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Leveling the Playing Field for Religious "Liberty" in Russia:

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NOTES

Leveling the Playing Field for Religious “Liberty” in Russia: A Critical Analysis of the 1997 Law “On Freedom of Conscience and Religious Associations”

There are five clusters of public opinion in Russia ranging from the retrograde fascism to libertarian democracy . . . and each exists to a greater or lesser degree within EACH AND EVERY RUSSIAN. Because these clusters of opinion are pitched in battle with one another, Russia’s future remains very much in doubt

Boris Grushin, a leading Russian public opinion specialist¹

The state is the defense and support of the independent church, and the church is the spiritual leader and guardian angel of the Christian state

I.A. Il’in, Russian jurist and philosopher (1883-1954)²

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1. See Jerry G. Pankhurst, *Sociological Models of Religion in Post-Communist Societies*, in *CHRISTIANITY AFTER COMMUNISM: SOCIAL, POLITICAL AND CULTURAL STRUGGLE IN RUSSIA* 75, 82-83 (Niels S. Nielsen, Jr. ed., 1994) [hereinafter *CHRISTIANITY AFTER COMMUNISM*].

2. For a discussion of Il’in’s conceptualization of ideal relations of church and state in Russia, see L.A. Morozova, *Gosudarstvo i Tserkov’: Osobennosti Vzaimootnoshenii* [*The State and the Church: Distinctive Features of Their Relationship*], 3 *GOS. I PRAVO* 86-95 (1995), reprinted in 38 *RUSSIAN SOCIAL SCIENCE REVIEW* 40, 48 & n.11 (quoting from Il’in’s book *ODINOKII KHUDOZHNIK*).

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I. INTRODUCTION

The collapse of the Soviet Union in 1991 ended an acute confrontation between two socio-economic systems. In subsequent years, the West has exhibited both euphoria and exasperation over the developments in Russia. Russia's record in the area of human rights, including religious rights, conforms to the overall “roller-coaster” pattern of its attempts to become a

truly democratic state.³ As a result, the West continues to perceive Russia with a certain apprehension: periodic goodwill among political leaders and the relative CNN silence about the events in Russia have left the West with an uneasy, latent anticipation of what might happen next.

In the summer of 1997, the acrimonious debate over freedom of conscience and the role of religion and church in Russia attracted international attention. The passage of a comprehensive new law "On Freedom of Conscience and Religious Associations"⁴ was a landslide⁵ victory for the conservatives, concluding a seven-year battle to amend the groundbreaking, progressive law "On Freedom of Religion."⁶ The 1997 law, while enjoying popular support, generated strong criticism because of its effective curtailment of the legal rights of certain religious associations and individuals.⁷ Nevertheless, the new law afforded substantial and

3. In the 1990' Russia has faced the tremendous challenge of preserving its territorial integrity while simultaneously upholding democratic norms. The war in Chechnya highlighted this dilemma. Ultimately, it demonstrated that Russia would suspend the rule of law in critical situations. See, e.g., Elizabeth K. Cooper, *Comment on "Transitional Constitutionalism: Politics and Law in Russia Since 1993."* 14 WIS. INT'L L.J. 531, 540 (1996).

4. FEDERAL'NYI ZAKON O SVOBODE SOVESTI I O RELIGIOZNYH OB'EDINENIYH [Federal Law on the Freedom of Conscience and on Religious Associations], *Sobr. Zakonod. RF*, 1997, No.39, Item 4465; *Ross. Gazeta*, 1 Oct., 1997, at No.190. (RF) [hereinafter THE NEW LAW] (all translations are by the author).

5. The State Duma voted 358-6, with four abstentions, in favor of the bill. See Igor Zhukov, *Religion Law to Protect Russians from Radical Sects*, ITAR TASS NEWS AGENCY, Sept. 19, 1997, at 1, available in LEXIS, News Library, TASS International File; *Russian Duma Passes Revised Religion Bill*, U.P.I., Sept. 19, 1997, at 1, available in LEXIS, News Library, International File. The upper house of parliament, the Federation Council, unanimously voted in favor of the measure. See Dmitriy Zaks, *Federation Council Approves Religion Bill*, MOSCOW TIMES, Sept. 25, 1997, at 1, available in LEXIS, News Library, File No.1301 (quoting a prominent member of the Federation Council who claimed that Russians "have flooded" him with letters demanding to draft legislation "regulating the work of destructive cults.")

6. ZAKON RSFSR O SVOBODE VEROISPOVEDANI [The Law of RSFSR On Freedom of Religion], *Vedomosti RSFSR*, 1990, Issue No. 21, Item No. 267-1, at 240 [hereinafter 1990 RUSSIAN LAW]. For a discussion of this law see Harold J. Berman, *Religious Rights in Russia at a Time of Tumultuous Transition: A Historical Theory*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE LEGAL PERSPECTIVES 285, 295-97 (Johan D. van der Vyver & John Witte, Jr. eds., 1996) [hereinafter RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE]; W. Cole Durham, Jr., Lauren B. Homer, Peter van Dijk, John Witte, Jr. et al, *The Future of Religious Liberty in Russia: Report of the De Burght Conference on Pending Russian Legislation Restricting Religious Liberty*, 8 EMORY INT'L L. REV. 1, 2-4, 30 (1994) [hereinafter *De Burght Report*].

7. See, e.g., David Hoffman, *Yeltsin and Religion: Gore Appeals Against a Russian Curb*, INT'L HERALD TRIB. (NEUILLY-SUR-SEINE, FR.), Sept 23, 1997, at 10, available in LEXIS, News Library; *Yeltsin Signs Controversial Religion Law*, AGENCE FR. PRESSE, Sept.26, 1997, at 1, available in LEXIS, Int'l News File (quoting regrets expressed by the White house officials and the leaders of the Catholic community); Charles W. Holmes, *Yeltsin Ok's Restricting Some Faiths*, ATLANTA J. & CONST., Sept. 27,

much needed political legitimacy to the indecisive Russian legislative branch as well as to the President.⁸ These diametrically opposed responses to the new legislation naturally translated into socio-political discomfort both in Russia and in the international arena.

Yet the rigid cultural stereotypes propagated by the Russian and Western media do not provide an adequate understanding of the origins and the repercussions of the new law. The purpose of this Note is to present a more comprehensive framework for analyzing the status of religious human rights in Russia after the enactment of the new law. Following the insights of an eminent scholar on law and religion, Prof. Harold J. Berman, the topic may be evaluated with a view to positive law (*Zakon*), moral theory

1997, at 03B, available in LEXIS, News Library, Foreign File (citing comments by the OSCE representative that the new law "does not represent progress toward the path to religious coexistence").

The majority of Russians apparently supported the bill. See Eric Burkett, *Orthodoxy Expert Says Russian People Back Religious Restrictions*, ANCHORAGE DAILY NEWS, Oct. 11, 1997, at 8C, available in LEXIS, News Library. However, there were outspoken domestic opponents of the law such as leading religious rights activist Fr. Gleb Yakunin. See David Filipov, *Yeltsin Signs Law Restricting Some Religions: Critics Say Constitution Violated*, BOSTON GLOBE, Sept. 27, 1997, at A2, available in LEXIS, News Library, Foreign File (criticizing the subjection of religion to the whim of the state). There was also a public protest staged by the opponents of the new law. See Julia Shargorodska, *5,000 Decry Church Law At City Park*, MOSCOW TIMES, Oct. 8, 1997, available in LEXIS, News Library, Indep. Press File No.1310. (Almost all the demonstrators appeared to be Russian and tried to emphasize their nationality by singing popular songs accompanied by balalaika; Anatoly Pchelintsev, Director of the Moscow Institute of Law and Religion, led the protest).

8. See generally Melor Sturua, *Svobodu Propovedi v Rossii Senat SSHA Ozenil v 200 Millionov Dollarov* [The U.S. Senate Valued the Freedom to Preach at \$200 million], IZVESTIA, Oct. 1, 1997, at 1 (arguing that, by passing a measure popular with the majority of the electorate, Russian leaders paid attention to their own political priorities and increased their political capital even though they lost \$200 millions in aid from the U.S.).

Conservatives accused Yeltsin of bowing to Western pressure when he vetoed an earlier version of the law in July 1997. See Peter Ford, *Curb on Religious Freedom in Russia May Rise Again*, CHRISTIAN SCIENCE MONITOR, July 24, 1997, at 6:3 (communist deputy V. Ilyukhin stated that the veto "provided further proof that Russia has become a protectorate of the West" and called to "limit Western pressure over the minds of Russian citizens"); *Newsline- Yeltsin Expecting Religion Law Override*, THE PATRIOT LEDGER (Quincy, Ma), July 24, 1997, at 5, available in LEXIS, News Library (citing a comment by V. Kuptsov, top communist lawmaker, that Yeltsin's actions lead to "the public humiliation of Russia"); *Yeltsin Intends to Pass Freedom of Conscience Law*, NEZAVISIMAYA GAZETA, July 29, 1997, at 1, available in LEXIS, News Library, RusData File (A. Isayev, a prominent labor leader, said that turning down the law was a "grave political error" and that Russian labor unions were indignant at the overt international political pressure).

The Parliament, on the other hand, was a popular champion of the Orthodox Church and a protector of the people against destructive 'totalitarian sects.' See Zhukov, *supra* note 5 (quoting Chairman of Parliament's Committee for Religion and Public Organizations).

(*Pravo*), and Russian historical experiences.⁹ Generally, positive law refers to domestic legal norms. Moral theory also stems primarily from domestic supra-legal sources, but it may connote global human rights principles where a state subscribes to monism,¹⁰ as Russia currently does. Historical contingencies can be described as prior experiences and the related set of solutions developed in the past. Historical experiences are relevant because of a society's natural proclivity to apply these time-tested solutions to new circumstances. Writing about a failed attempt to amend the liberal religious freedom law in 1993, Professor Berman correctly pointed to the overpowering force of historical contingencies in informing Russian legislation and molding both positive law and morality.¹¹

The situation in 1997 mirrored the one in 1993.¹² The dissolving of the Russian legislature in 1993 merely postponed the resolution of a drama surrounding Russian religious policies that reached its expected outcome in 1997. Once again, the needs of the state trampled the legal guarantees contained in the Russian Constitution and numerous instruments of international

9. See Berman, *supra* note 6, at 285-87. For an excellent summary of *zakon* vs. *pravo* dichotomy, see William E. Butler, *Justice in Russia*, in THE INTEGRATIVE JURISPRUDENCE OF HAROLD J. BERMAN, 13, 22-24 (Howard O. Hunter ed., 1996).

10. For a discussion of monism and dualism see Louis Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and Its Progeny*, 100 HARV. L.R. 853, 864-866 (1987) (illustrating an interesting contrast between the role of international law in the U.S. and in Russia) As a part of its full-scale democratization, Russia borrowed a multitude of international rules in the areas of political and civil rights. The country has clearly subscribed to monism in its Constitution. See KONST. RF (1993), arts. 17(1), 15(4). See Antti Korkeakivi, *The Reach of Rights in the New Russian Constitution*, 3 CARDOZO J. INT'L & COMP. L. 229, 243 (1995) (summarizing various types of human rights included in the Russian Constitution and identifying various ways to enforce them).

11. See Berman, *supra* note 6, at 297-304.

12. The parallels between the proposed religious law reform in 1993 and in 1997 are worth noting. In each case, the major forces driving reform were the nationalists—communists and Christian Democrats, labor and agrarian Parties—and the Moscow Patriarchate. Both bills received overwhelming support from the legislative branch before the President vetoed them. The coup in August 1993 and the subsequent dismissal of the legislature halted the momentum of the first proposed law. For an insightful first-hand description of these events, see Michael Bourdeaux, *Glasnost' and the Gospel: The Emergence of Religious Pluralism*, in THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA 113, 118-123 (Michael Bourdeaux ed., 1995) [hereinafter THE POLITICS OF RELIGION]. In 1997, Yeltsin again countered the populist legislation with his veto. Yet, he acknowledged the need for more effective regulation of religious organizations and was prepared to compromise. See Andrei Zolotov, *Compromise Alters Little in Religion Bill*, MOSCOW TIMES, Sept. 3, 1997, at 1, available in LEXIS, News Library, Indep. Press File No.1285. See Mikhail Sivertsev, *Civil Society and Religion in Traditional Political Culture: The Case of Russia*, in THE POLITICS OF RELIGION, *supra*, at 75-94, for a description of the major types of parties in Russia and an interesting correlation between political and religious pluralism.

law adopted by Russia. This Note explores the reasons for such a deplorable detour from the rule of law and attempts to chart the reach of the new legislation.

The discussion in Part II begins with a synopsis of religious policies in Russian history. It then offers general observations on Russian cultural predilections regarding religion, state, and the people. These constitute the most powerful strand of supra-legal sources—the Russian version of natural law. Part III identifies an alternative set of higher legal norms and principles contained in international religious rights instruments¹³ and in the 1993 Russian Constitution. Part IV starts with a description of the post-Soviet religious landscape and focuses on political and cultural motivations for the new legislation. It then lays out the structure of the new law and provides a commentary on important provisions. The Note assesses the law in light of constitutional guarantees, international norms, and practical domestic imperatives. Part V examines the potential effects of law and suggests the ways to resist gross abuses in its application. The Note concludes by asserting that if Russia blindly follows the worst features of its historic heritage the forecast is bleak. Yet, the future looks brighter if Russia follows international and constitutional norms in developing tempered cooperationist or endorsed¹⁴ paradigms of church-state relations. This scenario satisfies both the Russian quest for its unique cultural identity as well as its ambitions to become a truly democratic state.

II. HIGHLIGHTS IN THE HISTORY OF RELIGION AND RELIGIOUS POLICIES IN RUSSIA

Religious policy is a sensitive area because it is intimately connected with a state's history and is informed to a large extent

13. Constitutional provisions, international treaties, and "universally recognized" principles in the area of human rights function as both a set of aspirational ideals, "the supreme value," and as directly applicable positive rules. See KONST. RF., *supra* note 10, at arts. 2, 17(1) & 18. In the former capacity, they present an antithesis to traditional Russian moral theory. As legal norms, Constitutional provisions are "the supreme law." *Id.* at art. 15(1). International agreements supersede inconsistent domestic laws and customary international law is a "part" of the Russian legal system. *Id.* at art. 15(4).

14. This terminology is borrowed from a comprehensive discussion of different models of church-state relations and the content of religious liberty in them. See Cole W. Durham, *Perspectives on Religious Liberty: A Comparative Framework*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE, *supra* note 6, at 1-45 [hereinafter *Comparative Framework*]. For a summary of broad comparative classifications by other scholars, see Johan D. van der Vyver, *Legal Dimensions of Religious Human Rights: Constitutional Texts*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE, *supra* note 6, at XIX-XX.

by elusive national consciousnesses formed over centuries. In order to grasp the motivations and full implications of the positivist norms, one must understand the cultural milieu in which they operate. Russian history reflects a version of religious policies that are in sharp contrast to the Enlightenment-influenced Western European and American traditions.¹⁵ The following discussion explores these differences in a systematic way that adds another dimension to the appreciation of the challenges that Russia currently faces.

A. Historical Developments

The following is a brief summary of crucial events that formed Russian attitudes towards religion and the role of the Orthodox Church. It draws heavily on the political-juridical theory of Russian history.¹⁶

1. The Early Period (10th-17th Century)

If the Russian legacy contains any trace of religious "pluralism," a pre-Christian worship of local natural forces is probably the best illustration of the early decentralized religious practices of various Slavic tribes.¹⁷ In the tenth century, the Kievan princes' desire to unify the tribal lands prompted them to adopt a common religion as a moral foundation for the emerging

15. For an exploration of the cultural and historic forces that determined the content of freedom of religion in the United States, see John Witte, Jr., *The Essential Rights and Liberties of Religion in the American Constitutional Experiment*, 71 NOTRE DAME L. REV. 372, 376-405 (1996). The essential American freedom of religion values are liberty of conscience, free exercise of religion, pluralism, equality, separationism, and disestablishment of religion. These are derived from four influential historical perspectives: Puritan, Evangelical, Civic Republican, and Enlightenment. Interestingly, current Russian policies aiming to revive religious ethics and ethos as pillars of civil society and favoring a predominant religion while maintaining institutional separation between church and state resemble Civic Republican and Puritan ideologies respectively. In fact, Massachusetts and other New England states maintained "slender" establishment with special privileges to Calvinists until the 1830'. See *id.* at 388-89. Unlike the U.S., Russia does not have domestic parallels to countervailing Evangelical (religious equality) and Enlightenment (benign secularism and human rights) traditions. Both of these theories are reflected in international religious rights instruments. However, for Russia, these international norms remain culturally alien.

16. The major Nineteenth Century proponents of this influential school are V. Kliuchevskii, S. Soloviev, and B. Chicherin. For a good summary, see HUGH RAGSDALE, *THE RUSSIAN TRAGEDY: THE BURDEN OF HISTORY* 30-32 (1996).

17. For two interesting discussions of pre-Christian religious practices in Russia and their interaction with Christianity, see B.D.Grekov, *Kreshenie Rusi* [Christianizing of Russia], at 40-42 and M. N. Tikhomirov, *Jazucheskoe Mirovozzrenie i Khristianstvo* [Pagan Worldview and Christianity], at 42-46, in RELIGIA I TSERKOV' V ISTORII ROSSII [Religion and Church in Russian History] (A.M. Sakharov ed., 1975).

state.¹⁸ After a careful screening of several predominant religions, Prince Vladimir was baptized by Byzantine priests in 988 A.D. and ordered his entourage to convert to Christianity as well.¹⁹ Thus, from the earliest times, the foreign Church depended on princes for support and legitimization.²⁰ The intimate relationship between church and state was further reinforced by a doctrine of caesaropapism²¹ peculiar to Greek Christianity. In contrast to Western Catholicism, the Eastern Orthodox Church never challenged the supreme role of secular rulers.²² St. Sergius' blessing of prince St. Dmitry Donskoy before a decisive battle with the Mongols in 1388 exemplifies the symphonia²³ that characterized the relations between the princes and clerics.

The St. Sergius-Donskoy dynamic also illustrates that the Church extolled civic patriotism as a religious virtue.²⁴ The Orthodox Church was synonymous with Russian lands and the Russian people as a whole, in addition to being a close ally of the political elite.²⁵ The people were addressed not as "citizens" but

18. PAUL D. STEEVES, KEEPING THE FAITHS: RELIGION AND IDEOLOGY IN THE SOVIET UNION 19 (1989).

19. The monk Nestor's Eleventh Century account of Vladimir's baptism is the primary historical source. See THE RUSSIAN PRIMARY CHRONICLE 96-97, 110-11, 116-17 (Samuel H. Cross & Olgerd P. Sherbowitz-Wetzor eds. & trans., 1953), reprinted in PAUL D. STEEVES, KEEPING THE FAITHS: RELIGION AND IDEOLOGY IN THE SOVIET UNION 19-22 (1989). Vladimir selected Orthodox Christianity for its aesthetic beauty and a lack of objectionable features associated with other religions. He rejected Islam for its abstention from alcohol and was appalled at Jewish political inability to keep their land. See *id.*

20. Scholars agree that religious conversion was forced and slow. See S. Bakhrushin, *K Voprosu o Kreshenii Kievskoi Rusi* [On the Question of Baptism of Kievan Russia], in RELIGIA I TSERKOV' V ISTORII ROSSII, *supra* note 17, at 16-18; STEEVES, *supra* note 18, at 23. The early Church depended wholly on princes' support because it was not a popular institution and because early Greek priests could not even communicate in Russian. *Id.*

21. See Ragsdale, *supra* note 16, at 43 (arguing that caesaropapism—submission of church to state—historically suited the Russian political model of overdeveloped, 'hypertrophic' state); STEEVES, *supra* note 18, at 25-27 (discussing 'symphonia'—a harmony and mutual support between ecclesiastic and secular authorities in pursuit of a common task of "conducting the people to salvation, on earth and in heaven").

22. See STEEVES, *supra* note 18, at 25.

23. See STEEVES, *supra* note 18, at 32-34. This imagery recurs in relations between Yeltsin and Alexii II: the Patriarch publicly blessed Yeltsin before his first presidential campaign in 1990 and since then has figured prominently in Kremlin ceremonies. See *Yeltsin Signs Law to Curb Other Faiths*, THE BALTIMORE SUN, Sept. 27, 1997, at 9A. Yeltsin also appealed to the Orthodox Church for moral support during August 1991. After short hesitation, Alexii II threw the whole weight of the church behind the Yeltsin government. See Dennis J. Dunn, *Religion, Revolution and Order in Russia*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 24.

24. See STEEVES, *supra* note 18, at 31-32.

25. *Id.* at 63.

as "rightful worshippers" (*pravoslavnye*) implying that everyone was Greek Orthodox, and that it was the one and only true religion.²⁶ The sense of self-righteousness was further enhanced by the notion that Russia had borrowed a doctrinally complete religion.²⁷ This religious dogma obliterated any need for truth-seeking and fostered six centuries of a virtual absence of internecine conflicts, typical of the Catholic Church at the time.²⁸

In the early sixteenth century, the Church and ambitious Moscow princes allied to proclaim Moscow the Third and Last Rome after the fall of Constantinople.²⁹ In politics, this ideology justified the rapid expansionism of the Moscow state.³⁰ In religion, it solidified the Orthodoxy's role as a truly national church.³¹ Most importantly, it nourished Russian reveries of grandeur and a special mission³² in which the Church and secular rulers collaborated in strengthening Holy Russia and imparting its most pure religious and national values on all its subjects as well as beyond its borders.

26. See RAGSDALE, *supra* note 16, at 47. There was also a persistent assumption that all Russian common folk are Christian. The language illustrates this assumption. For example, "krestianin," a peasant, is derivative from "krest," a cross and phonetically is almost identical to "khrest'anin," a Christian. See *id.*

27. See STEEVES, *supra* note 18, at 24-25. Russian Orthodoxy recognizes resolutions of only the first seven ecumenical councils held between 325-787 A.D.

