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Liberalism in Decline: Legislative Trends Limiting Religious Freedom in Russia and Central Asia

Elizabeth A. Clark¹

Abstract

Religious freedom, among other human rights, has increasingly been restricted in Russia and Central Asia. Recent empirical research has shown that increased governmental regulation of religion causes increased social hostilities over religion and has shown the connections between religious freedom and numerous other civil rights and social goods. The U.S. government has particularly recognized the importance of religious freedom in Russia, mandating significant restrictions on aid based on the Russian interpretation of restrictive religion legislation passed in 1997. Since that time, however, virtually no attention has been given to draft legislation in this area in Russia and common trends seen in religion laws in Russia and Central Asia. This Article fills this gap by analyzing recent laws and draft laws in Russia and moderate Central Asian countries, many of which are unavailable in English. The Article provides context for the increasingly restrictive religion laws in this region, and then analyzes key provisions, evaluating them with regard to international norms on freedom of religion and speech.

Religious freedom, among other human rights, has increasingly been restricted in Russia and Central Asia. While the collapse of the Soviet Union generally accompanied liberal laws allowing for broad manifestations of freedom of religion,² recent years have witnessed a

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² See, e.g., Law of the Russian Soviet Federative Socialist Republic on Freedom of Worship, RELIGLAW 25 Oct. 1990, available at <http://www.religlaw.org/document.php?DocumentID=74>; On the Freedom of Conscience and Religious Organizations VIDOMOSTI VERKHOVNOYI RADY UKRAYINY [VVR] 1991, Issue 25, page 283 (Ukraine); enacted under Resolution of the Supreme Council No. 988-

significant reduction of those freedoms in Russia and Central Asia. Restrictive laws and draft laws, previously seen only in the more repressive parts of Central Asia, such as Turkmenistan and Uzbekistan,³ have increasingly appeared in more liberal Central Asian countries and Russia.⁴ Over the last two years alone, the comparatively liberal Central Asian countries of Kazakhstan and the Kyrgyz Republic have introduced religious censorship,⁵ banned or heavily regulated proselyting,⁶ raised requirements to obtain legal entity status,⁷ and created other obstacles to manifestations of religious freedom.⁸ Russia has proposed legislation that mirrors some of the problematic provisions found in Central Asian legislation.⁹

This Article provides both context for these troubling developments and an analysis of the legislative trends restricting religious freedom in this region, evaluating them against international norms protecting freedom of religion or belief. Legislation is an important basis for and indicator of government restrictions on religious freedom. While legislation is not the only basis for government restrictions—this region has also been plagued with unwritten regulations,¹⁰ stemming from the lack of a strong basis in rule of law, and arbitrary enforcement of

12 of Apr. 23, 1991, VVR 1991, issue 25, page 284 (Ukraine), available on-line at <http://www.religlaw.org/document.php?DocumentID=1764>.

³ See, e.g., ; Mushfig Bayram, *Uzbekistan: Religious Freedom Survey, August 2008*, FORUM 18, (Aug. 14, 2008), available at http://www.forum18.org/Archive.php?article_id=1170; U.S. STATE DEP'T, INTERNATIONAL RELIGIOUS FREEDOM REPORT (TURKMENISTAN) (July-Dec. 2010), available at http://www.state.gov/j/drl/rls/irf/2010_5/168254.htm.

⁴ “On Freedom of Conscience and Religious Organizations in the Kyrgyz Republic,” Law 282, adopted 6 Nov. 2008, signed 2009 (Kyrgyz Republic) [hereinafter “2009 Kyrgyz Law”]; “On Introduction of Amendments and Supplements to Certain Legislative Acts of the Republic of Kazakhstan on the Issues of Religious Activities and Religious Associations,” signed 13 October 2011 (Kazakhstan) [hereinafter “2011 Kazakh Law”]; “On amendments to the Federal law ‘On freedom of conscience and religious organizations,’” draft law promulgated by Russian Federation Ministry of Justice 5 Oct. 2011 (Russian Federation) [hereinafter “2011 Russia Draft Law”].

⁵ 2011 Kazakh Law, Art. 9; 2009 Kyrgyz Law, Art. 23.

⁶ 2011 Kazakh Law, Art. 8; 2009 Kyrgyz Law, Art. 5.

⁷ 2011 Kazakh law, Art. 3; 2009 Kyrgyz Law, Art. 11; See also Geraldine Fagan, *Russia: Proposed Missionary Restrictions—A Paper Tiger?*, FORUM 18, Nov. 23, 2009, available at http://forum18.org/Archive.php?article_id=1378.

⁸ See 2011 Kazakh Law; 2009 Kyrgyz law; 2011 Russia Draft Law.

⁹ See discussion *infra* Parts II.B and II.C.

¹⁰ For example, Azerbaijan’s 1992 religion law does not require religious organizations to register, but as a matter of practice, the state has criminalized unregistered religious activity. See U.S. STATE DEP’T, INTERNATIONAL RELIGIOUS FREEDOM REPORT (AZERBAIJAN) (July-Dec. 2010) available at <http://www.state.gov/j/drl/rls/irf/2010/148912.htm>.

seemingly liberal laws¹¹—legislation nevertheless is a key element in tracking the level of freedom in a country. Empirical research has also shown that higher regulation of religion results in the abuse and displacement of people based on their religious affiliation.¹² Higher governmental restrictions on religious groups have been shown to increase persecution and social hostility towards them as well.¹³

Religious freedom has also been empirically shown to correlate with other fundamental freedoms, such as civil and political rights, media and speech rights, as well as with the longevity of democracy.¹⁴ Statistical studies suggest that increased religious competition leads to increased religious social participation, which increases social capital and brings tangible benefits such as fewer incidents of armed conflict, better levels of health, higher earned income, and better educational opportunities for women.¹⁵

Examining legislative trends affecting religious freedom in Russia and Central Asia is particularly significant not only because of the wide block of the world's population affected,¹⁶ but also because of the region's significance as a positive or negative model for others. Eastern European revolutions took place approximately twenty years before the Arab Spring and affected, among other countries, the predominantly Islamic countries of Central Asia. Looking at Russia and Central Asia twenty years on may provide some helpful comparisons and warnings for countries currently experiencing rapid democratic change.

¹¹ See, e.g., the discriminatory and arbitrary enforcement of religious registration laws in Russia in *Kimlya v. Russia*, Eur. Ct. H.R., Applications nos. 76836/01 and 32782/03 (1 Oct. 2009).

¹² Brian J. Grim and Roger Finke, *Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?* 72 AM. SOC. REV. 633, 652 (Aug. 2007).

¹³ *Id.*; BRIAN GRIM & ROGER FINKE, THE PRICE OF FREEDOM DENIED: RELIGIOUS PERSECUTION AND CONDUCT IN THE TWENTY-FIRST CENTURY 81, 86-87, 211-13 (2010).

¹⁴ Brian J. Grim, *Religious Freedom: Good for What Ails Us?* THE REV. OF FAITH & INT'L AFFAIRS 3, 4(Summer 2008).

¹⁵ *Id.* at 4-7.

¹⁶ Russia, with a population of over 138 million, is the ninth most populous country on earth. THE WORLD FACT BOOK: COUNTRY COMPARISON POPULATION, CENTRAL INTELLIGENCE AGENCY, (Mar. 13, 2012), available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119rank.html?countryName=Russia&countryCode=rs®ionCode=cas&rank=9#rs>. (Note that while only one in eight countries have high levels of government restrictions or social hostilities affecting religion, these countries contain almost 1/3 of world population. Pew Research Center, *Rising Restrictions on Religion* (2011).

Russia in particular is also the subject of significant international scrutiny. In the past, restrictive religion legislation in Russia has led to strong international reactions. Its restrictive and discriminatory 1997 law on religious associations,¹⁷ for example, led to the U.S. Smith Amendments in 1998, which tied foreign aid payments to Russia to its implementation of laws such as the 1997 law in ways that do not discriminate among religions.¹⁸ This amendment is still in force.¹⁹

I. Context of Negative Legislative Trends

Putting current negative legislation in context is crucial. The attitudes and policies leading to current restrictive legislation have been significantly affected by recent experiences and political trends in this region. In part, recent legislation can be seen as a reaction by dominant religious traditions to the early openness after the fall of the Soviet Union. Restrictive legislation has also been influenced in part by global concerns of terrorism and religious extremism. Perhaps most significantly, however, legislation restricting religious freedom in Russia and Central Asia is part of a broader push to limit civil society and centralize power under a strong political leader.

A. Pushback from Dominant Religious Traditions

¹⁷ “On the Freedom of Conscience and Religious Associations, Federal Law No. 125-FZ (September 26, 1997), available at <http://www.religlaw.org/document.php?DocumentID=72> [hereinafter “1997 Russian Religion Law” or “1997 Law”].

¹⁸ The legislation was originally tied to non-passage of the 1997 Religion Law, but eventually was modified to align sanctions with the implementation of Russia’s religion law. Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 § 577(a), Pub. L. No. 105-118, 11 Stat. 2386, 2433-34 (1997) (no foreign aid unless the President certifies that Russia “has implemented no statute, executive order, regulation or similar government action that would discriminate, or would have as its principal effect discrimination, against religious groups or religious communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.”). For a discussion of the Smith Amendments and other international protest against Russia’s 1997 religion law, see W. Cole Durham, Jr. & Lauren Homer, *Russia’s 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT’L L. REV. 101, 108–110 (1998).

¹⁹ Note that in 2010 and 2011, the U.S. Commission on International Religious Freedom has called on the U.S. government to implement the Smith amendments because of deteriorating religious freedom conditions in Russia. See *Russia 2011 Chapter Summary*, in U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 2011 ANNUAL REPORT, available at <http://www.uscirtf.gov/government-relations/other-advocacy-materials/3387-russia-.html>; U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 2010 ANNUAL REPORT 272–87, available at <http://www.uscirtf.gov/images/annual%20report%202010.pdf>.

At the time the Soviet Union collapsed, laws affecting religion were significantly liberalized. Russia and Ukraine adopted extremely liberal religion laws in 1990-1991.²⁰ The Ukrainian law is still in force and its provisions remain among the most liberal in the post-Soviet world: religious organizations may gain legal entity status with only ten members and there are no restrictions on proselyting and no forms of censorship.²¹

In the late 1990s, countries in Eastern Europe saw a reaction against earlier openness.²² Concerns were raised that traditional religions, decimated under Communist regimes, were unable to compete with newer, foreign-funded organizations.²³ Dominant religious traditions sought to use state power to limit minority religions and schismatic or breakoff groups, such as non-traditional Orthodox or Muslim groups which were not part of national hierarchies.²⁴

In Moldova, for example, the state, because of national foreign policy, long refused to register an Orthodox community which sought to be under the Romanian Orthodox patriarch instead of the Russian Orthodox patriarch.²⁵ Russia has denied visas to prominent foreign

²⁰ Law of the Russian Soviet Federative Socialist Republic on Freedom of Worship, ReligLaw, 25 Oct. 1990, available at <http://www.religlaw.org/document.php?DocumentID=74>; On the Freedom of Conscience and Religious Organizations VIDOMOSTI VERKHOVNOYI RADY UKRAYINY [VVR] 1991, Issue 25, page 283 (Ukraine); enacted under Resolution of the Supreme Council No. 988-12 of Apr. 23, 1991, VVR 1991, issue 25, page 284 (Ukraine), available on-line at <http://www.religlaw.org/document.php?DocumentID=1764>.

²¹ On the Freedom of Conscience and Religious Organizations VIDOMOSTI VERKHOVNOYI RADY UKRAYINY [VVR] 1991, Issue 25, page 283 (Ukraine); enacted under Resolution of the Supreme Council No. 988-12 of Apr. 23, 1991, VVR 1991, issue 25, page 284 (Ukraine), available on-line at <http://www.religlaw.org/document.php?DocumentID=1764>; see also JULY-SEPTEMBER, 2010 INTERNATIONAL RELIGIOUS FREEDOM REPORT, UKRAINE, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR (Sept. 13, 2011), available at http://www.state.gov/j/drl/rls/irf/2010_5/168344.htm.

²² See, e.g., John Witte, Jr., *Introduction—Soul Wars: The Problem and Promise of Proselytism in Russia*, 12 EMORY INT'L L. REV. 1, 1 (Winter 1998).

²³ See, e.g., *id.*; Dimitry V. Pospelovsky, *Russian Orthodox Church in the Postcommunist CIS*, in *THE POLITICS OF RELIGION IN RUSSIA AND THE NEW STATES OF EURASIA* 41, 55–6 (Michael Bourdeaux ed., 1995); *Proselytism and Orthodoxy in Russia: The New War for Souls* (John Witte, Jr. and Michael Bourdeaux, eds., 1999).

²⁴ See, e.g., Marat S. Shterin & James T. Richardson, *Effects of the Western Anti-Cult Movement on Development of Laws Concerning Religion in Post-Communist Russia*, 42 J. OF CHURCH & STATE 247, 249 (2000); JOHN GORDON GERRARD, *RUSSIAN ORTHODOXY RESURGENT: FAITH AND POWER IN THE NEW RUSSIA* 172–176 (2008); Pospelovsky, *supra* note 23, at 56–61.

