

Religious Liberty: The Legal Framework in Selected OSCE Countries



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Briefing of the
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ABOUT THE ORGANIZATION (OSCE)

The Conference on Security and Cooperation in Europe, also known as the Helsinki process, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. Since then, its membership has expanded to 55, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia. (The Federal Republic of Yugoslavia, Serbia and Montenegro, has been suspended since 1992, leaving the number of countries fully participating at 54.) As of January 1, 1995, the formal name of the Helsinki process was changed to the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is engaged in standard setting in fields including military security, economic and environmental cooperation, and human rights and humanitarian concerns. In addition, it undertakes a variety of preventive diplomacy initiatives designed to prevent, manage and resolve conflict within and among the participating States.

The OSCE has its main office in Vienna, Austria, where weekly meetings of permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations and periodic consultations among Senior Officials, Ministers and Heads of State or Government are held.

ABOUT THE COMMISSION (CSCE)

The Commission on Security and Cooperation in Europe (CSCE), also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance with the agreements of the OSCE.

The Commission consists of nine members from the U.S. House of Representatives, nine members from the U.S. Senate, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair are shared by the House and Senate and rotate every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

To fulfill its mandate, the Commission gathers and disseminates information on Helsinki-related topics both to the U.S. Congress and the public by convening hearings, issuing reports reflecting the views of the Commission and/or its staff, and providing information about the activities of the Helsinki process and events in OSCE participating States.

At the same time, the Commission contributes its views to the general formulation of U.S. policy on the OSCE and takes part in its execution, including through Member and staff participation on U.S. Delegations to OSCE meetings as well as on certain OSCE bodies. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from OSCE participating States.

**RELIGIOUS LIBERTY:
THE LEGAL FRAMEWORK IN
SELECTED OSCE COUNTRIES**

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Note

Text of the report prepared by the Library of Congress, entitled *Religious Liberty: The Legal Framework in Selected OSCE Countries*, is available on the Commission's website at <http://www.csce.gov>.

RELIGIOUS LIBERTY: THE LEGAL FRAMEWORK IN SELECTED OSCE COUNTRIES

WEDNESDAY, JULY 19, 2000

COMMISSION ON SECURITY AND COOPERATION IN EUROPE,
WASHINGTON, DC

The briefing was held at 10:00 a.m. in Room 340 of the Cannon House Office Building, Washington, DC, Hon. Christopher H. Smith, Chairman, presiding.

Mr. SMITH. Good morning. I'm very happy to open today's briefing alongside my good friend, the Librarian of Congress, Dr. James Billington.

Dr. Billington and I traveled together when he led a delegation to Moscow to speak to the issue of religious freedom, especially after the Duma passed related legislation. I was so incredibly impressed not only by his knowledge of the country and his fluency in Russian, but by the fact that he was informing Duma members about their own history concerning religious freedom and other issues as well.

So it's always a great honor to be with Dr. Billington.

The OSCE participating States have committed to ensure that their laws, regulations, practices and policies conform with their obligation and are brought into harmony with the provisions of the declaration on principles and other OSCE commitments and international law.

In keeping with its mandate to monitor these commitments and considering the long-standing concerns over the status of religious liberty in the OSCE region, the Helsinki Commission requested, through the Congressional Research Service, that a study be conducted of legal systems in various OSCE States and the effect of these laws on religious liberty.

We know of no other repository of such legal detail and focused analysis of laws. Twelve countries, including the United States, were selected for their diverse geographical, historical and religious characteristics. The views expressed in the report represent the views of the individual researchers and do not necessarily reflect the views of the Helsinki Commission, the Congress or any individual Commissioner.

It is our hope that this 2-year project will be a resource for governments, academics and religious groups in fostering a better understanding of the legal framework for religious liberty and in encouraging countries where restrictions exist to amend or abolish their restrictive laws and practices bringing them into conformity with their OSCE commitments.

The issues raised in the report are timely. For example, last month the Lower House of the French Parliament passed a law creating a new crime of "mental manipulation" and establishing civil and criminal penalties for activities by religious or philosophical groups that government officials deem unacceptable. This is the latest French parliamentary action to threaten the religious liberty of French citizens. I have urged the French Parliament to abandon this course of action.

Regarding Greece, the Helsinki Commission and minority religious groups have been critical of Greece's policy of listing religion on national identity cards because it left minority religious groups in Greece vulnerable there and wherever they may travel on that card in the European Union. I commend the Greek Government's decision to abandon that policy in May.

In Turkey, various raids on Protestant groups over the last year and the continuing closure of the Greek Orthodox seminary on the island of Halki suggest serious issues of religious discrimination in that country.

The ramifications for these laws and governmental policies are broad, affecting people throughout the OSCE region and they're real and they're compelling.

For instance, Austria's restrictive laws passed in December 1997 was often referenced as justification for other OSCE countries, Russia, Uzbekistan, Romania, the Ukraine and Belarus to adopt restrictive laws. French policies are reportedly having an influence in former French colonies well beyond the OSCE region. A negative precedent is being established in contravention to international religious liberty commitments.

I am pleased to be joined by my good friend the Honorable James Billington, as I said, and I'd also like to welcome Mr. David Sale, Director of Legal Research in the Law Library of Congress, and I will introduce each of the other speakers after Dr. Billington opens up with some comments.

Dr. Billington.

Dr. BILLINGTON. Thank you very much, Mr. Chairman, and it is a great honor and pleasure to be here. I'm here only as a sort of opening commentator, but most gratefully here as the head of the Library of Congress and one who points with pride to the work of my colleagues here from the Law Library, primarily the Law Library of Congress and also from the Congressional Research Service.

Our priority is serving the Congress and mediating the vast material in our 120 million item collections at the Library for the good of the Congress—and in this case for the edification of a much broader audience on a very central topic on which there isn't that much comprehensive information that's been gathered in one place. So I congratulate my colleagues and commend them and their results to you. I will get out of the way as quickly as possible so you can get to their substance.

But I would just have a few words of introduction because the issue here of religious liberties is, of course, very central to our own history, our own development. We think of our cherished ideal of freedom as a distinguishing feature, not just of the American institutions and the American mentality, but also of our whole development as a nation and as a continuing ongoing experiment in self-government because freedom has always been combined with responsibility.

One thing that happened in the Communist nations which, after all, had the first systematic form of government to be based on the proposition that all religion should be eliminated, this is the first time in human history that large numbers of human society have been organized around an ideological commitment to eliminate religion.

So we're dealing not just with a perpetual subject, that is to say the freedom of religion, the tolerance of a plurality of religious beliefs, but we're dealing with a vast remedial situation in the communist world of something said to have been eliminated, to have been outmoded—and the dissolution of which was actively promoted by the organs of a very powerful and pervasive state and not merely a state, but an imperial system.

Therefore, the recovery of freedom in the former communist world, the former parts of

the Soviet empire, has been accompanied by a recovery of responsibility, because the absence of freedom in totalitarian states has often been noted, but there was also the absence of responsibility.

It was very interesting in the implosion of communism in the 48 hours in Moscow in April of 1991 which I was privileged to witness firsthand being there. One of the most striking things was that for 48 hours the outcome was uncertain and people had to assume moral responsibility for their choices.

Now the whole serial implosion of communism was influenced at every step, I think, more than has generally been realized by the recovery of responsibility and in most of these countries that had a pre-existing substratum of religious faith and religious belief, that meant a recovery of a deeper religious basis for responsibility—not only to one's neighbor, but also to a higher authority than the state itself, beginning with the Solidarity movement in Poland which was a religious-based movement from the bottom up, it became impossible for secular Leninist philosophy to always move from the top down to control and manipulate this movement.

This became, in Toynbee's terms—you know he says a system goes on until it meets the challenge to which it cannot structurally respond. Then it unravels. That was the challenge, I think fundamentally, and it could not respond. But you also saw a role of the Protestant churches in East Germany, a variety of churches in Hungary and Romania playing a role, and even in Russia there were around the White House in those 48 fateful hours, there were 10 young priests of the Orthodox Church and people of other faiths for whom this aspect, the recovery of responsibility, was as important in discovering themselves and their culture as was the recovery of freedom.