28. See *id.* Many leading Russian church historians such as George Fedotov and George Florovsky acknowledged the fact that Russia "had no theology worthy of the name" and "endured centuries long intellectual silence." RAGSDALE, *supra* note 16, at 46. One specialist aptly referred to traditional Orthodoxy as "the absence of books and the presence of painters," referring to magnificent icons that adorn Orthodox Churches and to "more sensate spirituality than was true of the more rationalist theology of the Catholic and Protestant West." Walter Sawatsky, *Visions in Conflict: Starting Anew Through the Prism of Leadership Training*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 114-15. Russian philosophers such as Chaadaev, S. Bulgakov, V. Soloviev, Il'in, Frank, Berdyaev and Meyendorff were the first significant contributors to the field of theology in the Nineteenth and early Twentieth Centuries but they are little known or followed by the Orthodox hierarchy and clergy.

29. See STEEVES, *supra* note 18, at 37-41. For the early political significance of this doctrine and its historic sources, see Pokrovsky, *Moskva-Tretij Rim* [Moscow as a Third Rome], in RELIGIA I TSEKOV' V ISTORII ROSSII, *supra* note 17, at 119-24.

30. See Ragsdale, *supra* note 16, at 27 (a Russian version of this manifest destiny).

31. See STEEVES, *supra* note 18, at 40-41.

32. The monk Philoteus concisely stated the vision that "[a]ll Christian realms will come to an end and will unite into one single realm of our sovereign" and that also included an exalted mission to promote the welfare of the whole humanity. See STEEVES, *supra* note 18, at 37. The notion of a special mission, or "The Russian Idea," remains one of the most popular themes in Russian culture. In fact, it imbued Russian and Soviet legal norms and led scholars to suggest that Russian society required not only a sense of direction conveyed by positive law, but also an inspiring idea or a mission. See Butler, *supra* note 9, at 26.

Ironically, Russian expansionism also required the nation to come in contact with different ethnic groups and religions. The centuries of cultural and religious isolationism under the Mongol yoke left Russia completely unprepared to productively accommodate foreign influences.³³ An overriding concern to preserve Russian Orthodox values insulated Russia from European developments.³⁴ From the earliest times, the Russian state projected an intolerance towards foreigners and religious minorities.³⁵ For example, medieval Russian rulers symbolically reflected national xenophobia in the ceremony of washing hands after each official reception of foreign emissaries.³⁶

2. The Imperial Period (18th-20th Century)

The reforms and imperial ambitions of Peter the Great (1689-1725) forced Russia to come face to face with the West.³⁷ Culturally, it was a painful experience because it exposed Russia to competing socio-cultural norms and demonstrated Russian backwardness, especially in education, economics, and technology.³⁸ In a truly autocratic manner, Peter ordered Russia to modernize in a series of ruthless executive decrees.³⁹ Peter's ideal was the *Polizeistaat*.⁴⁰ A creature of German political thought, this model presupposed comprehensive regulation of every aspect of public and sometimes private life as a way to mobilize the country's resources and to create "a perfect order" in a vast, multinational empire.⁴¹ The Orthodox Church also became an arena for governmental action. Peter's Spiritual

33. See, e.g., RAGSDALE, *supra* note 16, at 48 (explaining the divorce and state prom society).

34. See STEEVES, *supra* note 18, at 63.

35. For a classic perspective on the fate of religious minorities in Russia since the Middle Ages, see SERGE BOLSHAKOFF, *RUSSIAN NONCONFORMITY: THE STORY OF "UNOFFICIAL" RELIGION IN RUSSIA* (1950). The major schism within the Orthodox Church occurred in 1652 A.D. as a result of Patriarch Nikon's liturgical reforms. A substantial group of dissenters, the Old Believers, faced severe persecutions throughout the centuries. See *id.* at 46-83. Their derogatory name, the Schismatics, depicts the Orthodoxy earning for unity and consolidation at the expense of religious pluralism. Amazingly, the sect survived (probably because of its strong work ethic) and as of 1993, there were 121 religious associations formed by them. See Berman, *supra* note 6, at 296 n.12.

36. See RAGSDALE, *supra* note 16, at 26.

37. *Id.* at 49-62.

38. *Id.*

39. See S.M. SOLOVIEV, *CHTENIA I RASSKAZY PO ISTORII ROSSII* [Readings and Lectures on Russian History] 520-21, 557-63 (1990), for an apologetic view of Peter's 'large stick' measures by one of the preeminent Nineteenth Century historians.

40. See RAGSDALE, *supra* note 16, at 49-59.

41. *Id.*

Regulations promulgated in 1721 made the Church a department of the state.⁴² The lay official serving as the High Procurator of the Holy Synod replaced the Patriarch as the leader of the Church, marking the end to the institutional independence of the Church.⁴³ Later, Catherine II solidified administrative control over the Church through sequestration of its lands.⁴⁴

During the imperial period, the rulers exhibited various degrees of intolerance towards non-Orthodox religious confessions.⁴⁵ For example, to attract Western entrepreneurs, and to launch strong educational institutions, Peter was well disposed to Protestants and Catholics who enjoyed great personal religious freedom.⁴⁶ On the other hand, he persecuted domestic non-conformist movements, such as the Old Believers, and stressed the importance of ideological uniformity and the Orthodox supremacy.⁴⁷ Catherine II, Alexander I, and Alexander II also flirted with liberal enlightenment ideals including the freedom of conscience.⁴⁸ However, these were fleeting detractions from the predominant Russian policy summarized by Nicolas I in three words: "Autocracy, Orthodoxy, Nationality."⁴⁹ As late as 1903, missionary activity by non-Orthodox confessions was still illegal⁵⁰ and any conversion from the Orthodoxy resulted in criminal sanctions.⁵¹ Only in 1905, following great revolutionary agitation, did the government issue the law on tolerance, which adopted a more conciliatory posture towards non-Orthodox religious groups.⁵²

42. See STEEVES, *supra* note 18, at 47-49. A major theme in Peter's decree was the desirability of religious uniformity. Although Russian rulers were prepared to enforce this ideal, in practical terms, its achievement was virtually impossible because of the steady territorial expansion and the incorporation of many non-Russian and non-Orthodox people into the empire. See also Berman, *supra* note 6, at 288.

43. See Steers, *supra* note 18, at 47.

44. See ROBERT PIERCE CASEY, *RELIGION IN RUSSIA* 23 (1946).

45. See *id.* at 1-27, for a concise overview of imperial religious policies consistent with the temperaments of individual Russian czars.

46. See *id.* at 13, 31, 37-38.

47. See STEEVES, *supra* note 18, at 47-49.

48. CASEY, *supra* note 44, at 19-27.

49. RAGSDALE, *supra* note 16, at 80.

50. See Berman, *supra* note 6, at 288 & n.3. In Russia, Orthodox theology was closely affiliated with ethnicity. Non-Orthodox Russians betrayed their national identity and civic duties, and were viewed with hostility and suspicion. Non-Orthodox non-Russians, such as Jews, Tartars etc., occupied an even lower social status. For a discussion of persecution of Muslims and Jews in the Russian Empire, see STEEVES, *supra* note 18, at 49-55.

51. See Morozova, *supra* note 2, at 43.

52. See Berman, *supra* note 6, at 288. For a detailed account of this period, see JOHN SHELTON CURTISS, *CHURCH AND STATE IN RUSSIA: THE LAST YEARS OF THE EMPIRE, 1900-1917, 195-235* (1940).

3. The Soviet Period (1917-1988)

Consistent with Marxist materialism that viewed religion as a dangerous delusion, the Bolsheviks established the first secular state in Russian history.⁵³ The new scientific atheism was militant and aggressive.⁵⁴ Essentially, the Orthodoxy and Marxism-Leninism were the two competing faiths.⁵⁵ The Orthodox Church found itself in an unusual position when the Soviet legislation gave the latter an upper hand as the official state doctrine. The laws, passed in 1918 and 1929,⁵⁶ stripped the Orthodox Church of its privileged position and placed it on the same level as all other religions.⁵⁷ The Soviet state tolerated religions as a "necessary evil," so long as the religious organizations did not interfere with civil society. Religious organizations did not have the rights of a juristic person⁵⁸ because religion was an entirely personal matter. Accordingly, the state "relieved" the Church of its properties, its role in education, and other traditional activities.⁵⁹ The religious organizations had no redress for this abuse.⁶⁰ Even private religious worship was a risky activity, especially during the 1930s repression period and under the Criminal Code of 1960.⁶¹

53. See STEEVES, *supra* note 18 at 65.

54. See, e.g., Alexander Nezhny, *Jad i Topor* [Poison and Axe], KULTURA, Nov. 6, 1997, at 7.

55. See STEEVES, *supra* note 18, at 65-67.

56. For selected reprinted provisions and a discussion of the content and application of these laws, see Nezhny, *supra* note 54, at 7 (citing archive materials with secret Politbureau orders, issued in the early 1920s, to crush religious uprisings as violently as possible and to expropriate the church in the most expedient manner); STEEVES, *supra* note 18, at 70-72, 86-87; Berman, *supra* note 6, at 289-90.

57. One of the perverse results of this measure was a transitory growth of minority religions, especially evangelical Protestantism, before Stalin's repression in the 1930'. See, e.g., STEEVES, *supra* note 18, at 85; Sawatsky, *supra* note 18, at 119.

58. In the U.S.S.R., religious organizations could not engage in charity work, conduct religious studies, distribute religious literature, establish collection funds, rent or buy premises and cultic objects for their operations, or conclude agreements and transactions. See STEEVES, *supra* note 18, at 70-72.

59. *Id.* (reprinting provisions from the "Decree Concerning Separation of Church From State and School from Church").

60. *Id.* at 74-75.

61. See Dunn, *supra* note 23, at 18; Berman, *supra* note 6, at 290-91. In prosecuting individual believers, the government proceeded under the Criminal Code, Article 142 (up to three years for violations of separation between the church and the state and the school from the church by organizing religious assemblies and instruction) and Article 227 (up to five years for religious activists for damaging public health, detracting away from civic duties, and proselytizing). For an interesting illustration of applying these provisions against Hare Krishna and Jehovah's Witnesses in the 1970s and 1980s, see Oxana Antic, *The Spread of Modern Cults in the USSR*, in RELIGIOUS POLICY IN THE SOVIET UNION 252, 257-68 (Sabrina Petra Ramet ed., 1993).

During World War II, the Orthodox Church supported the state by making an appeal to national patriotic sentiments.⁶² As a reward, Stalin relented in his uncompromising posture towards traditional religions.⁶³ The state permitted the "election" of a new Patriarch, but in return created two supervising Councils, one for the Affairs of the Orthodox Church and the other to supervise Religious Cults.⁶⁴ The Councils,⁶⁵ comprised of communist bureaucrats, dictated religious policies. For instance, they ordered five million Eastern Rite Catholics to merge into Russian Orthodox Church,⁶⁶ outlawed entire religious denominations,⁶⁷ circulated special administrative directives ordering priests to report their congregates' confessions,⁶⁸ all while maintaining an appearance that the USSR complied with the international norms on freedom of conscience.⁶⁹

A religious group had to register with the state to exist legally.⁷⁰ The official registration requirement was a powerful instrument of state control. When the state perceived certain religious communities as undesirable for any reason, it simply refused to register them.⁷¹ Any activities by such unregistered

It is noteworthy that the Soviet regime perceived religious belief as a mental sickness and for many victims the punishment was not prison but mental institution where the inmates were often subjected to physical and mental torture (from the author's conversations with people who survived *psikhushki*—mental hospitals).

62. See STEEVES, *supra* note 18, at 94.

63. *Id.*

64. *Id.* at 98.

65. The above mentioned two councils later merged into an omnipotent Council for Religious Affairs. For a comprehensive study of the operations of the Council for Religious Affairs, see Otto Luchterhandt, *The Council for Religious Affairs*, in RELIGIOUS POLICY IN THE SOVIET UNION, *supra* note 61, at 55-83.

66. For a fascinating history of this religious community that has Orthodox liturgy but is under the Pope's dominion, see Bohdan Bociurkiw, *Politics and Religion in Ukraine: the Orthodox and the Greek Catholics*, in THE POLITICS OF RELIGION 131, *supra* note 12, at 135.

67. For example, all Protestant groups that did not belong to the official centralized All-Union Council of Evangelical Christian Baptists (AUCECB) were outlawed. See Walter Savatsky, *Protestantism in the USSR*, in RELIGIOUS POLICY IN THE SOVIET UNION, *supra* note 61, at 328-29.

68. See STEEVES, *supra* note 18, at 144-45 (discussing the moral dilemma of becoming a registered religious organization).

69. *Id.* at 105. See also J.A. Hebly, *The State, the Church, and the Oikumene: the Russian Orthodox Church and the World Council of Churches, 1948-1985*, in RELIGIOUS POLICY IN THE SOVIET UNION, *supra* note 61, at 105-21. The Soviet state allowed the Orthodox Church to build relations with foreign religious entities and exploited the Orthodox presence on the international religious arena for its own interests.

70. See STEEVES, *supra* note 18, at 142-45.

71. For example, while large traditional denominations were usually successful in obtaining registration enabling them to sponsor group worship, non-traditional sects, such as Jehovah's Witnesses, Hare Krishna, some Adventists, Pentecostals,

groups resulted in criminal and civil sanctions to their members.⁷² Some religious groups consciously chose not to register to signify their protest against the state control of religious organizations.⁷³

Overall, the Soviet legacy did not introduce liberal ideals on the separation of church and state. *De jure* separation translated into tremendous legal disabilities for religious organizations and did not diminish the pervasive state control of religious activities. Intolerance was still a central feature. The only difference was the substitution of the Orthodox Church with scientific atheism and Marxism-Leninism.⁷⁴

B. Traditional Moral Theory

Unique moral ideals recurrent throughout Russian history led to the development of religious policies that were different from other Western societies. The effect of the 1997 law will depend on the extent to which Russia follows these traditional determinants:

1. Autocracy and All-Encompassing State Control
2. Lack of the Inalienable Rights Concept
3. Great Affinity Between the Church and State
4. Orthodoxy as a Part of Russian National Identity
5. Xenophobia

Historians argued that an overly-developed state mechanism (hypotrophic state) was Russia's way of withstanding foreign invasion by mobilizing the resources of a population spread over vast wilderness. The state's control over its people was absolute, and inalienable individual rights were superfluous. In contrast to Western Europe, where human rights evolved from the rights and

Baptists, and even those Orthodox Christians who opposed officially recognized leadership, faced insurmountable difficulties at the registration stage. *Id.* at 42.

72. *Id.* at 143.

73. *Id.* at 144-45.

74. N. Berdyaev was the first proponent of the theory that there was a great continuity between communism and the traditional 'Russian Idea' associated with the Orthodoxy. See generally NICOLAS BERDYAEV, *THE ORIGIN OF RUSSIAN COMMUNISM* (R.M. French trans., 2d ed. 1948). The author argued that both Holy and Communist Russia were inspired by a strong sense of a historical mission, going back to the Moscow as the Third Rome theory. Other scholars elaborated on the theme and noted a number of graphic similarities between communist and religious rituals, educational and public relations strategies, as well as adherence to one dominant ideology to the detriment of all other beliefs. See, e.g., STEEVES, *supra* note 18, at 111-19 and 136; HAROLD J. BERMAN, *JUSTICE IN THE U.S.S.R.* 229 (1963), reprinted in *THE INTEGRATIVE JURISPRUDENCE OF HAROLD J. BERMAN*, *supra* note 9, at 26.

responsibilities of feudal classes (or estates) and were extended to individuals during the Enlightenment, Russia never developed the notion of human rights.⁷⁵ In Russia, a sovereign could grant or revoke privileges (not rights!) at will.⁷⁶ The sovereign was the ultimate source of all benefits and the people's protector.⁷⁷ Depending on personality, a ruler could be a reformer and even the most progressive force in society.⁷⁸

The Orthodox Church had a preeminent place because of its collaboration with rulers.⁷⁹ Their mission was identical: survival of Holy Russia and the attainment of a special place for its heritage among nations.⁸⁰ In an effort to achieve this goal, the Church was responsible for keeping Russia spiritually pure and the state provided for its physical continuity.⁸¹ Although the early Orthodox Church did enjoy some institutional independence, it grew accustomed to persistent state interference in its internal affairs, and doctrinally accepted rulers as a higher authority (*caesaropapism*).⁸² In return, it received a monopoly as the official state religion.⁸³ Moreover, in a thousand year period, the Orthodoxy became a part of Russian ethnic identity.⁸⁴ The Soviet state deprived the Orthodoxy of its privileged position but retained absolute control over religious affairs.⁸⁵ Thus, even if Russia witnessed the most radical exclusion of religion from public life, it never experienced a Western-type⁸⁶ separation of church and state.

75. See Ragsdale, *supra* note 16, at 31-27.

76. *Id.*

77. Building upon this historical contingency, the present Russian Constitution confers upon the President the role of the "guarantor of human rights." KONST. RF., *supra* note 10, at art. 80(2). Acting in this capacity, President Yeltsin symbolically announced 1998 to be a Year of Human Rights. See Oleg Moroz, *Novyi Zakon o Svobode Sovesti Stavit na Etaj Svobode Krest* [The New Law on Freedom of Conscience Crosses this Freedom Out], LITERATURNAYA GAZETA, July 23, 1997, at 3. Unfortunately, entrusting the fate of human rights to the head of the executive branch and not to the judiciary creates theoretical difficulties for enforcing human rights through courts. For example, the Constitutional Court may lack political legitimacy to strike down a law prepared by the executive staff that patently violates human rights because the executive, by definition, is the supreme guarantor of these rights. As the Note reveals, this is also one of the problems with the Law on Freedom of Conscience.

78. See RAGSDALE, *supra* note 16, at 58-59 & n.13, 70-71 (citing Natan Eidelman's famous thesis of "revolution from above," a common way to initiate changes in a largely inert Russian society).

79. See *supra* notes 20, 21 and accompanying text.

80. *Id.*

81. *Id.*

82. *Id.*

83. See *supra* part IIA (1-2).

84. *Id.*

85. See *supra* Part IIA(3).

86. See discussion *supra* note 15.

Finally, Russia was very protective of its cultural and religious idiosyncrasies.⁸⁷ Accepting the Orthodoxy or communism as the ultimate truth, it had little tolerance for other creeds.⁸⁸ Russia had a tendency to indulge in extremes: the utmost moral fervor and idealism did not countenance any compromises and pluralism.⁸⁹ Convinced of its moral superiority, and at the same time humiliated and intimidated by more successful⁹⁰ foreigners, Russians developed an acute xenophobia that was not conducive to cultural and religious diversity. Religious and ethnic minorities were powerless pawns⁹¹ subjected to both violent *pogroms*⁹² and persecution of the "flirtations with God"⁹³ by the Soviet regime.

III. INTRODUCTION OF INTERNATIONAL RELIGIOUS HUMAN RIGHTS IN RUSSIA

In the late 1980s Soviet Prime Minister Gorbachev introduced momentous political and social reforms. The role of religion and the Orthodox Church became a prominent issue, especially due to the celebration of the millennium of Christianity in Russia.⁹⁴ A great religious revival permeated all strata of society. More people identified themselves as believers.⁹⁵ Soviet writers, artists, and

87. See *supra* Part IIA, *passim*.

88. *Id.*

89. *Id.*

90. As author Tatyana Tolstaya stated "Scornful of Western materialism, Russians have mocked the English with their machines, the Germans with their order and precision, the French with their logic, and finally the Americans with their love of money. As a result, in Russia we have neither machines, nor order, nor logic, nor money." See Pankhurst, *supra* note 1, at 82.

91. The popular political adage *men'shinstva podchiniautsia bol'shinstvu*—minorities are subservient to the majority—well summarizes this national attitude in all spheres of life.

92. For a discussion of anti-Semitism and *pogroms*, see STEEVES, *supra* note 18, at 52-55. Violent anti-Semitism has become a growing threat since the late 1980s, particularly in conjunction with celebrating a millennium the Christening of the Russia. The militia specifically warned the Jewish community in Moscow that it will not be able to protect its members if they traveled outside of the city. See also Nielsen, *Introduction*, CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 10-12.

93. V. Lenin coined this phrase referring to the inherent insincerity and unjustifiability of religious beliefs. See Nezhny, *supra* note 54, at 7.

94. See Bourdeaux, *supra* note 12, at 114.

95. The statistics on religious believers in the Soviet Union and Russia are confusing. In 1988, a Soviet-American study showed that only ten percent of the population believed in God. See Nielsen, *supra* note 59, at 5. The Russian Academy of Science reported that the number rose twenty-nine percent in 1990 and forty-one percent in 1993. *Id.* However, these signs of religious revival may be misleading. In the USSR people were afraid to publicly acknowledge their faith because of numerous negative repercussions such an admission could generate. At best, believing in God

filmmakers openly pursued religious motifs.⁹⁶ In popular culture, religion was no longer a sign of cultural and social backwardness, but of "civic boldness"⁹⁷ and liberalism. People hoped that the newly-found faith would bring moral, spiritual, and ethical salvation as well as material rewards.⁹⁸ Given its history, the Orthodox Church expected to monopolize this spiritual awakening.

Significantly, Gorbachev admitted the mistakes with handling religious affairs in the past and promised to enact new legislation on freedom of conscience that would meet the highest international legal standards in regard to both individual rights and the status of religious organizations.⁹⁹ Although the Soviet Union always professed a respect for international instruments on human rights, this was the first time a Soviet leader actually intended to enforce international norms. The newly-independent Russia continued to follow liberal international norms, and enacted domestic legislation consistent with these practices. The next section elaborates on the early impact of international religious rights principles in Russia.

was ridiculed as cultural backwardness, at worst, as a psychiatric problem and civic misconduct. If one wanted to advance in society, one never admitted his faith. Gorbachev's "glasnost" reformed the stature of religion and people no longer feared to report their religious predilections. Thus, some observers have argued that the number of believers remained virtually unchanged or, at least, did not rise as dramatically as the numbers above suggest. Instead, it was a process of coming out of personal suppression. See, e.g., Berman, *supra* note 6, at 291 (estimating that even in the 1970s around forty percent were religious believers).