²⁵ See *Metropolitan Church of Bessarabia and Others v. Moldova*, App. No. 45701/99, Eur. Ct. H.R. (13 Dec. 2001).

leaders of minority groups.²⁶ In some countries, government leaders used their power or influence to support one of various leaders of Muslim groups.²⁷

In Russia, favoritism of dominant religious groups was a major factor leading to the more restrictive 1997 religion law.²⁸ This controversial law significantly increased requirements for legal entity status. In order to have legal entity status nationally, a religious association needed to either have three local organizations or to have been in the country fifteen years or more.²⁹ Given that meaningful religious freedom protections in Russia had only been in place six years,³⁰ this created significant limitations on minority groups. Although it did not on its face create a multi-tiered cooperation system like those of many European countries,³¹ the 1997 law had a preamble “recognizing the special role of Orthodoxy in the history of Russia and in the establishment and development of its spirituality and culture; respecting Christianity, Islam, Buddhism, Judaism, and other religions, constituting an integral part of the historical heritage of the peoples of Russia . . .”³² This preamble has been the slim legal basis for a series of separate state agreements with the Orthodox.³³ As a practical matter, Russia has developed a system of cooperation with the Russian Orthodox Church,

²⁶ See, e.g., Nolan and K. v. Russia, App. No. 2512/04, Eur. Ct. H.R. (12 Feb 2009); Geraldine Fagan, *Russia: Moscow Chief Rabbi returns, but expulsion explanations are contradictory*, FORUM 18, 19 Dec 2005, available at http://www.forum18.org/Archive.php?article_id=706; Geraldine Fagan, *Russia: Religious work visa respite?* FORUM 18, 3 May 2006, available at http://www.forum18.org/Archive.php?article_id=773.

²⁷ See *Russia's Muslims: Facing Extreme Prejudice*, THE ECONOMIST, 8 May 2003; see also Hasan and Chaush v. Bulgaria, App. No. 30985/96 (26 Oct. 2000).

²⁸ Russia 1997 Law; INTERNATIONAL RELIGIOUS FREEDOM REPORT 2003: RUSSIA, SECTION II: STATUS OF RELIGIOUS FREEDOM, U.S. DEP'T OF STATE, available at <http://www.state.gov/j/drl/rls/irf/2003/24430.htm>.

²⁹ Russia 1997 Law, Art. 8.

³⁰ Russia 1990 Law.

³¹ See, e.g., GERHARD ROBBERS, STATE AND CHURCH IN THE EUROPEAN UNION (1996); W. Cole Durham, Jr., *A Comparative Framework for Analyzing Religious Liberty*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 1 (Johan D. van der Vyver & John Witte, eds., 1996); W. COLE DURHAM, JR. & BRETT SCHARFFS, LAW AND RELIGION: NATIONAL, INTERNATIONAL, AND COMPARATIVE PERSPECTIVES (2010).

³² Russia 1997 Law, Preamble.

³³ See Geraldine Fagan, *Russia: Orthodox Becoming First Among Equals*, FORUM 18 (May 27, 2003), available at http://www.forum18.org/Archive.php?article_id=64.

ignoring the 1997 law and Russian constitutional demands that religious organizations are “separate from the state and equal before the law.”³⁴

B. Concerns of Extremism

Another significant factor leading to contemporary restrictive legislation is the rise of concerns about violent action from extremist Islamic groups. After the events of September 11, 2001 and subsequent terrorist attacks, a wave of anti-extremism and anti-terrorism legislation was passed in a number of countries, including Russia.³⁵ Extremism concerns have continued to hit home in Russia with the increasing radicalization of the situation in Chechnya,³⁶ the Beslan school hostage crisis in 2004,³⁷ and the Moscow Metro suicide bombings in 2010.³⁸ Although Russia has certainly been facing violence fueled by religious extremism, it has increasingly turned to anti-extremism legal measures to also limit unpopular religious groups rather than to merely address groups associated with violent behaviors.

The definition of extremism in the Russian Anti-Extremism law, passed in 2002, defines extremist activity *inter alia* as “forcible change of the foundations of the constitutional system and violation of the integrity of the Russian Federation; public justification of terrorism and other

³⁴ 1997 Law, Article 4.1; Constitution (Russia), Art. 14 (1. The Russian Federation shall be a secular state. No religion may be instituted as state-sponsored or mandatory religion. 2. Religious associations shall be separated from the state, and shall be equal before the law.).

³⁵ See, e.g., 2001 PATRIOT Act, Pub.L. No. 107-56, 115 Stat. 272 (2001); Federal Law “On combating extremist activity”; No. 114-FZ (25 July 2002) (as amended 27 July 2006, 10 May and 24 July 2007 and 29 April 2008) (Russia), available at [http://www.venice.coe.int/docs/2012/CDL-REF\(2012\)012-e.pdf](http://www.venice.coe.int/docs/2012/CDL-REF(2012)012-e.pdf); Anti-terrorism, Crime and Security Act 2001 (UK), available at <http://www.legislation.gov.uk/ukpga/2001/24/contents>. Cf. Geraldine Fagan, *Russia: How the Battle with “Religious Extremism” Began*, FORUM 18 (April 27, 2009), available at http://www.forum18.org/Archive.php?article_id=1287.

³⁶ See, e.g., *Russia’s Unruly North Caucasus: Islam Inflamed*, THE ECONOMIST (7 Apr. 2011) available at <http://www.economist.com/node/18530091>; Geraldine Fagan, *Russia: Southern Muslims Complain of Fall-Out from Anti-Terrorist Moves*, FORUM 18 (Nov. 1, 2004), available at http://www.forum18.org/Archive.php?article_id=442 (detailing what has been reported as Russia’s “negative policy towards all Muslims” since the start of the second Chechen conflict.).

³⁷ *Insurgents Seize School in Russia and Hold Scores*, N. Y. TIMES (Sept. 2, 2004); Geraldine Fagan, *Russia: Muslims Reject Hizb ut-Tahir Membership Changes*, FORUM 18 (Apr. 18, 2006), available at http://forum18.org/Archive.php?article_id=761 (focusing on foundationless persecution of Muslims after the Beslan hostage crisis).

³⁸ *Chechen Rebel Says He Ordered Moscow Metro Attacks*, BBC NEWS (Mar. 31, 2010), available at <http://news.bbc.co.uk/2/hi/8597792.stm>.

terrorist activity.”³⁹ The Russian government, however, appears to read this extremely broadly in practice. In 2000, for example, a Russian federal policy statement on national security was amended by presidential decree to state that “[e]nsuring the national security of the Russian Federation also includes the protection of its ... spiritual and moral heritage ... the forming of a State policy in the field of spiritual and moral education of the population ... and also includes opposing the negative influence of foreign religious organisations and missionaries

...⁴⁰

The law also is open to abuse against religious groups because of its broad definition of extremist actions -- it lists “propaganda of the exceptional nature, superiority or deficiency of persons on the basis of their . . . religious . . . affiliation or attitude to religion” as extremism.⁴¹ Since many religious traditions affirm their superiority to others, this definition cuts an extremely broad swath and can easily be used in a discriminatory fashion.

Dozens of extremism investigations and prosecutions have been brought against minority religious groups in recent years, particularly Jehovah’s Witnesses, Russian Orthodox Old Believers, and followers of Turkish theologian Said Nursi.⁴² Over one thousand publications have been banned as extremist,⁴³ including Jehovah’s Witness magazines, and

³⁹ Federal Law “On combating extremist activity” No. 114-FZ (25 July 2002) (as amended 27 July 2006, 10 May and 24 July 2007 and 29 April 2008) (Russia), Art. 1(1) *available at* [http://www.venice.coe.int/docs/2012/CDL-REF\(2012\)012-e.pdf](http://www.venice.coe.int/docs/2012/CDL-REF(2012)012-e.pdf); *see also* Brian Gross, *Russia’s War on Political and Religious Extremism: An Appraisal of the Law ‘On Counteracting Extremist Activity,’* BYU L. REV. 717 (2003); *The Structure of Russian Anti-Extremist Legislation*, EUROPEAN PARLIAMENT SOVA CENTER FOR INFORMATION AND ANALYSIS (Nov. 2010), *available at* http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201011/20101129_3_10sova_en.pdf.

⁴⁰ Case of Nolan and K. v. Russia, Application no. 2512/04, Eur. Ct. H.R. (12 February 2009), para. 12 (citing Concept of National Security of the Russian Federation (1997), as amended 10 January 2000 by Presidential Decree No. 24.)

⁴¹ Federal Law “On combating extremist activity” No. 114-FZ (25 July 2002) (as amended 27 July 2006, 10 May and 24 July 2007 and 29 April 2008) (Russia), Art. 1(1), *available at* [http://www.venice.coe.int/docs/2012/CDL-REF\(2012\)012-e.pdf](http://www.venice.coe.int/docs/2012/CDL-REF(2012)012-e.pdf),

⁴² A list of extremist organizations banned by Russian courts is available on-line at <http://www.sova-center.ru/misuse/docs/2007/11/d11927/>.

⁴³ A list of materials deemed extremist by Russian courts and listed by the Russian federal government is available on-line at <http://www.minjust.ru/nko/fedspisok>. Additional documents that have been banned by Russian courts but are not on the federal list are available on-line at <http://www.sova-center.ru/misuse/docs/2009/12/d17655/>.

attempts were made to ban the *The Baghavad Gita as It Is*.⁴⁴ The anti-extremism law has not only been used against religious organizations, but also against civil society organizations generally,⁴⁵ as well as those publicly expressing disrespect for mainstream Russian Orthodoxy.⁴⁶

The Russian Supreme Court raised concerns about extremism prosecutions, and issued a resolution in 2011⁴⁷ reiterating constitutional and international protections of human rights. Among other provisions, it made clear that extremism offenses require “direct intent to stir up hatred or hostility, and debased the person or group of persons on grounds of sex, race, nationality, language, origin, religion, membership of a social group.”⁴⁸ It also made clear that criticism of others’ beliefs, including religious beliefs, do not fall under the legal rubric of extremism:

“Under the actions aimed at inciting hatred or hostility, it should be understood, in particular, the statements justifying and/or affirming genocide, mass arrests, deportations, committing other illegal acts, including the use of violence against members of a nation, race, adherents of a religion, and other groups. Criticism of political institutions, ideological and religious associations, political, ideological or religious beliefs, national or religious identity is not in itself to be regarded as an act aimed at inciting hatred or enmity.”⁴⁹

⁴⁴ Felix Corley, *Russia: Has the “Madness” of Banning Religious Publications been Stopped?*, FORUM 18 (January 5, 2012), available at http://forum18.org/Archive.php?article_id=1652.

⁴⁵ See, e.g., Daira Shuchalina, Syktyvkar, Maxim Ivanov, “‘Memorial’ obvinili vo vsexh ekstremistkikh grekhakh,” *Kommersant* No.8 (4793) (19 Jan 2012) (Regional FSB head accusing human-rights organization of extremism for protesting presidential elections) (available on-line at <http://www.kommersant.ru/doc-y/1853724>); Dmitry Florin, “‘Sova’: delo protiv zhurnalistok, obvinyayemykh v ekstrimizme iz-za stati o deportatsii kavkazskikh narodov, nepravomerno,” *Kavkazskii Uzel* (13 Jan. 2011), available at <http://www.kavkaz-uzel.ru/articles/179574/> (detailing case of journalists prosecuted for extremism for their coverage of the deportation of ethnic groups from the Caucasus).

⁴⁶ Two prominent Moscow art curators were fined over \$10,000 over an exhibit that involved parody of a famous icon, although those vandalizing the exhibit were not charged with anything. Sophia Kishkovsky, *Organizers of Art Show Convicted in Moscow*, N. Y. TIMES (12 July 2010), available at <http://www.nytimes.com/2010/07/13/arts/design/13curators.html>; Alexander Verkhovsky, *Commentary: Russia: Art Curators’ Verdict Not Isolated Instance—This is a System*, FORUM 18 (19 July 2010), available at http://www.forum18.org/Archive.php?article_id=1468. Two “punk-feminist” protesters in the Moscow Church of Christ the Savior, the main Moscow cathedral, were arrested for extremism for a “punk prayer” and held without bail. Kevin O’Flynn, *Pussy Riot vs Vladimir Putin: The Feminist Punk Band Jailed for Cathedral Protest*, THE GUARDIAN (10 March 2012), available at <http://www.guardian.co.uk/world/2012/mar/11/putin-russia-president-election-protests>.

⁴⁷ Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11, “On judicial practice in criminal cases involving extremism crimes” (29 June 2011), available at <http://www.sova-center.ru/misuse/docs/2011/06/d21988/>.

⁴⁸ *Id.* § 8.

⁴⁹ *Id.* § 7.

Russian human right commentators, however, have expressed “doubts that [the Supreme Court’s resolution] will bear immediate fruit. So far, we see that regional courts are simply ignoring the Supreme Court’s directions.”⁵⁰

Concerns of extremism have also fueled restrictive government reactions in Central Asia, not unsprisingly, given its comparatively close geographic proximity to Afghanistan. In Tadjikistan, for example, the resistance group in the civil war fought between 1992 and 1997 called itself the Islamic Resistance Party, although it disavowed theocratic fundamentalism and allied itself with reformist secular nationalists and less orthodox Muslims.⁵¹ Many Central Asians have been fighting along with the Taliban in Afghanistan and have formed an Islamic Movement of Uzbekistan with an avowed goal of recreating an Islamic caliphate and some small numbers of jihadist groups have been infiltrating Tajikistan from Afghanistan and passing on to other Central Asian countries.⁵²

Despite some real threats, in Central Asia, as in Russia, extremism has largely been used as a convenient label to put down religious minorities—“the region’s governments find the existence of an Islamic threat quite useful in justifying their authoritarian behavior.”⁵³ In many cases, problems have arisen from ineffective governance, the narcotics trade, ethnic divisions, or political dissent. For example, while the Kyrgyz government blamed the 2010 violence against ethnic Uzbeks on external groups and Islamic militants, “the pogroms in fact involved many forces, from the remnants of the Bakiyev political machine to prominent mainstream politicians and organised crime, especially the narcotics trade.”⁵⁴

C. Centralization of Power

⁵⁰ Sova-Center Report, Misuse of Anti-Extremism Legislation in the First Half of 2011, *available at* <http://www.sova-center.ru/en/misuse/reports-analyses/2011/10/d22796/>.