The great mantra in Russia had always been (in Russian), "it doesn't depend on me." In other words, "I'm not responsible." There was a certain relief in being relieved of the responsibility of choice which is, of course, the great gift of freedom and goes with it. The Siamese twin of responsibility.

So people had to make moral choices, whether they would speak up within their family, to themselves, within their group, and it was a recovery responsibility not only among those who resisted that *putsch* attempt, you remember, which was the precipitant of the sudden implosion of communism in Moscow itself at the very heart of the system and the empire, but they recovered also the assuming of responsibility for making some moral choices when the outcome was uncertain.

It's now recovery of responsibility as much as recovery of freedom that is at stake and the return to the kind of moral health and the vigorous and positive use of freedom in which we're all interested—the whole external world and certainly the Helsinki Commission as a central sort of monitor of the health of the development and continuation of that process. It's a very mixed record and not an always encouraging one as we see, but the question of the recovery of responsibility is crucially involved in this question of religious freedom and what are the laws doing; because if religion touches on one's responsibility to God—to a higher authority, to one's inner voice of conscience, however you want to put it—and that has always been seen as essential. Certainly if you look at the great speeches of George Washington and the Founding Fathers of this country, it was assumed that there was going to be a plurality of beliefs, but a virtual uniformity of the fact that a moral people has to respond to some higher authority than simply that of the state and its procedures.

Nevertheless, at the same time responsibility involves not only responsibility to one's own conscience or to some higher inner authority that's within us and above us at the same

time. It also requires being imbedded in laws, because if we're responsible to our neighbors and it is something we all share, and it can only be enshrined in law.

So that the meeting of the recovery of this lost dimension of life that had been ruled out of the whole communist world (and in many respects is questioned by those in the rest of the world and is part of the pluralism of modern life), the one thing in which everyone has to agree is that there have to be basic ground rules in which the laws will guarantee the exercise of freedom and account that there is a responsibility to the laws regardless of how you feel about responsibility to a higher authority.

So this subject, it seems to me, Mr. Chairman, is very important to the ongoing drama of whether the rule of law is going to be exercised. We have on the one hand continuing development of freedoms.

On the other hand we have now a new regime in Russia which talks about the "dictatorship of law" which is not a happy merger of phrases; because if you think about the rule of law, you don't usually think about dictatorship. There was a system there which talked about doing something for the proletariat, but then ended up talking about the dictatorship of the proletariat; and what you ended up with was dictatorship and not much benefit.

So these are elements of concern and our distinguished analysts here and we do have them—one of the greatest treasures of the Library of Congress is not just the inert collections, but the live curators.

I want to hail you, Mr. Chairman, for summoning their talents, bringing them together on this all-important question. I think the most useful thing that I as an over loquacious bureaucrat in charge can do is get out of the way and let you get on with the heavy and important substance on this really dramatic all-important development as to whether responsibility, along with freedom is going to be guaranteed? Is responsibility going to be ensured?

Neither of these can happen without the protection of law and the advancement of law as something of independent stature, as the guarantor of freedom and as the expression of responsibility that all people can share despite their beliefs.

So I commend you, Mr. Chairman, and the Helsinki Commission for their continued vigilance and concern on this specially ongoing set of problems. There's only so much that one country can do to help another, but one thing that we can all do is to get the facts out, know what it is and keep close watch on these all-important developments in which we all have a stake.

Nevertheless, thank you, Mr. Chairman, and pardon my loquacious introduction, but it's really just a way of saying that the work that our analysts have done at the Library and Mr. Merry as well, contributed to something really, I think, very well directed by this Commission. I hope that this can be an ongoing process to which the Library will be very honored and privileged to participate.

Mr. SMITH. Thank you very much and I would just point out that we just recently returned from an OSCE Parliamentary Assembly session in Bucharest. We have 12 members and many members of staff and in our bilaterals and numerous conversations that we had with delegations from other OSCE countries, it became clear to me that there is a growing intolerance.

The zeitgeist is not a good one. I think this report from your—and I like the way you termed it, the treasures, the curators at the Library of Congress helps to give us a factual basis from which to go forward and rather than well I think or somewhere, this gives us kind of like the bible on the 12 selected countries.

I can't tell you how many times we've heard from the developing countries how they just

say they look to Austria or they look to one of these other nations and learn the bad from them rather than picking up on the good, selecting out what is more repressive rather than more expansion so I want to thank you and thank your very distinguished panel.

I'd like to introduce all those who will speak and then ask them if they would share some comments with us, beginning with Mr. David Sale, the Director of Legal Research in the Law Library. Beginning in 1972, Mr. Sale was an attorney with the American Law Division of the Congressional Research Service of the Library of Congress for 15 years and an attorney with the Maryland General Assembly for 12 years before coming to the Library last year.

Peter Roudik is the Senior Legal Specialist at the Law Library of Congress, overseeing the legislation of the former Soviet Republics and various other Eastern European countries. He joined the Law Library in 1996 after a 10-year academic career. He received his J.D. and Ph.D. degrees from Moscow State University and his L.L.M. from the Central European University. He is a member of the Russian Bar Association.

Next, Nicole Atwill is a Senior Legal Specialist for the Law Library of Congress. Ms. Atwill received her J.D. and M.A. in Civil Law from the University of Grenoble Law School in France and an M.A. in Comparable Law from George Washington University Law School. She is a member of the D.C. and Virginia bars.

Karel Wennink received his doctorate of law degree from the University of Leiden. He also specialized in intellectual and industrial property law at the University of Amsterdam. In 1979, Mr. Wennink joined the staff of the Law Library of Congress and is currently a senior legal specialist responsible for overseeing the legal systems of The Netherlands, The Netherlands Antilles, Aruba and Suriname.

David Ackerman is a legislative attorney for the Congressional Research Service. He received his B.A. degree from Knox College in 1964 and a J.D. degree from Georgetown Law Center in 1974. Between those dates he attended Chicago Theological Seminary for 2 years and worked for the Department of Health, Education and Welfare and for the Washington Office of the National Council of Churches. Among other responsibilities he has worked on the legal dimensions of church-state issues in the United States.

Finally, Wayne Merry is a Senior Associate at the American Foreign Policy Council, a nonprofit organization with a focus on U.S. policy toward Russia, Eastern Europe and Eurasia. Mr. Merry was previously director of the program of European Societies in Transition at the Atlantic Council of the United States in Washington dealing with the countries of Central and Eastern Europe. He remains a nonresident senior fellow of the Atlantic Council. In a 26-year career in the United States Foreign Service, Mr. Merry served 6 years in Moscow as a specialist in Soviet and Russian politics. Mr. Merry served in the German Democratic Republic during the early phase of the U.S. diplomatic presence in East Berlin. At the embassy in Athens he reported on domestic politics, Greek-Turkish relations and the Cyprus issue and domestic terrorism.

In the early 1990s, he was in charge of embassy reporting and analysis of the Soviet collapse and the emergence of an independent Russia and was an advisor to two U.S. ambassadors on these issues. Mr. Merry joined the staff of Secretary of Defense Perry in early 1995 as regional director for Russia, Ukraine and Eurasia to develop defense military relations between the Pentagon and newly independent states of the former Soviet Union. Before retiring from the Foreign Service, Mr. Merry, I'm happy to note, was Senior Advisor to our Commission and he dealt mostly with the Balkan issue.

Mr. SALE. Mr. Chairman, my name is David Sale. I am Director of Legal Research at the Law Library of the Library of Congress. It is a pleasure to be with you today to participate in this briefing concerning the subject of religious freedom under the legal systems of

the various OSCE countries in which this Commission is interested.