96. For example, the repentance and spiritual rejuvenation theme was explored by Chingiz Aitmatov in his novel *Plakha* [The Executioner's Block] (1987). It is reflected in monumental paintings by Ilya Glazunov, who is heavily influenced by the aesthetics of Orthodox icons. It is prominent in the most acclaimed film of the late 1980' *Pokayanie* [The Repentance] in which the last shot depicts a wise old Georgian woman stating that all roads eventually lead to "the Temple." In fact, the polls revealed that twenty-nine percent of believers listed TV, newspapers and magazines as the source of their new conviction, thirty-one percent were swayed by literature. Only twenty-one percent listed the Bible and other religious literature as their main influence and nine percent credited their beliefs to church ceremonies, preaching, and conversations with clergy. See Nielsen, *supra* note 92, at 5.

97. STEEVES, *supra* note 18, at 193.

98. For an insider account of this phenomenon by a liberal Orthodox theologian, see Vsevolod Chaplin, *The Church and Politics in Contemporary Russia*, in THE POLITICS OF RELIGION, *supra* note 12, at 95, 100-01 (arguing that the Church should avoid becoming heavily involved in politics and gaining power and influence through this process. However, a complete renunciation of its public role would also be irresponsible because people need spiritual guidance in dealing with the problems "of this world." Therefore, the Church must search for a middle ground).

99. See Berman, *supra* note 6, at 293 (citing Gorbachev's speech to the U.N. in December, 1988).

A. *The Sources and Standards of International
Law on Religious Human Rights*

Russia inherited all Soviet obligations under international treaties and agreements in the area of religious human rights. Several instruments provide essential standards in this area including: the International Covenant on Civil and Political Rights;¹⁰⁰ the Convention for Protection of Human Rights and Fundamental Freedoms;¹⁰¹ the U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religious Beliefs;¹⁰² and the Concluding Document of the Vienna Follow-Up Meeting of the CSCE Representatives.¹⁰³

In the international regime, every human being has a right to enjoy personal freedom of thought, conscience, and religion. This

100. International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (1976) (*entered into force* Mar. 23, 1976) [hereinafter *Covenant*]. The USSR ratified the *Covenant* on October 16, 1973. See CENTRE FOR HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS 27 Sales No.E.87.XIV.2 (1987). Thus, the rules in the *Covenant* are the law of the land in Russia. For a discussion of the status of international norms in Russia, see *supra* note 13.

101. See Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (*entered into force* Sept. 3, 1953), as amended by Protocol Nos 3 & 4 [hereinafter *Convention*]. When Russia became a member of the Council of Europe on February 28, 1996, it undertook extensive human rights obligations under the *Convention*. As a part of its membership package, Russia had to ratify the *Convention* and implement its norms through domestic legislation that would enable individuals to sue under the international rules. It also subjected Russia to the mandatory jurisdiction of the European Court of Human Rights. For a discussion of the problems with CE membership, see L.N. Shestakov, *Rossia-Chlen Soveta Evropy: Nekotorye Pravovye Voprosy* [Russia as a Member of the Council of Europe: Some Legal Issues], in 4 VESTNIK MOSKOVSKOGO UNIVERSITETA: PRAVO 61, 67-71 (1997) (arguing that the invitation to join the CE was premature and that now Russia is *legally bound* by the CE human rights standards expressed in the *Convention*).

102. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, adopted 18 Jan. 1982, G.A. Res. 55, 36 U.N. GAOR Supp. No. 51, U.N. Doc. a/RES/36/55 (1982) [hereinafter *Declaration*]. The *Declaration* is an exhortatory document that is not legally binding. Yet, it provides a comprehensive catalogue of religious rights and is an authoritative distillation of world opinion on religious liberty. See *De Burght Report*, *supra* note 6, at 20. Also, the *Declaration* may have greater legitimacy in Russia because the USSR was one of its active drafters and proponents.

103. Concluding Document of the 1986 Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, Jan 17, 1989, 28 I.L.M. 527 (1989) [hereinafter *Vienna Concluding Document*]. CSCE (OSCE) commitments, by their terms, do not constitute formal legal obligations, such as the *Covenant* and the *Convention*. However, they are politically binding and act as the most recent addition to customary ("soft") international law on religious rights. See Durham, *supra* note 14, at 37 & n.77. Under the 1993 Russian Constitution, the norms in the *Vienna document* may have a substantial, direct effect in Russia through Articles 17(1) and 18 (providing that "universally recognized" principles of human rights shall have "direct force" as well as "determine the meaning, content and implementation" of domestic legislation).

includes a right to have, adopt, or freely change religious beliefs, and to profess any religion either individually or in community with others.¹⁰⁴ These guarantees of personal (internal) freedom of conscience are absolute and inalienable. On the other hand, a state can circumscribe the right to *manifest* one's religion or beliefs in worship, teaching, practice, or observance.¹⁰⁵ However, any such limitations must be *strictly necessary* to protect an *exhaustive list* of recognized interests in a democratic state: public safety and order, health, morals,¹⁰⁶ and the fundamental rights and freedoms of others.¹⁰⁷ The European Court of Human Rights has further defined the scope of such limitations when it ruled that any interference with broadly construed religious rights must be "motivated by 'a pressing social need' and 'must be *proportionate* to the legitimate aim pursued.'" ¹⁰⁸ For example, the Court found that the Greek government failed to meet this exacting standard when it placed significant constraints on proselytizing efforts by Jehovah's Witnesses.¹⁰⁹

Another important principle in international religious human rights is the equality of all persons before the law and the prohibition of discrimination based on religion.¹¹⁰ The scope of this provision is subject to debate. If religion takes on its

104. See Covenant, *supra* note 100, at art. 18(1); Convention, *supra* note 101, at art. 9(1).

105. See Covenant, *supra* note 100, at art. 18(3); Convention, *supra* note 101, at art. 9(2).

106. Limitations that have as their purpose the protection of morals must not be based on principles deriving exclusively from a single tradition. See *De Burght Report*, *supra* note 6, at 15 & n.34 (citing General Comment No. 22(48) of the Human Rights Committee, an international body responsible for supervising states' compliance with the Covenant).

107. See Covenant, *supra* note 100, at art. 18(1); Convention, *supra* note 101, at art. 9(1) (protecting religious freedom); *De Burght Report*, *supra* note 6, at 14.

108. *De Burght Report*, *supra* note 6, at 17 & n.38 (quoting Case of Silver and Others, 61 Eur. Ct. H.R. (ser. A) at 38 (1983) (emphasis added)).

109. *Kokkinakis v. Greece*, 260-A Eur. Ct. H.R. (ser. A) 18 (1993). Proselytizing was defined as speaking about religious beliefs with a non-believer in that individual's home, or even attempting to sell religious literature. For a comment on the case and an overview of litigation on religious rights in the European Court of Human Rights, see T. Jeremy Gunn, *Adjudicating Rights of Conscience Under the European Convention on Human Rights*, in *RELIGIOUS HUMAN RIGHTS IN A GLOBAL PERSPECTIVE*, *supra* note 6, at 305-30.

110. See Declaration, *supra* note 102, at arts. 2, 3, 4. The Declaration's main focus is on the prohibition of religious discrimination and intolerance. Article 2(2) defines discrimination as "any distinction, exclusion, restriction, or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis." Such discrimination is prohibited when perpetrated by or against "any state, institutions, group of persons or person." See also Vienna Concluding Document, *supra* note 103, at 533; *De Burght Report*, *supra* note 6 at 20-26 (commenting on the Vienna Concluding Document).

broadest meaning,¹¹¹ a state must treat both individuals and religious institutions equally, regardless of denomination. The Vienna Concluding Document buttresses this reading when it links equal rights for religious groups to individual freedom to profess any religion. For example, the Document calls on states to take effective measures to eliminate discrimination against individuals or communities exercising religious beliefs, to foster a climate of mutual tolerance and respect, and to grant upon request the recognition of legal status to religious groups.¹¹² Such status affords numerous accessory rights such as the ability to: solicit and receive voluntary contributions; have independent governing structures; have access to real property for assembly and worship; consult with other religious institutions; have an opportunity to provide religious education and training; and to produce, import, and disseminate religious publications and materials.¹¹³ Moreover, the Human Rights Committee explicitly voiced its concerns about any tendencies to discriminate against newly-established religions or religious minorities.¹¹⁴

Nevertheless, there are numerous permutations¹¹⁵ on church-state relations in Europe, and most of them reflect the deep historical roots of preferential treatment for one particular religion. The European Court of Human Rights explicitly assented to the proposition that the State Church system does not, in and of itself, violate Article 9 of the Convention,¹¹⁶ and has repeatedly showed institutional bias in favor of traditional religions.¹¹⁷ Although religious policies of certain Western

111. Religious human rights encompass both individual and institutional rights. The latter are derived from individual liberty to pursue religion in groups. See *supra* note 104 and accompanying text. For example, Comment 22(48) to the Covenant "clarified that freedom to *manifest* one's religion includes 'acts integral to the conduct by religious groups . . . [including] freedom to establish seminaries or religious schools and freedom to prepare and distribute religious texts.'" *De Burght Report*, *supra* note 6, at 16 (also quoting Covenant, *supra* note 100, at art. 9(1)) (emphasis added). Also, Articles 1-6 of the Declaration set out a lengthy catalogue of religious rights including the right to worship or assemble and to maintain places for these purposes; to establish charitable organizations; to own property and cultic objects; to publish, write and disseminate religious materials; to provide religious education; to train, appoint, and elect leaders; to maintain contacts with international religious organizations. See *id.* at 18.

112. See Vienna Concluding Document, *supra* note 103, at 534.

113. See *id.*

114. See Human Rights Committee, General Comment No. 22(48) concerning Article 18 (CCPR/C/21/Rev.1/Add. 4, Sept. 27 1993) reprinted in *De Burght Report*, *supra* note 6, at 15.

115. See Berman, *supra* note 6, at XV.

116. See *Darby Case*, 187 Eur. Ct. H.R. (ser. A) at 13 (1990); see also Gunn, *supra* note 109, at 312.

117. See Gunn, *supra* note 109, at 312.

European states also evoked the sharp criticism of observers,¹¹⁸ the specialists agree that cooperative and endorsed models of church-state relations generally achieve international religious liberty standards.¹¹⁹

B. *Predominant Paradigms of Church-State Relations in Europe*

Due to geopolitical and developmental differences, European notions of the role of church and religion usually differ from those in the United States. With the exception of France, European models of church-state relations are more similar to the Russian tradition than to the American First Amendment ideals. Thus, even though the 1997 law was shocking to American religious rights analysts, its thrust is consistent with the European models. The next section describes several of these models.

1. Cooperationist—Germany

Germany is the prime example of a country in which the secular state cooperates with religious organizations. The State provides these organizations with material and other types of support.¹²⁰ Religion also has a distinct place in civil society, and the state sponsors religious education.¹²¹ The state does not directly endorse any religion, and officially all religions are equal and entitled to the same state support.¹²² However, this model raises practical problems of inadvertent or even intentional state preferences for certain religions and excessive intrusion into

118. For example, Germany was cited with criticism in a U.S. State Department review on the treatment of Christians around the world. See Steven Lee Meyers, *Word for Word/Religious Freedom*, N.Y. TIMES, July 27, 1997, at 7. Recently, a federal administration court in Berlin denied Jehovah's Witnesses the status of a "public body" on the grounds that the church did not offer "indispensable loyalty" towards the state when it refused to acknowledge public elections. Moreover, Mormons and Seventh Day Adventists are also listed in Western European parliamentary reports as "dangerous sects." See *Experts Warn of Growing Intolerance of Minority Religions in Europe*, U.S. NEWSWIRE, Dec. 1, 1997, available in LEXIS. In Belgium, Quakers, Hasidic Jews, and even the YMCA were labeled as "cults." Swiss authorities are considering legislation to criminally prosecute "mind control." In response to this disquieting news, the U.S. Senate had a special hearing on religious intolerance in the OSCE states. See *Religious Intolerance in Europe Today—Hearing Tomorrow*, PR NEWSWIRE, Sept. 17, 1997.

119. See Durham, *supra* note 14, at 24.

120. See generally Emily A. Moseley, Note, *Defining Religious Tolerance: German Policy Toward the Church of Scientology*, 30 VAND. J. TRANSNAT'L L. 1129, 1153 (1997).

121. *Id.* at 1143-45; Durham, *supra* note 14, at 20.

122. See Durham, *supra* note 14, at 21.

religious affairs.¹²³ For example, the practice of state recognition of some beliefs as religious and others as not meriting such status led to abridged rights and discrimination—especially against new confessions.

Scholars have suggested that Russia needs to adopt certain aspects of the cooperationist approach in order to redeem the damage to religious institutions by the Soviet regime. They recommend a transitional period during which the state will restore expropriated properties to religious organizations.¹²⁴ The risk is that Russian traditional moral theory will pervert this paradigm, and the state will indulge in impermissible favoritism and interventionism.

2. Endorsement—Spain

Historic state ties to one predominant religion may lead the state to endorse that religion while still proclaiming separation. Spain, a bastion of Catholicism, provides for such special recognition of this religion.¹²⁵ In its most enlightened form, this model reflects national pride when it recognizes a special historic place for a particular religion without providing further advantages to it. When a state assures equal protection to all religious groups, it balances national moral needs with the international principles of religious equality. However, in many states, a symbolic endorsement is inseparable from an actual preservation of prerogatives of formerly established religions under a liberal disguise.¹²⁶ In Russia, the endorsement model would accommodate Russian national sentiments, but Russian history alerts one to potential gross abuses of this arrangement. The current political strength of the Patriarchate¹²⁷ only exacerbates the worst suspicions of the Orthodox monopoly.

123. Moseley, *supra* note 120, at 1154-55 (contrasting the text of the Basic Law with its practical application).

124. See Durham, *supra* note 14, at 21; John Witte, Jr. *Religious Human Rights in the World Today: A Report on the 1994 Atlanta Conference: Introductory Remarks*, 10 EMORY INT'L L.R. 53, 57-58 (1996) (describing a self-assumed cultural obligation by the state to assist religious institutions to make amends for the communist past).

125. See Durham, *supra* note 14, at 20.

126. *Id.*

127. Before 1993, a number of individual churchmen were elected as people's deputies. See Chaplin, *supra* note 98, at 100. Moreover, a few Orthodox activists formed a Christian Democratic Party which actively identified with religious ideals and aimed to assume the role of chief representative of the Orthodox Church. For a history of the evolution of this party from moderately liberal to nationalistic, see Paul D. Steeves, *Christian Democrats in Russia*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 63-74. Since 1993 the Patriarchate officially eschewed direct participation in politics, and the Holy Synod issued a resolution that prohibited priests from running for a representative office on the penalty of defrocking. See Chaplin, *supra* note 98, at

3. Established Church—England

There are variations within the established church model ranging from the state enforced monopoly of one religion to the most democratic English arrangement. In the English experiment, the Anglican Church is historically inseparable from the state and has a prominent place in all spheres of public life.¹²⁸ However, the state also guarantees equal treatment of all other religious beliefs. This model is not desirable for Russia where there is no culturally ingrained respect for individual human rights, and the record of the established Church period abounds with examples of egregious inequality and intolerance.

D. *Late Soviet and Early Russian Progressive Religious Legislation (1990-1993)*

The above-mentioned international principles of religious rights informed late Soviet and early Russian domestic legislation. In the Russian legal scheme, the international norms are self-executory because Russia subscribes to monism in the areas of political and social human rights.¹²⁹ Moreover, the enactment of domestic legislation consistent with the international norms further enhanced their status. The concept of universal human rights emerged as a clear rival to the traditional Russian moral history.

1. The Religious Laws of 1990

Gorbachev fulfilled his promise to match the highest religious human rights standards with a federal "Law on Freedom of Conscience and Religious Organizations" promulgated in 1990.¹³⁰

111. However, the indirect influence of the Patriarchate remains significant as the process of adopting the 1997 religious law demonstrates. A colorfully despicable nationalist Russian politician, V. Zhirinovskiy, summarized the situation by confessing "if the Patriarch tells us to vote for some version of the bill—we'll oblige, and if he tells us not to vote—we won't!" See Ivan Rodin, *Prinyat Novyj Variant Zakona o Svobode Sovesti* [A New Version of the Law on the Freedom of Conscience is Adopted], NEZAVISIMAYA GAZETA, Sept. 20, 1997.

128. For example, 26 senior Anglican Bishops sit in the House of Lords and its institutional establishment continues even though only sixteen percent of English population are actively religious, as opposed to forty-three percent of Americans and seventy-eight percent of Irish. See generally Peter Cumper, *Religious Liberty in the United Kingdom*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE 205, *supra* note 6, at 205, 217-20.

129. See *supra* note 10, 101 and accompanying text.

130. O SVOBODE SOVESTI I RELIGIOZNYKH ORGANIZATSIYAKH' [On Freedom of Conscience and Religious Organizations], Ved. Verkh. Sov. SSSR, 1990, no. 41, item

The law closely tracked the language of the Covenant and the Convention in defining the freedom of religion. Specifically, it adopted the international bifurcated approach with an absolute freedom of personal convictions and very narrow limitations on the exercise of religion.¹³¹ The law retained the separation between church and state, but permitted religious organizations to become juristic persons upon registration.¹³² As legal entities, religious organizations received crucial rights such as the ability to own property, to provide religious education, to distribute religious literature, and many other rights denied to them during the Soviet times.

At the same time, the Russian Federation passed its own law "On Freedom of Religion."¹³³ Russian law contained an even more impressive list of liberal provisions¹³⁴ protecting religious freedom. The Preamble recognized freedom of conscience and an opportunity to exercise it as inalienable rights.¹³⁵ The law explicitly extended these religious rights, including the right to form religious organizations, to foreigners. The law also provided for a more equitable registration procedure and a process for judicial appeal if the state refused to register an organization.¹³⁶ In sharp contrast to Soviet laws, the Ministry of Justice could reject a registration application only if it failed to meet certain basic requirements specified in the law or if the organization was otherwise unlawful.¹³⁷ These easy, mechanical requirements led to the registration of 9,489 religious associations of various denominations by September 1993.¹³⁸ Even by the most exacting standards, before the collapse of the USSR, the Russian Federation had one of the most progressive religious policies in the world.¹³⁹

813 [hereinafter 1990 USSR Law] An English translation appears in 33 J. OF CHURCH & STATE 191-201.

131. See *id.* at arts. 3-4.

132. See *id.* at arts. 5, 13, 15.

133. See 1990 RUSSIAN LAW, *supra* note 6.

134. See Berman, *supra* note 6, at 295-297 (comparing the Soviet and Russian Laws of 1990 and pointing out greater religious protections in the Russian Law including an affirmation of supremacy of both customary and treaty-based international religious rights norms).

135. See 1990 RUSSIAN LAW, *supra* note 6.

136. *Id.* at art. 20.

137. *Id.*

138. See Berman, *supra* note 6, at 296 & n.12 (listing registered confessions).

139. *But see* LAWYERS' COMMITTEE FOR HUMAN RIGHTS, HUMAN RIGHTS AND LEGAL REFORM IN THE RUSSIAN FEDERATION 9-10 (1993) (noting significant limitations on religious liberty, especially in the USSR law pertaining to registration, and continued criminalization of religious activities in the Criminal Code).

2. Religious Human Rights and the Russian Constitution of 1993

The newly-independent Russia continued to build an exemplary legislative and practical record in the field of religious human rights. Unable to reach a political compromise to promulgate a new Constitution, the Parliament speedily passed the Declaration of Rights and Freedoms of an Individual and Citizen in late 1991.¹⁴⁰ Although not legally binding, this document demonstrated dedication to the democratic concept of inalienable human rights, including the right to freedom of conscience in its broadest sense.¹⁴¹

Finally, the Constitution of the Russian Federation, adopted by the popular referendum in December 1993, marks the apex in Russia's quest to implement the norms derived from international human rights sources. The Constitution radically departs from the traditional moral theory, and treats religious rights in the most liberal way. Article 14 proclaims Russia a secular state, and states that "no religion may be established as the State religion or as obligatory."¹⁴² The article further states that "*religious associations shall be separate from the state and shall be equal before law.*"¹⁴³

The Constitution also embraces an expansive¹⁴⁴ view of religion and individual religious liberties. For example, Article 28

140. DEKLARATSIIA PRAV I SVOBOD CHELOVEKA I GRAZHDANINA [Declaration of Rights and Freedoms of the Individual and Citizen], Nov. 22, 1991 adopted by POSTANOVLENIE VERKHOVNOGO SOVETA RSFSR O DEKLARATSII PRAV I SVOBOD CHELOVEKA I GRAZHDANINA [Resolution of the RSFSR Supreme Soviet on the Declaration of Rights and Freedoms of the Individual and Citizen], Nov. 22, 1991, *Ross. Gazeta*, Dec. 25, 1991, at 1, available in LEXIS, Russica File, as the Declaration of Human Rights and Civil Liberties.

141. See KONST. RF, *supra* note 10, at art. 1 (inalienable rights, supremacy of international human rights norms); art. 3 (equality before the law regardless of one's attitude towards religion); art. 13 (freedom of thought, speech, seeking or imparting information); art. 14 (freedom of religion, both individual beliefs and their manifestation).

142. *Id.*

143. *Id.* at art. 14(2).

144. The basic provision that addresses freedom of conscience tracks the language of the Russian Declaration of Human Rights (article 14) and is very close to the generic text in the international documents. Compare this with Covenant, *supra* note 100, at art. 18(1) and Convention, *supra* note 101, at art. 9(1). The only patent difference is that the constitutional text does not list specific activities included in the concept of 'manifesting' one's religion, such as worship, teaching, practice, and observance. Instead, article 28 of the Russian Constitution allows everyone to "freely choose, possess and disseminate religious and other convictions and *act in accordance with them.*" KONST. RF, *supra* note 10, at art. 28. Although the Russian text on its face adopts a somewhat broader definition of individual religious liberty than the comparable international instruments—in particular, the Russian text provides for an explicit right to be an atheist—a lack of specificity in vaguely allowing people to act in accordance with their beliefs gives the state an opportunity to define religious liberty in

affirms each person's right to "freedom of conscience and religion, including the right to profess individually or collectively any religion or not to profess any religion, and freely to choose, possess or disseminate religious and other convictions and act in accordance with them."¹⁴⁵ The specific freedom of religion is buttressed by a general freedom of thought and speech provision in Article 29.¹⁴⁶ Article 29 also prohibits propaganda that arouses religious hatred or preaches religious supremacy.¹⁴⁷

However, there is a caveat at the end of the Human and Civil Rights Chapter of the Russian Constitution. Article 55 allows limitations¹⁴⁸ on these freedoms by federal law only to the extent

domestic legislation. Unfortunately, the 1997 law *denies* the freedom of religious education to some organizations. See *infra*, Part IVD(4)(viii).