⁵¹ Qadi Akbar Turajonzoda, *Religion: The Pillar of Society*, in CENTRAL ASIA: CONFLICT RESOLUTION, AND CHANGE 269 (Roald Z. Sagdeev and Susan Eisenhower, eds. 1995); ADEEB KHALID, ISLAM AFTER COMMUNISM: RELIGION AND POLITICS IN CENTRAL ASIA 149 (2007).

⁵² Crisis Group International, *Tadjikistan: The Changing Insurgent Threats*, ASIA REPORT NO. 205 (24 May 2011), *available at* <http://www.crisisgroup.org/en/regions/asia/central-asia/tajikistan/205-tajikistan-the-changing-insurgent-threats.aspx>.

⁵³ KHALID, *supra* note 51, at 142; *see also* T. Jeremy Gunn, *Shaping an Islamic Identity: Religion, Islamism, and the State in Central Asia*, 64 SOCIOLOGY OF RELIGION 389 (2003).

⁵⁴ Crisis Group International, *The Pogroms in Kyrgyzstan*, ASIA REPORT NO. 193 (23 Aug. 2010), *available at* <http://www.crisisgroup.org/en/regions/asia/central-asia/kyrgyzstan/193-the-pogroms-in-kyrgyzstan.aspx>.

Religion politics in Russia and Central Asia have also been significantly influenced by attempts to consolidate government power.⁵⁵ The slide to authoritarianism in Russia under Putin has been widely noted.⁵⁶ Central Asia, with the exception of Kyrgyzstan, has likewise been under the control of ex-Soviet dictators.⁵⁷ Civil society groups of all types have faced limitations and harassment.⁵⁸ For example, Russia passed a restrictive law on NGOs in 2006⁵⁹ and has regularly initiated prosecutions and investigations of independent political figures and journalists.⁶⁰ State pressure is applied to groups and individuals seen as threats to its centralized control.

In Russia, this centralization of power has accompanied an attempt to reestablish regional dominance.⁶¹ After the fall of the Soviet Union, Russian citizens have increasingly resented their loss of international importance. Russia has turned to Central Asia,⁶² establishing the

⁵⁵ See, e.g., Chris Hann & Mathijs Pelkmans, *Realigning Religion and Power in Central Asia: Islam, Nation-State and (Post)Socialism*, 61 EUROPE-ASIA STUDIES 1516–41 (Nov. 2009); JAMES T. RICHARDSON, *REGULATING RELIGION-CASE STUDIES FROM AROUND THE GLOBE* (2004).

⁵⁶ See, e.g., Michael McFaul and Kathryn Stoner-Weiss, *The Myth of the Authoritarian Model: How Putin's Crackdown Holds Russia Back*, 87 FOREIGN AFFAIRS 68 (2008); Larry Diamond, *The Democratic Rollback: The Resurgence of the Predatory State*, 87 FOREIGN AFFAIRS 36 (2008); Ivan Krastev, *Democracy's 'Doubles'* 17 J. OF DEMOCRACY 52 (Apr. 2006).

⁵⁷ *Make a new plan, Stans*, THE ECONOMIST (17 Dec. 2011), available at <http://www.economist.com/node/21541844>; PAULINE JONES LUONG, *INSTITUTIONAL CHANGE AND POLITICAL CONTINUITY IN POST-SOVIET CENTRAL ASIA: POWER, PERCEPTIONS, AND PACTS* (2004); ERIC MAX MCGLINCHAY, *PAYING FOR PATRONAGE: REGIME CHANGE IN POST-SOVIET CENTRAL ASIA* (2003).

⁵⁸ *World Report 2012: Russia*, HUMAN RIGHTS WATCH, available at <http://www.hrw.org/world-report-2012/world-report-2012-russia>; HUMAN RIGHTS REPORT (RUSSIA) U.S. DEP'T OF STATE (2010) available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154447.htm>; CHARLES BUXTON, *THE STRUGGLE FOR CIVIL SOCIETY IN CENTRAL ASIA* (2011); U.K. FOREIGN & COMMONWEALTH OFFICE, *HUMAN RIGHTS & DEMOCRACY: THE 2010 FOREIGN & COMMONWEALTH OFFICE REPORT, RUSSIA*, available at <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/russia/>.

⁵⁹ For an excellent analysis of the context and provisions of the NGO law, see Robert C. Blitt, *'Babushka Said Two Things—It Will Either Rain or Snow; It Either Will or Will Not': An Analysis of the Provisions and Human Rights Implications of Russia's New Law on Non-Governmental Organizations as Told Through Eleven Russian Proverbs*, 40 GEO. WASH. INT'L L. REV. 1 (2008–2009).

⁶⁰ RUSSIA: FREEDOM OF THE PRESS 2011, FREEDOM HOUSE, available at <http://www.freedomhouse.org/report/freedom-press/2011/russia>; INAPPROPRIATE ENFORCEMENT OF ANTI-EXTREMIST LEGISLATION IN RUSSIA IN A [SIC] FIRST HALF OF 2010 (Alexander Verkhovsky, ed., 2010), available at <http://www.sova-center.ru/en/misuse/reports-analyses/2010/10/d19880/>.

⁶¹ Roman Muzalevsky, *Russia's Strategy in Central Asia: An Analysis of Key Trends*, 4 YALE J. INT'L AFF. 26 (2009); Dmitri Trenin, *Russia Leaves the West* 85 FOREIGN AFFAIRS 92–93 (July-Aug. 2006).

⁶² Roman Muzalevsky, *Russia's Strategy in Central Asia: An Analysis of Key Trends*, 4 YALE J. INT'L AFF. 26 (2009).

Shanghai Cooperation Organization (including Central Asia and China), originally designed to rival the European Union.⁶³ The “color” revolutions in Georgia (2003), Ukraine (2004-5), and Kyrgyzstan (2005) have unsettled Russia and its authoritarian Central Asian neighbors.⁶⁴ The Western orientation of these former Soviet republics is troubling in Russia—in contrast, Putin has proposed reuniting the former republics in a new Eurasian Union, “a powerful supranational union capable of becoming a pole of the modern world.”⁶⁵

Religion has also been the victim of centralizing approaches. Minority or break-off religions face repression or discrimination.⁶⁶ In many cases, dominant religions have become co-opted by the state.⁶⁷ Whether by self-censorship or because of attempts to curry favor, dominant religious leaders often endorse those in power and echo political leaders’ self-serving statements.⁶⁸ Government officials have

⁶³ See generally Boris Gorshkov, *Shanghai Cooperation Organization: A Paradigm for Geopolitical Determinism*, 1 WORLD AFFAIRS REVIEW 1, 30 (Apr. 2006); Thomas Ambrosio, *Catching the ‘Shanghai Spirit’: How the Shanghai Cooperation Organization Promotes Authoritarian Norms in Central Asia*, in 60 EUROPE-ASIA STUDIES 1321 (2008); Alexander Cooley, *Cooperation Gets Shanghaied: China, Russia, and the SCO*, 88 FOREIGN AFFAIRS 6 (2009).

⁶⁴ Dmitri Trenin, *Russia Leaves the West* 85 FOREIGN AFFAIRS 92–93 (July-Aug. 2006); Thomas Carothers, *The Backlash against Democracy Promotion*, 85 FOREIGN AFFAIRS 55–57 (July-Aug 2006); Thomas Ambrosio, *Insulating Russia from a Colour Revolution: How the Kremlin Resists Regional Democratic Trends*, 14 DEMOCRATIZATION 232 (2007).

⁶⁵ *Ukraine, Russia and the Eurasian Union: Yulia Timoshenko’s Trials*, THE ECONOMIST (15 Oct. 2011) available at <http://www.economist.com/node/21532290>.

⁶⁶ See, e.g., Geraldine Fagan, *Russia: State Restrictions on Mosques in South’s Minority Muslim Areas*, FORUM 18 (Nov. 9, 2004), available at http://forum18.org/Archive.php?article_id=447; Geraldine Fagan, *Russia: Kalmykia’s “Common Defence” Against “Non-Traditional” Religions*, FORUM 18 (Apr. 15, 2003), available at http://forum18.org/Archive.php?article_id=32; Felix Corley, *Turkmenistan: Religious Communities Theoretically Permitted, But Attacked in Practice?*, FORUM 18 (Apr. 1, 2004), available at http://forum18.org/Archive.php?article_id=293; Igor Rotar, *Uzbekistan: No Hope of Registration for Minority Faiths?*, FORUM 18 (Mar. 12, 2003), available at http://forum18.org/Archive.php?article_id=1; Mushfig Bayram, *Kazakhstan: “To Prepare the Public for a Discriminatory New Law,”* FORUM 18 (Sept. 20, 2011), available at http://forum18.org/Archive.php?article_id=1614.

⁶⁷ See, e.g., Robert Crews’ discussion of Islam in Russia in RELIGION IN RUSSIAN SOCIETY: STATE POLICY, REGIONAL CHALLENGES, AND INDIVIDUAL RIGHTS 15 (F. Joseph Dresen, ed. 2008), (“the Russian state has approached Islam by trying to construct institutions, by cutting off transnational ties, and by manipulating religious authority to validate state policies. It has also used these institutions to try to conduct surveillance of the activities of mosque communities and personnel.”); See also Felix Corley, *Turkmenistan: State Officials’ Dual Role as Clergy to Suppress Freedom of Religion or Belief*, FORUM 18 (Oct. 13, 2009), available at http://forum18.org/Archive.php?article_id=1361.

⁶⁸ Aleksei Sosodov, *Presidential Candidate Vladimir Putin Visits Religious Leaders for a Blessing and He Got It*, INTERFAX-RELIGIA Feb. 2012), English translation available online at <http://www2.stetson.edu/~psteeves/relnews/1202b.html#08>; *Head of Russian Pentecostals Compares Putin to Solomon*, INTERFAX-RELIGIA (Mar. 6, 2012), English translation available at <http://www2.stetson.edu/~psteeves/relnews/1203b.html#05>; Mikhail Moshkin, *Church Considers Faithful Loyal Voters: RPTsMP and other traditional confessions congratulate Putin on decisive*

intervened in the leadership of major denominations.⁶⁹ “Putin has shown that he likes to deal with religions, as with other social organizations, along Soviet lines: through a single, pliable leader.”⁷⁰ Religion has also become part of Russian foreign policy: official diplomatic channels are used to promote the Russian Orthodox Church Moscow Patriarchy in Ukraine against rival Orthodox groups.⁷¹

II. Legislative Trends in Russia and Central Asia

The last few years have seen a flurry of restrictive laws affecting religion in moderate Central Asia and Russia. In 2008 and 2009, restrictive revisions of key religion laws were passed in Kazakhstan⁷² and in the Kyrgyz Republic.⁷³ The Kazak law was referred by their president to Kazakhstan’s Constitutional Council, which held that the law was unconstitutional.⁷⁴ The law reappeared, however, with slight variations and was passed again in October 2011 and signed by President Nazarbayev, who chose not to refer it to the Constitutional Council.⁷⁵ A law which would limit proselyting was proposed by the Russian Ministry

victory, MOSKOVSKIE NOVOSTI (Mar. 5, 2012), *English translation available at* <http://www2.stetson.edu/~psteeves/relnews/1203b.html#05>.

⁶⁹ *Russia’s Muslims: Facing Extreme Prejudice*, THE ECONOMIST (May 8, 2003) *available at* <http://www.economist.com/node/1768623> (citing examples from Russian intervention in the Jewish and Muslim communities’ leadership).

⁷⁰ *Id.*

⁷¹ See Robert C. Blitt, *Russia’s ‘Orthodox’ Foreign Policy: The Growing Influence of the Russian Orthodox Church in Shaping Russia’s Policies Abroad*, 33 UNIV. PA. J. INT’L L. 363 (2011).

⁷² “Law on Amendments and Additions to Several legislative Acts on Questions of Freedom of Conscience and Religious Associations” adopted 26 Nov. 2008, struck down by Constitutional Council of Kazakhstan 11 February 2009. See Julia Dunn, *Kazakhstan Backs Off on Religion Limits*, THE WASH. TIMES (Feb. 13, 2009), *available at* <http://www.washingtontimes.com/news/2009/feb/13/kazakhstan-reverses-law-to-restrict-minority-relig/?page=all>.

⁷³ 2009 Kyrgyz Law.

⁷⁴ See, e.g., United States Commission on International Religious Freedom, *USCIRF Annual Report 2010 – Additional Countries Closely Monitored: Kazakhstan*, Apr. 29, 2010, <http://www.unhcr.org/refworld/docid/4be2840b1a.html>; *Kazakhstan’s amendments to religion law ruled unconstitutional*, Interfax, Feb. 11, 2009, <http://www.interfax-religion>; Mushfig Bayram, *Kazakhstan: “The current Religion Law is also unconstitutional,”* Forum18.org, Feb. 12, 2009, <http://www.forum18>.

⁷⁵ See, e.g., *President Nursultan Nazarbayev signed the Law of the Republic of Kazakhstan*, PRESIDENT OF THE REPUBLIC OF KAZAKHSTAN, (Oct. 2011), http://www.akorda.kz/en/news/decrees_orders_laws/2011/10/glava_gosudarstva_podpisal_zakon_resp_ubliki_kazahstan; *Kazakhstan: New Law on Religion Enacted*, LAW LIBRARY OF CONGRESS, Oct. 17, 2011, http://www.loc.gov/lawweb/servlet/lloc_news; Georgiy Voloshin, *New law on religions in Kazakhstan criticized by Muslims and NGOs*, CENTRAL ASIA-CAUCASUS INSTITUTE, (Oct. 19, 2011), <http://www.cacianalyst.org/?q=node/5651>.

of Justice in 2009, but dropped after public opposition.⁷⁶ In October 2011, the Russian Ministry of Justice proposed amendments to the 1997 law which would change registration requirements and codify the allocation of broad powers to a body responsible for religious “expert” opinions.⁷⁷

Commenting on the 2011 Russian draft amendments to their religion law, Andrey Sebentsov, executive secretary of the Russian Federation’s governmental Commission for Religious Associations noted, “Whenever we try to improve things, we manage to make them worse.”⁷⁸ In many ways, that sums up current legislative trends in Russia and Central Asia. Recent years have seen a sharing of “worst practices,” as the more liberal states in this region, such as Russia, Kazakhstan, and the Kyrgyz Republic, have adopted or proposed approaches that track developments from the more repressive countries, such as Turkmenistan, Uzbekistan, and Tadjikistan. Dominant issues addressed by these laws include registration, proselyting, the role of religious “expertise,” and censorship.

