effect, a social and psychological deterrent to the exercise of the human right to change one's religion as one's conscience dictates. As far back as 1963, in connection with the well known Supreme Court decision (in the *Rufeisen* - or *Brother Daniel* - case) to validate this government practice, the leaders of all Christian denominations in Israel - Catholic, Orthodox, Protestant - in a rare joint statement (there had been none before and there has been

none since, to the best of my knowledge) affirmed in contrast that "we recognise the Jew who professes the Christian faith as being always a member of his people, as he has been since the day of his birth" (quoted from memory).

3, (With reference to *Section II, Legal/Policy Framework*): It must be pointed out that there is not in fact a Jewish "Recognised Religious Community" as there was during British Rule (1917-1948) and before. The distinct Jewish Religious Community (called "Knesset Israel," not to be confused with Israel's parliament also called "Knesset") was abolished by law not long after the establishment of the State of Israel, whereupon it became (for its purposes) identical with the State itself, just as the Muslim community had been during Islamic Ottoman rule (1516-1917). The official Jewish religious institutions, such as the Chief Rabbinate and the local rabbinates, together with the religious tribunals, are departments of the State, even though they may almost invariably follow Jewish religious law without much interference in its administration by the legislator or by other departments of the State.

4. The fact that, as stated in the *Report* (ibid.), "each recognized religious community has legal authority over its members in matters of marriage, divorce..." is the most unfortunate divergence from the requirements of religious freedom, since "membership" of the (non-Jewish) "religious community", or of the Jewish religion, is not voluntary in nature, does not as such depend on personal choice, and there is no way simply to opt out of it. Thus Jews, Muslims, Catholic Christians and Orthodox Christians (according to the civil register) are subject to different laws in matters of marriage and its dissolution the law and the religious courts exercise exclusive jurisdiction over them in these matters, whether or not they are believers in the religion assigned to them, with no availability of either civil marriage or civil divorce in accordance with civil laws (that do not exist). Those who do not belong to any of the official classifications of religion have no possibility of contracting marriage in their own country. Nor can a couple marry if the man and the woman happen to be classified as belonging to different religions, even when one of those religions (or both) permits such a marriage in its own laws. Evidently, when it is a matter of a Jewish and a Christian (or other non-Jewish) party, the pressure is on the minority Christian party to convert to the (Orthodox) Jewish religion, the religion of the majority.

5. Since the time of the British Mandate, the law explicitly confirmed the exemption from local property taxes of a long list of religious (and other not-for-profit) institutions, including, not only actual worship spaces, but also, among others, monasteries and convents, schools, "soup kitchens" and so on. That law remained in force in Israel. Yet just after the Supreme Court had affirmed it twice, in December 2002 the "Arrangements Law" took a way a full third of the exemption from all but the actual spaces used for worship itself. It is true that the same applies to the religious institutions of the Jewish religious majority, but while the later are massively and consistently funded by the State, the Catholic Church does not receive, and would decline to receive (even if, hypothetically, offered) State funding for its own religious institutions and activities (as distinct from State participation in funding

Church activities supplying - often insufficiently available [to the target population] - public services in the educational and similar sectors). Now it is not simply that, as the *Report* states (ibid.), "the Government has interpreted [the full] exemption ... to apply only to the property of religious organizations that was actually used for religious worship" - this is plainly the norm of the new law itself. As far as the Catholic institutions are concerned, this legislation contravened Art. 10 § 2 (d) of the ***Fundamental Agreement between the Holy See and the State of Israel*** (30 December 1993) that, as intended and read by both Parties, froze the then existing situation, in matters of taxation, pending conclusion of the therein mandated "**comprehensive agreement**" on the fiscal régime of Catholic institutions - negotiations were still underway when the "Arrangements Law" was hurriedly passed, and still are underway today. Monasteries and convents, in particular, may not be able to survive if forced to pay even a third of heavy local property taxes. When the Catholic Church applied to the High Court of Justice (Israel's Supreme Court in its capacity as the highest administrative court in the land), the Government, through the State Advocate, informed the Court, in 2004, that the ***Fundamental Agreement*** was not binding since (although ratified internationally, and in force as between the Parties since 10 March 1994 - facts omitted from the State Advocate's statement to the Court) it had not been (and still has not been) legislated in Israel itself. This although the Government had not even begun its own drafting process of such legislation (and still has not). In submissions to the Court by the Church's Israeli lawyers, it was pointed out that, not having even initiated legislation in ten years since ratification, the Government should be deemed estopped from raising such an argument. The Government has even declined to accept my suggestion, on behalf of the Church, that it at least amend its statement to include something like recognition of the validity of the ***Fundamental Agreement*** at public international law, as a treaty to which the State is a Party, and a declare an intention to write it into Israeli law (at least at some point in time). The case is still pending.