145. See KONST. RF, *supra* note 10, at art. 28.

146. See *id.*

147. See *id.* at art. 29(2). There was some criticism of this provision because the propaganda of supremacy is such a vague concept. For example, would the Orthodox "Russian Idea" described above, or a group of communists shouting the slogans of the supremacy of the Proletariat at the metro station, qualify as constitutional violators? Political culture makes such results unlikely, and yet constitutional language seems to permit them. See Korkeakivi, *supra* note 10, at 236 & n.37.

148. One of the critical distinctions between the Russian Constitution and the international religious liberty regime is the state's indiscriminate ability to limit human rights through Article 55(3). See Korkeakivi, *supra* note 10, at 233-34 & nn.22-23. Thus, there is no bifurcated approach exhibited by the international instruments in which the government may only limit manifestation of religion (free exercise) but not individual (internal) beliefs. Although this omission may not have a direct practical effect because, as the Soviet experience demonstrated, it is almost impossible for the government to control one's soul, the provision, nonetheless, potentially allows Russia to outlaw some faiths as dangerous and deny constitutional protections to their followers even when they do not manifest their beliefs. This provision invites classifications of faiths into religious ones versus "totalitarian," "mind-controlling" cults, and provides an excuse for crushing the latter. The current Russian experience shows that the Russian public and politicians are quick to engage in making such classifications. For example, the sponsor of the 1997 bill, V. Zorkaltsev, refers to Baptists and Protestants as "proper" religions and Hare Krishna as "improper." See Andy Bowers, *Regulating Russian Religions*, ALL THINGS CONSIDERED, NPR, Sept. 19, 1997, transcript available in LEXIS, News Library, International File; Mikhail Ivanov, *Auditing the Soul of Russia*, RUSSIAN LIFE [Monthly], Sept. 1997, at 6, 9, 11 (expressing distrust of the "improper beliefs" of Scientologists who allegedly infiltrated the Russian military-industrial complex and of Mormons who allegedly steal public records from the archives and perform religious rituals over the souls of the deceased). This article is the prime example of the Russian moderate position and is an excellent cultural illustration of "the pieces in the puzzle" in the dilemma of choosing between a genuine religious liberty and pluralism, and security considerations. Even though the author dismisses the most paranoid stories about non-traditional beliefs, there is still a marked discomfort with the proliferation of "cults." Other best known "cults" include the Boston Church of Christ, Jehovah's Witnesses, the Unification Church, Sahaji Yoga, Transcendental Meditation, Brahma Kumaris, and the so-called "prosperity" theology such as the Word of Life. See *id.* at 8. See also Dina Usupova, *Okhota na Ved'm s Lizenziy Gosdumy* [A Witch Hunt Licensed by the State Duma], Oct. 1998, OGONEK no. 40, at 27-29 (noting the intensification of an anti-cult campaign, and in

necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defense of the country and the security of the state.¹⁴⁹ Article 56 deals with a state of emergency and an abridgment of certain liberties for that reason. However, the state may not restrict freedom of conscience, as defined in Article 28, even in such emergency situation.¹⁵⁰

IV. THE 1997 LAW "ON FREEDOM OF CONSCIENCE AND RELIGIOUS ASSOCIATIONS"

The tremendous social and economic changes in Russia over the last several years have generated a sense of instability that conservatives utilized to introduce restrictions on religious liberty. Ironically, the former rivals, Orthodox Church and communists, allied as the primary sponsors of the new religious legislation.¹⁵¹ This section begins with an exploration of the domestic imperatives that caused Russia to deviate from its international obligations and constitutional guarantees. The potency of these forces will determine the interpretation of the new law and the scope of its actual enforcement. The remainder of this section analyzes the text of the new law through both normative and hypothetical discussions. In addition to explaining the structure of the law and its potential effects on the religious rights of individuals and religious organizations, the discussion highlights inconsistencies between the new law and the norms of constitutional and international law. These norms can serve as the basis for legal challenges in Russian and European courts.

A. *The Hardships of Religious Pluralism*

The surge of excitement that initially accompanied the liberal freedom of conscience legislation dissipated in light of numerous socio-economic problems that Russia faced as it struggled to build

particular, the courts' willingness to review the allegations of "zombying" and other types of "anti-social" activities by the so-called sects. Despite a lack of foundation in most such claims, the courts usually adopt a strong anti-cultist posture and allow groundless allegations into evidence. Many regions have already set up "psychiatric rehabilitation" centers for the alleged victims of "zombying").

149. See KONST. RF., *supra* note 10, at art. 55(3).

150. See *id.* at art. 56(3).

151. One of the best known liberal deputies, Galina Starovoitova, referred to the law as the plot between communists and reactionaries in the Patriarchate. See *Prinyat Novyj Zakon o Svobode Sovesti [The New Law on Freedom of Conscience Has Been Passed]*, IZVESTIA, Sept. 20, 1997, at 1.

a democratic society and a market economy.¹⁵² Unaccustomed to religious pluralism, Russians were ill-equipped to deal with a "market place of faiths"¹⁵³ with each confession offering a long awaited spiritual and ethical renewal. At the same time, Russia also was widely exposed to a "nihilistic consumer oriented mass

152. As happened throughout Russian history, the initial pace of the reforms, initiated from the above' by Yeltsin's team, generated a social upheaval. For examples of the tremendous pressure applied by the hypertrophic state to the traditionally passive and conservative Russian masses, see RAGSDALE, *supra* note 16, at 31-32, 49-61. The perennial dilemma of Westernization verses a retreat to Slavophile sentiments emerged on the religious plane as well. The proponents of international human rights standards and the writers of the 1993 Constitution represented the former influence, while the latter were represented by militant nationalistic and religious groups. See, e.g., Nielsen, *supra* note 92, at 10-12.

Furthermore, the break-up of the Soviet Union was a significant event for the Russian Orthodox Church because the Moscow Patriarchate faced the loss of control over its branches in the newly-independent states. In response, the Church allied itself with Slavophiles in order to consolidate its influence. For a review of the status of the Moscow Patriarchate in the newly-independent states and an analysis of the political leanings of the Church, see John B. Dunlop, *The Russian Orthodox Church as an "Empire Saving Institution,"* in THE POLITICS OF RELIGION, *supra* note 12, at 15, 28-37. The restoration took various forms ranging from paranoia and open hostility espoused by Metropolitan Ioann of St. Petersburg, see *The West Wants Chaos*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 107-13 (elaborating on the plot by the Elders of Zion) to a more moderate position adopted by Patriarch Alexii and other members of the Orthodox elite. See Berman, *supra* note 6, at 300-03 (quoting an insider of the Orthodox establishment on the proposed law of 1993). The insider stated that the 1993 proposed law:

. . . was a reaction against the premature invasion of Western missionaries. Of course we do not want to violate international law or our own constitution or principles of human rights. But we hope that those legal and moral norms can be adapted to enable us to meet the acute spiritual crisis that now confronts us.

Berman, *supra* note 6, at 303.

See also Vladimir Ivanov, *Church and Society in Russia Today*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 29, 38 (professor at the Moscow Orthodox Seminary arguing for a new conceptualization of church-state relations. The essential features in this new model are institutional separation between church and state and enhanced Orthodox education programs. However, the author still reviles pure religious pluralism and the "new sub-cultures devoid of any intrinsic bond with Russian religious tradition).

153. See Philip Walters, *Current Developments in Russia and the Response of the Orthodox Church*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 85-86 (detailing problems of the Russian Orthodox Church and suggesting infra-structural reforms that would enable the Patriarchate to meet the new challenges). The author refers to Russians as "gullible cynics" who viewed with "corrosive cynicism the official ideology with readiness to lend credence to almost anything else." *Id.* Currently, many Russians view the mainstream Orthodoxy with such cynicism, causing them to revert to the most grotesque eschatological cults, such as White Brotherhood. *Id.* In this climate, the paternalistic purpose of the 1997 law is self-evident, and very consistent with the traditional function of laws in Russia to "educate and guide an individual as a child" and steer him to the "right" choices. For a discussion of paternalism in Russian jurisprudence, see HAROLD J. BERMAN, JUSTICE IN THE U.S.S.R. 6 (1963).

culture imported from the United States and Western Europe"¹⁵⁴ that many viewed as an antithesis to spiritual life.

Given the historic role of the Orthodoxy and its appeal to a vast majority of Russians, the Orthodox Church expected to be a bellwether in the religious renewal.¹⁵⁵ However, there were significant internal and external impediments to fully realizing this ambition. For example, the Orthodox Church suffered from the stain of collaboration with the Soviet regime,¹⁵⁶ and from assertions of independence by regional branches of the Russian Orthodox Church in the newly-independent states¹⁵⁷ and by other Christian denominations forced under the aegis of the Moscow Patriarchate by Soviet authorities. Although the Russian religious

154. See Nielsen, *supra* note 59, at 6. The scholars pointed out that the "religious boom" should not be confused with the revival of Russian spirituality. See, e.g., Walters, *supra* note 111, at 86; Beverly Nickles, *New Religion Law Fraught With Potential for Abuses*, 41 CHRISTIANITY TODAY 66, Nov. 17, 1997 available in LEXIS, News Library, Int'l File (citing a sociological study by the Russian Academy of Science in 1996 which concluded that "a perceived religious renaissance . . . never, in fact, occurred. While as many as four out of five Russians claim affiliation with traditional religions, only 7 percent of the population attend a service in any church at least once a month, and only 4 percent pray regularly."). In comparison, forty-two percent of Americans attend church services on a weekly basis. See Frederick Mark Geddis & Roger Hendrix, *Democracy, Autonomy & Values: Some Thoughts on Religion and Law in Modern America*, 60 S. CAL. L. REV. 1579, 1581 & n.10 (1987).

Resembling Eastern mysticism, the purest life-fleeing Orthodox theology has to compete with both materialistic values preached by MTV and the passion for business. Thus, the Orthodox spirituality and materialist market values seem to be mutually exclusive. In this dilemma, a Protestant formula which combines religious pursuits and materialist rewards is a formidable challenger to Orthodoxy. See Alexander Zaichenko, *Ethics and Economic Activity in Russia*, in CHRISTIANITY AFTER COMMUNISM, *supra* note 1, at 39, 40, 44-46 (arguing that Protestant beliefs encourage one to remain a spiritual individual and attain temporal success as well).

155. See Berman, *supra* note 6, at 302 (quoting an insider in the Moscow Patriarchate: "a great many Russians are ignorant of Russian Orthodoxy or indifferent to it. But their roots are Orthodox. It is our task to return them to Orthodoxy.")

156. During the communist regime, the Orthodox hierarchy was wholly under the KGB control. Even Alexii II acted as an informer under the name of Drozdov. See Seamus Martin, *New Russian Religion Law Harms Minority Churches*, IRISH TIMES, Oct. 6, 1997, at 14, available in LEXIS, News Library, Int'l File; see also Nielsen, *supra* note 92, at 4; Walters, *supra* note 153, at 87-88. In the 1991, Fr. Yakunin and Ponomarev began an extensive research of the opened KGB archives. The findings of this study shocked many Orthodox believers and led to a formation of the Orthodox splinter groups such as the True Orthodox Church and the Orthodox Free Church (not to be confused with Free Russian Orthodox Church, a nationalist-monarchist group) which did not wish to be affiliated with the Patriarchate that compromised itself in such a way without formally recanting. For a perceptive exposé on this theme, see Dmitriy V. Pospelovsky, *The Russian Orthodox Church in the Postcommunist CIS*, in THE POLITICS OF RELIGION, *supra* note 12, at 41, 48-55. These dissident Orthodox movements also opposed the 1997 law. See Julia Shargorodska, *Dissident Orthodox Priests Blast Religion Bill*, MOSCOW TIMES, Aug. 7, 1997, available in LEXIS, News Library, Indep. Press File, no. 1266, at 1.

157. See generally Dunlop, *supra* note 152.

legislation provided for a gratuitous transfer of sequestered properties back to the Church, the Patriarchate had no institutional structures for channeling resources into religious education and proselytizing efforts.¹⁵⁸ At the same time, the Church faced an increased competition from foreign missionaries who were experienced and possessed considerable resources for mass evangelization.¹⁵⁹

In addition, the easy registration provisions in the 1990s led to a proliferation of cults that preached violent, socially destructive doctrines.¹⁶⁰ Many pseudo-religious entities obtained an official status allowing them to perpetuate spiritual coercion and outright fraud.¹⁶¹

B. *The Responses to Challenges in 1993*

The criticism of the new religious "anarchy" took many different forms ranging from paranoid xenophobia, espoused by religious and secular nationalists,¹⁶² to a more centrist position adopted by the Moscow Patriarchate and some prominent

158. See, e.g., Walters, *supra* note 153, at 94-96 (noting underdeveloped Orthodox religious education and an influx of missionary literature into Russia which the Patriarchate could not match). The tension between intellectual and nationalistic elements of the Orthodoxy was violently projected in the murder of the most refined contemporary Orthodox theologian and pastor of the Russian intelligentsia, Fr. Men' (of Jewish descent) by the neo-Nazi Orthodox Brotherhood. See Pospelovsky, *supra* note 156, at 52.

159. The missionary activities were staged on a grand scale, including "Mission Volga," a religious cruise sponsored by various Protestant denominations. See Nielsen, *supra* note 92, at 8-9; Walters, *supra* note 153, at 97. These missionaries sometimes showed great insensitivity to the Orthodoxy. See Pospelovsky, *supra* note 156, at 55-56 & n.40 (describing a failed request by missionaries to rent the Red Square during a solemn night of the Orthodox Easter). Overall, Dr. Dvorkin, the most famous Russian crusader against 'totalitarian sects.' describes the Orthodox attitudes towards foreign religions: "The competition between the Orthodox Church and the sects is unfair—the forces are uneven from the outset. The sects can buy TV time, plus they use dishonest forms of recruitment." M. Ivanov, *supra* note 148, at 8 (emphasis added). Other threats to Orthodoxy are the financial resources of the missionaries and the close connection between humanitarian assistance and proselytizing.

160. Such dangerous cults include Aum Senrikyo, which was suspected of organizing the subway gas attacks in Tokyo in 1995. The sect had daily broadcasts on one of Russia's largest radio stations. Maxim Isayev & Andrei Vaganov, *Japanese Police Looks for Aum Senrikyo Chief*, NEZAVISIMAYA GAZETA, Mar. 24, 1995, at 1, available in LEXIS News Library, Russica Info File, at 1.

161. For example, Aum Senrikyo fraudulently attracted some of its followers by claiming that its theology coincided with Orthodoxy. For a description of the neo-Nazi White Brotherhood inculcating its young followers, and other new Russian doomsday cults, see Pospelovsky, *supra* note 156, at 59-61.

162. The sermon by Metropolitan Ioann, in *The West Wants Chaos*, *supra* note 152, *passim* represents this view.

politicians.¹⁶³ The Orthodox Church appealed to the state to restore religious equilibrium by enabling it to compete with all other confessions on 'an equal basis'. For the Orthodox Church, the concept of equality had a special meaning that diverged from international principles of separation between church and state. The Church lobbied for effective restraints on foreign missionary activity in order to mobilize its resources before the "onslaught of destructive religious pluralism."¹⁶⁴ According to Patriarch Aleksii II, considerable economic and social problems prevented people from freely choosing a religious confession, especially when they were "bribed" and "pressured" by the outsiders.¹⁶⁵ This position presupposed that the Orthodoxy was the right religion for every ethnic Russian, that people were unable to make an informed decision for themselves, and that the state had a stake in assisting the Patriarchate's paternalistic efforts in make people realize their destiny.¹⁶⁶ Consistent with this vision, the equality of confessions meant an endorsement of the Orthodox Church. Interestingly, the establishment model did not suit the Patriarchate because it was wary of pervasive institutional control by the state since the late seventeenth century.¹⁶⁷

In August 1993, the protectionist momentum reached its apogee when the legislature passed an amended version of the 1990 Freedom of Religion law. Supported by a vast majority of the deputies,¹⁶⁸ this bill evoked sharp criticism from human rights advocates and religious minorities because it facially discriminated against non-traditional religious communities, especially those with foreign ties.¹⁶⁹ It also contained numerous

163. Patriarch Alexii excommunicated the White Brotherhood and denounced radical nationalists. However, Boris Yeltsin still clamored for a law "to protect the moral and spiritual health of the nation and raise reliable barriers to radical sects which inflict great damage on the physical and mental health of our citizens." M. Ivanov, *supra* note 148, at 8. In his most outspoken statements, the Patriarch also compared missionary work to the expansion of NATO. See Daniel Williams, *Faith-Curbing Bill Becomes Law in Russia*, WASH. POST, Sept. 27, 1997, at A16. The high Orthodox officials complained that a free can of beer makes an easy conquest of a Russian to a foreign religion. See *id.*

164. See *De Burght Report*, *supra* note 6, at 9-10 & n.25.

165. *Id.*

166. See *supra* note 153 for a discussion of the traditionally paternalistic quality of Russian legislation.

167. The Patriarch repeatedly emphasized the importance of institutional separation between church and state. See, e.g., *Interview With Patriarch Alexy II* (Official Kremlin Int'l News Broadcast), Sept. 29, 1997, available in LEXIS, News Library, Int'l News File.

168. On August 27, 1993 the Parliament passed the bill 156-3, with 2 abstentions. See Bourdeaux, *supra* note 12, at 123.

169. See *De Burght Report*, *supra* note 6 at 30-38 (noting the special restrictions and closer state control of non-traditional religions and foreign religious groups). For example, article 21 bluntly outlawed foreign missionary activity. See *id.* at 32.

provisions allowing for increased state interference in religious affairs through a registration mechanism.¹⁷⁰ The bill introduced multiple disproportionate limitations on the freedom to exercise one's beliefs.¹⁷¹ President Yeltsin voiced his concern with the spiritual renewal of Russia and the importance of traditional religious confessions but refused to sign the bill because it contradicted international legal agreements and compromised the "equal right of individuals to enjoy freedom of conscience and religion . . . regardless of their possession of Russian citizenship."¹⁷²

The direction of religious policies remained uncertain for the four years following the dissolution of the Supreme Soviet by President Yeltsin in September 1993.¹⁷³ Seemingly, Russia embraced an enlightened position consistent with the most liberal strand of international principles on religious human rights and enshrined these ideals in the Russian Constitution adopted in December 1993. On the other hand, the new Parliament was even more ideologically polarized¹⁷⁴ than the previous one, and therefore, the status of religious pluralism in Russia remained in jeopardy.

C. Resuming the Religious Policies Reform in 1997

The concerns that led to proposing protectionist religious legislation in 1993 resurged in the new draft of the "Law on

170. See *id.* at 35-38. The legislation allowed for arbitrary delays in processing registration applications for up to one year, and it authorized the agency to refuse registration on the vague ground of finding a certain belief to be a non-religion. Overall, specialists concluded that the restrictions on religious organizations were too burdensome and fell short of international and constitutional standards.

171. See *id.* at 25-47. Scholars concluded that blanket restrictions on activities of religious groups and a virtual Orthodox monopoly in such critical spheres as publication of religious literature and providing religious education were unjustifiable and inconsistent with religious liberty.

172. *Id.* at 10.

173. The dismissal of the legislature and the judiciary coincided with an attempt to pass new religious legislation. For a comprehensive discussion on the struggle between the branches in that period, see John P. Willerton & Aleksei A. Shulus, *Constructing a New Political Process: The Hegemonic Presidency and the Legislature*, 28 J. MARSHALL L. REV. 787 (1995); Herbert Hausmaninger, *Towards a New Russian Constitutional Court*, 28 CORNELL INT'L L.J. 349, 361-65 (discussing the role of the Constitutional Court in the interbranch struggle and concluding that the Court headed by Chief Justice V. Zorkin (1991-1993) damaged its legitimacy by becoming involved in politics and supporting the outgoing Parliament).

174. Willerton & Shulus, *supra* note 173, at 796, 823 tbl. 1 (in 1994 elections communists and socialists claimed twenty-three percent of the seats in the State Duma, extremists/nationalists and radical reformers each accounted for twenty percent).

Freedom of Conscience and Religious Associations" in 1997.¹⁷⁵ Both houses of the Russian Parliament enthusiastically supported and passed the new version of the law.¹⁷⁶ This enthusiasm was in spite of the experts' warnings that the law violated essential constitutional provisions and international obligations in the area of religious rights, especially in connection with the principle of equality of religious associations. Observers pointed out that the law was superfluous because the existing criminal legislation adequately safeguarded society from destructive activities of pseudo-religious groups and random acts of violence perpetrated by individual fanatics.¹⁷⁷ They criticized the new law for allowing the state to prejudge religious associations, and to place institutional and ad hoc bureaucratic restraints on the activity of non-traditional religious communities.¹⁷⁸ The thrust of the law exhibited blatant favoritism of the Orthodox Church. It reinforced the impression that religious protectionism rather than permissible concerns such as public safety, health, constitutional order, or rights of other people, was the primary motivation for restricting religious liberty.¹⁷⁹

Under persistent international pressure,¹⁸⁰ President Yeltsin vetoed the bill, referring to it as unconstitutional and inconsistent with Russian international obligations.¹⁸¹ However, he promised

175. For a perceptive overview of the traditionalist position by a liberal journalist, see Andrei Zolotov, Jr., *Why Russia Restricts Religions*, CHRISTIAN SCI. MONITOR, Oct. 28, 1997, at 18, available in LEXIS, News Library, International File (stressing inter-denominational jealousy and alienation as well as the traditional theory on the role of Orthodoxy in Russia, and introducing the concept of "level[ing] the playing field in the race for Russian souls" as the impetus for the new Russian model of church-state relations "which will be part of the modern world, but not quite American or European").

176. For the voting record on the bill, see *supra* note 5.

177. See, e.g., Aislu Unusova, *Svoboda Sovesti I Svoboda Veroispovedanii: Tak li Neobkhodim Otdel'nyj Zakon o Religioznykh Organizatsiyakh I Ob'edineniyakh* [Freedom of Conscience and Freedom of Religion: Is There a Real Need for a Separate Law on Religious Organizations and Associations], NEZAVISIMAYA GAZETA—RELIGII, Sept. 25, 1997, at 2.