A. Registration Restrictions

“Registration” is largely akin to legal incorporation in the U.S., but in the Soviet and post-Soviet world, registration laws have largely been used as a control mechanism to regulate the existence and behavior of religious organizations.⁷⁹ Religious organizations may not obtain legal entity status without registration,⁸⁰ and in some cases may not operate at all without registration⁸¹ or at least notification to the state.⁸²

⁷⁶ See Geraldine Fagan, *Russia: Proposed Missionary Restrictions—A Paper Tiger?*, FORUM 18 (Nov. 23, 2009), available at http://forum18.org/Archive.php?article_id=1378.

⁷⁷ See, e.g., *Russia tightens grip on religious groups*, GAZETA, July 10, 2011, http://en.gazeta.ru/news/2011/10/07/a_3793474.shtml; *Legislative Analysis of Ministry of Justice Proposed Amendments to 1997 Religion Law*, INSTITUTE ON RELIGION AND PUBLIC POLICY, Nov. 1, 2011, http://religionandpolicy.org/cms/index.php?option=com_content&task=view&id=7203&Itemid=495

⁷⁸ Facebook page, Alexander Verkhovsky, November 2011.

⁷⁹ See, e.g., Sebastien Peyrouse, *The Relationship between Church and State in the Post-soviet World: The Case of Christianity in Central Asia*, 49 J. CHURCH & ST. 97, 108 (2007) (“The most common judicial measure [of controlling religious groups] consists of refusing the registration of groups considered undesirable, even if they met all the necessary conditions.”).

⁸⁰ See, e.g., Blitt, *supra* note 71; Perry L. Glazer & Konstantin Petrenko, *Religion and Education in Post-communist Russia: Russia’s Evolving Church-State Relations*, J. CHURCH & ST. 53, 54 n.7 (2007); Nathaniel Stinnett, *Defining Away Religious Freedom in Europe: How Four Democracies Get Away with Discriminating Against Minority Religions*, B.C.INT’L & COMP. L. REV. 429, 432 (2005).

⁸¹ See, e.g., David Galembo, *The Authoritarian Roadblock on Post-Soviet Central Asia’s Long Road to Religious Freedom*, Rutgers J. of Law and Religion 1 (Spring 2007); Igor Rotar, *Central Asia:*

Requirements for religious groups to register are generally more restrictive than those for other non-profit organizations, and in some cases involve or easily permit discriminatory decisions based on the beliefs of the organization in question.⁸³ Registration laws have been described as “a key indicator of religious freedom.”⁸⁴

1. Compulsory Registration

a. Legislative provisions

In recent years, compulsory registration of religious groups and an accompanying ban on unregistered activity has extended from the more repressive countries of Turkmenistan, Uzbekistan, and Tadjikistan⁸⁵ to the Kyrgyz Republic⁸⁶ and Kazakhstan.⁸⁷ Bans on unregistered activity are some of the most repressive measures possible, as the state not only limits religious activity to groups of which it approves, but also, in many cases, invokes criminal penalties for any other forms of religious expression.⁸⁸

State Policy Towards Religious Minorities in Central Asia, FORUM 18 (Jan. 21, 2004), available at http://forum18.org/Archive.php?article_id=233; Igor Rotar, *Uzbekistan: New Hope for Religious Communities to Get State Registration?*, FORUM 18 (Apr. 26, 2004), available at http://forum18.org/Archive.php?article_id=305.

⁸² See Igor Rotar, *Central Asia: State Policy Towards Religious Minorities in Central Asia*, FORUM 18 (Jan. 21, 2004), available at http://forum18.org/Archive.php?article_id=233; Igor Rotar, *Kazakhstan: More Planned Restrictions on Religious Freedom*, FORUM 18 (Feb. 21, 2007), available at http://forum18.org/Archive.php?article_id=916;

⁸³ See, e.g., Irina G. Basova, *Freedom under Fire: The New Russian Religious Law*, Temp. Int'l & Comp. L. J. 181 (2000); Wallace L. Daniel & Christopher Marsh, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, J. Church & St. 5, 8-10 (2007); Veronika V. Kravchouk, *New Religious Movements and the Problem of Extremism in Modern Russia*, BYU L. REV. 507 (2004); R. Christopher Preston, *Islam in Russia Under the Federal Law on Freedom of Conscience and on Religious Associations: Official Tolerance in an Intolerant Society*, BYU L. REV. 773, 801 (2001).

⁸⁴ Durham, W. Cole, Jr. *Religious Association Laws and Facilitating Freedom of Religion or Belief in FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK* 326 (Linholm, T. et al., eds. 2004),.

⁸⁵ See, e.g., Galemba, *supra* note 81 at 14-17; Sebastien Peyrouse, *supra* note 79, at 105-013.

⁸⁶ 2009 Kyrgyz Law, Art. 11.

⁸⁷ 2011 Kazakh Law, Art. 3.11.

⁸⁸ See e.g. Felix Corley, *Turkmenistan: Religious Freedom Survey, November 2010*, FORUM 18, (Nov. 18, 2010), available at http://www.forum18.org/Archive.php?article_id=1512 (Individuals participating in unregistered religious activity are subject to raids and fines in Turkmenistan); *Violations of Freedom Religion or Belief in Turkmenistan*, OPEN SOCIETY FOUNDATIONS; *USCIRF Annual Report 2011-Countries of Particular Concern: Uzbekistan*, United States Commission on International Religious Freedom, (Apr. 28, 2011), available at <http://www.unhcr.org/refworld/docid/4dbe90bd4b.html> (Uzbekistan Muslims failing to conform to government standards have been subject to arrest.); Mushfig Bayram, *Uzbekistan Legal Status Denials and Unregistered Activity Fines Continue*, FORUM 18, (Aug. 8, 2008), available at

This extremely restrictive approach has reared its head in countries that had generally been more tolerant.⁸⁹ In 2009, the Kyrgyz Republic adopted a law requiring registration of religious organizations and missions of foreign religious organizations.⁹⁰ The law also penalizes individuals performing activities on behalf of an unregistered religious organization⁹¹ and the “evasion of religious organizations from registration with the state body for religious affairs.”⁹² Kazakhstan followed suit in October 2011, also making registration compulsory and banning unregistered activity.⁹³ It had previously attempted this in its 2009 draft, which had been found to violate the religious freedom protections in the Kazakh Constitution by Kazakhstan’s Constitutional Council.⁹⁴ Since the Kazakh Constitutional Council does not have direct review and cases must be referred by one of several political leaders, it appears highly unlikely that the Constitutional Council will have the opportunity to review the 2011 law.

Russia on its face appears to be moving the other direction – recent draft legislation proposes eliminating the notification requirement from the 1997 law, i.e., that unregistered “groups” intending to become

http://www.forum18.org/Archive.php?article_id=1169 (Courts in Uzbekistan routinely uphold fines imposed on religious practitioners.); *USCIRF Annual Report Report 2011-The Commission’s Watch List: Tajikistan*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, (Apr. 28, 2011), available at <http://www.unhcr.org/refworld/publisher/USCIRF,,,4dbe90b7c,0.html>. (A Church, synagogue, and three mosques were destroyed by the Tajik government and Jehovah’s Witnesses are banned.); Mushfig Bayram, *Tajikistan: Religious Freedom Survey March 2011*, FORUM 18, (Mar. 17, 2011), available at http://www.forum18.org/Archive.php?article_id=1553 (Tajik government engaging in human rights violations including arbitrary jailing of Muslims, destruction of religious buildings, increased censorship, limitations on belief sharing, and a draft Parental Responsibility Law that bans individuals under 18 from participating in religious activities.); Mushfig Bayram, *Kyrgyzstan: “Restore Religious Freedom at Least to the Level we had Before Bakiev*, FORUM 18, (Apr. 16, 2010), available at http://forum18.org/Archive.php?article_id=1432. (Action of the Kyrgyz government has included a ban on unregistered religious activity and raids on worship meetings.); Mushfig Bayram, *Kazakhstan: Criminal Records for Religious Activity*, FORUM 18, (Apr. 1, 2010), available at http://forum18.org/Archive.php?article_id=1428. (Criminal penalties imposed by the Kazakhstan government include fining a pastor engaged in prayer for the health of a parishioner and charging religious drug rehabilitation centers with illegal detainment of patients.)

⁸⁹ It has also been adopted in Belarus in 2002 and proposed in Armenia in 2011. “On Freedom of Conscience and Religious Organisations,” Law of the Republic of Belarus (2002), Ch. 2, Art. 16-19; Draft Law of the Republic of Armenia on Freedoms of Conscience and Religion (2011), Art. 6.1.

⁹⁰ 2009 Kyrgyz Law, Art. 9.

⁹¹ *Id.*

⁹² 2009 Kyrgyz Law, Art. 11.

⁹³ 2011 Kazakh Law, Art. 3.11 (“Activity of religious associations not registered in the manner established by law . . . is not allowed”).

⁹⁴ See Mushfig Bayram, *Kazakhstan: Religious freedom survey*, FORUM 18, (Sept. 23, 2009), available at http://forum18.org/Archive.php?article_id=1352.

registered associations are required to report to the state.⁹⁵ The 2011 draft does not explicitly ban unregistered activity, and so would appear to liberalize the situation (i.e., unregistered groups now need not notify the government). Some Russians have raised the concern that it is unlikely that all bureaucrats enforcing the law would see it that way, given the remnants of the Soviet mindset that “anything not permitted is strictly prohibited.”⁹⁶ From this point of view, elimination of the designation “group” means that it is no longer a permissible organizational unit. A few Russian commentators have argued that the next likely logical step after elimination of “groups” would be to ban meetings of unregistered organizations or any non-registered religious societies.⁹⁷ Given the trend in this region, the concerns are not without basis.

b. Evaluation with regards to international norms

Mandatory registration provisions and bans on unregistered activity are very problematic; freedom to manifest one’s religion or belief “alone or in community with others” forms the core element of international protections of religious freedom.⁹⁸ The European Court of Human Rights has specifically rejected the attempt of a state to penalize individual

⁹⁵ Russian Federation, Federal Law No. 125-FZ on the freedom of conscience and religious association (1997), Art. 7.2.

⁹⁶ Aleksandr Verkhovsky, “Попытка выпорядочения: Как можно понимать законопроект Минюста” *NARODNAYA GAZETA-RELIGII* (16 Nov. 2011) (recognizing that some bureaucrats may well misunderstand the law, but arguing that it is indeed a liberalizing measure).

⁹⁷ See, e.g., Analysis of the Slavic Center for Law and Justice, Новая инициатива Министерства юстиции РФ: больше вопросов, чем ответов (October 11, 2011), *available at* http://www.sclj.ru/news/detail.php?SECTION_ID=260&ELEMENT_ID=3527; Letter of Guild of Experts on Religion and Law to civil servants and believers on the amendments to the Federal law from September 26, 1997, no. 125-F3 “On freedom of conscience and religious organizations,” *available at* <http://perchatkin.com/perchatkin/?p=4151>.

⁹⁸ Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217A (III) (10 December 1948) (hereinafter “Universal Declaration of Human Rights”), Art. 18; *see also* International Covenant on Civil and Political Rights, adopted and opened for signature by United Nations General Assembly Resolution 22000A (XXI) (16 Dec. 1966) (hereinafter “ICCPR”), *see* Art. 18.1 (“right to thought, conscience and religion shall include “freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice or teaching”); European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature by the Council of Europe (4 Nov. 1950) (hereinafter “European Convention”), Art. 9 (“the right to freedom of thought, conscience and religion includes the freedom “either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance”); Organization for Security and Co-operation in Europe, Concluding Document of Madrid-The Second Follow-up Meeting, Madrid, (6 Sept. 1983), “Questions Relating to Security in Europe,” para. 12 (OSCE member states will recognize, respect and furthermore agree to take the action necessary to ensure the freedom of the individual to profess and practice, alone or in community with others, religious or belief acting in accordance with the dictates of his own conscience”).

members of a denomination for manifesting unregistered religious beliefs as incompatible with the European Convention.⁹⁹ No state in the Western Hemisphere or Europe requires mandatory registration of religious organizations except Cuba and Belarus.¹⁰⁰

While most religious organizations seek legal entity status, there are some individuals and groups that object to state registration either as a matter of belief¹⁰¹ or of religious judgment as to what is most convenient in administering the affairs of a small group. These groups should not be required to register in order to be able to practice their beliefs. Limiting their right to manifest religious beliefs is disproportionate and not necessary in a democratic society. “Any legitimate concerns a state may have in registration (such as being aware of the existence of religious groups in society or of who represents religious groups in public settings) can be sufficiently met by notice requirements (as opposed to state-controlled registration requirements) that do not confer on government the right to curtail religious practice.”¹⁰²

Bans on unregistered activity also as a practical matter make it impossible for a new group to form legally or for existing groups to expand beyond the jurisdiction in which they are registered—gaining the number of adherents required to register and making the decision to register themselves require unregistered religious activity. The Organization for Security and Cooperation in Europe, together with the Council of Europe’s Venice Commission have produced Guidelines for Review of Legislation Pertaining to Religion or Belief, which make it clear that “[i]ndividuals and groups should be free to practice their religion without registration if they so desire”; “[r]egistration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits.”¹⁰³

⁹⁹ *Masaev v. Moldova*, No. 6303/05, Eur. Ct. HR (12 May 2009).

