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ROADBLOCK TO RELIGIOUS LIBERTY: RELIGIOUS REGISTRATION

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ABOUT THE ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE

The Helsinki process, formally titled the Conference on Security and Cooperation in Europe, 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. As of January 1, 1995, the Helsinki process was renamed the Organization for Security and Cooperation in Europe (OSCE). The membership of the OSCE has expanded to 55 participating States, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia.

The OSCE Secretariat is in Vienna, Austria, where weekly meetings of the participating States' permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations. Periodic consultations are held among Senior Officials, Ministers and Heads of State or Government.

Although the OSCE continues to engage in standard setting in the fields of military security, economic and environmental cooperation, and human rights and humanitarian concerns, the Organization is primarily focused on initiatives designed to prevent, manage and resolve conflict within and among the participating States. The Organization deploys more than 20 missions and field activities located in Southeastern and Eastern Europe, the Caucasus, and Central Asia. The website of the OSCE is: <www.osce.org>.

ABOUT THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE

The Commission on Security and Cooperation in Europe, also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance by the participating States with their OSCE commitments, with a particular emphasis on human rights.

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

In fulfilling its mandate, the Commission gathers and disseminates relevant information to the U.S. Congress and the public by convening hearings, issuing reports that reflect the views of Members of the Commission and/or its staff, and providing details about the activities of the Helsinki process and developments in OSCE participating States.

The Commission also contributes to the formulation and execution of U.S. policy regarding the OSCE, including through Member and staff participation on U.S. Delegations to OSCE meetings. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from participating States. The website of the Commission is: <www.csce.gov>.

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THURSDAY, OCTOBER 11, 2001

PARTICIPANTS

APPENDICES

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COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The briefing was held at 9:30 a.m. in Room 340, Cannon House Office Building, Washington, DC, Ronald J. McNamara, Chief of Staff of the Commission on Security and Cooperation in Europe and Knox Thames, Staff Advisor of the Commission, moderating.

Witnesses present: Dr. Sophie van Bijsterveld, Co-Chair, OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief and Professor of Law at Katholieke Universiteit Brabant, Netherlands; Dr. Gerhard Robbers, Member, OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief and Professor of Law, Universitat Trier, Institut fur Europaisches Verfassungsrecht, Germany; Vassilios Tsirbas, Executive Director and Senior Legal Counsel, European Centre for Law and Justice, Greece; Col. Kenneth Baillie, Commanding Officer, Salvation Army, Eastern Europe.

Mr. MCNAMARA. Good morning. I am Ron McNamara, the Chief of Staff of the Commission on Security and Cooperation in Europe, the Helsinki Commission.

On behalf of Senator Ben Nighthorse Campbell, the Chairman of the Commission, and Congressman Christopher Smith, our Co-Chairman, and the members of the Commission, I am pleased to welcome you here today to this briefing on religious registration in the Organization for Security and Cooperation in Europe [OSCE] region. This session is part of an ongoing series of hearings and briefings that the Commission is holding on questions relating to various aspects of religious liberty in the OSCE region.

I am pleased to introduce the Commission's Staff Advisor for religious liberties issues, Knox Thames. He will serve as the Moderator of this morning's program.

We are particularly pleased that many of you are representing various OSCE participating States, and I have met several of you and would appreciate an opportunity to meet more of you. I think some participants will also be visiting our Commission offices tomorrow, where we will be able to have a more in-depth discussion.

This forum, today's briefing, will be transcribed and will be produced in printed copy, and will also be available through the Commission's website, which is <www.csce.gov>. We would encourage you, if you have not done so already, to visit our website. There is also a subscription function where you can subscribe based on your interest in individual participating States, or in topics including religious liberties. So, I will turn to Knox, and he will, again, serve as the moderator for the balance of the program. Again, I do want to welcome each of you here today. Thank you.

Mr. THAMES. Good morning, ladies and gentlemen. I would like to express my gratitude for everyone attending today. I have a statement that our Co-Chair, Mr. Smith, was hoping to give today but, unfortunately, he had a conflict arise this morning, so I will read his opening statement and then we will hear from our panelists.

PREPARED STATEMENT OF HON. CHRISOPHER H. SMITH, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Ladies and gentlemen, I would like to welcome everyone to this briefing today, convened by the Commission on Security and Cooperation in Europe, to address an issue of great importance in the promotion of religious freedom, religious registration policies in the OSCE. The Commission strives to monitor and encourage compliance with the Helsinki Final Act and other commitments of the Organization for Security and Cooperation in Europe.