178. But see Vladimir Fyodorov, *No One is Out to Offend Russian Catholics*, ROSSIIKAYA GAZETA, July 23, 1997, at 7, available in LEXIS, News Library, Russ. Press Digest File; Galina Vasina, *Who, Indeed, Has Vetoed the Law on Religion?*, PRAVDA, July 26, 1997, at 1, available in LEXIS, News Library, Russ. Press Digest File (conservative views on the progress and desirability of religious legislation).

179. For a brief legal analysis of the new law and a comparison with an earlier parliamentary version, see Alexandr Soldatov, *The Law After a Make-Over*, MOSCOW NEWS, Oct. 29, 1997, at 10, available in LEXIS, News Library, Current Digest of Post-Soviet Press File.

180. See *supra* note 7 and accompanying text. Vice-President Al Gore and the Pope were particularly vocal in denouncing the bill. *Id.*

181. See, e.g., Ivan Rodin & Maxim Shevchenko, *President's Veto Looks Well Augmented*, NEZAVISIMAYA GAZETA, July 25, 1997, at 1, available in LEXIS, News Library, Russian Press Digest File.

to sign the bill if certain objectionable features were removed.¹⁸² As the West celebrated a precarious human rights victory, the presidential staff busied itself with reaching a rapprochement with the Patriarchate¹⁸³ and ensuring token support from other major religious denominations.¹⁸⁴ The resulting version of the law was "music to the Parliament's ears"¹⁸⁵ because it retained the system of discriminatory treatment of religious groups and even contained more restrictive provisions than the parliamentary version.¹⁸⁶ Both the Duma and the Federation Council passed the law with lightning speed and by an overwhelming majority.¹⁸⁷ As the world watched with amazement, President Yeltsin signed the bill into law in September 1997. The brief period of respect for the international standards of religious human rights, had eclipsed and a new era began, inspired by traditional Russian moral theory.

182. See, e.g., *Yeltsin Intends to Pass Freedom of Conscience Law*, *supra* note 8, at 1.

183. Between July and September, Yeltsin had at least one official meeting with the Patriarch to discuss the future of the law. See Gayaz Alimov & Gennady Charodeyev, *There Will Be No Rapprochement with Communists*, *IZVESTIA*, Aug. 5, 1997, at 1, available in LEXIS, News Library, Russian Press Digest File (the Patriarch assured his support for Yeltsin's upcoming version of the law as long as it protected traditional religions). At the same time, the Presidents' staff worked on the new text of the law, leaving the majority of the discriminatory provisions intact, as the Patriarch desired for the "spiritual health of the people . . . and the preservation of [Russia's] inimitable face." Zolotov, *supra* note 12, at 1.

184. Representatives of various minority religions were invited to the Presidential Advisory Council meetings. However, they did not have a real opportunity to express their ideas. For instance, the staff made Pentecostals and Adventists signify their approval before they had an actual chance to look at the text of the law. The most influential minority religions such as Catholics and the mainstream Baptists failed to mount a forceful opposition during the "bargaining" process. See Lawrence A. Uzzell, *Letter From Moscow*, *FIRST THINGS*, Jan. 1998, at 17-19 (criticizing Catholics for "caving in" to Yeltsin's assurances).

185. See, e.g., Rodin, *supra* note 127, at 1. The sponsor of the bill in the Duma admitted that the President's version of the law is even better than the parliamentary one because it requires all organizations to re-register and places the organizations that do not meet the 15-year presence requirement on a mandatory probation period, even if they had already operated as religious organizations under the old registration system. See *infra* section IVD(4)(viii).

186. See *id.* In addition to mandatory re-registration and the creation of a new category of religious organizations with diminished rights, the enacted version of the law also expanded the list of grounds for disbanding religious organizations. See Soldatov, *supra* note 179, at 10.

187. For the record of enactment, see *supra* note 5.

D. *The Structure and Substantive Highlights of the New Law*

The following discussion tracks the provisions of the new law and identifies potential problems in its application as well as inconsistencies with pertinent constitutional and international law provisions.¹⁸⁸ Subsequent legal challenges to the structure and enforcement of the new law will likely evoke these concerns.

1. The Preamble

As the most ideological portion of the new law, the preamble proved highly controversial from the beginning. The public debate was understandable, because in a country lacking the rule of law tradition, the spirit of a law, usually expressed in its preamble, determines its interpretation and application.

The current preamble has four major elements: 1) confirms the right of each individual's freedom of conscience and freedom to profess a religion (*veroispovedanie*),¹⁸⁹ and assures personal equality before the law regardless of one's convictions; 2) proclaims Russia a secular state; 3) ranks religions in terms of their historical significance, and 4) aspires to promote mutual tolerance of and respect for religious rights. The first, second, and fourth of these objectives are laudable and consistent with the international principles of religious human rights. A concern, however, is that such aspirations are only diluted versions of a corresponding portion of the 1990 law that explicitly proclaimed freedom of conscience and religion as an inalienable right of each individual guaranteed by the Constitution and by Russian international obligations.¹⁹⁰

The most controversial part of the preamble is the ranking of the confessions in terms of their importance to Russian national identity. Consonant with the traditional moral theory, the earliest draft of the law placed Russian Orthodoxy at the top of the hierarchical ladder of religions.¹⁹¹ Within a month, other major

188. For a more detailed exploration of the law and the accompanying Regulations and Commentaries, see W. Cole Durham, Jr. & Lauren B. Homer, *Russia's 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT'L L. REV. 101 (1998).

189. *Vera* literally means "faith" or "creed" and *veroispovedanie*, "professing a faith," although it is commonly translated as "religion." Berman suggested that freedom of *veroispovedaniï* connotes greater rights than freedom of conscience (*sovesti*) because the former implies the liberty to manifest one's beliefs, as opposed to merely possess them. See Berman, *supra* note 6, at 295 & n.11.

190. See discussion *supra* note 6.

191. For a discussion of the earliest passed version of the 1997 law, see Moroz, *supra* note 77, at 3 (also explores the irony of conservative Russian notion of equality: "Here everything is vice versa—equality of religions, proclaimed in Constitution, led to

traditional religions, such as Islam,¹⁹² Judaism, and Buddhism found their way into the preamble. Originally, Catholicism and Protestantism did not make it on the list, and the international communities associated with these denominations exerted great pressure on Yeltsin to veto the bill. In retrospect, observers criticized the narrow, superficial focus of these international lobbying efforts¹⁹³ and doubted the propriety of overt political pressure from abroad.¹⁹⁴ The present law accounts for the above-mentioned concerns when it adopts the following scheme: Orthodoxy is recognized for its special role in Russian history and as *the* guiding spiritual and cultural force.¹⁹⁵ The law then announces “respect” for Christianity,¹⁹⁶ Islam, Buddhism and Judaism as well as other unnamed religions that “make up an integral part of historical legacy of the peoples of Russia,”¹⁹⁷ i.e., traditional religions.

instability and the proponents of the law seek to restore equilibrium. So if, contrary to constitutional norms, you would ‘slightly suppress’ the so-called non-traditional religions, equality will be restored.”)

192. In the earliest version of the law, Islam was placed on the same level with Russian Orthodoxy. Prior to the break-up of the USSR, there were about forty to fifty million Muslims, a number comparable with the fifty million members of the Russian Orthodox Church. See RELIGIOUS POLICY IN THE SOVIET UNION, *supra* note 61, at 355 app. Islam is the predominant religion in several CIS states, such as Uzbekistan. By 1993, there were 2,639 registered Muslim organizations in Russia, the second largest number after the Orthodox Church. See Berman, *supra* note 6, at n.12. However, Islam lost its highest position as a primary cultural and historic force in the enacted version of the law.

193. See, e.g., Uzzell, *supra* note 184, at 17-19.

194. See Rodin & Schevchenko, *supra* note 181, at 1 (noting that Russian deputies would find it very hard to reform the law because “always in the back of their minds, they will clearly remember that Yeltsin’s veto was motivated by pressure from the outside”). The sponsor of the bill, V. Zorkaltsev, also credited foreign pressure for helping to enact the law: “I was very concerned that the vote would be close. But this avalanche of messages from abroad—from the Pope, from Clinton, and the Senate’s action—made our job easy. The moment I heard about all this, I knew that we had won.” (*quoted in* Bowers, *supra* note 148).

195. This sweeping affirmation may actually be true in the context of Russian history discussed in Part II.

196. Recognition of Christianity as a “respected” confession was actually a major compromise in the presidential version of the bill. Catholicism, Protestantism, Orthodoxy not affiliated with the Moscow Patriarchate, and other Christian denominations are included in this category. Possibly, this recognition will make it easier for these communities to register and to prove their status as religions. For example, Zorkaltsev stated that “registration just means putting a rubber stamp on their status For example, the Baptists, they’re Protestants; they’re a branch of Christianity. They don’t need to prove that their religion is a proper one.” (*quoted in* Bowers, *supra* note 148).

197. One commentator ironically noticed that this provision makes it easier for pre-Christian pagans to be the most legitimate Russian religions, see M. Ivanov, *supra* note 148, at 7 (quoting suspended Archpriest Ioann Sviridov). However, this recognition may be an important one for the tribes in the far regions of Russia, such as Nenets who still retain their animist beliefs. For an interesting ethnographic story

Significantly, the preamble alters the conceptual model of church-state relations in Russia. Since 1990, a cooperationist dynamic has existed between the state and various religious organizations. Although *de facto* the Orthodox Church received the greatest portion of state largesse¹⁹⁸ and archived the greatest public prominence,¹⁹⁹ it was legally on the same level with all other religions. The new law undermines the former arrangement by providing a special endorsement of the Orthodoxy. Although the principle of denominational equality inspires the international religious rights regime, many other members of the Council of Europe have a favored religion in either the endorsement or establishment models.²⁰⁰ Therefore, a special recognition of the Orthodox Church does not appear to contradict international practice.

The more serious problem is the distinction between traditional and non-traditional religions which is apparent in the preamble and which is perpetuated in the substantive provisions of the new law. In light of the Russian ideal of Orthodox supremacy, intolerance, xenophobia, and radical nationalism, such special recognition of certain religions in the preamble raises a strong possibility that the endorsement experiment in Russia will not be benign.²⁰¹ Thus, the preamble symbolically paves the way for abuse of the rights of non-traditional religions excluded from the category of "respected" and for discrimination against religions appearing lower on the list. Potential gross violations of the rights of religious minorities and the equality of the confessions principle compromise Russia's record of

on this people, see Fen Montaigne, *Nenets: Surviving on the Siberian Tundra*, 193 NAT'L GEOGRAPHIC 120, 135-37 (Mar. 1998).

198. For example, during the last year the Mayor of Moscow channeled hundreds of millions of dollars into the reconstruction of the Cathedral of Christ the Savior, blasted by Stalin in the 1930s. See Nickles, *supra* note 154. The Cathedral opened with a grand ceremony in September of 1997, coinciding with the enactment of the new law on religion.

199. Alexii II frequently expressed the Church's opinion on a variety of issues ranging from the war in Chechnya to presidential elections and even constitutional questions. Also, Yeltsin did not hesitate to incorporate high Orthodox officials into public ceremonies in the Kremlin. See *supra* note 23.

200. For example, state churches exist in England, Denmark, and Sweden. See Morozova, *supra* note 2, at 42-44. Ireland, Italy, and Spain exhibit endorsement features. Germany, Belgium, and the Netherlands fit under the cooperationist model. France achieved the greatest separation between church and state among European states. See Durham, *supra* note 14, at 16-21. These classifications are by no means absolute. Some countries combine the features of two or more of these models.

201. For a definition of "benign endorsement" and other models, see Durham, *supra* note 14, at 20-21. By acknowledging a special role of the Russian Orthodoxy and by giving traditional religions special rights, *infra* Part IVD, Russia inaugurated an endorsement pattern, instead of cooperation and/or accommodation maintained in 1990-97.

democratization and adherence to international human rights standards.

2. General Provisions

The general provisions on the status of the legislation appear in Chapter I, Articles 1-2. Article 1 defines the broad scope of the law as regulating norms in the area of human and civil rights, freedom of conscience and religion, as well as the legal status of religious associations. The language extending religious rights to "a human being and a citizen" (*prava cheloveka i grazhdanina*) is awkward. The spirit of the failed 1993 amendments suggests that it is possible that one has to be a Russian citizen to enjoy religious rights. Such a reading contradicts constitutional²⁰² and basic international principles²⁰³ which imply that all individuals are entitled to freedom of conscience regardless of their citizenship. To avoid this undesirable result, the latter qualifier may be viewed as redundant. Yet, the substantive provisions which treat citizens and foreigners separately demonstrate that the choice of language was deliberate.

The legislation regulates not only individual religious rights but also religious associations. This type of state regulation of religious entities is common in Europe, even though it sharply contrasts with the treatment of religious communities in the United States.²⁰⁴ Still, whereas in most democratic countries the registration of a group is a mere formality prior to recognition as a juristic person, the new law reincarnates the old Soviet legacy of registration as a formidable tool in the hands of the state to control the activities of religious communities, and to perpetuate distinctions and inequalities among them.

202. See KONST. RF., *supra* note 10, at art. 28 (guarantees religious liberty to everyone, not just citizens).

203. See Covenant, *supra* note 100, at art. 18(1); Convention, *supra* note 101, at art. 9(1); Declaration, *supra* note 102, at art. 2(2).

204. See, e.g., Durham and Homer, *supra* note 188, at 113 (the aim of registration in the United States is to make flexible entity structures easily available, whereas the purpose of the Russian law is to effectuate control over such religious entities). European countries also typically require religious organizations to register. See *De Burght Report*, *supra* note 6, at 35. In United States practice, religions do not have to be officially recognized. Instead, religious organizations incorporate as non-profit corporations. The scrutiny for *bona fide* religious organizations is performed by the IRS for tax treatment only. Russia was ideally situated to copy the U.S. experiment because the Russian Civil Code, Chapter I Article 117 specifically deals with public non-profit and religious organizations. See *Unusova*, *supra* note 177, at 2. Russia, instead, chose a more controlling approach by enacting separate laws regulating religion. Thus, Russian regulation of religious organizations is reminiscent of the public corporation regime in the U.S. where the Securities and Exchange Commission can enforce laws and actively monitor various corporate activities.

Article 2(1) identifies the Constitution, the Civil Code, the present law, and normative acts issued in accordance with them, as the core of federal religious legislation that preempts any local laws.²⁰⁵ Unlike the Constitution (Articles 15(4), 17(1) and (18)) and the 1990 law, which explicitly identified international norms as the highest law in the area of human rights), the new law incorporates international standards only indirectly. Article 2(3) states that "nothing [in the law] should be interpreted as a diminution or limitation of human and civil rights to freedom of conscience and religion guaranteed by the Constitution . . . or derived from (*vytekayusih*) the international treaties." Thus, international treaties are no longer an independent source of self-executing legal norms. Instead, they have only an indirect effect as a method to assess Russian religious policies and make sure that interpretation and application does not fall short of international standards.

3. Personal Freedom of Conscience and Religion

In contrast to the 1990 law, half of which was devoted to individual religious liberties, the new law disposes of this task in a single article that defines individual religious liberty as "the right to profess individually or collectively any religion or not to profess any religion, and freely to choose, change, possess and disseminate religious and other convictions, and act in accordance with them."²⁰⁶ Although this language tracks Article 28 of the Constitution, it neither lists the specifics²⁰⁷ of the right, nor ties it to the general freedom of thought and expression provisions. This is a fatal omission because the two freedoms complement each other, and both are necessary to provide for the solid protection of religious liberties.

The law explicitly grants the same personal religious liberties to foreign citizens and stateless persons as to Russian citizens.²⁰⁸ However, the provision assumes an ominous tone when it connects the rights to liabilities for violating the present law. Thus, the law confers jurisdiction over foreign persons for all

205. This is actually a sensible provision because many local laws on religion, enacted since 1990, are even more reactionary than the present legislation. For an excellent overview of such local laws in various regions, see Lauren Homer and Lawrence Uzzell, *Federal and Provincial Religious Freedom Laws in Russia: A Struggle For and Against Federalism and the Rule of Law*, 12 EMORY INT'L L. REV. 247 (1998). See also Unusova, *supra* note 177, at 2.

206. THE NEW LAW, *supra* note 4, at art. 3(1). See generally Article 3 (determining the right to freedom of conscience and religion).

207. Compare with 1990 RUSSIAN LAW, *supra* note 6, at arts. 3-6.

208. See THE NEW LAW, *supra* note 4, at art. 3(1).

violations pertaining to individual religious freedom and activities of religious associations. For instance, if a court finds that a foreign missionary "induces a minor to join a religious association,"²⁰⁹ the missionary will be prosecuted under Article 3(5) of the law.

Article 3(2) allows the State to limit freedom of conscience by federal laws, but only to the extent necessary to protect constitutional order, morality, health, rights of third persons, and state security.²¹⁰ The permissible bases of limitations parallel those in the Constitution (Article 55) and generally follow the accepted norms of international law, with one important distinction. In the international regime, a state can limit only the exercise of religion and not one's personal beliefs.²¹¹ In Russia, the language of the statute permits the State to restrict personal beliefs as well as their manifestation.²¹² Practically, the former limitation is almost impossible to administer because a person does not have to identify his religious beliefs.²¹³ Nonetheless, such textual sloppiness is disturbing, given Russia's record of personal repression and its aim to be governed by the letter of the law.

Finally, Article 3 contains several protective provisions. For example, Article 3(3) prohibits the establishment of advantages, limitations, or other types of discrimination depending on one's attitude toward religion.²¹⁴ Article 3(4) confirms equality of all citizens²¹⁵ before the law in all spheres of life regardless of one's religion.²¹⁶ Article 3(6) prohibits intentional insults to personal religious feelings, including the propaganda of religious

209. See *id.* at art. 3(5). The law does not define which actions constitute inducement, "*vovlechenie*." The officials applying the law will have to determine it on an ad hoc basis. This provision may become one of the numerous avenues for administrative arbitrariness.

210. See *id.* at art. 3(2).

211. See *supra* notes 104-05.

212. The provision reads "the right . . . to freedom of conscience and freedom to profess a faith may be limited." See THE NEW LAW, *supra* note 4, at art. 3(2).

213. See THE NEW LAW, *supra* note 4, at art. 3(5). See also Durham & Homer, *supra* note 188, at 137.

214. See THE NEW LAW, *supra* note 4, at art. 3(3).

215. When analyzing the law, it is imperative to keep track of the classes of people to whom the rights are granted. Although the Preamble and Article 3(2-3) grant equal rights to all, the substantive provisions depart from this general principle. For example, civil and social rights in Article 3(4) are reserved only for citizens. Moreover, congregates of organizations with diminished rights, *infra* Part IVD(4)(viii), do not enjoy the liberties of this provision. The most practical consequence of this distinction is that members of non-traditional religious communities will not get exemption from military service in accordance with their beliefs. This inequality can be the basis of a strong constitutional challenge.

216. THE NEW LAW, *supra* note 4, at art. 3(4).

supremacy, threats to destroy personal property, and other acts that prevent one from realizing personal religious rights.²¹⁷ Article 3(7) guarantees the secrecy of confession.²¹⁸ All these provisions are specific responses to abuses of religious liberty in the pre-Revolutionary and Soviet times.²¹⁹ The effectiveness of these legal norms depends on their ability to influence the culture of civil society and to neutralize deep-rooted intolerance and violence.

4. The Status of Religious Associations

The new legislation creates an intricate hierarchy of religious associations. Such differentiation between religious communities as well as excessively burdensome registration requirements and procedures are the most controversial parts of the law and will constitute the gravamen of any constitutional challenge to it.

i. Separation Between Church and State in a Cooperationist Mode

Article 4(1) confirms the principles of separation between church and state, the non-establishment of religion, and equality of religious associations.²²⁰ However, the entire structure of the law consistently undermines equality of religious associations.²²¹ Article 4(2) explicitly incorporates constitutional principles, and further defines the meaning of separation. However, the provision is silent about equality.²²²

Article 4(3) envisions a cooperationist relationship in which the state provides religious organizations with a preferential tax treatment as well as special funding for restoration and maintenance of cultural objects, and even for secular subjects taught at religious schools.²²³ It treats religious employees as state employees for retirement purposes,²²⁴ and encourages public educational institutions to form agreements with religious organizations to teach religious subjects after regular school hours.²²⁵ Also, religious organizations may request that the State

217. *Id.* at art. 3(6).

218. *Id.* at art. 3(7).

219. *See supra* Part IIA.

220. *See* THE NEW LAW, *supra* note 4, at art. 4(1).

221. *See infra* Part IVD(4)(iii-viii), *passim*.

222. *See* THE NEW LAW, *supra* note 4, at art. 4(1).

223. *See id.* at art. 4(3).

224. *See id.* at art. 24(4).

225. *See id.* at art. 5(4). This provision presents a sharp contrast to judicial interpretation of the First Amendment in the United States.

observe religious holidays as non-working days.²²⁶ Still, Article 4(4) prohibits public religious rituals and ceremonies during the exercise of State functions.²²⁷ A strict enforcement of this provision is unlikely because many prominent politicians continue to use their affiliation with the Orthodox Church as a public relations tool.²²⁸ The same is true for the provision that religious associations may not participate in the functioning of state bodies and political parties.²²⁹ In practice, the prohibition may target only minority religions, and is unlikely to reduce the great influence of the Orthodox Church over the political process.

ii. Religious Associations

Article 6(1) defines religious associations as voluntary associations of citizens or lawful aliens formed for the purposes of jointly professing and disseminating a faith (*vera*)²³⁰ and exhibiting any of the following traits: a creed (*veroispovedanie*), worshipping or engaging in other religious rituals and ceremonies, or conducting religious instruction of its followers. All religious associations are subdivided into religious *organizations* and religious *groups*.²³¹ This is a crucial classification because groups' rights are a fraction of those enjoyed by some organizations.