Before providing an overview of the content of the legal studies that are before the Commission today, I have been asked to say a few words about the mission and services of the Law Library of Congress in relation to the Congress itself. The Law Library of Congress consists of two directorates. The Directorate of Law Library Services is responsible for providing information services to Congress and the public in American law through the Law Library Reading Room and for the management, development, preservation, and security of the American and foreign legal collections of the Law Library which now number some 2.3 million volumes, more than 50 percent of which are in the area of foreign and international law. The Directorate of Legal Research, which currently consists of 23 foreign legal specialists, several senior legal research analysts, and editorial and support personnel, provides analytical research and reference services primarily to the Congress in the area of foreign, international and comparative law, and secondarily to the federal agencies and the courts. The Directorate also provides reference service to the general public in the area of foreign and international law.

The foreign legal services that the Directorate provides to the U.S. Congress appear to be unique internationally. We are not aware of any other national legislature that can call upon the services of an in-house body of legal specialists to provide analytical studies concerning virtually any foreign legal system in the world.

These legal specialists are responsible for entire legal systems in response to congressional interests and cannot, of course, specialize in any one area of the law. At the same time, however, because of the multilingual capabilities of the foreign legal staff, the Directorate is effectively able to provide substantive coverage to Congress for most of the some 200 foreign jurisdictions throughout the world.

The value of this type of service to the Congress is twofold: (1) it allows Congress to compare the provisions of a foreign law with pending U.S. federal legislation as an aid in drafting an appropriate statute or in making basic policy decisions concerning the content of a proposed federal statute; and (2) it allows the Congress to learn about the legal system of any foreign nation that is of interest to congressional constituents who may have commercial or other interests abroad.

The types of studies the Directorate prepares for the Congress include major multinational reports such as the one before you today, covering a specific issue under many foreign legal systems; shorter reports in response to congressional inquiries about the law of a specific foreign nation; monthly summaries of significant legal developments occurring around the world through the *World Law Bulletin* which is circulated to all congressional offices; and the *Foreign Law Brief* series which provides brief, but authoritative reports concerning recent and significant legal issues under the laws of particular foreign countries. In addition, the legal staff of the Directorate is available to provide briefings such as the one today to Congress, and to serve as expert witnesses in foreign law before U.S. courts.

Although the Law Library administratively is separate from the Congressional Research Service of the Library of Congress, both service units share a common mission of providing research and reference services to the Congress. The Legal Research Directorate of the Law Library works closely with the Congressional Research Service where congressional inquiries involve the expertise of both units.

At the request of this Commission, the Directorate prepared the reports before you today concerning the legal systems applicable to the exercise of religious freedom in 11 countries: Austria, France, Germany, Greece, The Netherlands, Poland, the Russian Fed-

eration, Turkey, Ukraine, the United Kingdom, and Uzbekistan.

The overall purpose of the reports included in the study is to provide the Commission with a basis upon which it may compare the exercise of religious freedom in the countries covered by these studies.

David Ackerman, an attorney for the American Law Division of the Congressional Research Service, prepared the report concerning the United States and Carol Migdalovitz, an analyst with the Foreign Affairs, Defense, and Trade Division of the Congressional Research Service, prepared a separate section concerning recent religious conflicts and issues in the report for Turkey.

The reports are structured in accordance with a topical outline that the Commission prescribed for the study to ensure a set of uniform categories for assessment. Accordingly, each report contains an abstract summarizing the principal themes of that report and an Introduction noting both the religious demographics of a particular country and the historical context of the current legal structure applicable to religious freedom in that country.

The body of the reports consists of a discussion of the general constitutional structure of each nation, including the hierarchical order of its national laws, the court system, and official documentary sources for publication of the laws. The reports also identify specific constitutional provisions applicable to the exercise of religious freedom.

The reports reference significant international agreements and other commitments to which each country has adhered that recognize the right of religious freedom. There is also a discussion of specific statutes applicable to the exercise of religious freedom and the status of religious organizations under national law. The reports further identify the official and quasi-official governmental entities responsible for religious issues.

In an effort to provide an illustrative factual context for the application of the law relevant to this subject area, the reports note various controversies that have arisen in each country concerning the exercise of religious freedom. The reports are accompanied by bibliographies and by appendices which provide the full text of some of the primary constitutional and statutory provisions cited for each country in the study.

From the Legal Research Directorate of the Law Library, there are present today at the invitation of the Commission: Ms. Nicole Atwill, legal specialist for France; Mr. Karel Wennink, the legal specialist for The Netherlands; Mr. Peter Roudik, legal specialist for Russia, Ukraine and Uzbekistan; and also Mr. David Ackerman from the American Law Division of the Congressional Research Service who prepared the report for the United States. The reports prepared by the Law Library were edited by Ms. Alicia Byers, Principal Editor, and by Ms. Natalie Gawdiau, and Ms. Sandra Jones. With your permission, Mr. Chairman, we would be happy to proceed to brief the Commission concerning the content of the reports for these six countries.

Mr. SMITH. Please do. Just to note at this point we've been joined by Commissioner Pitts from Pennsylvania.

Mr. SALE. I'll now ask Mr. Roudik to brief us concerning Russia, Uzbekistan and Ukraine.

Dr. ROUDIK. Mr. Chairman, Members of the Commission, thank you for the chance to appear before you and your colleagues. The legal background and implementation of religious freedom in Russia, Ukraine and Uzbekistan are thoroughly described in the submitted reports. Today, I welcome the chance to discuss the most recent developments in the field and to summarize major problems related to this fundamental freedom.

Three former Soviet republics, Russia, Ukraine and Uzbekistan have much in common

in regard to the implementation of religious legislation. In all of them, freedom of conscience was declared a constitutional principle during the Soviet time. However, this freedom always had a fictitious nature.

The first relatively liberal USSR Law of Religion was passed in 1990, as a result of Gorbachev's political reform. In the early 1990s, religious organizations played a significant role in the pro-democracy movement in all republics and were a motivating force in the adoption of national liberal laws on freedom of religion and religious organizations in the newly independent states in 1991.

These laws were relatively identical. They repeated provisions of the USSR law and declared the protection of religious freedom. In accordance with these laws, existing barriers in the religious sphere were decreased, rights of foreigners to exercise the right to freedom of religion were ensured, and registration procedures were simplified.

Describing the state-church relationships at this time, we can say that all states tolerated religious organizations for social services they provided and the clergy exploited religious feelings of the population to challenge the state and to enter national politics.

Major legal principles relevant to freedom of religion and belief are included in the Constitutions of these states. All Constitutions declare their states to be secular and prohibit the declaration of any religion as compulsory. They provide for equality of all religions before the law and guarantee freedom of conscience to all. However, some restrictions are included even in the Constitutions. Since 1991, the governments of all these countries have been criticized for serious human rights violations.

Uzbekistan is the most multi-ethnic state in the Central Asian region. Its government is suspicious of the religious activities of the population and closely monitors all religious organizations because it is afraid of growing fundamentalism and religious extremism. Because of the spread of militant Islam throughout Central Asia, the Law on Religion was brought into force in May of last year.

Although the law provides for freedom of worship, freedom from religious persecution and separation of church and state, it contradicts provisions of the European Convention on Human Rights and almost 30 other international documents on human rights to which Uzbekistan is a party because it imposes special restrictions to an extent necessary for national security and requires state interference in the activities of religious organizations. State authorities hold the right to grant privileges to religious organizations and the confessional secrecy is not protected by the law.

In its current policy toward religion, the Uzbek leadership seeks support among Islamic organizations that espouse traditional Islam in waging the struggle against the Wahhabi and other sects. The government attempts to present those being persecuted for their religious beliefs as people who desire to overthrow the secular order and commit acts that fall under the norms of criminal law.

Just recently about 30 people were detained for distributing the leaflets published by an unofficial religious group. Criminal proceedings against the members of the group were initiated. In spring, national television initiated a major media campaign aimed at forming hostile public attitudes to the so-called non-traditional religions and military counterintelligence agents were assigned to work with these organizations.