As Co-Chairman, over the past decade I have observed a troubling drift away from a robust and vibrant protection of religious freedom in a growing number of OSCE States. I have become alarmed with how some OSCE countries have developed new laws and regulations that serve as a roadblock to the free exercise of religious belief. These actions have not been limited to emerging democracies, but also include Western European countries, with the definitive example being Austria.

Considering the gravity of this issue, I am pleased by the panel of experts and practitioners assembled today who have been kind enough to travel from Europe to share their thoughts and insights. Our distinguished panel includes Dr. Sophie van Bijsterveld, who is currently serving as Co-Chair of the OSCE Advisory Panel of Experts on Freedom of Religion or Belief, as well as a law professor at Catholic University in The Netherlands. Dr. Gerhard Robbers is also a member of the OSCE Advisory Panel of Experts, and is a professor of law at the University of Trier in Germany. Vassilios Tsirbas serves as interim Executive Director and Senior Legal Counsel for the European Centre for Law and Justice, and he is based in Strasbourg. Lastly, Col. Kenneth Baillie is the Commanding Officer for the Salvation Army in Eastern Europe. He has experienced firsthand registration laws which not only have impeded, but actually "liquidated," a religious group, as he has been very involved with the Salvation Army's ongoing action to register in Moscow.

During today's briefing, the panel will provide critiques of religious registration policies throughout the 55-country OSCE region. In addition, panelists will prove the 'big picture' of religious registration issues throughout that region, including States which formerly were part of the Soviet Union. I feel the upcoming dialogue will be very helpful in developing a better understanding of these 'roadblocks' to religious freedom.

From what I have seen through the work of the Helsinki Commission, many of these laws are crafted with the intent to repress religious communities deemed nefarious and dangerous to public safety. Certainly after the September 11 tragedies, one cannot deny that groups have hidden behind the veil of religion in perpetrating monstrous and perfidious acts. Yet, while history does hold examples of religion em-

ployed as a tool for evil, these are exceptions and not the rule.

In our own country, during the Civil Rights Movement, religious communities were the driving force in the effort to overturn the immoral "separate but equal" laws and provide legal protections. If, during that time, strict religious registration laws had existed, government officials could have clamped down on this just movement, possibly delaying long overdue reform. While the OSCE commitments do not forbid basic registration of religious groups, governments often use the pretext of "state security" to quell groups which espouse views contrary to the ruling power's party line.

Another practice I have observed is the creation of registration laws designed on the premise that minority faiths are inimical to governmental goals, like respect for human rights and rule of law. Often, proponents of these provisions cite crimes committed by individuals in justifying stringent registration requirements against religious groups. Still, as I previously mentioned, the history of religious movements is one of good will and benevolence, not hate and misdeeds. Clamping down on the ability for a religious group to exist not only contravenes numerous, long-standing OSCE commitments, but also serves to remove from society forces that operate for the general welfare. The Salvation Army in Moscow is a lucent example.

In other situations, some governments have crafted special church-state agreements, or concordats, which exclusively give one religious group powers and rights not available to other communities. By creating tiers or hierarchies, governments run the risk of dispersing privileges and authority in an inequitable fashion, ensuring that other religious groups will never exist on a level playing field, if at all. In a worst case scenario, by officially recognizing "traditional" or "historic" communities, governments declare their ambivalence, and sometimes hostility, toward minority religious groups, which can serve as a catalyst for violence. The persistent violence against Jehovah's Witnesses and other evangelical groups in Georgia is a prime example.

Notably, religious registration laws do not operate in a vacuum; other rights, such as freedom of association or freedom of speech, are often enveloped by these provisions. Accordingly, it is with great concern that I convene this briefing to discuss religious registration roadblocks. My heightened level of concern is only equaled by my strong desire to encourage participating OSCE States to fully comply with their OSCE commitments.

In working toward this goal, I was pleased to learn of the Bush Administration's shared commitment to religious freedom. In a March 9, 2001 letter, Dr. Condoleezza Rice, Assistant to the President for National Security, stated: "President Bush is deeply committed to promoting the right of individuals around the world to practice freely their religious beliefs." She also expressed her concern about religious discrimination. In a separate letter on March 30 of this year, Vice President Dick Cheney echoed this commitment when he referred to the

promotion of religious freedom as "a defining element of the American character." He went on to declare the Bush Administration's commitment "to advancing the protection of individual religious freedom as an integral part of our foreign policy agenda."