Article 6(4) typifies numerous instances of vague restrictions on the activities of religious communities. The provision tersely forbids the creation of a religious association if "its purposes or actions contravene the law."²³² This language invites an improper intrusiveness by the state throughout the process of formation and functioning of religious associations. It presupposes that local authorities have wide discretion to investigate and assess the purposes and activities of religious associations. Importantly,

226. See *id.* at art. 4(7).

227. See *id.* at art. 4(7).

228. See *supra* note 1999; M. Ivanov, *Auditing the Soul*, *supra* note 148, at 8 (picture of Luzhkov, the Mayor of Moscow standing next to the Patriarch and crossing himself); Oleg Mramornov, *Otynne Gosudarstvo Uvazhaet Vse Istoricheski Slozhiushiesia Verouchenia, No Odno Iz Nikh Priznaet Osobo* [From Now On the State Respects All Traditional Religions, but Specially Recognizes One of Them], NG-RELIGII (Monthly), Sept. 1997, at 1 (discussing how Yeltsin's desire to be on good terms with the Patriarchate prompted him to ignore constitutional concerns).

229. See THE NEW LAW, *supra* note 4, at art. 4(5).

230. Neither faith (*vera*) nor professing a faith (*veroispovedanie*) is defined in the law. It is unclear who is responsible for making such determinations and how they are to be made. This is likely to become an arena for administrative "creativity" and abuse. See *infra* Part V. See THE NEW LAW, *supra* note 4, at art. 6(1).

231. *Id.* at art. 6(2). Religious associations in Russia can operate in the form of either groups or organizations.

232. *Id.* at art. 6(4).

in the international religious rights context, a religious community is presumed innocent until proven guilty.²³³ The new Russian law reverses this presumption when it targets aspirations of religious associations as a starting point for official scrutiny. In this scenario, administrative abuse is practically inevitable.

iii. Religious Groups

Members of religious communities in Russia may opt to become a religious group if they wish to avoid the complicated registration process.²³⁴ However, a religious group does not receive the status of a juristic person.²³⁵ Article 7(3) limits the rights of religious groups to conducting worship sessions and other religious rites and ceremonies, and to teach religion to its followers.²³⁶ However, the groups do not have to file reports with the state, unless they anticipate transforming themselves into religious organizations.²³⁷ The state may still monitor the creation and activities of groups under Article 6(4) because they are a form of religious association.²³⁸

The religious group classification is an extraordinary and, most likely, unconstitutional legal creature. The circumscribed rights of groups fall infinitely short of the international liberties of religious communities.²³⁹ The status of groups is similar to that of religious institutions in the Soviet period when religion was tolerated as long as it was kept within the "four walls" of a state-owned building. The experts on religious human rights point out that a legal entity status for religious communities is a prerequisite to genuine freedom of conscience.²⁴⁰ Russian drafters may argue that the law does not force religious associations to organize themselves as groups, and that juristic personality is available to communities which elect to become religious organizations. In practice, some associations will be

233. See *De Burght Report*, *supra* note 6, at 23 (discussing Principle 16(C) of the Vienna Concluding Document).

234. See *THE NEW LAW*, *supra* note 4, at art. 7(1).

235. In practical terms this means that religious groups do not enjoy corporate rights enumerated in Chapter III (Articles 15-24). For instance, religious groups cannot own property. Prayer facilities and other religious objects are to be provided by individual members. See *id.* at art. 7(1).

236. See *THE NEW LAW*, *supra* note 4, at art. 7(3).

237. See *id.* at art. 7(2).

238. See *id.* at art. 6(4).

239. Compare Article 79(3) of the law conferring solely the rights to worship, conduct religious ceremonies, and educate its followers with the list of principles in the Vienna Concluding Document, *supra* note 103, Principles 16-7.

240. See *De Burght Report*, *supra* note 6, at 24 (commenting on Principle 16(C) of the Vienna Concluding Document).

forced to operate as groups²⁴¹ upon their failure to pass the rigorous registration requirements

A comparison of the rights of groups versus organizations highlights an egregious inequality between these two forms. Granting extensive rights to organizations, derived from their status as legal entities, and only minimal rights to groups, contravenes Article 14(2) of the Russian Constitution which provides for equality of religious associations before the law.²⁴² It is also internally inconsistent with Article 4(1) of the instant legislation which tracks the constitutional equality language.²⁴³ Finally, the group/organization dichotomy discriminates against non-citizens because only citizens can form religious groups.²⁴⁴ The only justification for this unconstitutional²⁴⁵ distinction is the immediate threat of foreign cults that may choose to operate as religious groups and thereby prevent the state from effectively regulating their activities. Still, the problem of whether the scope of the discrimination is proportionate to the danger of foreign cults remains especially because these foreign cults co-exist with radical domestic cults. In short, this provision appears to be another instance of Russian xenophobia.

iv. Definition and Types of Religious Organizations

A religious organization is a type of religious association formed by citizens or lawful aliens that gets recognition as a juristic person.²⁴⁶ Depending upon the geographical reach of activities, all organizations are subdivided into either local or centralized ones.²⁴⁷ A local organization must consist of at least ten members over the age of eighteen who reside in the same locality.²⁴⁸ If at least three local organizations unite under the same charter, they can apply for recognition as a centralized religious organization.²⁴⁹ A centralized religious organization can generate accessory religious organizations under its charter.²⁵⁰

241. Even this form may not be available to communities that are deemed subject to liquidation under Article 14(2). These grounds are extended into groups' context by Article 14(5). The rationales for disbanding religious organizations may also serve as reasons for banning religious groups. See *THE NEW LAW*, *supra* note 4, at arts. 14(2), 14(5).

242. *Id.* at art. 14(2).

243. *Id.* at art. 4(1).

244. See *id.* at art. 7(1).

245. Compare with KONST. RF., *supra* note 10, at art. 28, 19(2).

246. See *THE NEW LAW*, *supra* note 4, at art. 8(1).

247. See *id.* at art. 8(2).

248. See *id.* at art. 8(3).

249. See *id.* at art. 8(4).

250. See *id.* at art. 8(6).

The newly-formed accessory organizations can perform a variety of tasks connected to the functioning of the primary centralized organization.²⁵¹

Articles 8(5) and 8(8) are symbolically noteworthy for their treatment of the naming religious organizations.²⁵² In response to an alleged proselytizing fraud, organizations must now use their full name while engaging in activities.²⁵³ The word "Russia" and all its derivative forms can be used only by a narrow class of traditional religions that have *legally* operated in Russian territory for at least fifty years prior to current registration.²⁵⁴ This provision is an excellent example of the protectionist spirit of the law that is directed against foreign religions and against some non-conformist groups within the major Russian confessions that were outlawed by the Soviet government.²⁵⁵ The application of this provision creates an inconvenience by requiring evidence of the status of a given confession throughout Russian history.²⁵⁶ Although the naming classification does not have any tangible consequences, except for an ability to set up offices of foreign religious representatives under its auspices,²⁵⁷ it is a potent psychological tool for alienating believers who do not belong to "Russian" churches. In Russia, where religion, ethnicity, patriotism, and social standing are interlinked, this provision is of great concern. Thus, the potential effects of Article 8(5) can raise constitutional challenges under Articles 14 and 19(2).²⁵⁸

251. See *id.* at art. 8(6). These subsidiary organizations can be additional places for worship or religious education institutions. They can also perform solely administrative tasks ("governing and coordinating"). See *id.* Such organizations can also engage in charitable or cultural work.

252. See *id.* at art. 8(5), 8(8).

253. *Id.* at art. 8 (8).

254. See *id.* at art. 8(5).

255. See *supra* note 48 (providing examples of such denominations within the Protestant movement). Also the leaders of the splinter Orthodox communities—such as Fr. Yakunin of the Ukrainian Autocephalous Orthodox Church, Fr. Sergeev of the True Orthodox Church and Fr. Ardov of the Orthodox Free Church—strongly objected to the legislation. They argued that the law would give the Patriarchate an upper hand in expropriating these Orthodox sects and controlling them. They decried this consolidation measure as inconsistent with the religious pluralism envisioned in the Constitution. See Shargorodska, *Dissident Orthodox Priests Blast Religion Bill*, *supra* note 156, at 1. Their fears came true upon the enactment of the law. See *infra* note 347.

256. It is unclear whether a confession's existence before the Revolution will be taken into account. In any case, most religions in czarist Russia were not legally recognized until 1905. See *supra* Part IIA(2).

257. See THE NEW LAW, *supra* note 4, at art. 13(5).

258. See *supra* Part IIID(2). Article 19(2) guarantees equality of civil rights regardless of race, sex or religious belief. *Id.* at art. 19(2).

v. The Registration Process

The registration process and its effects on religious organizations is one of the most problematic parts of the instant legislation. In particular, excessive complexities throughout the registration process, the omnipotence of the registration agencies, pervasive state supervision and control of subsequent activities by religious entities, and an operational distinction between the full and limited-power religious organizations, are the most troubling features of the law.

The hypothetical situations described below are designed to illustrate the application of the law. First, the Patriarchate desires to establish an Orthodox seminary in Tver. Second, a Hare Krishna community tries to register as a centralized religious organization in Tver. It submits applications along with two other sister-communities in Moscow and Yakutsk. Third, several Mormon families, some from the United States and some Russian citizens, would like to re-register their existing local organization in Moscow as required by the new law.

All believe that they qualify as religious associations under Article 6(1). They also prefer the status of an organization to that of a religious group because of the severe restrictions on the latter type of associations. Thus, they need to re-register in order to become organizations and to acquire their legal entity status. What do they do next?

First, each must prepare a charter.²⁵⁹ Article 10(2) lists the information that should be included in the charter.²⁶⁰ In addition to basic requirements such as the name and location of an association, the charter must also elaborate its purposes, prospective activities, structure, and sources of income.²⁶¹ It must contain a procedure for amending the charter and meet several other requirements in order to allow the registration agencies to monitor its activities and to intrude if an organization departs from its charter.²⁶² In fact, Article 25 (1-2) explicitly authorizes the registration agencies and the procurator to supervise organizations' compliance with their charters on a continuous basis.²⁶³ The extensive scope of such supervision may violate separation between church and state. Furthermore, the law is adamant about registering any amendments to charters²⁶⁴ and updating information included in the register of

259. See THE NEW LAW, *supra* note 4, at art. 10(1)

260. See *id.* at art. 10(2).

261. See *id.*

262. See *id.*

263. See *id.* at art. 25(1-2).

264. See THE NEW LAW, *supra* note 4, at art. 11(11).

juristic persons within one month of discovery.²⁶⁵ Systematic activities that contravene the purposes with which an organization was created may lead to disbanding pursuant to a complaint by the registration agency.²⁶⁶

The next step will differ for each of the three associations. The Orthodox seminary will swiftly register as a member of the largest centralized registered organization, the Russian Orthodox Church. In theory, the seminary will have a choice of registering as a more independent local organization or remaining a part of the centralized organization that endows it. In the former scenario, it will have to file a petition with a local registration agency established under the auspices of the Ministry of Justice in the federal constituent area (*sub'ekt*) where it plans to operate.²⁶⁷ The application must contain a confirmation note from the centralized "parent" stating that the seminary was indeed within its structure prior to the application.²⁶⁸ Most likely, the seminary will choose to remain within the structure of the centralized organization that creates it. The seminary will then submit its petition, charter, and other documentation²⁶⁹ to the federal registration agency. The agency will issue its registration decision within one month.²⁷⁰

The Hare Krishna's situation will be much different. Despite its presence in the USSR since the 1970s, it was outlawed by the Soviet regime.²⁷¹ As a result, it never received official registration prior to 1990. In order to form a centralized organization, the

265. See *id.* at art. 11(12).

266. See *id.* at art. 14(1).

267. Article 11(1-3) regulates the process of administering registration in the Russian federalist structure. The registration agencies may be set up under the auspices of either federal or constituent Justice Ministries. *Id.* at art. 11(1). Religious organizations which operate only in one constituent area file with the local registration agency. *Id.* at art. 11(2). If centralized organizations have branches in two or more constituent areas, federal registration organs handle their application. *Id.* at art. 11(3). Presumably, both federal and local agencies must apply federal law, especially if local law contradicts federal legislation. *Id.* at art. 2(2). However, when discussing application of the law, one has to be cognizant of differences that may be perpetrated not only in various Russian regions, but also at different administrative levels.

268. See THE NEW LAW, *supra* note 4, at art. 9(1). The certificate must confirm that an organization was within the structure of the centralized organization of the same denomination. This is an alternative to presenting an infamous certificate of the fifteen-year existence, issued by local government. See *infra passim*.

269. For the types of information to be included in the application. See generally THE NEW LAW, *supra* note 4, at arts. 10(2), 11(5-7). For example, a local organization must provide a list of its members, and a centralized one, a list of its founders. Also, local organizations must submit information about basic religious beliefs and history, as well as views on education, civic duties, marriage, and health. See *id.* at art. 11(5). This requirement will allow agencies to screen out 'dangerous' cults.

270. See *id.* at art. 11(8).

271. See Antic, *supra* note 61, at 260-65.

associations in Moscow, Yakuts, and Tver will have to present the federal registration agency with three charters confirming their status as local religious organizations. This facially benign requirement is the most formidable obstacle to non-traditional religions.

Under the 1997 law, all religious entities recognized under the 1990 law will have to re-register. Article 27(4) mandates re-registration for all organizations by December 31, 1999, under the penalty of liquidation by a judicial order.²⁷² The Krishna associations in Moscow, Yakuts, and Tver will have to obtain new registration as local organizations, and then submit these three approved charters for re-registration as a centralized organization. However, in order to qualify as *bona fide* local organizations, the applicants will have to furnish "a document that confirms the existence of that religious group on the given territory for no less than fifteen years."²⁷³ This is one of the most problematic and ambiguous provisions in the law. It is unclear how and from whom a religious association can get such document. Although the language does not require a local group to have fifteen years of prior legal existence as a registered religious entity,²⁷⁴ it is practically impossible to imagine how anything other than a certificate of such official existence will suffice. For Hare Krishna this requirement is particularly burdensome because fifteen years ago the USSR simply refused to recognize its existence. Will the Soviet press materials of the early 1980s ridiculing Hare Krishnas be accepted as a proof of actual existence? Will the imprisonment of its leaders under Article 227 of the Soviet Penal Code— infringement upon personal rights under the guise of performing religious rites—or their confinement to psychiatric institutions be sufficient to demonstrate their existence? All of these questions are left to the discretion of the registration agencies. The decision is in the hands of bureaucrats influenced by a tradition of intolerance, xenophobia, and scientific atheism.

Acknowledging this high burden of proof, the law creates a special niche for confessions not registered during the Brezhnev era. Article 27(3) "graciously" extends the status of a juristic

272. See THE NEW LAW, *supra* note 4, at 27(4).

273. *Id.* at art. 11(5). See also Durham and Homer, *supra* note 188, at 195-207 (noting that no other European country has a similar fifteen year provision as a prerequisite to acquiring full legal personality).

274. Ruslan Orekhov, Yeltsin's chief legal advisor, emphasized that to be an "established" faith, an organization must show that it has been active for fifteen years. That does not mean it must have been registered for fifteen years. The effect of this law is to target sects outside the mainstream. See Larry Stammer, *Russians Reassure US on Religious Freedom*, L.A. TIMES, Sept. 24, 1997, at 14A, available in LEXIS, News Library, Int'l File.

person to such organizations, but with substantially diminished rights and a mandatory re-registration each year until they reach the fifteen-year "age of maturity."²⁷⁵ This is the most flagrant violation of constitutional and international norms of equality of religious associations before the law, as it uses the policies of the Soviet era to arbitrarily differentiate between religious organizations. This provision also directly conflicts with Article 54 of the Constitution which guarantees that laws establishing or heightening responsibility cannot be retroactive.²⁷⁶

Depending upon the officials' attitudes, Hare Krishnas may not even be able to avail themselves of this limited organization status. Article 27 prohibits registration if an organization exhibits any traits for which it can be liquidated under Article 14(2).²⁷⁷ For instance, engaging in rituals found detrimental to public health or morality, or improperly using drugs, psychotropic devices, and hypnosis during their ceremonies, are some of the grounds for liquidation.²⁷⁸ The Hare Krishna group will have to wait for up to six months while the registration agency conducts a review (*ekspertiza*) of its charter and of its general profile and practices.²⁷⁹

Mormons will encounter many of the same problems as the Hare Krishnas. They will have to prove their fifteen-year existence in Moscow in order to obtain the local legal entity status. Unlike the Hare Krishna, however, the first Mormons did not come to Russia until the early 1990s, so they will not encounter the same difficulties establishing their existence.²⁸⁰ Thus, there will be no imbroglio in establishing its existence. Mormons will also have to submit to a six-month examination period throughout which a local registration agency will examine its charter, the charter of its foreign parent-organization,²⁸¹ and make sure that Mormons are not subject to liquidation under Article 14(2). The agency will have a great deal of discretion during the entire process. If it finds that the Mormon church should be liquidated, the case will automatically go to court where

275. See THE NEW LAW, *supra* note 4, at art. 27(3).

276. KONST. RF. at art. 54(1). This was one of the most persuasive arguments against promulgating this law. See *infra* note 350 (citing the Statement of the Head of Registration of the Russian Ministry of Justice).

277. See THE NEW LAW, *supra* note 4, at art. 27(3) para. 2.

278. See *id.* at art. 14(2).

279. See THE NEW LAW, *supra* note 4, at arts. 11(5), 11(8). The Russian government is authorized to issue a set of procedures to be utilized during such examination.

280. See M. Ivanov, *Auditing the Soul*, *supra* note 148, at 10-11 (reporting on his visit to the Mormon Center in Moscow and his conversation with the leader of the mission, Donald Jarvis).

281. See THE NEW LAW, *supra* note 4, at art. 11(6).

the religious community will appear as a defendant.²⁸² If the agency re-registers Mormons, they will receive the status of a religious organization with limited rights.²⁸³ They will also be required to re-register every year until they can prove their fifteen-year existence in Russia. These clearly disproportionate limits on freedom of religion, even in light of a perceived danger to public health or national security, clearly contravene constitutional and international norms.

If the agency denies registration to Mormons and the court agrees with such a determination, the Mormon church cannot exist as a religious organization, even as one with limited rights. It probably cannot operate even as a religious group, due to the likelihood of a ban under Article 14(2) and 14(5) of the law.²⁸⁴ Mormons may have some special rights under Article 13, which regulates representative offices of foreign religious organizations. Article 13(3) leaves the questions of registration and the opening and closing of such offices to be addressed through regulations.²⁸⁵ Still, Article 13(2) clarifies that these outposts of foreign religions are not deemed religious associations by the law.²⁸⁶ Accordingly, they can not engage in cultic or other religious activity.²⁸⁷ The function of these offices remains unclear and presents another example of objectionable differentiation between religious rights of Russian citizens and foreigners.²⁸⁸

vi. Grounds for Denying Registration

As Soviet history demonstrates, authorities had unlimited discretion to deny registration to religious communities. The new law aims to prevent such rampant administrative abuse in Article 12(2) and prohibits non-registration due to undesirability (*nezelesoobraznost*) of forming a religious organization.²⁸⁹ This provision also requires that a written explanation for the denial be

282. See *id.* at art. 27(3). Presumably, organizations will be able to counterclaim with constitutional challenges, such as general inequality or administrative abuse. See *infra* Part V.

283. This is the rate of all confessions failing to satisfy their fifteen year presence requirement. See THE NEW LAW, *supra* note 4, at art. 27(4) para. 3, 4.

284. See *id.* at art. 14(5) (listing 12 grounds for liquidating religious organizations); art. 14(5) (permitting the application of the same criteria in the context of religious groups).

285. See *id.* at art. 13(3).

286. See *id.* at art. 13(2) para. 2.

287. *Id.*

288. For a discussion of the recently promulgated regulations of foreign religious entities, see Durham & Homer, *supra* note 188, at 190-95.

289. See THE NEW LAW, *supra* note 4, at art. 12(2).

given to the applicant.²⁹⁰ Most importantly, it gives religious organizations a right to appeal the denial or the agency's failure to make a decision within the established time (*uklonenie*) in court.²⁹¹ This is the only explicit conferral of the right to sue to religious organizations in the entire body of the new law.²⁹²

Article 12 sets out a list of five grounds that agencies may use to deny registration.²⁹³ Three of them focus on the mechanics of the application.²⁹⁴ The two remaining grounds are more problematic. Article 12(1) allows an agency to deny registration if it finds that the submitted charter contravenes constitutional or other federal norms.²⁹⁵ The registration officers have broad discretion to scrutinize the charter for such flaws.²⁹⁶ However, the agency must then provide specific references to the allegedly violated constitutional or legislative provisions.²⁹⁷ This thoughtful requirement will help to contain potential abuse and give applicants a chance to reform their charter or even to submit a particular issue to court for review. The liberal inclinations of the law cease at this point.

Most troubling, denials of registration will likely occur due to non-recognition of applicants as *religious* organizations. Conspicuously absent from the text of the law is any method to determine whether an organization qualifies as *religious* and any information about the person authorized to make this decision. What if a liberal minded official in Yakutsk thinks that Hare Krishna is a religion and one in Tver views it as a totalitarian non-religious sect? Russia does face a serious problem of sham religions and dangerous sects, but this problem does not justify the denial of registration to a legitimate group under the pretext that it is not a religion. The disproportionality of this protective measure is even more obvious because the State can protect itself through the law's liquidation mechanism, which is based on

290. *See id.*

291. *See id.*

292. Other avenues of judicial redress may be available through incorporation of constitutional human rights principles and their direct applicability. *See infra* Part VA.

293. *See THE NEW LAW, supra* note 4, at art. 12(1).

294. Such mechanical grounds occur when another organization with the same name already exists, the information in the charter is incorrect, or the founders lack legal rights (usually age and citizenship). Importantly, the agency may summarily reject an application without reviewing it if the information provided is incomplete. There are potential problems with this provision as seen in the recent case in the city of Reuty. *See Ivaneko, infra* note 347, at 16.

295. *THE NEW LAW, supra* note 4, at art. 12(1).

296. *See id.* at art. 11(8) (enabling the administrative bodies to conduct up to a six months discovery, *ekspertiza*).

297. *See id.* at art. 12(2).

actual conduct of religious communities.²⁹⁸ It is unfortunate that Russia will follow the European practice of prejudging beliefs rather than the U.S. precedent. This ground for non-registration can become a potent tool for administrative tyranny and discrimination against new or minority beliefs.