Human rights organizations report on repressions concerning the Jehovah's Witnesses, the Full Gospel Christian Church and the Pentecostalists. Government officials usually view all these incidents as isolated cases.

One may view the conclusion of the agreement between Russia, Uzbekistan and Tajikistan on Joint Struggle Against the Islamic Fundamentalism as the continuation of the gov-

ernmental task to intensify efforts to prevent religious extremism. For the same reason the Uzbek Government decided to control religious education and the Tashkent Islamic University was established in accordance with the edict of Uzbekistan's president.

The goals of this state university are to prepare Muslim scholars, to provide for the in-depth study of Islam and Uzbekistan's Islamic heritage and to study Islamic developments in other countries.

Meanwhile, Uzbek authorities state that one of the priorities in reforming the society is to ensure and uphold the rights and freedom of people and their equality before the law regardless of anything, including religion. Based on the analysis of the legislation and its implementation, one can conclude that there are massive numbers of violations of human rights in Uzbekistan and that the existing political and legal system is not democratic. Nevertheless, the present system is definitely the most liberal under which the religious communities in Uzbekistan have ever lived.

According to information from Uzbekistan's State Committee for Religious Affairs, a government agency that oversees religious organizations and related legislation, 1,710 religious organizations were registered in the Republic as of the end of 1999. Ten spiritual educational institutions operate in Uzbekistan, in which about 1,200 students are enrolled.

In Ukraine, the number of religious organizations increased during the years of independence some fourfold and is represented by more than 22,000 communities of believers. Ukrainian legislation is based on major principles protected by the constitution and the Law on Religion of 1991. Having been adopted in the initial period of legal and political reform in Ukraine, the law includes general declarations on human rights and the preservation of religious freedom without prescribing a working implementation mechanism. The vagueness of the law does not prohibit national and local power institutions from using religious rites in their activities, nor does it bar government and military officials from using their official position to help shape religious attitudes. The indirect participation of religious organizations in Ukrainian political life is also not excluded by the law.

The implementation of the freedom of conscience is one of the duties of the Human Rights Commissioner who may submit claims on violations directly to any court in the country. However, no actions in regard to the protection of religious rights have been reported. Because of the lack of experience, it is especially difficult to provide human rights protection at the municipal level.

In 1998, the latest data available, the State Committee on Religious Affairs recorded 127 violations of legislation on religion in Ukraine. The state claims that about 40 percent of the violations were committed by registered religious organizations, and in one third of cases foreigners were accused.

The long period of official atheism and numerous types of bans on religion by the state left a negative impact on the current relation between the state and the church. Presently, political tensions are high and church leaders are involved in the struggle between the political elites.

In 1999, President Kuchma of Ukraine issued a special statement on religion, a kind of state apology to the religious believers, where he officially condemned the policy of force that was applied against religion and expressed the need for the moral and political rehabilitation of the church as a social institution that suffered under the previous regime.

The President's statement is a compromise between acknowledgment by the state of the great harm that was done to the church in the course of 7 decades, the desire to overcome the effects of communist policies and to establish the most constructive relations possible with

the church, and on the other hand, existing realities.

The realities are such that the state is not able to compensate the church for the losses it suffered during the Soviet era, nor is the state able to return to the church all the nationalized lands, forests, hospitals, shelters, and factories, or to give appropriate compensation. Last year about 90 civil lawsuits relating to the property issues were tried based on complaints from religious organizations. Conflicts between congregations of various churches over the right to possess or use buildings and property sometimes lead to clashes.

Religious life in Ukraine is complicated with settling of scores between the communities. Currently, there are two main problems as they are viewed by the authorities and the majority of the population. These are a split between the denominations and a danger of foreign influence.

As compared to the period of 1992 to 1994, the state's attitude has significantly changed. However, because of the uncertain and unstable state of political, economic and social affairs in Ukraine, and the generally restrictive attitude toward non-traditional religions, it is impossible to predict the outcome of potential development.

Comparing the religious situation in Russia with other post-Soviet states, we must take into account certain circumstances. The dynamics of the growth of the number of religious congregations is impressive. If we take 1985 as a starting point, which is the year in which Gorbachev began his reforms, the number of registered religious congregations in Russia totaled 3,000. This number has grown since then by a factor of six.

However, only half of them are registered and have the status of a legal entity. Because of the difficulties involved in obtaining the status of a legal entity, the actual number of religious congregations differs significantly from official figures.

Accurate statistics are further impeded because in the territories it is virtually impossible to determine the exact number of congregations and regional elites grant privileges to certain religious institutions and impose restrictions on "undesirable" religious denominations. The annual re-registration of religious organizations still remains an unresolved question, and there are grave doubts that the new Law on Extension of the Registration Period will improve the situation.

The religious organizations are not equally distributed throughout the various regions, and the proportions of the religious congregations is far from equivalent to the proportion of adherents to the given denomination among the general mass of believers. This trend applies even to the so-called "traditional" religions determined by the contradictory Law on Freedom of Religion and Religious Organizations of 1997.

Even though the law of 1997 prohibits any form of religious discrimination and its provisions are supported by the Criminal Code and some other implementing documents that provide for severe punishment of any activities aimed against religions, congregations and believers, the registration and management of religious communities in Russia is significantly restricted.

In November 1999, the Constitutional Court of the Russian Federation discussed the Law on Religion and upheld provisions of the law requiring religious organizations to prove 15 years of existence in Russia in order to be registered and did not invalidate several other unpopular provisions. Unwilling to contradict popular opinion, the court ruled that the government has the right to erect certain barriers so as not to automatically grant the status of a religious organization, to prevent the legalization of sects and to obstruct missionary activities.

Except for the Chechen war, no other development as the implementation of reli-

gious legislation appears to have raised in the last several years such serious questions about Russia's commitment to international human rights norms. Today, the Russian Government has no means of exercising control over human rights violations.

The negative effects of the 1997 law have been somewhat muted because the law is implemented only episodically and half-heartedly. Federal authorities have transferred the responsibility for implementation of the law and for punishing violations to regional administrations. As a rule, regions often pass their own legislation which totally contradicts federal rules and sometimes makes federal norms void on the territory of the region.

Other acute problems include the continuing interference of the Russian Orthodox Church hierarchs in political affairs. Despite its own ban on clergy taking part in political life, the Orthodox leadership actively participated in the last electoral campaign, and no later than in April, the Patriarch of Moscow and All Russia Alexii II strongly criticized the Ukrainian Government for its support for creating an independent Ukrainian Orthodox Church.

Under the initiative of the Moscow Patriarchate, the unified standards of higher education were amended by the Government of the Russian Federation. The Orthodox Christian theology has been included as a mandatory subject in curriculum of the Russian state universities where it substitutes for the neutral Introduction to Religion. In addition, religious information in the Russian mass media about non-Orthodox denominations is mostly negative. Criminal proceedings and hate crimes as religious persons or groups are not resolved, and cases usually are not submitted to the court.

In conclusion, the freedom of religion remains an important and still unresolved problem for these three former Soviet republics. All of them, to a much lesser extent Ukraine, experience a wave of religious intolerance which is directed against almost all existing denominations. Lack of strong law enforcement has opened the door to the persecution of dissident religions and to arbitrary rule.

In such conditions, attention to the implementation of religious liberties in these countries, which is paid by the international community, and especially by the OSCE, is of great importance and is one of the most significant factors influencing democratic development in Russia, Ukraine and Uzbekistan.

Mr. SALE. We will now hear from Ms. Nicole Atwill concerning the French report.

Ms. ATWILL. Mr. Chairman, Members of the Commission, it is a privilege to be here today to provide you with an overview of the legal framework concerning freedom of religion in France.

French law provides for freedom of religion and for the separation of church and state. The only permissible restrictions are those necessary in the interest of public order.

In itself, religion has no legal status. Groups or organizations essential to the practice of a religion are governed either by the 1901 Law on Freedom of Associations or by the 1905 Law on the Separation of Church and State. The status of association under the 1901 law is easy to obtain as the law only requires registration with the local administrative authority. There is no prior control by the state.