¹⁰⁰ *July-December 2010, International Religious Freedom Report: Cuba*, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPT. OF STATE (Sept. 13, 2011), available at http://www.state.gov/j/drl/rls/irf/2010_5/168209.htm.

¹⁰¹ Durham, *supra* note 84 at 385.

¹⁰² *Id.* at 388.

¹⁰³ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 17.

2. Increase in registration requirements

a. Legislative provisions

Concomitant with mandatory registration provisions are significant increases in registration requirements, both in minimum number of members and in length of time the organization has operated in the country.

The 2009 Kyrgyz Law increased the requirement of minimum number of members for local religious organizations to register from 10 to 200.¹⁰⁴ To establish a central administrative body, religious organizations must act in at least 9 regions of the Kyrgyz Republic.¹⁰⁵ To establish a religious association (which is not clearly distinguished from a religious organization or a central administrative body), the association “must have at least ten religious communities of a common denomination, of which at least one has been operating in the Kyrgyz Republic for no less than fifteen years.”¹⁰⁶

In 2011, Kazakhstan increased the number of members required from 10 to 50 for local organizations, 500 for regional, and 5,000 for national organizations.¹⁰⁷

The Russian 2011 draft amendments take a more nuanced approach. They do not eliminate the division between local organizations, which require 10 members to form, and centralized organizations, which require 3 local organizations.¹⁰⁸ They do, however, eliminate the 1997 law’s requirement that centralized organizations have been operating in the country for at least fifteen years.¹⁰⁹ This implemented the European Court of Human Rights decision from 2009, *Kimlya v. Russia*, in which the Court held that the 15-year requirement violated Russia’s religious freedom obligations under the European Convention.¹¹⁰

¹⁰⁴ 2009 Kyrgyz Law, Art. 9.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ 2011 Kazakh Law, Art. 12.

¹⁰⁸ 1997 Russian Law Art. 8.

¹⁰⁹ 2011 Russian Draft Amendments; see 1997 Russian Law Art. 9.1

¹¹⁰ *Kimlya v. Russia*, Eur. Ct. H.R., Applications nos. 76836/01 and 32782/03 (1 Oct. 2009).

The draft amendments, however, do not entirely abandon the idea of using years of operation in the country; the amendments propose restricting the rights of local organizations which are not connected with centralized religious organizations or that have not been registered for ten or more years. These local religious organizations may not exercise various rights of other associations: tax privileges, financial support, and support of teaching general educational subjects in religious educational institutions;¹¹¹ representation of a foreign religious organization;¹¹² conducting religious rites in hospitals, homes for children and the elderly, and correctional facilities;¹¹³ creating educational organizations and mass media;¹¹⁴ creating institutions of professional religious education;¹¹⁵ inviting foreign citizens for professional activity.¹¹⁶

b. Evaluation with regards to international norms

Making distinctions among groups to receive additional state benefits, as the Russian draft appears to do, is fairly typical among cooperationist regimes like those in many European countries¹¹⁷ and meets international standards so long as the distinctions are proportionate and “necessary in a democratic society.”¹¹⁸ Any attempts to have high minimum membership or length of time requirements for base legal entity status, however, violate international norms on religious freedom.¹¹⁹

¹¹¹ 2011 Russian Draft Amendments, Art. 5.3 and 5.4.

¹¹² 2011 Russian Draft Amendments, Art. 13.5.

¹¹³ 2011 Russian Draft Amendments, Art. 16.3.

¹¹⁴ 2011 Russian Draft Amendments, Art. 18.2.

¹¹⁵ 2011 Russian Draft Amendments, Art. 19.

¹¹⁶ 2011 Russian Draft Amendments, Art. 20.2.

¹¹⁷ See GERHARD ROBBERS, *STATE AND CHURCH IN THE EUROPEAN UNION* (1996); Durham *supra* note 31, at; DURHAM SCHARFFS, *supra* note 31.

¹¹⁸ COUNCIL OF EUROPE, *EUROPEAN CONVENTION ON HUMAN RIGHTS* art. 9, cl. 2 (2010), available at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B4575C9014916D7A/0/CONVENTION_ENG_WEB.pdf; see also U.N. HUMAN RIGHTS COUNCIL, *REPORT OF THE SPECIAL RAPPORTEUR ON FREEDOM OF RELIGION OR BELIEF* 16 (22 Dec. 2011) (“While states have a clear human rights obligation to offer the possibility for religious or belief communities to obtain a general status of a legal personality, the provision of a more specific status position on behalf of religious or belief communities does not directly follow from the human right to freedom of religion or belief. States have different options in this regard. There is room for a broad range of possibilities.”).

¹¹⁹ See *id.* at 15-16; Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 17.

The U.N. Human Rights Committee, interpreting the religious freedom protections of Article 18 of the International Covenant on Civil and Political Rights has stated that “Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.”¹²⁰

Reasonable access to legal entity status is a core part of religious freedom.¹²¹ The European Court of Human Rights has repeatedly emphasized that the right of religious freedom in light of the freedom of association involves reasonable access to legal entity status: “one of the means of exercising the right to manifest one’s religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and assets . . .”¹²² Toleration of unregistered groups by the state is no substitute for reasonable access to registration “since recognition alone is capable of conferring rights on those concerned.”¹²³

Best practice in the OSCE region also suggests small minimum membership—“the overwhelming majority [of OSCE countries] have minimum member requirements of 10 or less.”¹²⁴ The OSCE/ODIHR Guidelines on Legislation explain that “[h]igh minimum membership requirements [should] not be allowed with respect to obtaining legal

¹²⁰ United Nations Human Rights Committee General Comment No. 22(48), adopted by the U.N. Human Rights Committee (20 July 1993), U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), par. 2.

¹²¹ Member states of the Organization for Security and Co-operation in Europe, for example, have committed to “grant upon their require to communities of believers, practicing or prepared to practice their faith within the constitutional framework of their states, recognition of the status provided for them in their respective countries.” Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe, Adopted in Vienna (17 January 1989), para. 16c.

¹²² *Metropolitan Church of Bessarabia v. Moldova*, App. No. 45701/99 Eur. Ct. H.R. (13 Dec. 2001), para. 118.

¹²³ *Id.*, para. 129.

¹²⁴ Durham, *supra* note 84, at 388. *See also* Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 17 (“High minimum membership requirements should not be allowed with respect to obtaining legal personality”).

personality,” and “[i]t is not appropriate to require lengthy existence in the State before registration is permitted.”¹²⁵

This reflects a clear understanding of freedom of religion and freedom of association requirements and respect for the various organizational structures of religious organizations. Some organizations, as a matter of belief, are structured congregationally instead of hierarchically, which results in a smaller number of members.¹²⁶ The reduced minimum membership requirements properly prevent discrimination against congregationally structured religious organizations.

B. Restrictions on Proselyting

1. Context

Restrictions on proselyting result from numerous negative attitudes and concerns about groups that engage in proselyting. For example, many Russians see missionary activity as primarily a foreign endeavor and reject it on nationalistic grounds.¹²⁷ Alarmist media reports often describe foreign missionaries as spies.¹²⁸ In many ways this parallels the accusations Putin’s government made that the protests following the elections of December 2011 were fomented by foreigners trying to undermine the government. As early as 2000, Putin’s government adopted a policy paper on national security which had a chapter on “spiritual security” and the importance of controlling missionary activity.¹²⁹

¹²⁵ OSCE/ODIHR Guidelines for Review of Legislation, 17.

¹²⁶ See Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 17.

¹²⁷ See, e.g., Robert C. Blitt, *How to Entrench a De Facto State Church in Russia: A Guide in Progress*, BYU L. REV. 707, 723 (2008); Witte, *supra* note 22 at 1; Pospelovsky, *supra* note 23, at 55-56; PROSELYTISM AND ORTHODOXY IN RUSSIA: THE NEW WAR FOR SOULS, *supra* note 23.

¹²⁸ See, e.g., Arina Lekhel, Note, *Leveling the Playing Field for Religious “Liberty” in Russia: A Critical Analysis of the 1997 Law “On Freedom of Conscience and Religious Associations*, VAND. J. TRANSNAT’L L. 167, n.380 (1999); Geraldine Fagan, *Russia: Are Kalmykia’s Protestants “western spies”?*, FORUM18, Apr. 14, 2003, *available at* http://www.forum18.org/Archive.php?article_id=31&pdf=Y.

¹²⁹ See Nolan and K. v. Russia, App. No. 2512/04, Eur. Ct. H.R. (12 Feb 2009); Daniel P. Payne, *Spiritual Security, the Russian Orthodox Church, and the Russian Foreign Ministry: Collaboration or Cooptation?* J. OF CHURCH AND STATE 712, 713–14 (Autumn 2010).

Another basis for the legislative reaction against proselyting in this region comes from a strong tradition that religion functions primarily as a cultural and ethnic marker—the assumption that to be truly “Russian,” ethnic Russians must be Orthodox or that ethnic Kazakhs or Kyrgyz must of necessity be Muslim.¹³⁰ The Russian government often makes reference to the four “traditional” religions in Russia—Russian Orthodoxy, Islam, Judaism, and Buddhism, but ignores other, non-ethnically divided religions, such as Protestantism, that have been in the country for over two hundred years.¹³¹

2. Legislative provisions

Restrictions on proselyting are one of the most common forms of restriction of religion in recent years in Russia and Central Asia.¹³² The 2009 Kyrgyz law prohibited “all actions directed to proselytizing of the faithful from one denomination to another . . . as well as any other illegal missionary work,”¹³³ but failed to define “illegal” missionary work.

The Russian government proposed a ban on missionary activity in 2006 and again in 2009.¹³⁴ The original 2006 proposal required missionaries to notify the state of an intent to conduct missionary activity and to carry permission to preach. It also banned proselyting in hospitals or within 100 meters of religious building of another denomination, as well as missionary activity directed at minors or “people who are experiencing difficult life situations and involving any promise to help

¹³⁰ See Igor Rotar, *Central Asia: State Policy Towards Religious Minorities in Central Asia*, FORUM 18 (Jan. 21, 2004), available at http://forum18.org/Archive.php?article_id=233.

¹³¹ See, e.g., Robert C. Blitt, *supra* note 127 at 707 ; Wallace L. Daniel & Christopher Marsh, *Russia's 1997 Law on Freedom of Conscience in Context and Retrospect*, J. CHURCH & ST. 5 (2007); R. Christopher Preston, *Islam in Russia Under the Federal Law on Freedom of Conscience and on Religious Associations: Official Tolerance in an Intolerant Society*, BYU L. REV. 773, 784 (2001).

¹³² See also 2011 Armenia Draft Law Draft Law of the Republic of Armenia on Freedoms of Conscience and Religion (2011). The draft bans “proselytism” i.e., “use of threat of physical or psychological violence”; includes the vague ban on “providing material or social advantage or taking advantage of dependence” and “persecuting the person twice or more.” *Id.*, Art. 4. The law also prohibits proselyting of minors without parental permission. *Id.*, Art. 4.3.

¹³³ 2009 Kyrgyz Law art. 5

¹³⁴ Geraldine Fagan, *Russia: Proposed missionary restrictions – a paper tiger?* FORUM18, Nov. 23, 2009, available at http://www.forum18.org/Archive.php?article_id=1378; Geraldine Fagan, *Russia: How likely are missionary restrictions?* FORUM18, Nov. 15, 2006, available at http://www.forum18.org/Archive.php?article_id=870.

them resolve such a situation.”¹³⁵ This exceptionally broad sweep would significantly restrict freedom of speech and religion.

The 2009 proposal was slightly narrower, but still significantly limited proselyting activity. According to the draft law, any missionary activity would have to be authorized by the religious association being promoted unless it took place on sites belonging to a religious association. Also, foreign citizens would need religious work visas to proselyte, defined as “activity by a religious association aimed at disseminating its doctrines among persons who are not members, participants or followers of the given religious association, with the aim of drawing the said persons into the religious association, and conducted directly, publicly, through mass media or other legal means by religious associations or persons authorised by them.”¹³⁶ Under the draft law, proselyting could not be accompanied by “material, social or other benefits” or “psychological pressure”—all vague terms with the potential for discriminatory application.¹³⁷ Finally, religious organizations would not be permitted to have non-member minors in their meetings without parental permission.¹³⁸

Kazakhstan, as part of the 2011 amendments to its religion law, passed restrictive proselyting restrictions that track the 2006 Russian draft in large part, except that they add the requirement that anyone proselyting must register annually with the state, which may review their religious beliefs and materials.¹³⁹ Proselyting is barred in buildings of state bodies, the armed forces, schools, prisons, hospitals, and other state buildings.¹⁴⁰ This provision has led to the wholesale removal of chaplaincy programs and prayer rooms from prisons, hospitals, and other state buildings.¹⁴¹

¹³⁵ See, e.g., Roman Lunkin, *Religion and State After 2000 in Putin's Era: The Legislation and the Reasons of the Discrimination of Believers*, SLAVIC CENTER FOR LAW AND JUSTICE, Jul. 7, 2010, available at http://sclj.org/press_releases/10-0707-PutinEra.htm.

¹³⁶ Geraldine Fagan, *Russia: Proposed missionary restrictions – a paper tiger?* FORUM18, Nov. 23, 2009, available at http://www.forum18.org/Archive.php?article_id=1378.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ 2011 Kazakh Law; see also Peter Roudik, *Kazakhstan: New Law on Religion Enacted*, GLOBAL LEGAL MONITOR, Oct. 17, 2011, available at http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402850_text.