Article 12 is deceptive in that it seems to imply that the above mentioned grounds for non-registration are exclusive. A careful reading, however, suggests that all the liquidation grounds in Article 14 are applicable by reference. Article 27(3) specifically prohibits re-registration if the agency "has reasons to believe" that an organization is subject to liquidation under Article 14(2).²⁹⁹ Article 27 re-registration requirement is extremely important because it mandates re-registration of all currently registered religious organizations.³⁰⁰ In practice, all existing organizations that intend to continue to operate as such, risk being denied registration or liquidation by judicial means when they apply for re-registration.

vii. Grounds for Liquidation

Article 14 contains a long list of grounds for liquidation if an organization's activities constitute a menace to society. This article can be activated by the procurator or the registration agency.³⁰¹ It can also be invoked at time the agency determines that an organization does not comply with its charter, or meets other grounds for liquidation.³⁰² Furthermore, local governing organs (*organy mestnogo samoupravlenia*) have standing to bring liquidation and banning actions against religious organizations and groups.³⁰³ Once disbanded, an organization loses its juristic personality, and its property is distributed in accordance with its charter.³⁰⁴

There are twelve paragraphs in Article 14(2) defining the grounds for banning groups and liquidating organizations.³⁰⁵ These expansive grounds invite active administrative

298. See *infra* Part IVD4(vii).

299. See THE NEW LAW, *supra* note 4, at art. 27(3) para. 2.

300. See *id.* at art. 27(4).

301. See *id.* at art. 14(2).

302. See *id.* at art. 14(1) para. 1. See also art. 25(2) (enabling the registration agencies to monitor an organ to monitor compliance with its charter).

303. See *id.* at art. 14 (3, 5). Observers often noted how local officers "can stage a veritable religious slaughter" with the use of such vague provisions. See, e.g., Bourdeaux, *supra* note 12, at 119.

304. If an organization's charter does not specify how to proceed in this case, general civil legislation determines the distribution of property. See THE NEW LAW, *supra* note 4, at art. 14(4).

305. See *id.* at art. 14(2).

enforcement. The State would not have to try very hard to ban or liquidate an objectionable organization or group under one of these provisions. For example, the Church of Scientology is almost certainly subject to liquidation because it uses "psychotropic" devices. Some Amish-type communities are definitely illegal because they prevent their children from getting primary education and they provoke citizens to abstain from carrying out legally established civic duties. Furthermore, if one adopts Patriarch Alexii's thesis that any missionary activity is by definition coercive and detrimental to individual liberty, all evangelical organizations will be in danger of liquidation as "inflicting coercion upon an individual or interfering with civil rights and liberties."³⁰⁶

These numerous reasons for liquidation clearly exceed the narrow bases upon which a state can limit religious liberties.³⁰⁷ Even if originally intended as a clarification of broad constitutional norms,³⁰⁸ rather than new substantive rules enabling the state to close down organizations and curtail religious practices, this departure from the Constitutional text is unfortunate because it creates additional ambiguities and lays a deeper foundation for abuse by law enforcing organs.

viii. Distinctions Between the Rights of Organizations as a Result of Meeting the Fifteen Year Existence Requirement

Once a religious association passes the mandatory re-registration under the new law, it becomes an organization and acquires broad rights as a juristic person.³⁰⁹ In contrast to the Soviet period, during which religious organizations were

306. *Id.* at art. 14(2), para 6. This scenario is particularly likely if the Patriarchate has as much influence over application and interpretation of the law as it had over its enactment.

307. Compare with KONST. RF., *supra* note 10, at art. 55(3); Covenant, *supra* note 100, at art. 18(3); Convention, *supra* note 101, at art. 9(2).

308. In contrast to the common law tradition in the United States in which courts, especially the Supreme Court, define the parameters of the First Amendment as it pertains to religion, see generally Witte, *supra* note 15, at 403-31, Russia is a civil law country. Expansive legislation and administrative decrees are the hallmarks of this system. So, it was natural that laws would elaborate on broad constitutional principles of religious liberty. However, such broad, careless language in the special statute on religion is unfortunate and is likely to significantly restrict the freedom of religion espoused in the Constitution. For a discussion of differences between civil law, socialist, and common law traditions and their effect on the judiciary's ability to protect individual rights, see Robert F. Utter and David C. Lundsgaard, *Comparative Aspects of Judicial Review: Issues Facing the New European States*, 77 JUDICATURE 240, 240-44 (1994).

309. See THE NEW LAW, *supra* note 4, at chapter III, arts. 15-24 (powers and obligations of religious organizations).

powerless, Articles 15-23 of the Law explicitly authorize such organizations to perform an array of functions. However, even though all newly-reregistered organizations become juristic persons, the religious communities which cannot prove their fifteen-year existence in the given area or fail to present a certificate from a centralized religious organization of the same denomination do not enjoy the rights accorded to traditional churches.³¹⁰ Instead, they are placed on a mandatory probation period during which they have to re-register every year, although they eventually may be eligible to receive equal treatment.³¹¹ This dichotomy between organizations with full rights and those with limited powers blatantly defies constitutional and international norms.

The prerogatives of organizations with full rights are on par with international standards. Article 15 allows religious organizations to operate according to their own bylaws as long as they are consistent with their registered charters and do not contravene federal legislation.³¹² Religious organizations are free to conduct any type of rites on their properties.³¹³ They also have an unrestricted access to cemeteries and pilgrimage sites.³¹⁴ They may conduct services in hospitals, elderly care centers, orphanages, and even prisons, at the inmates' requests.³¹⁵ In order to conduct public services in other places, they need only to go through the same permit process as secular groups.³¹⁶

Article 17 gives religious organizations a right to produce, purchase, export, import, and disseminate religious literature and audio-visual materials for religious purposes.³¹⁷ Also, religious organizations have a monopoly on producing prayer books

310. See THE NEW LAW, *supra* note 4, at art. 27(3), para. 2 (probation period); art. 27(4) (mandatory re-registration of all organizations legally existing prior to the new law).

311. *Id.* According to the final version of the law, organizations on a probation period will be eligible to receive full rights after presenting a certificate of the fifteen-year existence in that territory. Most likely, the years of existence prior to 1997 will be taken into account. Thus, the Mormon Church, which has operated since 1991, will be on a probation period only until 2006, as opposed to 2112 if calculated starting in 1997. This means that Mormons will have to go through nine mandatory yearly re-registrations, with all perils and inconvenience that they entail.

312. See *id.* at art. 15(1). The state "respects" such internal bylaws if they are not at odds with Russian federal legislation. See *id.* at art. 15(2).

313. See *id.* at art. 16 (1-2). Property ownership by religious organizations is a hallmark of post-Soviet legislation on churches.

314. See *id.* at art. 16(2).

315. See *id.* at art. 16(3).

316. See *id.* at art. 16(5). The other rights of religious organizations also could have been easily taken care of by general civil legislation. See *supra* note 162.

317. See *id.* at art. 17(1).

(*bogoslužebnaya literatura*) and ritual objects.³¹⁸ In order to counteract alleged fraud and manipulation by certain religious communities, an organization that produces such items must mark its full name on the objects.³¹⁹

Article 18 is particularly important because it allows religious organizations to engage in charitable activities either directly or through special foundations.³²⁰ In order to realize the goals specified in its charter, an organization may establish religious schools, cultural centers, and mass media corporations.³²¹ The government pledges to support charitable religious organizations, including significant cultural and educational programs.³²² This last provision gives an advantage to traditional religions, especially the Orthodox Church, because Russian political culture views the Orthodox revival as a significant cultural event.

Article 19 redeems the structural weakness of religious organizations by giving them an exclusive right to set up institutions for professional religious training.³²³ Such schools receive state licenses upon registration.³²⁴

Article 20 permits organizations to maintain contacts with foreign religious communities, and gives them an exclusive right to invite foreign citizens to engage in professional religious activities such as preaching.³²⁵ This is a significant provision because now foreign missionaries will have to get invitations from religious organizations, rather than from individual citizens or foreign representatives, in order to enter Russia for the purposes of proselytizing or engaging in other religious activities.

Article 21 restores property rights to religious organizations, a feature they have been legally deprived of since the age of Catherine II.³²⁶ Religious organizations can own personal and real property, including historical monuments, manufacturing and charitable establishments, and establish bank accounts.³²⁷ Importantly, the state transfers back property, nationalized

318. See *id.* at art. 17(2).

319. See *id.* at art. 17(2).

320. See *id.* at art. 18(1).

321. See *id.* at art. 18(1-2).

322. See *id.* at art. 18(3).

323. See *id.* at art. 19(1). On the acute need for professional religious teaching, see *supra* note 116.

324. See *id.* at art. 19(2).

325. See *id.* at art. 20(2).

326. See *supra* note 44.

327. See *id.* at art. 21(1). Religious organizations also have a right to own property earned through their own activities, donated by citizens, transferred by the state, or acquired in any other legal manner.

during the Soviet regime, free of charge.³²⁸ Naturally, the Orthodox Church will remain the greatest beneficiary of this policy. The law also provides for some tax and creditor exemptions to religious organizations.³²⁹

The gap between organizations with full rights and those on a probation period is enormous.³³⁰ First of all, the latter congregates are explicitly denied civil equality before the law, which amounts to a gross deviation from Article 14.³³¹ They cannot create private religious education institutions or arrange for religious education of children on public school premises in the after-hours.³³² Aside from violating constitutional and international norms, this reservation gives traditional religions a tremendous advantage in one of the most crucial areas in which they sought control.³³³ This provision forces theological instruction by non-traditional religions back underground.

The organizations with limited rights cannot set up representative offices of foreign religious organizations.³³⁴ They also cannot invite foreign citizens to act as priests and in other professional religious capacities.³³⁵ This is a significant limitation because many new religions in Russia have extensive foreign contacts.

The public profile of new religions will also be diminished. For example, they will not be allowed to conduct services in public

328. See *id.* at art. 21(3). Restitution is atypical in church-state relations in post-communist states. The state responds to a moral obligation to expiate for its former hostility to religion. See Tamás Földesi, *Religious Human Rights in Eastern Europe*, 10 EMORY INT'L L. REV. 127, 133-36 (1996) (gratuitous transfer of property is a precondition for free exercise of religion).

329. See *id.* at art. 21(5).

330. See a list of rights denied to organizations that fail to prove their fifteen-year existence in Article 27(3) paragraph 4. Currently, organizations on a probation period do not enjoy the rights in Articles 3(4), 5(3-4), 13(5), 16(3), 17(1-2), 18(2) (as relates only to education and mass media), 19, 20(2).

331. See *supra* notes 142-43.

332. Religious organizations with full rights have such powers. See THE NEW LAW, *supra* note 4, at art. 5(3-4), 27(3), para. 4.

333. The Patriarchate claimed anarchy and inequality (i.e., no Orthodox monopoly) in religious education. Generally, Alexii II complained that foreign religions:

resort to methods of zombiing and hypnosis. They resort to psychotropic means. Thereby the personality is suppressed. Capitalizing on our difficulties they buy the souls of Russian people by handing our free literature and invitations to travel abroad. They are vigorously infiltrating educational establishments.

Interview with Patriarch Alexy II, OFFICIAL KREMLIN INT'L NEWS BROADCAST, at 1, available in LEXIS, News Library, Int'l File. The Patriarch also said that it cannot compete with media evangelists because it must allocate financial resources into restoring churches.

334. See THE NEW LAW, *supra* note 4, at art. 27(3) para. 4.

335. See *id.*

institutions such as hospitals and prisons.³³⁶ This rule compromises both the individual freedom of conscience of people in such institutions and the principle of proportionality for restrictions on the manifestation of religion. The arbitrariness of this limitation is best demonstrated in the context of Pentecostals. Some Pentecostal communities belonged to the dissident wing of the Protestant movement (C.C.E.C.B.) and consciously refused to register with the Soviet authorities.³³⁷ These communities will have the same difficulties proving their fifteen-year existence as the Hare Krishna described in the earlier hypothetical. They will be placed on probation only because of their courage in defying the Soviet regime in the past, whereas the members of the same religious faith who cooperated with communists will enjoy full rights as a time-tested organization that does not pose a threat to society.

The traditional religions will also have a monopoly on publishing, importing, and distributing religious literature to the detriment of the limited power organizations.³³⁸ The restriction undermines constitutionally guaranteed freedom of religion and expression. The Orthodox Church clamored for such limitations because it felt truly threatened by an influx of Protestant literature.³³⁹ But there was also a legitimate need for some regulation of the mass media against excessive usage by destructive cults such as Aum Senrikyo. As some Russian observers have suggested, general civil legislation would have been the best way to achieve such legitimate purposes without violating constitutional guarantees that are inherent in a flat denial of rights to some religious organizations based on the arbitrary length of existence requirement.³⁴⁰

Allowing new religious communities to conduct charitable activities was probably the most important concession in the final version of the bill.³⁴¹ However, to protect traditional faiths from

336. *See id.*

337. *See STEEVES, supra* note 18, at 144-45.

338. Rights in Article 17(1-2) are denied to non-traditional religions. This is a gross violation of the freedom of expression. *See generally De Burght Report, supra* note 6, at 33. The provision imposes broad prohibitions not only on objects used during worship, but also on all kinds of religious materials in printed or audio-visual form. For example, the Mormons in the hypothetical above would no longer be able to pass brochures introducing their beliefs. This policy is consonant with the Patriarch's demands. *See supra* note 333.

339. *See supra* note 158.

340. *See supra* note 177.

341. The missionaries' resources were always a threat to traditional religions. The Patriarch complained that the missionaries use humanitarian aid as a lure for spiritually naive Russians. *See supra* note 333. However, the foreign denominations provided much needed humanitarian aid to Russians who felt the stress of adjusting to a new socio-economic system. *See Andrei Zolotov, Duma Passes Harsher Religion Bill,*

competing with the new ones, usually backed by rich foreign sponsors, the law still prohibits organizations with limited rights from establishing cultural and religious education facilities, and from establishing their own mass media sources.³⁴² The new religions are also deprived of the right to create their own institutions of professional religious training.³⁴³ This provision is reminiscent of Soviet methods of battling religion.³⁴⁴ Along with the prohibition on inviting foreign religious professionals as preachers,³⁴⁵ this restriction casts a shadow on the prospects of survival for the new denominations in Russia. Overall, the restraints on the rights of certain religious organizations interfere with individual liberty to profess the religion of one's choice, and contravene basic international religious human rights principles because they act as barriers to one's equal access to all religions.

V. PROSPECTIVE APPLICATION OF THE LAW AND THE WAYS TO CHALLENGE VIOLATIONS OF CONSTITUTIONAL AND INTERNATIONAL NORMS ON FREEDOM OF RELIGION

As noted above, the current political and social climate as well as traditional moral theory and historical inclinations militate for strict enforcement of the 1997 law despite numerous high-level assurances³⁴⁶ to the contrary. Recently reported incidents

MOSCOW NEWS, June 24, 1997, at 1, available in LEXIS, News Library, Indep. Press File, no. 1234. For example, the missionaries cared for the homeless and the greatly impoverished elderly, new phenomena in post-Soviet society. For a commentary on the June version of the law deploring the prohibition to engage in charity work,

342. Rights contained in Article 18(2) are denied.

343. See THE NEW LAW, *supra* note 4, at art. 37(2) para. 4 (denying professional training rights in Article 19).

344. See *supra* Part IIA(3).

345. These are the prerogatives under Article 20(2). Now, religious organizations with full rights have a monopoly on inviting clerics to engage in professional conduct. Private individuals may still invite religious professionals as long as they abstain from religious activities. *Id.*

346. For example, the White House had assurances "from the highest level of the Russian government that Russia will continue to respect the rights of religious minorities and to honor its international commitments to religious freedom." See *Yeltsin Signs Controversial Religion Law*, *supra* note 7. Moreover, pursuant to the Smith Amendment adopted by the US Congress, monetary aid to Russia depends on "nondiscriminatory implementation" of the law. For a discussion of applicability of this Amendment, see Durham and Homer, *supra* note 188, at 237-39. However, democratic and international legality concerns will have to be balanced against the interest in enforcing the new law "[to ensure] the rights of majority of believers and [to protect] society from totalitarian sects." See Stammer, *supra* note 274, at 14A. Thus, despite state assurances, Russian leaders will not be able to wholeheartedly honor them.

of intolerance, non-registration, and violence in various regions³⁴⁷ confirm the worst fears about the effect of the law.

In general, there are two major flaws in the legislation that are likely to foster undemocratic developments: textual violations of constitutional/international norms on freedom of religion and broad powers conferred upon administrative agencies during the process of re-registration and liquidation. In the short term, courts can ameliorate these problems. However, a comprehensive solution must involve changing societal attitudes towards religious rights.

A. *Judicial Recourse*

The analysis of the text of the law in the previous sections revealed numerous conflicts with constitutional and international norms as well as internal contradictions among various

347. See, e.g., Alexey Maliutin, *Noginsk: Svoboda Sovesti Posle 19 Sentiabria* [Noginsk: Freedom of Conscience After September 19th] MOSCOW NEWS, Oct. 12, 1997 (describing a violent raid and the closing down of a sectarian Orthodox monastery after a local court awarded the building which it occupied to the Moscow Patriarchate; noting that the spirit of the new law endorses such radical treatment of dissident sects); Phil Reeves, *Dispatches: The Night Religious Persecution Returns to Russia*, THE INDEPENDENT (London), Oct. 15, 1997, at 13, available in LEXIS News Library, Int'l File (describing the same raid and quoting Dr. Uzzell of the Keston Institute: In Russia laws are often taken as signals rather than as a precise instruction. This law was a signal that it is [an] open season when it comes to religious minorities." Fr. Adrian, a priest of the Free Orthodox Church also predicted: "We are the first victims, there will be more").

Other disturbing developments were reported from various Russian regions. For example, in municipal election in the Tumen' region, one candidate alerted the authorities that his contestant was a Pentecostal and asserted that such religious affiliation prevented her from running. It also blackened her reputation as a judge. See Sergey Ivanenko, *Svoi Zakon* [One's Own Law], MOSCOW NEWS, Nov. 30, 1997, at 16.

The actual, highly reactionary application of the law occurred in the city of Reuty (Moscow region). See *id.* The Pentecostal community applied for re-registration and the agency summarily rejected it because the applicants failed to submit a certificate of the fifteen-year existence and therefore, their application was incomplete. The law gives agencies the power to reject the application automatically if it lacks any necessary documentation. See THE NEW LAW, *supra* note 4, at art. 11(9). A certificate of the fifteen-year existence is part of the registration application under Article 11(5). So the agency had legal authority to act as it did. However, such interpretation of the law would make annual re-registration under Article 27(3) for organizations on a probation period absolutely impossible. It prevents the implementation of a scheme designed by law drafters, one that creates two separate classes of organizations, one with full and the other with diminished rights. In the Reuty situation, the community can possibly sue the agency under Article 12(2), for failing to make a substantive decision on registration. See *supra* Part IVD(4)(v-viii), *passim*.

provisions.³⁴⁸ The most conspicuous constitutional problems are as follows:

1. Differentiation between the rights of religious organizations based on meeting the fifteen-year existence requirement, and effective denial of basic religious and freedom of expression rights as a result of this distinction.³⁴⁹ Also, retroactive imposition of the heightened registration requirements contradicts Article 54 of the Constitution, as the Head of the Department for Registration of Religious Associations has acknowledged.³⁵⁰

2. Inequality among individual believers manifested in classifications such as: citizens or foreigners, members of religious groups or members of religious organizations, members of religious organizations with full rights or members of religious organizations with limited rights.³⁵¹

3. Severe limits on freedom of religion as defined in the Constitution accomplished through a complex registration process with low administrative accountability.³⁵²

4. Expanded grounds for liquidation of religious organizations and groups that undermine democratic prerequisites of compelling justification and proportionality of any curtailment of religious rights.³⁵³

5. Erosion of the separation between church and state through ubiquitous state supervision over organizations' compliance with the purposes set out in

348. For example, Article 3(1) grants equal religious rights to foreign citizens, but Article 7(1) does not permit them to form religious groups, and representative offices of foreign religions under Article 13(2) are not religious associations at all and can not engage in religious activity. See generally Soldatov, *supra* note 179, at 16.

349. See *supra* Part IVD(4)(viii).

350. See G.A. KRYLOVA, SVOBODA SOVESTI NA VESAX PRAVOSUDIJA, 231 (1998) [Freedom of Conscience on the Scales of Justice] (citing A. Kudriavzev for the proposition that if the Ministry refuses to re-register a formerly registered organization under the new law, such result would be inconsistent with Article 54 of the Russian Constitution that provides for non-retroactivity of laws establishing or increasing responsibility. He also predicted that the Constitutional Court would definitely find such arrangement unconstitutional if the matter is ever presented to it.)

351. See *supra* Part IVD, *passim*.

352. See *supra* Part IVD(4) (v-vi).

353. See *supra* Part IVD(vii).

their charters and strict reporting requirements regarding internal changes.³⁵⁴

6. General unjustifiability of numerous categories and limitations in the law.

In addition to the above mentioned problems, the following major deviations from international principles of religious human rights are apparent:³⁵⁵

1. The same heightened level of regulation of individual's personal beliefs and practices.³⁵⁶

2. Automatic discrimination against religious organizations which can not prove their fifteen-year existence clashes with a "presumption of innocence" until the actual conduct of a religious organization rebuts that presumption.³⁵⁷

There are several opportunities to challenge the new law in courts. Several religious communities have already expressed their willingness to pursue this option.³⁵⁸ Individual citizens and religious groups may seek a writ from the Russian Constitutional Court³⁵⁹ raising constitutional and international law questions.

354. See *supra* Part IVD(4)(v-viii) *passim*. The most ominous provision in the New Law is article 25(1-2) (on monitoring and control of compliance with the law).

355. The difficulties mentioned in 1-6 above also violate international norms, but these concerns are peculiar to measuring the new law against international standards not necessarily reflected in the Russian Constitution or the Russian Declaration of Human Rights.