The status granted under the 1905 law is more difficult. The association must be created exclusively to "provide for the expenses, maintenance and practice of a religion and it must not disregard, by its practices, public order." These associations have a greater legal capacity and additional tax exemptions, notably on gifts and bequests.

Two main debates are currently taking place in France. The first concerns new religious movements which have multiplied in recent years in France. Several parliamentary and executive branches commissions have studied and reported on these groups since

1995. One commission published a list of 173 groups it referred to as sects.

The latest commission which published its report in February has classified them into three categories. The first category, the totalitarian groups that do not recognize democratic norms and threaten public order and human dignity. The second is the groups with indisputable religious and philosophic foundations, but infringing certain liberties, human rights or laws, and the third group is the less dangerous groups whose actions are considered to be on the fringe of legality.

Although the parliamentary commissions concluded that there is no need to pass “anti-sects” legislation, a bill currently pending before Parliament would allow judges to dissolve legal entities whose aim is to create or exploit their members psychological or physical state of dependency when such entities have been convicted on several occasions on charges such as endangering lives, illegal practice of medicine or false advertising.

The law would give mayors the right to keep these groups from moving or advertising within 200 meters of schools, hospitals and retirement homes. Finally, the bill would make “mental manipulation” a criminal offense.

The second debate concerns the right of Muslim girls to wear the traditional Islamic scarves in public schools. In 1989, the Council of State, the highest administrative court, ruled that the wearing by students of religious signs is not in itself incompatible with the secular nature of public schools as long as such wearing was not an act of provocation or proselytism which would violate the freedom of other students and members of the education community, disturb school activities and public order.

In 1994, the Minister of Education published a circular allowing the wearing of discreet signs, religious or otherwise, while prohibiting signs which in “themselves are elements of proselytism or discrimination.” It leaves to the headmasters the decision of how to categorize the signs. Since this circular was issued, administrative courts have struck down several decisions expelling Moslem girls from schools, on the grounds that no evidence was introduced that they were wearing their scarves as an act of provocation or proselytism.

Finally, in October of 1999, the Council of State ruled that the headmasters’ right to request clothing that is appropriate, according to the circumstances, particularly in gymnastic and science classes did not violate students’ freedom of expression or freedom of religion.

Mr. SALE. We will now hear from Mr. Karel Wennink, our Legal Specialist for The Netherlands.

Mr. WENNINK. Good morning, Mr. Chairman, Members of the Commission. It’s a privilege to be here today and be able to provide you with a general overview of the development of the legal aspects concerning the freedom of religion in The Netherlands.

In the Netherlands, the first limited form of constitutional recognition of freedom of religion, brought about by the religious wars that took place in the 16th century, can be found in the Union of Utrecht in 1579. In this Union, seven northern provinces agreed to give assistance to each other if the Spaniards attempted to restore or introduce the Roman Catholic religion by force of arms.

After 1579, the next constitutional recognition of freedom of religion is found in the Constitution of 1814, which mandates for the first time that equal protection has to be given to existing religions. With respect to freedom of religion, the constitution has been frequently amended, the most recent being in 1983.

The complete separation of church and state has taken a long time to be established in The Netherlands. The mandate in the Constitution of 1814 stating that all religions are equal, means that the country cannot designate a dominant religion. However, the govern-

ment has held for a long time that it was authorized to intervene in the internal organizations of the church, especially with respect to the Dutch Reformed Church. The secularization between state and church that started in the 19th century was completed with the last revision of the Constitution in 1983.

The new Article 6 of the Constitution prescribes the following: everyone shall have the right to manifest freely his religion or philosophy of life, either individually or in community with others, without prejudice, to his responsibility under the law. The insertion of the term philosophy of life has caused religions to lose their preferential position. Religious and nonreligious philosophies of life must be treated equally.

According to the Civil Code, religious bodies and their independent components possess a legal personality. Their structure and organization are not regulated by law. They are governed by their own bylaws insofar as this does not conflict with the law. There is no prior government involvement and no system of registration. There is no legal definition of a church and strict formulations have been avoided. The Supreme Court has held as minimum conditions the recognition of the existence of a religious body that structured organization exists and that religion must be involved.

Traditionally, only donations to Christian churches and their Jewish equivalents that work for charity and for certain enumerated causes were tax deductible. Presently, gifts to other religions and to bodies that disseminate a philosophy of life may be tax deductible. The tax inspector, and in final instance, the court, will determine which body can and which body cannot be considered a church or a body disseminating a philosophy of life for tax reasons. Organizations or institutions that work for charity may, under certain circumstances, and by way of General Administrative Order, be exempted from paying taxes. The charitable purpose must be expressed in their articles or bylaws.

No general subsidies to churches or religion exist in The Netherlands. However, some support from the government may take place in various ways, and for various purposes, to groups or institutions that provide public services. If the government would subsidize, for example, social or cultural activities, they should treat the various applicants equally. Providing financial support to specific religious or ideological activities is rejected on the basis that this would be in violation of the separation of church and state. Equal treatment and respect for minority religions are deep rooted in Dutch law and history.

Mr. SALE. I'd now like to ask Mr. David Ackerman, a Legislative Attorney with the American Law Division of the Congressional Research Service to speak about the U.S. report.

Mr. ACKERMAN. Mr. Chairman, Congressman, it's a pleasure to be here this morning. As Dave said, my contribution to this report is the chapter on religious liberty in the United States. That is a subject of enormous complexity and I doubt that I did it full justice in my section of the report. But let me lift up a few salient points that are made in that chapter.

First, I think it's important to note, quite simply, that the story of America cannot be told without talking about religion. At every stage in American history, religion has been an important element and it remains so today.

Secondly, in general terms the United States has gradually developed a relationship between government and religion which formally separates each from the other and allows all religious faiths to flourish "according to the zeal of their adherents and the appeal of their dogma." That quote comes from the Supreme Court. But that separation occurred slowly in American history and how complete it is now and how complete it should be remain subjects of ongoing debate.

Third, religion has thrived in the United States. Public opinion polls consistently report that 80 to 90 percent of Americans identify themselves as part of a religious community and say that religion is very important in their lives. As de Tocqueville said in 1830, “There is no country in the whole world in which the Christian religion retains a greater influence over the souls of men than in America.” One hundred and thirty years later, the Supreme Court in *Zorach v. Clauson* said, somewhat more ecumenically: “We are a religious people.” That seems to remain true.

Fourth, we are a religiously pluralistic people, although culturally and historically we are and have been predominantly Protestant. *The Yearbook of American Churches*, for instance, reported statistics in 1997 on no fewer than 213 established religious bodies in the United States, and the *Yearbook* confessed that that does not begin to exhaust the number of religious communities in the U.S. Academic studies and public opinion polls seem to agree on the breakdown of affiliations, in general terms: 55 to 60 percent of Americans identify themselves as Protestant; 22 to 25 percent as Catholic; 2 to 4 percent as Jewish; 2 to 6 percent as non-Christian or simply “other.”

In terms of the legal rubric governing religious liberty in the United States, two provisions of the Constitution are of critical importance, namely the establishment and free exercise clauses of the first amendment. “Congress,” the First Amendment says, “shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” In the 1940s, the Supreme Court held those clauses to be applicable not just to the federal government but also to the States as part of the liberty protected from undue State interference by the due process clause of the fourteenth amendment.

How those clauses should be interpreted is always at the center of public debate about religion in the U.S. But a continuing touchstone for the Supreme Court and the judicial interpretation of these clauses has been the concept of neutrality. The Court said in *Epperson v. Arkansas* in the late 1960s, “Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.”

Sixth, nonetheless, our domestic legal structure, both federal and State, I think it can be said, generally protects and support religion. Unlike some other countries in the world, there is no requirement that a religious community register with the government or get approval from anyone in the government. Persons can freely choose to meet as an unincorporated associations. Most choose religious communities, of course, do choose to incorporate because of the legal benefits of incorporation.