¹⁴⁰ 2011 Kazakh Law, Art. 7; see also Felix Corley, *Kazakhstan: New proposed legal restrictions on religion reach Parliament*, FORUM 18, Sept. 6, 2011, available at http://www.forum18.org/Archive.php?article_id=1610.

¹⁴¹ Felix Corley, *Kazakhstan: Prison mosques, churches, and prayer rooms closed down*, FORUM 18, Nov. 11, 2011, available at http://www.forum18.org/Archive.php?article_id=1635.

3. Evaluation with regards to international norms

Communication of religious messages is a core part of both freedom of speech and freedom of religion.¹⁴² Religious persuasion, advocacy, and proselytism are often sensitive issues. In a limited set of circumstances, these expressive activities may be in tension with the rights and freedoms of others, but the Russian and Central Asian laws and draft laws discussed above excessively restrict religious freedom and freedom of speech. The European Court of Human Rights has recognized that religious freedom under Article 9 of the European Convention includes “‘the right to manifest [one’s] religion,’ including the right to try to convince one’s neighbor, for example, through ‘teaching,’” but that religious freedom “does not, however, protect every act motivated or inspired by a religion or belief.”¹⁴³

While some language in European Court cases seems to indicate that religious freedom may not protect some forms of proselytism, such as the “offering of material or social advantage or the application of improper pressure with a view to gaining new members for a church,”¹⁴⁴ it is important to note that the only restrictions of proselytism that the European Court has actually upheld are those that penalized members of the armed forces from repeatedly approaching a subordinate, “in view in particular of the special character of the relationship between a superior and subordinate in the armed forces . . .”¹⁴⁵

The proper approach is to focus specifically on acts constituting coercion. The OSCE/ODHIR Guidelines for Review of Legislation Pertaining to Religion or Belief, for example, focus on actual coercion: “If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such

¹⁴² See, e.g., *Watchtower Bible & Tract Society v. Village of Stratton*, 536 U.S. 150 (2002); Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Law*, 1999 BYU L.Rev. 1, 252.

¹⁴³ *Larissis and others v. Greece*, no. 140/1996/759/958-960, Eur. Ct. HR (24 February 1998), para. 45 (quoting *Kokkinakis v. Greece*, No. 3/1992/348/421, Eur. Ct. HR (19 April 1993), para. 31).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at para. 49.

regardless of the religious beliefs involved.”¹⁴⁶ Issues of coercion, violence, or fraud are typically already penalized in existing law, thus eliminating the need for specific provisions dealing with religious coercion, religious violence, or religious fraud. Leaving religious coercion, violence, and fraud to the existing criminal law instead of creating separate offenses is the approach of most democratic systems.

The draft laws and legal limitations on proselytism discussed above reach beyond coercion, fraud, and violence, and intrude on the right to have or adopt beliefs, which is protected unconditionally in international law. It is well-settled that whereas “manifestations” of religion may be subject to a carefully restricted set of limitations,¹⁴⁷ the internal freedom of thought, conscience and religion—the so-called “forum internum”—may not be limited. As the U.N. Human Rights Committee has formulated this doctrine,

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. *It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1).*¹⁴⁸

It is worth noting that over the years, many religious groups have helped draft codes of missionary conduct in an effort to provide appropriate self-regulation in this sphere.¹⁴⁹ As a general matter, such codes suggest a variety of “best practices,” but it is important that practices that go beyond what is required by international human rights

¹⁴⁶ Guidelines for Review of Legislation Pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in Consultation with the European Commission for Democracy Through Law (Venice Commission), adopted by the Venice Commission (Venice, 18-19 June 2004), welcomed by the OSCE Parliamentary Assembly (Edinburgh, 5-9 July 2004), 20.

¹⁴⁷ Article 18(3), International Covenant on Civil and Political Rights; Article 9.3, Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights).

¹⁴⁸ UN Human Rights Committee, General Comment No. 22(48), adopted by the U.N. Human Rights Committee on 20 July 1993, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994) (emphasis added).

¹⁴⁹ See, e.g., Matthew K. Richards et al., *Voluntary Codes of Conduct for Religious Persuasion: Effective Tools for Balancing Human Rights and Resolving Conflicts?* RELIGION AND HUMAN RIGHTS 6 (2011).

standards should be voluntary. Coercive state measures that inappropriately limit religious persuasion are as problematic as any other form of restrictions on expression rights.

In the draft laws and law discussed above, the definitions of impermissible proselytism are overly broad, thus impinging on the unconditional freedom of belief. In addition, these provisions are so vague that they do not give sufficient notice of what behavior is illegal. The European Court of Human Rights has held that limitations on religious freedom may not be so vague that they do not give fair notice or allow for arbitrary enforcement.¹⁵⁰

For example, barring proselytism with “material, social or other benefits” or “psychological pressure,” (in the 2009 Russian draft law) or proselytism “directed at people who are experiencing difficult life situations and involving any promise to help them resolve such a situation” (in the 2006 Russian draft law)¹⁵¹ are excessively vague. What one may see as a statement of conviction about sinful activity or the wrongness of other beliefs or as extremely eager attempts to share one’s beliefs might be portrayed by others as “psychological pressure.” Certainly, one man’s enthusiastic zeal is another man’s fanaticism. “Difficult life situations” could be found in most lives. Vagueness not only creates notice problems, but also presents opportunities for abuse and discrimination in enforcement, particularly in countries without a strong tradition of rule of law such as Russia and Central Asia.¹⁵²

Merely speaking words others find distasteful should not be banned. The European Court has repeatedly reaffirmed the principle that “[a]lthough . . . it is possible that tension is created in situations where a religious or any other community becomes divided, . . . this is one of the unavoidable consequences of pluralism. *The role of the authorities in such circumstances is not to remove the cause of tension by eliminating*

¹⁵⁰ *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (ECHR, App. No. 40825/98, 31 July 2008) § 71; *Hasan and Chaush v. Bulgaria*, ECHR, App. No. 30985/96 (Oct. 26, 2000), ¶¶ 84–87; CAROLYN EVANS, FREEDOM OF RELIGION UNDER THE EUROPEAN CONVENTION OF HUMAN RIGHTS 139–42 (2001).

¹⁵¹ See Roman Lunkin, *Religion and State After 2000 in Putin’s Era: The Legislation and the Reasons of the Discrimination of Believers*, Slavic Center for Law and Justice, Jul. 7, 2010, available at http://sclj.org/press_releases/10-0707-PutinEra.htm.

¹⁵² See Roman Podoprigora, *Discretionary State Approval of Religious Activity*, in *FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK* 434–37 (Tore Lindholm et al. eds., 2004).

*pluralism, but to ensure that the competing groups tolerate each other . . .*¹⁵³

The provisions on psychological pressure draw on a largely discredited approach.¹⁵⁴ Social scientists generally reject the idea of “brainwashing”¹⁵⁵ and many courts have rejected this as a defense to forcible “deprogramming.”¹⁵⁶ Ironically, the term “brainwashing” itself arose from fears of what Communist leaders were able to do to their citizens.¹⁵⁷

Other vague and overbroad provisions in the proselyting provisions cited above include the restrictions on advocacy by provision of material or social benefits. Many religions provide material assistance to their needy members and to others.¹⁵⁸ This form of humanitarian and charitable work is found in virtually all religions¹⁵⁹ and constitutes a considerable benefit that religions confer on society. What is normal and laudable charitable service provided by one group may be mischaracterized and criticized as improper proselyting by members of other religious denominations, even though the charitable service is rendered without intent or expectation of conversion. Does giving new members access to benefits equally available to all members of that religion constitute “providing material or social advantage”? With vague

¹⁵³ *Serif v. Greece*, European Court of Human Rights (ECtHR), App. No. 38178/97, 14 December 1999) (emphasis added).

¹⁵⁴ See Marat S. Shterin and James T. Richardson, *Effects of the Western Anti-Cult Movement on Development of Laws Concerning Religion in Post-Communist Russia*, 42 J. OF CHURCH & STATE 257–71 (2000).

¹⁵⁵ See, e.g., THE FUTURE OF NEW RELIGIOUS MOVEMENTS 216 (David G. Bromley & Phillip E. Hammond, eds., 1987); James T. Richardson, *A Social Psychological Critique of ‘Brainwashing’ Claims about Recruitment to New Religions*, in *The Handbook of Cults and Sects in America* 75–97 (J. Hadden and D. Bromley, eds., 1993).

¹⁵⁶ See, e.g., *Riera Blume and others v. Spain*, No. 37680/97, Eur. Ct. H.R. (14 Oct 1999) (rejecting “deprogramming” “brainwashed” individuals as a lawful ground for detention); *Scott v. Ross*, 140 F.3d 1275 (9th Cir. 1998); see generally W. COLE DURHAM AND ROBERT SMITH, 3 RELIGIOUS ORGANIZATIONS AND THE LAW § 11:39; MARC GALANTER, *CULTS, FAITH, HEALING AND COERCION* (2nd ed. 1999); Barry A. Fisher, *Devotion, Damages and Deprogrammers: Strategies and Counterstrategies in the Cult Wars*, 9 J. L. & RELIGION. 151 (1991).

¹⁵⁷ See, e.g., James T. Richardson, *A Social Psychological Critique of ‘Brainwashing’ Claims about Recruitment to New Religions*, in *THE HANDBOOK OF CULTS AND SECTS IN AMERICA* 75–97 (J. Hadden and D. Bromley, eds., 1993),.

¹⁵⁸ See, e.g., CATHOLIC RELIEF SERVICES, <http://crs.org/> (last visited Mar. 12, 2012); Humanitarian Aid, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS (last visited Mar. 12, 2012), available at <http://mormon.org/humanitarian-aid/>; ISLAMIC RELIEF WORLDWIDE, <http://www.islamic-relief.com/> (last visited Mar. 12, 2012).

¹⁵⁹ See, e.g., *id.*

terms, it is unclear how provision of legitimate charitable assistance can be distinguished from abusive material inducements or how discriminatory enforcement can be avoided. The state has a legitimate interest in addressing coercion or fraud, but otherwise, it should encourage the charitable activity of religious groups, and should avoid imposing criminal or administrative liability that could lead members of less popular groups to fear prosecution for their charitable efforts.

The 2006 Russian draft law creates even more problems by penalizing promises to “help [individuals] resolve [a difficult life] situation.”¹⁶⁰ Religious organizations regularly promise that individuals will receive non-tangible spiritual benefits, such as benefits in the next life, from listening to their advocacy or joining their organizations.¹⁶¹ The proposed draft law is worded broadly enough to include even these as impermissible benefits. As demonstrated by the European Court’s decision in *Larissis*, penal or administrative sanctions for religious persuasion and missionary work should be permitted only in the context of coercive relationships, such as persons acting as a representative of the state, military superiors, employers, or where fraud has substantially similar effects.¹⁶²

The restrictions on proselyting to children without their parents’ consent in the Russian 2006 and 2009 draft laws and the ban on “involvement of minors into religious organizations”¹⁶³ in the 2009 Kyrgyz law are also excessively restrictive. Parents do, of course, have the right to direct their children’s exercise of religious freedom in

¹⁶⁰ See, e.g., Roman Lunkin, *Religion and State After 2000 in Putin’s Era: The Legislation and the Reasons of the Discrimination of Believers*, SLAVIC CENTER FOR LAW AND JUSTICE, Jul. 7, 2010, available at http://sclj.org/press_releases/10-0707-PutinEra.htm.

¹⁶¹ Professor Jesse Choper goes so far as to argue that “extratemporal consequences” can be used as a defining feature of religion. Jesse H. Choper, *Defining ‘Religion’ in the First Amendment*, 1982 U. ILL. LREV. 579, 597-601 (arguing that

¹⁶² See *Larissis v. Greece*, Eur. Ct. H.R., App. Nos. 23372/94, 26377/94, 26378/94 (24 Feb. 1998), at para. 51 (“[T]he hierarchical structures which are a feature of life in the armed forces may color every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him.”; see also *Lee v. Weisman*, 505 U.S. 577, 587, 598 (1992), in which the U.S. Supreme Court raised concern that persons acting in an official state capacity or with official endorsement impermissibly coerce individual choice in religious matters. U.S. courts have also recognized that policies or actions by private employers or employment superiors, such as mandatory prayer sessions, can violate non-discrimination laws. See *EEOC v. Townley Engineer and Manufacturing Co.*, 859 F.2d 610 (9th Cir. 1988); *Young v. Southwestern Savings and Loan Association*, 509 F.2d 140 (5th Cir. 1975).

¹⁶³ 2009 Kyrgyz Law, Art. 4.

connection with the “evolving capabilities of the child.”¹⁶⁴ However, these laws create a strange situation where individuals may freely speak to children about atheism or extreme political views without their parents’ consent, but violate the law when they speak about religious beliefs. Mature minors also have rights to religious freedom¹⁶⁵ and freedom to receive information.¹⁶⁶

Also, allowance should be made for the fact that teenagers sometimes initiate interaction with members of other faiths. For example, a pastor should not be held liable for violating the child-protection provisions merely because a teenager walks into a service during a sermon or attends a youth activity. The 2011 Kazakh law is comparably more reasonable, only requiring “the head of a religious association to take measures to prevent involvement and/or participation of juveniles in activity of a religious association in case of objection of one of the parents or their legal representatives.”¹⁶⁷

C. Religious Expertise

1. Legislative Provisions

Another significant trend in legislation affecting religion in Russia and Central Asia is the troubling use of the term “religious expertise” or “religious studies expertise.”¹⁶⁸ These laws and draft laws grant significant executive decision-making power to a group of designated “experts” who may determine if a group is religious, is dangerous, or is “extremist,”—determinations that result in a refusal to register a group, a group’s de-registration, or the banning of a group’s literature.¹⁶⁹ Some of this practice stems from the Soviet-era view of the control functions of state agencies: registration is still often seen in this part of the world as a means for protecting society from undesirable groups.¹⁷⁰ Even after the

¹⁶⁴Convention on the Rights of the Child, Art. 14.3.