356. See *supra* Part IV(D)(3).

357. See *supra* Part IV(D)(4)(viii) (compare with the international standards, see *supra* Part III(A)).

358. See, e.g., *Battling Over Russian Souls*, MACLEAN'S Oct. 20, 1997, at 36, available in LEXIS, News Library, Int'l File (stating that Mormons intend to challenge the law in Constitutional Court because they wish to continue their missionary activity). Although there is no direct ban on missionary work, bans on invitation of foreign religious professionals, distribution of religious literature, and the establishment of educational centers by organizations with diminished rights seriously limit proselytizing. See Ilya Medovoi, *Svoboda Sovesti Po Ranzhiru* [Freedom of Conscience on a Scale] KULTURA, Sept. 29, 1997 at 1 (Baptists would like to lodge constitutional complaints); Zaks, *supra* note 5, at 1 ("[l]eaders of the so-called non-traditional churches, including Catholics and Protestants . . . plan to challenge the law in the Constitutional Court"). In 1996, the Constitutional Court declined to review the petition submitted by Duma members to review the reactionary local religious laws. The Court determined that there was an insufficient number of deputies presenting the petition. See Krylova, *supra* note 350, at 22.

359. On procedures of the Constitutional Court, see Hausmaninger, *supra* note 173, at 375-77; Korkeakivi, *supra* note 10, at 239, 245-46. Article 125(4) of the 1993 Constitution expressly authorizes human rights complaints. The 1994 law on Constitutional Court further clarifies the right of individuals and organizations to lodge complaints concerning violations of constitutional rights and freedoms.

This method may have sweeping consequences because judicial review by the Constitutional Court is the only way to invalidate the 1997 law, aside from resorting to the political process. Although a human rights challenge is very strong on its merits, it is highly unlikely that the Constitutional Court, populated by Yeltsin's protégés,³⁶⁰ will review the claim³⁶¹ and support a counter-majoritarian³⁶² cause at the risk of further compromising its already low public stature.³⁶³

The law gives religious organizations an opportunity to appeal non-registration in local courts.³⁶⁴ In addition to these specific claims, individuals and organizations can allege constitutional violations in local courts because, for the first time in Russian history, the 1993 Constitution makes human rights guarantees directly applicable and enforceable in the courts.³⁶⁵ Such challenges will probably implicate freedom of expression and manifestation of religious beliefs. In these cases, judges should pay close attention to the text of constitutional provisions and use

360. See Hausmaninger, *supra* note 173, at 368-70, 378-81, 382 (describing the process of appointing Justices in 1993 and noting that the present Court would be very responsive to Yeltsin's political needs). Also, of the present Justices, only Tamara Morshchakova consistently adhered to a vision that the constitutional Court should be the chief proponent of human rights. See *id.* at 354-55 & n.42.

361. As is true of its American counterpart, the Russian Constitutional Court has broad discretion to deny judicial review. See *id.* at 361. Also, this institution is also paralyzed by its own cumbersome procedures. For example, the previous Court issued only seventeen decisions in its two years of operation. *Id.* It is unlikely that the present Court will be any more efficient. See *id.* at 384. Thus, it is highly improbable that the Constitutional Court will actually get to review religious challenges.

362. The Constitutional Court is a wholly new experiment in Russia since 1991. The Court must still define its proper role in the political process and imprint it on the national consciousness. Chief Justice Zorkin's flamboyant style did not enhance the prestige of this institution in the long run. See *id.* at 363, 386. Currently, the Court has the lowest stature of all the three branches and it is very cautious about making correct political alliances following Zorkin's fiasco in 1993 when he supported the outgoing Parliament. The President is the most powerful figure in Russian politics and the Court is likely to follow the President's lead. See Willerton & Shulus, *supra* note 173. Because the current version of the bill was prepared by the President's staff, the Court will hesitate to overturn or limit it. See also *supra* note 77.

363. The new law is a "social hot potato" because of the diametrically opposed concerns in one of the most sensitive areas—religion. The Court will have to balance pluralistic constitutional principles with an overpowering tradition of religious consolidation and intolerance. Moreover, the Russian tradition of autocracy makes independent, counter-majoritarian stands extremely unpopular. Thus, taking the side of minorities on this issue may result in temporary institutional suicide. However, in the long run, it may define the Court as a truly independent and liberal institution.

364. See THE NEW LAW, *supra* note 4, at art. 12(2).

365. See KONST. RF, *supra* note 10, at arts.18, 15(1); Korkeakivi, *supra* note 10, at 239. These provisions present a sharp contrast to the Soviet period during which the Constitution was merely an ideological document and its guarantees were unenforceable. See LAWYERS' COMMITTEE FOR HUMAN RIGHTS, *supra* note 139, at 5.

international norms on religious rights at least as persuasive, if not binding, authority.³⁶⁶

Another important arena for human rights actions is the judicial review of administrative actions in order to combat draconian application of the law by state agencies.³⁶⁷ In reviewing such complaints, judges should focus on proportionality and justifiability of administrative actions vis-à-vis religious associations and their members, especially if the plaintiff is affiliated with a new or minority religion. Realistically, local courts will probably hesitate to take up the organizational dichotomy scheme enunciated by the law as the basis for a constitutional challenge because they are still adjusting to their new institutional independence.³⁶⁸ However, more specialized complaints based on specific fact patterns may serve as an impetus to the judiciary's activism even though the judiciary has been reluctant to serve as a constitutional watchdog in the past.³⁶⁹ Importantly, Russia now has very competent legal professionals, like Galina Krylova³⁷⁰ and Jacov Krotov, who have

366. See *supra* Part IVD(2) for a discussion of dilemma on the status of international legal norms. Basically, the Constitution incorporates them in domestic law. However, the present law on religion treats them as persuasive authority for interpreting the scope of provisions of this legislation. See THE NEW LAW, *supra* note 4, at art. 2(3).

367. See KONST. RF., *supra* note 10, at art. 46(2); Korkeakivi, *supra* note 10, at 242.

368. The courts will have to frame constitutional issues for the Constitutional Court to obtain invalidation of the whole structure of the new law. See *supra* note 359. In the past, scholars noted such institutional problems with the courts. See, e.g., Sergey Pozhivilko, *Spots on the Robe: What is Happening in the "Third Kingdom?"* 35 RUSS. POL. & L. 82, 88-89 (1997) (exposing the instances of judicial arbitrariness and local cliques with the political elite). Article 121 of the 1993 Constitution aims to make judges more independent by prohibiting removal. KONST. RF, at art. 121(1). Yet, even if judges are able to claim *de jure* institutional independence, many judges are still a part of the *nomenklatura*, a Soviet-built establishment, and they are unable to sever personal ties to it.

369. Historically, judicial independence is problematic in Russia because it combines two traditions, civil law and socialist, which relegate judges to servants of the other branches and blind enforcers of legal norms. See Utter & Lundsgaard, *supra* note 308, at 240-43. Russian judges are wholly untrained for and unfamiliar with the practice of reviewing statutes for constitutional violations.

370. Galina Krylova has just published a book about her court experiences in defending the so called-cults. See *supra* note 350. This book is a unique contribution to the advancement of human rights in general and religious rights in particular by legal professionals. The author delineates several court cases arising in various Russian regions under the old, more liberal law. *Id.* at 21-33. In most of these cases, the courts found for those who attempted to restrict the activity of non-traditional religious groups. *Id.* The author offers an insightful commentary on procedural aspects, such as admissibility of expert and lay evidence, that make it difficult for the proponents of religious freedom to prevail. *Id.* at 69-202. Krylova also analyzes the issue from a global human rights perspective and highlights psychological and

dedicated their expertise to defend democratic freedom of conscience norms and to counteract the mass hysteria generated by popular anti-cultists, such as A. Dvorkin, that has found its way into the judicial system.³⁷¹

The last innovative path for judicial recourse are international legal channels. The right to appeal to international bodies is confirmed by Article 46(3) of the Russian Constitution. Currently, individuals may file complaints with the U.N. Human Rights Committee or the European Court of Human Rights. The latter is particularly promising because Russia undertook firm human rights obligations upon becoming a member of the Council of Europe in 1996, and has a high political stake in complying with basic conditions of accession to this organization.³⁷² It is hard to predict whether the European Court of Human Rights would be willing to resolve the issues presented by Russian plaintiffs. Since one of the Council's primary functions is to promote human rights in its member states, and Russia has a checkered record in this area, the Court of Human Rights may elect to address the issue. On the other hand, history reveals that the Court was only a reluctant champion of the rights of minority religions.³⁷³ In any event, the Court of Human Rights is likely to be more receptive to a claim that focuses on a specific, arbitrary denial of essential religious rights to some organizations under Article 27(3), instead of invalidating the general endorsement of traditional religions and the Orthodoxy.

B. *Reforming Public Conception of Law and Religious Human Rights*

Aside from facial constitutional violations, the broad discretion accorded to the registration agencies is the most objectionable feature of the new legislation.³⁷⁴ In the short term, this problem should be addressed by the Ministry of Justice who should promulgate standardized definitions of such critical terms as "existence," "religious," and "creed" as well as provide guidelines regarding the individuals authorized to make the final decisions on these issues.³⁷⁵

financial determinants that make the religious witch hunt a popular activity. *Id.* at 17-21, 38-44, 50-54.

371. *Id.* at 17-21, 38-44, 50-54.

372. See Shestakov, *supra* note 101, at 69 (discussing the repercussions of failing to implement and enforce human rights obligations in the European Convention since Russia became a member of the Council of Europe).

373. See generally Gunn, *supra* note 109.

374. See *supra* note Part IVD(4).

375. These words appear in Article 6(1) in the definition of religious associations.

In the long run, reforming societal outlooks is the most daunting challenge that Russia faces as it tries to become a democratic state. As discussed above, both Russian people and institutions historically gravitate toward political autocracy, ethnic intolerance, and a single established religion or predominant ideology.³⁷⁶ History and traditional moral theory are compelling forces that still shape Russian politics and society even if on a subconscious level.³⁷⁷ This legacy will aggravate normative deviations from constitutional and international religious human rights principles because bureaucrats responsible for implementing the new religious regime are conditioned by Russia's past.

However, there are also nascent signs of cultural and democratic structural changes in Russia. First of all, the Russian Constitution endorses domestic human rights legislation that matches liberal international standards.³⁷⁸ The country also has a high political stake in keeping its international obligations. In making Russia abide by international agreements, the world community should emphasize Russia's sovereign interest in *choosing* such behavior as opposed to forcefully antagonizing and threatening Russian leaders as it did during the enactment of the present law. The latter technique plays squarely into the hands of reactionaries and nationalists.³⁷⁹ For the future, funding of international observers who will monitor the application of the new law and participate in public life as influential interest groups is a better, less intrusive approach.³⁸⁰

376. See *supra* Part II(B).

377. *Id.*

378. See *supra* Part III(D)(2).

379. See *supra* note 8.

380. For example, following the enactment of the new law, human rights activists began to document its application on the local level. See Nickles, *supra* note 154, at 67. In the first ten days after the law's promulgation, the Center for Religion and Law received five reports from various regions about Orthodox priests attempting to close down Protestant religious establishments, and denying them access to public places, such as a local House of Culture where a group of Pentecostals traditionally held its gatherings. *Id.* According to E. Smyslova, an expert with the Russian Institute of Religion and Law, the Ministry of Foreign Affairs entered into an agreement with the Patriarchate to protect Russians from "spiritual aggression" by foreigners. See *id.* There are widespread fears that foreign missionaries, especially from the Church of Scientology, may be spies. See *supra* note 148. Smislova also indicated that the Ministry of Public Health issued a circular to related agencies inviting them to monitor the effects of sects on the physical and mental health of Russians, and to establish "mental correction centers" for victims of religious zombing. See Nickles, *supra* note 154, at 67. The latter measure appears particularly ominous in light of the Soviet experience with *psikhushki*. See *supra* note 61. Apparently, the highest Russian officials bought into the myth of the psychological destructiveness of non-traditional religions. For instance, Moscow Mayor, Y. Luzhkov directed municipal health

Since the late 1980s, Russia also engaged in numerous institutional reforms making the judicial, law enforcement, and administrative systems more sensitive to human rights concerns.³⁸¹ Recently, even the most repressive institution—the Procuracy—prided itself on successfully pleading on behalf of civil and political human rights.³⁸² The Human Rights

authorities to establish special services for citizens harmed by cults staffed by medical professionals, psychologists, and Orthodox priests. See Nickles, *supra* note 154, at 67.

In the final stages of preparing this Note, the author had a fortunate opportunity to meet and work with one of the leading Russian human rights activists, Dr. Larisa Skuratovskaya. In remarking about the law, Dr. Skuratovskaya emphasized the importance of monitoring its application to combat gross abuses. She also noted that the law can be considered the testing ground for Russian liberalism. This was the first time that Russian public and human rights activists actively participated in the process leading to the enactment of the law. Even though this time, Dr. Skuratovskaya and her colleagues were not able to stop the momentum of the “witchhunt,” their active international and domestic campaign, as well as continued commentaries and monitoring efforts, represent a change in Russian society. Dr. Skuratovskaya was also very optimistic about cooperating with human rights activists and scholars in the West. For instance, she said that e-mail communications permitted the opponents of the new law to quickly relay all the information to their colleagues around the world, to organize a world-wide campaign, and to solicit international analysis of measures taken by the Russian government. Finally, Dr. Skuratovskaya praised human rights education seminars held at Columbia University and the European Court of Human Rights to introduce specialists from Russia and the former Eastern bloc countries to the substance and practice of such international rights. Dr. Skuratovskaya expressed her hope for a gradual change in Russian perceptions as a result of such cross-cultural interactions, but she was also realistic about Russia’s need to create its own paradigms consistent with international standards, taking into account Russia’s unique cultural identity.

381. See generally LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 139, at 90-115 (examining the reforms in the Ministry of Justice, the State Legal Department, the Ministry of Internal Affairs, the Procuracy, the Russian Bar Association and various NGOs).

382. See A. Churilov, *Prokurorskiy Nadzor za Sobludeniem Prav I Svobod Grazhdan* [The Procuracy’s Monitoring of Adherence to Civil Rights and Liberties], 8 ZAKONNOST’ 8, 8-9 (1997) (discussing the Procuracy’s involvement in ensuring fair regional procedures in various civil rights matters). However, in the recent freedom of conscience case of *City Prosecutor v. CARP* (Collegiate Organization for Research of the Principle), the Prosecutor sought to revoke education rights from this Unification Church affiliate organization for students based on allegations of zombing and undermining families. Report forwarded by Galina Krylova (on file with author). This case was filed by anti-cult activists in 1995 in St. Petersburg City Court and sought \$6 million in damages for brainwashing and destroying Russia’s genetic fund. *Id.* at 1-2. The Prosecutor and the Justice Department attempted to join the process to liquidate CARP in 1996, but under the old laws the suit was not pursued because the discovery process did not reveal any evidence on the basis of which the group could be liquidated. *Id.* at 2-3. The Prosecutor reinstated his charges under the 1997 law when the youth group applied for re-registration. *Id.* at 4. The hearing that took place in September 1998 highlighted the gross inadequacies of judicial process in Russian courts. *Id.* at 7-19. The judge repeatedly demonstrated her anti-CARP bias, and ultimately re-scheduled the trial when the Prosecutor was unable to prove the case. *Id.* The admissibility of evidence, questioning of witnesses, and clarification of the opponent’s claims in the Russian judicial system, are heavily dependent upon the

Commissioner³⁸³ may also become a player in the field of human rights.

Non-governmental organizations (NGOs) are another promising mechanism for changing popular conceptions of law and human rights.³⁸⁴ The post-Soviet legislation enables independent³⁸⁵ peoples' groups to influence public opinion and political process as mediators between specialized and state interests. In addition, NGOs can appear in court on behalf of human rights interests.³⁸⁶ The interested political, social, and religious non-governmental groups, both domestic and foreign, should utilize this method in order to challenge the excesses in application of the new religious legislation. The most notable of such progressive organizations are the Christian Juris-Center, led by A. Pchelintsev and V. Riakhovsky (recently transformed into the Institute for the Study of Law and Religion), the Independent Organization of Psychiatrists which provides vital expert testimony in trials to counteract the allegations of "zombying" by new religions, and the Committee for Freedom of Conscience, led by G. Yakunin.³⁸⁷ Unfortunately, the activities of the latter

presiding judge. In the instant case, the Judge refused the defense's request to obtain a statement from the Prosecutor with particular bases for liquidation, as is required by the 1997 law. The judge refused to admit the photos confirming the charitable activities of CARP, and the results of the court-psychiatric expert examination of CARP members attesting to their sanity, as irrelevant. *Id.* at 13-15. On the other hand, the judge allowed several representatives from the Interregional Committee for Salvation from Totalitarian Sects to testify about the mental harm inflicted by new religions while cutting short their cross-examination or answering the questions herself. *Id.* at 13-14. The defense was not successful in the motion to dismiss the judge based on her derogatory comments about the Unification Church. *Id.* at 18. In addition, during the trial, it was revealed that the City government actually provides funds to the Salvation Committee, and that the Prosecutor's office engaged in thirty to forty minute daily phone communications with the mother of the key witness regarding the progress of the trial. *Id.* at 16-17.

383. This office has not yet reached the same prominence as in Poland or the Scandinavian countries, but it symbolically rallied human rights activists on various matters. *See, e.g.,* Utter & Lundsgaard, *supra* note 308, at 245. The current head of the office, L. Levinson is an active proponent of the international standards of freedom of conscience, and on numerous occasions spoke out against the intensification of mass hysteria in connection with alleged zombying by foreign cults. *See, e.g.,* Usupova, *supra* note 148, at 28-29.

384. *See generally* S. Bocharova, *Rol' Obshestvennykh Ob'edinenij v Zashite Prav Cheloveka* [The Role of NGOs in Protecting Human Rights], 1 VESTNIK MOSKOVSKOGO UNIVERSITETA: PRAVO 98 (1997).

385. In the Soviet period, non-conforming NGO's were certainly outlawed. The only officially tolerated NGO was Moscow's Helsinki Human Rights Group. This organization was never truly independent. *See* LAWYERS COMMITTEE FOR HUMAN RIGHTS, *supra* note 139, at 107-111. Currently, NGO's can genuinely represent a wide variety of viewpoints. They will be instrumental in creating a culture of ideological pluralism.

386. *See* Bocharova, *supra* note 384, at 105.

387. *See* KRYLOVA, *supra* note 350, at 44-49.

organization often received negative publicity detrimental to its lofty goals.

In fact, Article 8(7) of the instant legislation specifically encourages such participation and instructs state organs to involve religious organizations in the decisions affecting their activities.³⁸⁸ Notably, this provision does not discriminate against new religious organizations.³⁸⁹ One can only hope that local authorities will carefully consider this provision when dealing with the various interests of the religious communities.

A robust polemic in the mass media is another sign of changing times. During the period of adopting the new law and in the months following its enactment, the Russian media covered the developments in great detail and offered insightful political and legal commentaries. The *Moscow News* and *Nezavisimaya Gazeta* emerged as the true champions of religious liberty. Also, Russians now have access to information reflecting democratic values advanced by the Western media and on the Internet.³⁹⁰

Finally, even the Orthodox Church, the primary lobbyist and beneficiary of the new law, has an inherent stake in resisting a strict application of the law. Both traditional and non-traditional religions should be wary of numerous provisions giving the state enormous control over religious organizations. The registration requirement and continued state supervision over an organization's compliance with its charter provide ample opportunities for intervention into religious affairs. As its own history demonstrates, the Patriarchate must realize that a short term gain of virtual religious monopoly of the Orthodox Church may cause a long term loss of its institutional independence, a feature that Patriarch Alexii II considers essential in church-state relations.³⁹¹

VI. CONCLUSION

The law on Freedom of Conscience and Religious Associations represents a major setback in Russia's recent human rights record. The law clashes with the constitutional principles of individual religious liberty and subverts the notion of equality of religious organizations. The law establishes a system in which

388. See THE NEW LAW, *supra* note 4, at art. 8(7).

389. *Id.*

390. See discussion *supra* note 380.

391. The laws making the judiciary more independent, see *supra* note 368, create an excellent opportunity for this branch to develop into a protector of human rights. Unfortunately, the judges are not immune from stereotypes of destructive cultural infiltration offered by the traditional Russian moral theory.

religious organizations that cannot prove their fifteen-year legal existence enjoy only a fraction of the rights reserved for traditional religions. Although this restriction is only a temporary probation period, it may effectively destroy less-favored religious communities. Even if they survive, they will almost certainly be burdened by the vicissitudes of administrative arbitrariness. Another hallmark of the 1997 law is the laborious registration process, reminiscent of the Soviet period. The law confers great powers on agencies to supervise the activities of religious organizations under the pretext of verifying their compliance with charters, and to initiate the liquidation process on a variety of grounds.

Although in a brief post-communist euphoria Russia enacted one of the most progressive constitutions in the world and ratified numerous international human rights instruments, it was naive to believe that in such a period of acute cultural crisis the newly-implanted liberal principles (democratic *Pravo*) could easily overcome the millennium-old Russian moral theory (reactionary *Pravo*). The current legislation (*zakon*) is a reflexive response to what proponents of the legislation view as ruinous religious anarchy that threatens internal security, rather than as desirable religious pluralism. Even though Russia did not wish to contravene democratic principles, it had absolutely no experience in dealing with its very real problems in a democratic fashion. By default, in creating the new law, policy-makers reverted to a slightly modified traditionalism with a stricter control of religious institutions.

Russia is currently reviving religious policies that are historically tested and culturally suitable. In practice, Russia may develop a viable cooperationist or endorsement mode of church-state relations rather than pursue the ideal of benign neutrality as provided for in the Russian Constitution. European experience illustrates that substantial religious liberty is attainable in cooperationist, endorsement, and even establishment models as long as the state maintains some religious equality within the preferential superstructure. Such balancing is possible when human rights are an integral part of a country's political and social culture.

Unfortunately, Russia does not share the Western democratic tradition of respect for human rights. Therefore, Russia must strive twice as hard to assure the equality of individuals and organizations in their access to religious rights. The thrust of the new law contravenes this goal and casts serious doubt on the future of religious liberty in Russia. Yet, there is a glimmer of hope embodied in the Russian Constitution and international instruments. This alternative set of norms permits interested individuals and groups to challenge the new law, and to counter

the excesses of its strict, reactionary enforcement. As Russian society stabilizes, and its liberal institutions and traditions solidify, the international human rights tradition may yet prevail over nationalistic sentiments.

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