They also generally choose to apply for tax exemption at both the federal and state level. Federal and state tax laws are filled with exemptions that are favorable to religion, exemptions from federal income taxes, exemptions from State and local income taxes, exemptions from State and local property taxes and often exemptions from State sales and use taxes. And of course, once religious organizations are deemed tax exempt, donors also can take advantage of the charitable contribution provision of the tax code.

And there are a variety of other exemptions in law that are of benefit to religious communities. To cite just a few, religious communities are exempt from the religious nondiscrimination in employment provision of Title VII of the Civil Rights Act of 1964 and that is true not only with respect to their religious activities, but also to any secular activities engaged in by religious organizations.

The Americans With Disabilities Act requires all structures that are open to the public to be made accessible to the disabled. Churches are wholly exempt from that requirement. The Religious Freedom Restoration Act gives religious communities the opportunity to be deemed exempt from any governmental regulation, at least at the federal level now, that imposes a substantial burden on a religious practice.

Seventh, internationally, the United States is a very strong advocate of religious liberty. We are party to several treaties that promote human rights and religious freedom such as the U.N. Charter, the International Covenant on Civil and Political Rights and a number of conventions that promote, among other things, the religious rights of prisoners of war and the civilians in occupied zones. We're also party to a number of non-treaty commitments such as the Universal Declaration of Human Rights and, as evidenced by this Commission, the Helsinki Accords. The United States was also a strong proponent of the U.N. Declaration on Religious Intolerance.

Congress has also enacted several statutes that give added force to these commitments and further promote the United States as an advocate of religious freedom internationally. In the mid-1970s, it amended the Foreign Assistance Act to set the promotion of human rights as a fundamental goal of United States foreign policy. It forbade foreign aid from going to governments that egregiously violate the human rights of their citizens. It mandated annual human rights reports by the Department of State that have become a benchmark for the status of human rights, including religious freedom around the world. And in 1998, it adopted the International Religious Freedom Act that gives even higher priority to the promotion of religious freedom and to combatting religious persecution.

Finally, Mr. Chairman, it should be said that while religious freedom remains one of the most cherished components of the American experiment, the relationship of religion and government remains an unfinished and evolving aspect of that experiment and controversies continue to abound. The report simply describes four areas of controversy.

One, the continuing question of the extent to which religious bodies ought to be exempted from governmental regulations that impose a burden on religious practices. That's the interesting conversation between the Supreme Court and Congress, the *Smith* decision, the Religious Freedom Restoration Act, the *Boerne* decision, the Religious Liberty Protection Act and as of last Thursday, I believe, the Religious Land Use and Institutionalized Persons Act, still subject to debate.

Secondly, educational vouchers, a very volatile political issue.

Third, direct public funding of religious institutions. Now in recent years, debated largely under the rubric of charitable choice. It's become a very major issue in Congress.

Finally, the very emotional issue of the conduct of religious activities in the public schools. The boundaries remain somewhat undefined, but religious liberty remains a cherished freedom in the United States.

Mr. SMITH. Yes, Mr. Merry.

Mr. MERRY. Mr. Chairman, thank you very much. I've been asked by the Commission to give an initial commentary and assessment on this report which I'm very happy to do. I am happy to say that I have read this very extensive report with great benefit, learned a good deal from it, and I'm extremely appreciative for what I know is 2 years of very long, hard and diligent work in its production.

I must, however, express some concern at what I see in a number of the reports as a distinct bias on the side of government and of state authority rather than on the side of liberty, a tendency in some reports to give the benefit of the doubt to official claims justifying

repressive measures against religious groups, and a tendency to repeat uncritically the self-justifying claims of authoritarian regimes at the expense of persons seeking to exercise religious liberties.

I also cannot agree with the characterizations in the report of Jehovah's Witnesses and Seventh-day Adventists as "new religions." In my view, both of these denominations have more than demonstrated their staying power, not least by surviving the full venom of the Third Reich.

Mr. Chairman, it seems to me that in this report there is substantiation and evidence for two basic lessons for Americans seeking to foster religious liberty issues in the OSCE region and that these reveal two misconceptions that are widely shared in this country, the first being that religious tolerance is a product of separation of church and state, and the second that the problem we face is to foster individual rights of conscience rather than group rights.

It's clear that our own country began with established churches in a number of the colonies and a number of the States. These established churches were protected in the First Amendment and, as documented in the report, the last of the established churches only passed away a third of the way into the 19th Century. It was, in fact, the mass migration of diverse peoples into our country and the creation of pluralism in a mobile society which produced tolerance, and the product of that tolerance was separation of church and state, not the reverse.

If we look at the countries under examination it's clear that separation of church and state does not always produce tolerance. The most aggressive form of separation of church and state, of course, having been in the Soviet Empire region, which scarcely needs commentary. But if we look at the two countries under examination with the most secularized practices, namely France and Turkey, both of which practice what in French is called "Laïcité," a rather intense form of separation of church and state, we nonetheless see that both of the countries in different ways are rather problematic, if not highly problematic, in their tolerance of religious minorities which are often seen as rivals to and threatening the state authority.

It is striking that one of the most tolerant, if not the most tolerant, country in the OSCE region, the United Kingdom, is the country examined in this report which has the most tightly linked church and state and where government authority plays the most continuing active role in the affairs of the established church.

Mr. Chairman, I think all the countries in Europe share traditions of tightly linked secular and spiritual authorities, whether these countries are the successors of the traditions of Rome, of Byzantium or of Istanbul.

In western continental Europe, the clear tradition that has been built upon is that of the Peace of Westphalia with its sovereignty principle of *Cujus Regio, Ejus Religio*, "his who is the power his also is the religion," reflecting a bias that the state needs to be protected from religion. This is a concept which strikes many Americans as difficult to accept and yet, throughout many of the reports in this study, one sees this underlying theme, that religion unchecked, unregulated, is potentially a threat, not only to the authority of the state, but to the integrity of society. It is this tendency, based upon the history of the Thirty Years War, which resulted in the Westphalian Peace, that I think underlies many of the disputes we have with some of our European partner governments.

I think it is no accident that it was in Great Britain which was outside the Westphalian Peace that the greatest climate of tolerance developed, which supplied the roots for the even

more tolerant climate for religion in North America.

However, one must note that even in Great Britain significant religious restrictions, particularly on Roman Catholics, were carried through well into the 20th Century and the greatest constitutional crisis which Britain has suffered in the last hundred years, that of the succession of Edward VIII, concerned his spiritual role as head of the Church, rather than his secular authority.

Mr. Chairman, throughout much of Central and Eastern Europe and even parts of Western Europe, religion has often been a crucible of nationalism and national identity for countries seeking statehood. We've seen this in places as divergent as Ireland and Greece, Poland and Serbia, and many others.

Unfortunately, when nations achieve statehood, the tendency is for religion to be closely wedded to secular power. This does not produce tolerance, but rather an increase in societal demands for conformity and the tendency to see any form of religious deviance as a manifestation of national disloyalty.

I think we also need to recognize that the societies within the Eastern Christian Church, the Orthodox Christian Church, feel themselves today very much to be peoples and a faith under siege, both from highly well-funded western proselytizing Protestantism and from the Islamic revival on the other side. These are churches and peoples which feel very strongly the historical depths and the venerable traditions of their faith which they see as being in a struggle against modernizing pluralism and globalization. The "barricades mentality" which this has produced in a number of countries has been bolstered by the economic weakness and poverty which many of these societies are experiencing.

Russia is a particularly interesting case because, in addition to being an extremely spiritual society in which even the Soviets sought to emulate the religious rites of the Orthodox Church, we see the situation of a country which is certainly part of the Orthodox tradition, but also contains a high degree of religious pluralism based on the number of indigenous faiths which were incorporated into the Russian Empire throughout its growth.