6. Concerning the case of the **LUTHERAN** WORLD FEDERATION (LWF), it is not exact to say, with the *Report* (ibid.), that the "privilege" of tax exempt status was enjoyed by LWF's hospital on the Mount of Olives until "the District Court revoked it" in 2002. The LWF had an agreement with the Government, which was confirmation of an earlier agreement with Jordan (made when Jordan had controlled the Mount of Olives, pre-June 1967), and which the Government, not the Court, revoked through notification by the Attorney General. The Courts have only been asked to rule on whether the Government has the power to revoke such an agreement, and the District Court has ruled that it has. [The agreement is evidently not itself an international treaty, and the Court ruled that the Executive may revoke such undertakings when it concludes that public policy so requires]. This has aroused much anxiety and uncertainty in a whole range of Christian religious and not-for-profit institutions whose beneficent activities have been premised on long agreed tax exemptions.

7. As observed above, it is not exact to say simply that the Government "directly funds religious services for recognised non-Jewish religious communities." The Catholic

Church neither receives nor is prepared to receive such funding, it only requires observance of its acquired rights to tax exemptions, rights existing at the time the State of Israel was established. Negotiations on a "comprehensive agreement" - as mandated by Art. 10 §2 of the 1993 ***Fundamental Agreement*** - to reconfirm and consolidate those rights are on-going. The Church's expectations in this matter are premised, in part, on the fact that it is a net importer of human and financial capital into Israel, with considerable social and even economic benefits to State and society, and takes nothing out of it.

8. (With reference to *Section II, Restrictions on Religious Freedom*): Concerning the "1977 anti-proselytizing law", more commonly known in Israel, by supporters and opponents alike, as the "anti-missionary law", it is worth remarking that, following a world-wide campaign of protest by both Christian and Jewish leaders and organisations at the time, the Government then (in March 1978) gave a public undertaking not even to commence any investigation without the explicit authorisation of the Attorney General, it being understood that no such authorisation would ever be given. Until then the law represented a major threat to Christians in Israel (as it potentially still does, if ever the promise of non-implementation is revoked or ignored): It did not prohibit evangelising or converting as such, only "buying souls" or "selling one's soul," as it were, for material gain, but the explanatory note to the law, the parliamentary debate, and parliamentary testimony by the then Ministry of Religious Affairs, created the strong presumption that "buying" converts, especially the poor and the neediest, with promises of material gain, was what Christians normally did, was the habitual activity of Christians, and morever - it was even alleged - it was all done for the purpose of subverting the Jewish State, paying such converts to leave it, so as to weaken the State, draining the pool of recruits for its armed services engaged in an unending defence against enemies in the region, with whom the missionaries were thus allying themselves. The original demand of the Churches (as noted above, I myself was privileged to provide leadership on this issue, together with others), and of our Jewish and other friends, was for the law's repeal, and since the Attorney General's hold on the law's actual implementation could be unilaterally withdrawn at any moment, it should still be repealed.

9. (There): Concerning the ***Fundamental Agreement*** again: As noted above, the ratification process, as between the High Contracting Parties, was complete by 10 March 1994, and the treaty then entered into force as between those Parties (the Holy See, on behalf of the Catholic Church, and the State of Israel) on the plane of public international law. What the Knesset has not yet done is not "ratify" it, but write it into Israeli law so that the rights and freedoms that it secures for the Church can be pursued in Israeli courts. Not only has the Knesset not yet legislated, the Government itself has not yet even initiated the legislative process, and declines to say that it ever will.