¹⁶⁵ Convention on the Rights of the Child, Article 14(1); see also ICCPR Article 18.

¹⁶⁶ Convention on the Rights of the Child, Article 13(1) (One of the rights of the child is “the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds).

¹⁶⁷ 2011 Kazakh law, Art. 3.16.

¹⁶⁸ See, e.g., 2011 Kazakh Law, Art. 6; 2009 Kyrgyz Law, Art. 11; 2011 Russia Draft Law, Art. 11.

¹⁶⁹ See, e.g., 2011 Kazakh Law, Art. 6; 2009 Kyrgyz Law, Art. 11; 2011 Russia Draft Law, Art. 11.

¹⁷⁰ Durham, *supra* note 84, at 215–16.

liberalizing legislation of the post-Soviet era, this function continued to be performed by Departments of Religious Affairs in countries with these government offices.¹⁷¹ In Russia, registration has been under the auspices of the Ministry of Justice, but the 1997 Russian religion law permitted it to conduct a state expert analysis by scholars of religion as part of review of applications.¹⁷²

To some extent, this use of scholarly expertise is fairly innocuous—Western governments also occasionally consult scholars on questions requiring expertise in religious studies.¹⁷³ The concern raised by recent legislation and practice in Russia and Central Asia, however, is that significant executive power has been delegated to these bodies, which have been staffed with representatives of dominant religious groups instead of recognized scholars.¹⁷⁴ These “expert councils” or government religious affairs offices are given authority to review the legitimacy of all organizations upon registration or in some cases upon their own initiative.¹⁷⁵ None of the recent draft laws or laws in Russia or laws in Central Asia provides criteria for evaluations or limitations on what bases may be used.¹⁷⁶ The placement of representatives of dominant religious

¹⁷¹ See generally Silvio Ferrari and W. Cole Durham, Jr., eds., *CHURCH AND STATE IN POST-COMMUNIST EUROPE* (2004).

¹⁷² 1997 Russian Religion Law, Art. 11.8; see also Geraldine Fagan, *Russia: A New “Inquisition,”* FORUM 18 (May 26, 2009), available at http://www.forum18.org/Archive.php?article_id=1299.

¹⁷³ For example, INFORM (The Information Network on Religious Movements) has been consulted by the British Home Office and other governments on questions involving understanding of religious beliefs and RENNER (Research Network on New Religions) scholars sit on a committee which makes recommendations to the Danish government. See Eileen Barker, *What Should We Do about the Cults? Policies, Information and the Perspective of INFORM* in PAULINE CÔTÉ AND JEREMY GUNN, *THE NEW RELIGIOUS QUESTION: STATE REGULATION OR STATE INTERFERENCE?* 379-80, 384-90 (2006). It is important to note that these organizations are scholarly, not affiliated with any particular religious tradition, and generally avoid normative judgments on religious beliefs.

¹⁷⁴ See Geraldine Fagan, *Russia: Widespread Protests at New “Inquisition,”* FORUM 18 (June 2, 2009), available at http://www.forum18.org/Archive.php?article_id=1303; Mushfig Bayram, *Kyrgyzstan: What Will New “Coordinating Council on the Struggle Against Religious Extremism” Do?*, FORUM 18 (Aug. 19, 2009), available at http://forum18.org/Archive.php?article_id=1337.

¹⁷⁵ E.g., 2011 Russia Draft Law, Art. 11 (expertise may be carried out upon registration application of an organization not connected to a centralized religious association or changes to the charter of a religious organizations (including its name) if these changes are connected to existing or changed evidence of the beliefs of an organization; expertise must be carried out “If necessary to evaluate the increases or losses in the activity of a registered religious association of the characteristics of a religious organization”); 2011 Kazakh Law, Art. 15 (expertise conducted during registration or re-registration); 2009 Kyrgyz Law, Art. 11.3 (expertise conducted during registration).

¹⁷⁶ See 2011 Russia Draft Law, 2011 Kazakh Law; 2009 Kyrgyz Law; see also Mushfig Bayram, *Kyrgyzstan: What Will New “Coordinating Council on the Struggle Against Religious Extremism” Do?*, FORUM 18 (Aug. 19, 2009), available at http://forum18.org/Archive.php?article_id=1337; THE INSTITUTE ON RELIGION & PUBLIC POL’Y, *KAZAHSTAN: LEGISLATIVE ANALYSIS OF DRAFT RELIGION LAW: FUNDAMENTAL RIGHT TO RELIGIOUS FREEDOM IN JEOPARDY* 12 (2011), available at

traditions and non-scholars on these councils or in these offices increases the likelihood that these bodies will make uneducated judgments that discriminate against minority groups.

Kyrgyzstan's 2009 law and Kazakhstan's 2011 amendments introduce a "religious study examination" to review religious registration applications.¹⁷⁷ In Kazakhstan, the examination, "carried out by persons holding special knowledge in the field of religious studies, with the assistance, when necessary of representatives from government bodies and other professionals,"¹⁷⁸ is also required in a broad array of situations: upon request of natural or legal persons, application of religious organizations or missionaries for registration, or upon the initiative of the government agency for religious affairs.¹⁷⁹ This review is also explicitly combined with censorship—the government agency responsible for religious affairs is required to conduct this examination to review all religious materials before they can be imported, distributed, or placed in state libraries.¹⁸⁰

A prime example of some of these concerns is that of Russia, where the religious examination is used to investigate the activity, doctrines, leadership decisions, literature and worship of any registered organization.¹⁸¹ The 2011 Russian law proposed codification of an earlier order of the Ministry of Justice creating the Russian Council for Conducting State Religious Expert Analysis.¹⁸² In April 2009, the members of the Expert Council were appointed, with few academics and many representatives of the Russian Orthodox Church who have made a name for themselves by opposing and labeling non-Orthodox groups as cults.¹⁸³ The chair of the Expert Council is Alexander Dworkin, an anti-

<http://www.osce.org/odihr/82925>; Felix Corley, *Kyrgyzstan: President's Signing of Restrictive Religion Law Condemned*, FORUM 18 (Jan. 13, 2009), available at http://www.forum18.org/Archive.php?article_id=1240.

¹⁷⁷ 2011 Kazakh law, Art. 6; 2009 Kyrgyz law, Art. 11.3.

¹⁷⁸ 2011 Kazakh law, Art. 6.4.

¹⁷⁹ 2011 Kazakh law, Art. 6.2; see also Art. 15.6 (using the "religious study examination" as a basis for registration).

¹⁸⁰ 2011 KAZAKH LAW, ART. 6.

¹⁸¹ See Geraldine Fagan, *Russia: A New "Inquisition,"* FORUM 18 (May 26, 2009), available at http://www.forum18.org/Archive.php?article_id=1299.

¹⁸² Compare 2011 Russia Draft Law with Order of the Ministry of Justice No. 53 (18 Feb 2009) (Russia); see also Geraldine Fagan, *Russia: A New "Inquisition,"* FORUM 18 (May 26, 2009), available at http://www.forum18.org/Archive.php?article_id=1299.

¹⁸³ See Geraldine Fagan, *Russia: Notorious "Anti-Cultists" on New "Inquisition,"* FORUM 18 (May 27, 2009), available at http://forum18.org/Archive.php?article_id=1300.

cult activist,¹⁸⁴ who has described the faith of charismatic Protestants as “a crude magical-occult system with elements of psychological manipulation”¹⁸⁵ and supported the Moscow’s deregistration of the Jehovah’s Witnesses,¹⁸⁶ which has been rejected by the European Court of Human Rights.¹⁸⁷ The Expert Council at this point is a part-time body and has not been very active. It has, however, been on the cusp of an extremely worrying trend of using Russia’s anti-extremism legislation to prosecute religious minorities, particularly Jehovah’s Witnesses.¹⁸⁸

Local expert councils have been formed in cities and regions around Russia, and prosecutions have been brought for extremism against Jehovah’s Witnesses, followers of the Turkish theologian Said Nursi, and other Muslims.¹⁸⁹ Prosecutions have been brought to banned a wide range of materials as “extremist” including the Jehovah’s Witnesses’ *Awake!*; the Hare Krishna’s *Baghavad-Gita As It Is*; a Jehovah’s Witness children’s book about Jesus, *Learn from the Great Teacher*; a picture showing Mickey Mouse preaching the Sermon on the Mount in *The Journey of Mickey Mouse in the History of Art*; and the “staple [Islamic]

¹⁸⁴ For an interesting exploration of the Western anti-cult movement’s influence on Dworkin’s views, see Marat Shterin and James T. Richardson, *Effects of the Western Anti-Cult Movement on Development of Laws Concerning Religion in Post-Communist Russia*, 42 J. OF CHURCH AND STATE 257–71 (2000).

¹⁸⁵ Geraldine Fagan, *Russia: Notorious “Anti-Cultists” on New “Inquisition,”* FORUM 18 (May 27, 2009), available at http://forum18.org/Archive.php?article_id=1300.

¹⁸⁶ *Id.*

¹⁸⁷ *Jehovah’s Witnesses of Moscow v. Russia*, 2010 Eur. Ct. H.R., available at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=869647&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

¹⁸⁸ See, e.g., “Fifteen Jehovah’s Witnesses on Trial: Criminal Prosecution of Jehovah’s Witnesses in Russia Reaches New Level” Administrative Center of Jehovah’s Witnesses in Russia (Mar. 12, 2012), English translation available at <http://www2.stetson.edu/~psteeves/relnews/1203f.html#29>; Geraldine Fagan, *Russia: Nationwide Strike At Jehovah’s Witnesses*, FORUM 18 (Mar. 13, 2009), available at http://www.forum18.org/Archive.php?article_id=1267; Geraldine Fagan, *Russia: Jehovah’s Witnesses to Be Banned?*, FORUM 18 (Oct. 23, 2009), available at http://www.forum18.org/Archive.php?article_id=1366; Felix Corley, *Russia: “Extremism” Prosecutions Continue, But Supreme Court Advises Caution*, FORUM 18 (July 19, 2011), available at http://forum18.org/Archive.php?article_id=1594.

¹⁸⁹ See Geraldine Fagan, *Russia: The Battle With “Religious Extremism”—A Return to Past Methods?*, FORUM 18 (Apr. 28, 2009), available at http://forum18.org/Archive.php?article_id=1288; Maria Rozalskaya, “Misuse of Anti-Extremism Legislation in the First Half of 2011,” available at <http://www.sova-center.ru/en/misuse/reports-analyses/2011/10/d22796/>; “Misuse of Anti-Extremism Legislation in December 2011: available at <http://www.sova-center.ru/en/misuse/news-releases/2012/01/d23380/>; “Misuse of Anti-Extremism Legislation in January 2012,” available at <http://www.sova-center.ru/en/misuse/news-releases/2012/02/d23664/>; “Misuse of Anti-Extremism in February 2012,” available at <http://www.sova-center.ru/en/misuse/news-releases/2012/03/d23831/>.

religious text” *The Personality of a Muslim*.¹⁹⁰ The Russian Ministry of Justice has developed a list of over one thousand federally banned publications; it is essentially impossible to appeal the decision to put an item on the list.¹⁹¹

The 2011 Russian draft amendments would codify and expand existing federal practice, allowing evaluation of the “religious character” of the organization and the trustworthiness of the data concerning the basics of its religious doctrine and corresponding practice during registration.¹⁹² The expert council is also supposed to give an opinion if changes are made to an organization’s charter that are related to changed evidence of beliefs, or if “changes in activity warrant investigation.”¹⁹³ The 2011 draft would also give the Expert Council authority to investigate whether religious organizations follow the laws of the Russian federation, a power previously reserved to prosecutors’ offices.¹⁹⁴ There are no limitations placed on how religious organizations are evaluated or what bases for evaluation are permissible or impermissible.¹⁹⁵

These provisions are particularly problematic given the widespread abuse of anti-extremism provisions in Russia against minority religious groups. The Russian Supreme Court has recognized this problem, and in June 2011, issued a resolution¹⁹⁶ condemning non-objective prosecutions

¹⁹⁰ See Geraldine Fagan, *Russia: The Battle With “Religious Extremism”—A Return to Past Methods?*, FORUM 18 (Apr. 28, 2009), available at http://forum18.org/Archive.php?article_id=1288; Geraldine Fagan, *Russia: Islamic Book Promoting Tolerance Banned*, FORUM 18 (Feb. 1, 2008), available at http://forum18.org/Archive.php?article_id=1080; Felix Corley, *Russia: “This Isn’t About Freedom of Conscience or Censorship,”* FORUM 18 (Dec. 2, 2011), available at http://forum18.org/Archive.php?article_id=1642; “Misuse of Anti-Extremism in February 2012,” available at <http://www.sova-center.ru/en/misuse/news-releases/2012/03/d23831/>.

¹⁹¹ Министерство юстиции Российской Федерации [Ministry of Justice], *Федеральный список экстремистских материалов* [Federalist List of Extremist Materials] (2011), available at <http://www.minjust.ru/nko/fedspisok/>. As of April 3, 2012, 1,132 works had been placed on the Federal List of Extremist Materials. *Id.* See also SOVA Ctr. for Information and Analysis, *The SOVA Center’s Talking Points for the EU/Russian Federation Human Rights Consultations*, MISUSE OF ANTI-EXTREMISM (May 29, 2009), available at <http://www.sova-center.ru/en/misuse/conference-papers/2009/05/d16124/>.

¹⁹² 2011 Russia Draft Law, Art. 11.

¹⁹³ *Id.*

¹⁹⁴ *Id.* See Slavic Legal Center, “Новое инициатива Министерства юстиции РФ: больше вопросов, чем ответов” (11 Oct. 2011), available at http://www.sclj.ru/news/detail.php?SECTION_ID=260&ELEMENT_ID=3527.