The problem we see in Russia is a fear of importations of religion, not so much a rejection of religious pluralism as such. I think we must also recognize that for many Russians, Orthodoxy, after so many decades of repression under the Soviet period, is seen as a vehicle of national resurrection as well as of spiritual resurrection. There is within the Russian Church, a considerable internal debate. An internal dynamic, between what I would consider to be more tolerant, pluralist, more ecumenical tendencies and those of a highly nationalist, exclusionary, intolerant variety. How this will develop, I think, will say a great deal about the future of Russian society in general.

Mr. Chairman, the Central Asian States have to be seen as qualitatively different than all the others in the OSCE region in that they are so highly in violation, not just of their OSCE commitments on religious liberties, but on their OSCE commitments on liberties across the board. For these governments I don't think the issue is one of religious belief or practice, it is a matter of authoritarian control across the board and should be seen in that light.

Mr. Chairman, I think again the problem that we in the United States who are seeking to foster religious liberty issues, that we have to recognize this is not so much a matter of individual right of conscience or of practice, as it is the problem of communities seeking to practice religion collectively. The OSCE document language specifically guarantees the rights not just of an individual to practice religion, but the practice of religion, I quote, "in community with others" which I think is the key language we need to focus on.

No government really tries to control the thoughts of its citizens because this is impractical. Only a handful of authoritarian governments concern themselves with the individual religious practices of their citizens. What they are concerned with is congregational activity which is often perceived, even in some Western societies, as social deviance at best, and in more repressive societies as dangerous foreign importations or, at worst, as subversive and treasonable activity. This is a problem particularly because many of these societies have relatively little tradition of a civil society in either volunteerism or private group activity.

Thus, I think Americans must understand that what we are seeking to protect is not so much an individual right as a group and a collective right. I think many Americans are uncomfortable with this because of the concern that this will lead to involvement with other group rights. Nonetheless, I think this is the task we face.

I think in the OSCE region, the separation of church and state that we are accustomed to in North America will rarely, if ever, be manifest. The task therefore is the pursuit of tolerance within mechanisms of state authority. We must recognize that what we are seeking from foreign governments is some derogation of classic state sovereignty. We are asking them to give up something of the principle that "his who is the power, his also is the religion."

To do this most effectively, there is a need for mechanisms for recourse, for appeal, and for due process. The good news is that within the European Union such mechanisms do exist and are beginning to be productive in the supranational authorities of the European Court of Human Rights. If one looks at the problems of religious practice in Greece in which the European Court has made a number of rulings, we can see the potential role that court can play. We can also see in the reaction of both the ecclesiastical and state authorities in Greece to those rulings how difficult these challenges can sometimes be.

The bad news, however, is that most of the most problematic countries under consideration are well beyond the European Union's Human Rights Court's authority. Many of the former socialist states—having restored or only newly established themselves as sovereign entities—seek to exalt state sovereignty and the authority of the state and are often little concerned with the religious liberty issues of concern to us here.

I think a major problem is that the OSCE does not provide any formal mechanism for appeal or adjudication for these problems, and I would suggest that a practical line of inquiry for the Commission should be whether or not the OSCE should create a specific mechanism to allow religious groups throughout the OSCE region to appeal their problems to gain some degree of due process.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Merry, for your comments. We will open it up to the audience, if you have any questions or Mr. Pitts.

I'd just like to ask one opening question for anybody on the panel who would like to answer it. It seems to me we run the risk of comparing apples to peaches because in every country there is a standard that the OSCE sets in other human rights documents. The question is whether or not the work in progress, country-by-country is improving or getting worse. And perhaps some of you might want to speak to that.

Many of these countries, Uzbekistan, for example, have a strong executive, weak Parliament, and an even weaker judiciary. Poverty and instability reign. There's almost no rule of law in some of the worse off countries and Belarus would fall into that. Then you look at what they're coming from. The Warsaw Pact nations and Russia, I think Solzhenitsyn had it right when he said it is militant atheism. It's not just a disbelief in God, it's an extreme

hatred of God and the authorities at those times during which Lenin and Stalin did everything they could to crush absolutely and then to control whatever remnant remained.

How much impact does that have as we go forward, as we try to rid countries of that kind of vestige of oppression?

The French—I don't understand why they are doing what they are doing. Perhaps, Ms. Atwill, you might want to speak and touch on how they define false advertising and especially "mental manipulation." It seems to be a very elastic term, and if someone can be held criminally libel for that, that could catch a number of people.

But just a general question in terms of the work in progress, all of these countries, coming from their histories. Would anybody want to touch on that?

Ms. ATWILL. Regarding France's—I'm very surprised the way it is going forward right now. I was very surprised to read the term of that law because all the parliamentary commissions that have studied this problem have concluded that no special law was necessary, that all the tools—all the legal tools were there and the law—I mean the bill pending before the parliament right now is scary.

It would not apply to one individual. It will apply to a group which they have defined. Let's see, it will apply to a legal entity whose aim is to create or exploit their member's psychological or physical state of dependency. And what the law is doing is to take a certain number of criminal offenses that were only applicable to individuals and extend them to those groups. The punishment will be, of course, a fine which will be five times the fine that an individual would have been liable to.

It is a bill. It hasn't been passed yet. It only was passed in the National Assembly in the first reading. It will maybe go to the Senate. I think the Ministry of Justice and Order propose first to listen to the commentary of religious groups and also to study whether such law will be violating the European Convention on Human Rights. So hopefully, it will not go any further and will not be promulgated and become a law.

Mr. PITTS. Thank you, Mr. Chairman. A couple of questions for Wayne Merry. What are the arguments that governments in places like Uzbekistan or Greece give for restricting religious speech restrictions that are in contravention to their international agreements?

Mr. MERRY. Congressman, in the case of Uzbekistan, the rationale tends to be that it is facing a threat from Islamic extremism. How this accords with its repressive measures against Christian denominations I find difficult to understand.

I have a tendency to be very skeptical of government assertions of an extremist threat because they have so often in the past, including in the recent past, been merely a rationale for arbitrary and repressive measures by governments.

In the case of Uzbekistan, I think a good argument can be made that whatever growth of religious extremism may be taking place in the country is more the result of repression than the repression being a response to the extremism.

In the case of Greece, a country I know quite well, I think the issue is slightly different. There, I think, it's a question of a tight link between religion and nationalism.

Greece is not a very spiritually active country. It's a society in which people profess their religion only at a generally fairly shallow level, but in which the Orthodox Church exercises very great political authority and has a veto power over almost all religious activities of other denominations, including other Christian denominations, because of its traditional role as the protector of Greek national identity during the 400 years of Turkish rule.

The current Greek Government is attempting to bring the country more into line

with European Union norms and is facing considerable political opposition from ecclesiastical authorities. I think the current Greek Government is very positive in the measures it has been trying to implement, but it is finding that in many ways much of society is on the side of a more restrictive, more exclusionary attitude toward religion than is the European Union.

Mr. PITTS. Just a couple more. Based on the outlines of the various legal systems among OSCE countries, how would you judge the level of protection provided to religious liberty? Which countries would be most protective? Which would be least?

Mr. MERRY. A rather large question and indeed there's a vast amount of good material in this report which of necessity, of course, could only look at 12 countries in the OSCE region, so of course, there are three times as many countries that were not addressed.

Other than in North America, it seems to me that the United Kingdom and The Netherlands are probably the most tolerant societies, and that tolerance falls off quite sharply as one moves into the former socialist countries and disappears almost entirely when one reaches Central Asia.

I would like to note, however, a point that the Chairman made in his opening statement with which I very much agree, which is the problem that some West European countries are now providing a bad example for countries farther east. This is particularly true with legislative practices in Germany, Austria, to a lesser extent in Belgium, and in France, so countries to the east can use the forms of religious regulation that we have seen develop in some Western and Central European countries for their own much more repressive purposes. I think that is a very serious concern.

Mr. PITTS. One final question. I heard you say that we're not seeking to protect the individual rights, we're seeking to protect the practice of religion in community with others. Groups are made up of individuals. If you don't have an individual right, how can you have a right as a community and I'll give you an example.