10. As for the current negotiations (mandated by the ***Fundamental Agreement*** in its Art. 10 § 2) on a comprehensive agreement on "issues of tax exemption... and the access

of the Roman Catholic Church to Israeli courts," concerning which the *Report* correctly observes, "No agreement had been reached by the end of the period covered by this report," (ibid.), it must be added that no agreement has been reached at this time. That the negotiations are now taking place at all, even though at intervals and with insufficient time dedicated to them (hence their protracted character), is mostly thanks to the interest shown by the **UNITED STATES**: by the **Chairman of the House of Representatives's Committee on International Relations**, by other **Members of the House and Senate**, and by officials of the **Administration**, at both the **National Security Council** and the **Department of State**. Earlier, as is widely known, on August 28, 2003, the Government of Israel had withdrawn its delegation from the negotiations (which had begun on 11 March 1999, or even, on a different basis, on 4 July 1994), and declined to agree to any date for renewal of the talks. Thereupon, the sustained interest shown by these Members of Congress and officials of the Administration, friends and supporters of Israel all, had a decisive role in persuading the Government of Israel to return to the negotiating table. It is, among other things, a fact that that the Government of Israel first agreed to resume the talks only days after the Prime Minister's visit to Washington and the White House on 14 April 2004. I believe that continued interest shown by **U.S. Administration** officials and **Members of Congress**, particularly the **Committee on International Relations**, is vital if these negotiations are to continue to a successful conclusion. It is, I believe, appropriate to point out here that, among other things, the effectiveness is at stake of the considerable financial support that Catholic believers in the United States provide the Church in Israel, which is practically entirely dependent on such support from the U.S. and elsewhere. This is so in relation to taxation that may consume significant portions of these charitable contributions, unless the historic exemptions are confirmed by the agreement being negotiated. At stake also is the just expectation of believers in the U.S. that the Church in Israel - supported by their own charitable contributions - enjoy the same exemptions that the churches, synagogues and other Christian and Jewish religious and not-for-profit institutions enjoy in the United States, either in the federal system or in the several States and local jurisdictions.

11. Concerning the matter of access to the Israeli courts, to which the *Report* refers (ibid.), let me observe that it is a matter of **due process**. All the Church asks is recognition of the universal right so well expressed in the Fourteenth Amendment. An old law, inherited by Israel from the British Mandate (the 1924 *Order-in-Council*, which, however, had been meant simply to assure compliance with resolutions of the League of Nations that soon after lost their relevance), empowers the Government, the Executive, to take away jurisdiction from the courts in disputes involving churches, religious building, religious sites. The Government is then to decide these matters (or not, as the case may be) at its sole discretion, without a trial. It had long been naively assumed that the law had fallen into desuetude, at least as far as the Catholic Church is concerned, especially given its total contrariness to fundamental principles of the **right to private property** and the **rule of law**. However, there was a wake-up call when the Government invoked the law in the late 1990's to take away jurisdiction from the courts in a property dispute involving a Catholic Church-owned cemetery (in Ramleh, in central Israel). Private persons had invaded the cemetery,

> tried to establish possession, and claimed ownership. The Church turned to the courts, as any property owner would do, but the Government took away jurisdiction from the courts, in virtue of that long out-dated British Mandate *Order-in-Council*. The Government then delegated its jurisdiction to a low-level official whose very first decision for the record was that he was not bound by the rules of evidence! Enquiries by the highest level in the Church as to how such conduct was thought to be compatible with the rights or property owners to due process have remained to this day without answer. Hence the determination that the current negotiations must fundamentally change this situation and secure for the Church, not a privilege, but the same right that any property owner has in a democratic republic ruled by law, such as the State of Israel, to pursue and defend property rights in a court of law. The irony of the present state of affairs is that the Church has this right in respect of its secular properties but not in regard to what it values most of all, its own churches!

Let me conclude this Statement with renewed gratitude for the irreplaceable and uniquely effective role that the United States has in assisting Israel, as only a true friend can, to grow in practical awareness of the full range of requirements of Israel's own founding values and ideals as a democratic republic, following the United States's own leadership and example, particularly as regards religious freedom. On the part of the Catholic Church, the ***Fundamental Agreement*** itself is seen as a contribution to the development of the Israeli State and society in this same direction. It is an expression and a pledge of a friendly relationship, yet it needs to be given practical effect for its purpose to be properly accomplished. It is still waiting to be written into Israeli law, and a major necessary complement, the "comprehensive agreement" it mandates on tax and property matters is still the subject of protracted negotiations. *The 2005 International Religious Freedom Report*, and the attention you are paying it, reinforce one's hope and trust that these goals are achievable, and will indeed, with your continued interest and support, be achieved.

Thank you.