¹⁹⁵ See 2011 Russia Draft Law.

¹⁹⁶ Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11, “Concerning Judicial Procedure in Criminal Cases of Crimes of Extremism” (June 28, 2011), available at

of “extremism” crimes against individuals having no motive to incite hatred or enmity.¹⁹⁷ Russian human rights commentators, however, have expressed “doubts that its approval will bear immediate fruit. So far, we see that regional courts are simply ignoring the Supreme Court’s directions.”¹⁹⁸ At present, the bulk of the problem has been regional religious expert councils, prosecutors, and courts, but the 2011 legislation would expand the scope of the Federal Expert Council and set a problematic precedent of a national expert council with no restrictions on the nature or basis of its evaluations and appears. Passage of the draft legislation also would appear to endorse the existing council, with its strong denominational and anti-minority slant.

2. Evaluation with respect to international norms

By not providing standards for expert review of religious organizations, the 2011 Russian draft, like the Kazakh and Kyrgyz laws before it, is excessively vague and opens the way for substantive reviews of religious beliefs, which would clearly violate international norms.¹⁹⁹ As the European Court of Human Rights has explained, “The right to freedom of religion or belief as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”²⁰⁰

<http://www.rg.ru/2011/07/04/vs-dok.html>, translated in Stetson Univ., *Russian Supreme Court Tries to Limit Use of “Extremism” Cases Against Believers*, RUSSIA RELIGION NEWS (PDS trans., July 1, 2011), available at <http://www2.stetson.edu/~psteeves/relnews/1107a.html>.

¹⁹⁷ Resolution of the Plenum of the Supreme Court of the Russian Federation No. 11, “Concerning Judicial Procedure in Criminal Cases of Crimes of Extremism” (June 28, 2011), available at <http://www.rg.ru/2011/07/04/vs-dok.html>, translated in Stetson Univ., *Russian Supreme Court Tries to Limit Use of “Extremism” Cases Against Believers*, RUSSIA RELIGION NEWS (PDS trans., July 1, 2011), available at <http://www2.stetson.edu/~psteeves/relnews/1107a.html>. See also Felix Corley, *Russia: “Extremism” Prosecutions Continue, But Supreme Court Advises Caution*, FORUM 18 (July 19, 2011), available at http://forum18.org/Archive.php?article_id=1594; Stetson Univ., *Russian Supreme Court Tries to Limit Use of “Extremism” Cases Against Believers*, RUSSIA RELIGION NEWS (July 1, 2011), available at <http://www2.stetson.edu/~psteeves/relnews/1107a.html>.

¹⁹⁸ Maria Rozalskaya, *Misuse of Anti-Extremism Legislation in the First Half of 2011*, SOVA CENTER FOR INFORMATION AND ANALYSIS (Alexander Verkhovsky ed., Oct. 17, 2011), available at <http://www.sova-center.ru/en/misuse/reports-analyses/2011/10/d22796/>.

¹⁹⁹ See generally Roman Podoprigora, *Discretionary State Approval of Religious Activity*, in FACILITATING FREEDOM OF RELIGION OR BELIEF: A DESKBOOK 434-37 (Tore Lindholm et al. eds., 2004).

²⁰⁰ *Manoussakis v. Greece* 23 Eur. H.R. Rep. 387 (1997), Eur. Ct. H.R. ¶ 2 (1996).

The U.N. Human Rights Committee, in interpreting the religious freedom protections of Article 18 of the International Covenant on Civil and Political Rights has outlined similar standards. It has explained that:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.²⁰¹

D. Censorship

1. Legislative provisions

Another worrying trend is the imposition of censorship of religious materials. Central Asian countries have imposed considerable prior restraint on any publication or importation of religious materials. The 2011 Kazakh law, for example, requires the government agency in charge of religious affairs to review all religious materials before they are distributed by missionaries, imported (except for personal use), or placed in state libraries.²⁰² Distribution of any materials with religious content is only permitted in religious buildings, religious educational institutions or “specifically identified stationary facilities identified by local executive bodies of oblasts [regions].”²⁰³

Similarly, the 2009 Kyrgyz law imposes censorship over religious materials and control over their distribution. Examination by a “state religious expert” is required before material can be imported, distributed, or placed in state libraries.²⁰⁴ Distribution of religious materials and media is limited to sites owned by religious organizations “as well as in places allocated for these purposes in the standard procedure by local

²⁰¹ C.C.P.R. Gen. Cmt. No. 22/48, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993).

²⁰² 2011 Kazakh Law, Art.6 (review materials before placing in library stocks, missionary applications, importation of religious materials); 8.6 (review before use of religious materials by missionaries), 9 (review before importation).

²⁰³ 2011 Kazakh Law, Art. 9.

²⁰⁴ 2009 Kyrgyz Law, Art. 23.

governmental institutions.”²⁰⁵ Distribution of religious media is banned in public places, in “visits to private apartments, children’s institutions, schools, and higher education institutions.”²⁰⁶ Citizens and religious organizations are only permitted to purchase and use religious literature and “materials of religious orientation” only in places of worship and “in specialized shops.”²⁰⁷

2. Evaluation with respect to international norms

These provisions clearly violate international norms on freedom of speech and religion. The Universal Declaration of Human Rights provides that “Everyone has the right to freedom of expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²⁰⁸ Article 19 of the International Covenant on Civil and Political Rights recognizes that the exercise of free speech rights “carries with it special duties and responsibilities and may therefore be subject to certain limitations, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”²⁰⁹

The U.N. Human Rights Committee has explicitly noted that freedom of expression, as protected in Article 19 of the International Covenant on Civil and Political Rights, includes religious discourse.²¹⁰ To limit this right, states “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”²¹¹ Concerns for national security from extremist-based violence are too broad and disproportionate from the sweeping ban seen in the Kazakh law. In any

²⁰⁵ 2009 Kyrgyz Law, Art. 23.4.

²⁰⁶ 2009 Kyrgyz Law, Art. 23.4.

²⁰⁷ 2009 Kyrgyz Law, Art. 23.5.

²⁰⁸ UDHR Art. 19; see also ICCPR Article 19 (1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

²⁰⁹ ICCPR, Art. 19.

²¹⁰ U.N. Human Rights Committee, General Comment 34 to Article 19, (21 July 2011) CCPR/C/GC/34, para. 11.

²¹¹ General Comment 34, para. 35.

case, religious manifestations (unlike speech rights generally) may not be limited based on national security: the U.N. Human Rights Committee has explained that “restrictions are not allowed on grounds not specified [in Article 18], even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.”²¹²

Commitments made as a part of the Organization for Security and Co-operation in Europe include ones that “states will . . . allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials”²¹³ and “respect the rights of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief.”²¹⁴ Similarly, states have committed to “ensure that individuals can freely choose their sources of information. In this context they will . . . allow individuals, institutions, and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information of all kinds.”²¹⁵ The 2011 Kazakh law and 2009 Kyrgyz law violate all of these commitments.

²¹² United Nations Human Rights Committee General Comment No. 22 (48), para. 8 (“The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.” Article 19 of the International Covenant on Civil and Political Rights recognizes permits certain restrictions on free speech, the offending states have not invoked these limitations, and in any case, the permissible limitations on religious speech, as part of freedom of religion, are narrower. See ICCPR Art. 19 (noting that the exercise of free speech rights “carries with it special duties and responsibilities and may therefore be subject to certain limitations, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”), but ICCPR Art. 18 does not include national security in its list of permissible limitations on religious freedom.

²¹³ Vienna Concluding Document, para. 16.10

²¹⁴ Vienna Concluding Document, para. 16.9.

²¹⁵ Vienna Concluding Document, para. 34. See also Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, para. 9.1 ([the states reaffirm that] “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright.”); Concluding Document of Budapest, 6 Dec. 1994 para. 36 (“The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.”); Istanbul Document, Istanbul, 19 November 1999, Charter for European Security: III Our Common Response, par. 26 (“We reaffirm the importance of (...) the free flow of information as well as the public’s access to information. We commit ourselves to take all

The breadth of censorship imposed by these laws brings to mind the U.N. Human Rights Committee's comment that restrictions on freedom of expression "may not put in jeopardy the right itself. The Committee recalls that the relation between right and restriction and between norm and exception must not be reversed."²¹⁶

III. Conclusion

The troubling trend of legislation seeking to limit religious freedom in Russia and Central Asia, although formidable, is not inevitable or unstoppable. Other former Soviet states have adopted or proposed legislation much more conducive to religious freedom. In Ukraine, for example, various drafts have been proposed in recent years that generally facilitate religious freedom.²¹⁷ Armenia has proposed a law to resolve problems facing conscientious objectors to military service²¹⁸ and has proposed amendments that would reduce the number of members for registration and legal entity status from 200 to 25.²¹⁹

Concerns about rule of law and political uncertainties, however, add a level of uncertainty to even positive legislative innovations. In Ukraine, for example, resurrection of the comparatively innocuous 2006 draft law

necessary steps to ensure the basic conditions for (...) unimpeded transborder and intra-State flow of information(...).").

²¹⁶ General Comment 34, para. 21.

²¹⁷ For example, in 2006, a draft law was proposed that was apparently revived in 2011 which fills in gaps in current legislation in ways that expand religious freedom: the legislation would permit religious organizations to set up associations of religious organizations, educational establishment, engage in non-commercial economic activity, permit state funding of projects of public interest run by religious organizations, and permit religious organizations to establish sub-organizations and branch organizations. See, e.g., Oleksandr Zaiets, "The Council of Europe's Requirements for Ukraine's Legislation on Religious Freedom: Between Truth and Falsehood," (27 May 2011), available at http://risu.org.ua/en/index/expert_thought/analytic/42562/; Gennadiy Druzenko, *Redrafting of the Ukrainian Law on Religious Freedom: Ukrainian Churches vs. Ukraine's Obligation to the Council of Europe*, 2012 B.Y.U. L. Rev. __ (forthcoming).

²¹⁸ Draft law of the Republic of Armenia on Making Amendments and Supplements to the Law on Alternative Service (2011), available on-line with commentary by the Venice Commission at <http://www.osce.org/yerevan/84996>. This draft may not entirely meet the objections of conscientious objectors and the Council of Europe because it proposes alternate civil service be twice as long as regular military service and be served under military supervision. *Id.* Still, the draft law signals progress in an area that Armenia has been criticized by the European Court of Human Rights. See *Bayatyan v. Armenia*, App. No. 23459/03, Eur. Ct. H.R. (7 July 2011).

²¹⁹ Draft Law of the Republic of Armenia on Freedoms of Conscience and Religion (2011), Art. 5. Note, however, that the law does make registration compulsory. *Id.*, Art. 6. This raises the problems addressed earlier in this Article.

has been strenuously opposed by the All-Ukrainian Council of Churches not because of the content, but because of concerns that when the draft goes to parliament that more restrictive provisions would be added.²²⁰

The absence of effective protest against authoritarian trends in Russia and Central Asia also suggest that change may not come quickly. The so-far-limited success of protests against unfair elections in Russia starting December 2011 is symptomatic of the strong hold that the government has over civil society and public opinion.²²¹

Another issue of concern is the increasingly limited attempts of Russia and Central Asian countries to burnish their human-rights credentials. Kazakhstan, for example, campaigned extensively for chairmanship of the Organization for Security and Co-operation in Europe, which it gained in 2010.²²² The referral of the restrictive 2009 Kazakh draft law to the Constitutional Council, which struck it down, can be seen as part of the Kazakh leadership's attempt to portray its image as a defender of human rights. After the chairmanship of the OSCE rotated on to other countries in 2011, Kazakhstan promptly adopted an even more repressive version of the 2009 Draft law. Russia has also made limited attempts to win approval of its human rights record. For example, it still has not implemented a 2010 religious freedom decision of the European Court of Human Rights.²²³ With Putin's election as president in March 2012,

²²⁰ See "Amendments to the Law of Ukraine on Freedom of Conscience and Religious Organizations to be Promulgated Soon," (Jan. 13, 2011) Religious Information Service of Ukraine, available at http://risu.org.ua/en/index/all_news/state/legislation/40149/; Oleksandr Zaiets, "Overview of Church-State Relations in Ukraine in 2011" (Feb. 21, 2012), available at http://www.irf.in.ua/eng/index.php?option=com_content&view=article&id=306:1&catid=36:com&Itemid=55.

²²¹ See, e.g., *Russian Protests: Putin's People*, THE ECONOMIST (21 Jan. 2012) available at <http://www.economist.com/node/21543207>; *Russia: Politics begins at home*, THE ECONOMIST (Apr. 7, 2012) available at <http://www.economist.com/node/21552241>.

²²² See Anna Wołowska, *The OSCE chairmanship—Kazakhstan's self-promotion campaign?* CENTRE FOR EASTERN STUDIES (11 Jan. 2010), available at <http://www.osw.waw.pl/en/publikacje/osw-commentary/2010-01-11/osce-chairmanship-kazakhstans-self-promotion-campaign>.

²²³ See Rosemary Griffin, *European Court of Human Rights 'Obviously Ignored'* FORUM 18 (Mar. 1, 2011), available at http://forum18.org/Archive.php?article_id=1548. This practice is not limited to the sphere of religion. As of May 2011, no European Court of Human Rights decisions concerned Chechnya had been implemented. See William E. Pomeranz, "Russia and the European Court of Human Rights: Implications for U.S. Policy" available at <http://www.wilsoncenter.org/publication/russia-and-the-european-court-human-rights-implications-for-us-policy>; U.K. Foreign & Commonwealth Office, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report, Russia* ("the incomplete implementation of European Court of

beginning what appears to be another twelve years of assured position, many Russians concerned about religious freedom and human rights are concerned that increasingly restrictive measures will be adopted there. Absent extreme regime changes, the decline of liberalism in Russia and moderate Central Asia seems unstoppable for the foreseeable future.