In Turkmenistan where Shageldy Atakov is in prison for converting from Islam to Christianity, guilty of their blasphemy or paucity law, that's an individual case. Can you explain what you meant a little bit more?

Mr. MERRY. Yes sir. I hope I did not give the impression that I thought that the individual right was unimportant. And it is, in fact, of course, basic. But my view is the policy problem we face is not so much governments seeking to control individuals as to control congregations, to control communities.

And I believe I said that few governments would try to control individual liberties. Turkmenistan is definitely the exception to that rule as was clearly demonstrated in a recent hearing by this Commission on human rights in Turkmenistan. There, certainly, any form of individual liberties are more marked by their absence than by their practice.

My only point was that I think that in most of the countries under review in this report, the problem of government practice is directed at religious communities, not at individuals and the reason I drew attention to this, is that I think for many Americans the idea of seeking to defend a group right rather than an individual right is uncomfortable and unusual, but I think that if we're going to be helpful in religious liberty issues in many of these countries, that is the avenue we have to pursue.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. SMITH. Any questions from the audience?

Mr. FEFFERMAN. I have a comment.

Mr. SMITH. Would you mind just coming to the microphone so we can get it on the tape,

please?

Mr. FEFFERMAN. Mr. Chairman, I'm Dan Fefferman from the International Coalition for Religious Freedom and personally I'm a member of the Unification Church. One of the things I saw alarming about the French proposed legislation is, in fact, in my opinion, I think it's clear from the legislation that it targets not only groups, but also individuals.

One of the points in the bill is that once a group is banned, any individual who seeks to rebuild that group under another name or otherwise is liable to a prison sentence of 3 years. So in the case of that particular legislation in France, individuals are targeted.

Thank you.

Ms. ATWILL. It's quite correct.

Mr. SMITH. Three years?

Ms. ATWILL. Yes, the bill provides for that.

Mr. FEFFERMAN. I do have one question of the panelists and that has to do with the different ways that government support religion or take a benign neglect type of view. Many of the obviously Warsaw Pact countries still provide salaries to the clerics. Romania, for example, and there's a census done and depending on how it breaks down there's an apportionment of monies to each of the different religious denominations and the salaries are then paid for by the government.

We indirectly, but it is a direct, help out religion by way of tax deductions. Obviously, one is more controlling than the other and I think you mentioned, Mr. Roudik, church confiscation issues, settling scores. I think that would probably come under that banner.

The government seems to be in a situation where it's in their own interest to have a dominant church, you know, go with the Orthodox or go with this church to the exclusion of the other minorities because one, you're paying their salaries, that gives you more control.

Secondly, you've got this vexing issue of confiscated properties and how do you work that out when you've had people occupying churches or schools or rectories or whatever for 20 or 30 years and then they have to give it back. How does that play into this—does it muddy the waters?

I mean it would seem to be an impediment to a breakout of real religious freedom, particularly in the former Soviet Union.

Dr. ROUDIK. All these countries are different and have a different history and different conditions. It seems that all of them still continue to follow the general trend when the state arbitrarily controls religious organizations and limits judicial forms of dispute resolution.

For instance, in all former Soviet countries, the states keep former councils for religious affairs, government executive agencies which control all issues related to appointment of clergy, even of resolution of theological disputes.

In some countries, many government agencies continue to keep the same people in the same positions as it was 10 years ago during the Soviet time and another alarming trend, dominant religions continue to make very close alliances with anti-democratic and nationalistic forces, make union with the state where rules are very definitely determined. State uses religious organizations as a tool for manipulating the electorate and the churches are permitted to enter the politics, to use their status of dominating religion in order to receive some material benefits.

Mr. SMITH. Mr. Wennink, you mentioned philosophy of life and religious organizations have pretty much of an equal status under the law in The Netherlands. What is the philosophy of life type of organization? Could you explain it?

Mr. WENNINK. For example, some organization that promotes like humanists and if

they want to apply for a government subsidy to give on a public broadcasting organization to get television time to promote humanism as the same, as the Protestant or the Jewish or Catholic or the Jehovah's Witnesses can apply, if they have so many members and if they do a program on it. It could be like—humanism is one example of a philosophy of life.

Mr. SMITH. How stringent are the tax authorities in providing for a tax deduction status in evaluating an organization? Can just a few people come together and say we're so and so and therefore we get—or is it very rigorous?

Mr. WENNINK. Well, I assume that they have to have a number of members and their bylaws and the charitable purpose has to be clearly expressed.

Mr. SMITH. Let me just ask as legal experts, have the plethora of new laws in the post-communist countries marked a positive trend in the protection of religious liberty or do you believe the new laws tend towards freedom within governmental restraint? We've had 10 years now of this experiment after the fall of the Wall. Is it moving in the right direction or the wrong direction?

Dr. ROUDIJK. We can see two waves of legislation. First legislation was passed in 1991 in all former Soviet Union countries is liberal, is democratic and for instance, Ukraine still continues to use this law. I say "still" with a big doubt because there are forces which prefer to follow the Russian path. But then we see a second wave of legislation which was passed just recently in 1997, 1998, more restricted, more as Mr. Merry said, with the fear of foreign importation and it seems that this way, unfortunately is more prevailing.

Mr. PITTS. To follow up and any of you can respond to this, how would you characterize the role of the constitutional provisions or the laws versus the role of the administrative initiatives, or executive orders? In your examination, was there a trend toward consistency or inconsistency between laws and administrative initiatives? Anyone?

Dr. ROUDIJK. I thought all these countries tried to keep the possibility to use out of court resolutions and to use arbitrarily rules. For instance, the Russian Law on Religion provides for the necessity of judicial decision in order to close a religious organization. But there is another provision which says that in order of establishing an organization, this organization should obtain a review or statement about its views, the status of its religion from the state authorities and this scholarly expertise cannot be reviewed by the court. But it is the reason for denial of registration of religious organization.

Mr. MERRY. In that regard, I would just comment that we hadn't addressed the issue of federalism which is quite important in a number of the countries under review, although most OSCE member participating States have fairly centralized laws and regulations concerning these issues. In some cases, the actual practice varies enormously within the federal structure.

This is most obviously the case, of course, in Russia with its immensity of federal extent and the tendency of regional and local officials to be much more repressive than central government authorities would wish. There is also a problem, for example, in federal Germany where many of the problems for religious minorities are more a reflection of governments and of courts at the regional level which have made some rulings that in some cases have later been overturned by the constitutional court and some cases not which are I think quite striking in their intolerance of religious liberty.

So I think in many cases it is—one cannot just talk about the central authority within a state. One has to talk about the actual practice which is in federal systems much more likely to be a question of a regional and local government.

Mr. FINERTY. Always go to the right. Thank you, Mr. Chairman. I'm John Finerty from

the Helsinki Commission staff. A question for Peter. Peter, Russia seems to be one of those few countries I think where there's a shortage of lawyers, but there does seem to be a small cadre of religious experts, legal experts now in Moscow who are actually fighting these cases.

Keston College mentions one in its most recent issue and my impression is that where an organization is persistent and where they have good legal representation, the batting average of court cases, local and also going up to the constitutional court and the Russian Supreme Court is actually not that bad and I just wondered if you could comment on that. Thank you.

Dr. ROUDIK. Yes, you are right. We have a good example of Jehovah's Witnesses who resolved their problems last year in the Moscow City Court, but I think it depends on their lawyers. It depends on the general situation in the country. It depends on international support. Only when, for instance, in this case of Jehovah's Witnesses, they received strong support from international organizations, from this Commission, the Moscow Court stepped back and made decision in their favor.

Mr. SMITH. Any questions? If not, I want to thank Mr. Sale and his very distinguished colleagues for being here and especially for producing this very informative and useful document which we will use as a Commission going forward. We've been using it already, but we'll use it even more, and hopefully we can, on behalf of religious freedom, push the envelope to the greatest extent possible. Thank you.

(Whereupon, the briefing was concluded at 11:42 a.m.)

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