While some may construe the Administration's "war" on terrorism as a move away from religious freedom, Mr. Bush has repeatedly made it clear, as stated in his address to the country, "the enemy of America is not our many Muslim friends.... Our enemy is a radical network of terrorists and every government that supports them." His statement that "the terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself" demonstrates his distinction between terroristic acts and religion. Accordingly, it is my belief that this Administration will not stray from supporting religious freedom during this challenging time.

In closing, the Helsinki Commission is greatly appreciative to our panelists for agreeing to come and share their thoughts on this critical issue. In addition, the Commission will continue to monitor the activities of governments in light of their OSCE obligations and encourage compliance. We will now proceed with the panelists' presentations, which will be followed by an opportunity for questions. Thank you."

Mr. THAMES. Once again, that was the opening statement by our Co-Chairman, Mr. Chris Smith of New Jersey.

At this time, I would like Dr. van Bijsterveld to give her presentation. Thank you.

Dr. VAN BIJSTERVELD. Thank you very much, Mr. Moderator. Ladies and gentlemen, I am very grateful for the opportunity to be here and to be able to share some thoughts with you on the legislative developments regarding religion in the OSCE region.

I would first like to sketch a perspective against which to assess the registration of religions issue and, second, to address the role of the OSCE and the panel in religious liberty matters.

In dealing with socio-religious changes, states often turn to the instrument of legislation and, in this legislation, the mechanism of registration of religion plays a crucial role. Indeed, one recurrent issue under which problems of religious liberty become manifested in the OSCE region is that of registration of religions. This has also made the phenomenon of registration itself suspect.

It is important, however, to realize that registration, even if this mechanism has become charged in the context of legislative change, is not, in itself, good or bad. The assessment of registration from the point of view of religious liberty depends entirely on the function that registration fulfills in the legal system, and the consequences that are attached to registration.

So, the assessment of registration and the criteria to be met in order for a religion to be registered depends on these underlying elements, and this starting point allows us to make some concrete observations.

First, registration as an absolute requirement: A requirement of registration of religious groups as a pre-condition for the lawful exercise of religious freedom is worrisome in the light of international human rights standards. A prior permission of the government for allowing a person to adhere to a religion and to exercise his religion in commu-

nity with others is, indeed, problematic in the light of internationally acknowledged religious liberty standards. Religious liberty should not be made dependent on a prior government clearance, and this touches the very essence of religious liberty. In this case, the motives for requiring registration are undesirable and not in tune with the standards.

Second, registration and countering certain particular behavior: Government may wish to counter particular behavior. Controlling the existence of or the adherence to religions as such, by introducing a requirement of registration is not the right approach. The law in such cases should deal with the actions and manifestations themselves, and should not criminalize a particular religion in general. In other words, if in such a case the motive of government to tackle a particular behavior was justifiable, using the mechanism of registration is not the right means to achieve this end.

Third, registration and entity status: It is important to notice the registration also fulfills many other functions in legal systems of OSCE countries.

A primary condition for being able to function as an organization in society is that of enjoying entity status, that is, to be able to function as a legal entity, as a collectivity distinct from the individual members. To function as such a legal entity, a certain structure is required. Allocations of responsibilities for decision making and financial matters need to be clear. Legal systems often require some sort of registration for obtaining entity status. If registration fulfills a role in the process of requiring entity status, the role of the state is, in principle, a facilitative one. Without such legal status on the basis of which an organization can function independently from its members, the effective exercise of religion as an organization would be illusory.

The facilitative role of the state, however, can change into its opposite if the criteria to be met in order to register are disproportionately burdensome. For instance, a very high numerical threshold, or a very long duration of existence in a particular country would be elements that would make the registration disproportionately burdensome. Very large discretionary powers may result in the same. In this case, the motives and the function of registration are in order, but the way the registration mechanism is used is disproportionate.

Fourth, the facilitative role of the state is not limited to granting entity status. Often states provide more elaborate facilities to enable the functioning of religion and religious organizations in societies such as, for instance, chaplaincy services in public institutions or religious education in school or access to the public mass media, and so forth. The precise legal format of these facilitative arrangements depends on legal and cultural factors, and the general legal system of a particular country. These facilities are, of course, important for the functioning of religions in the social reality.

In one form or other, facilities to enable the functioning of religion and religious organizations in societies are available in all types of systems of church-state relationships, whether there is a separation of church and state, or system of cooperation, or one of an established church.

Typically, in systems of cooperation between church and state, organizations based on the religion or belief which meet particular criteria are granted a certain status not only giving them entity status, but also qualifying them for other facilities as well. Indeed, also here the facilitative role of the state is paramount. It is also clear that sometimes more strict requirements are set. But whether these requirements are acceptable depends on their being adequate and proportional for the purpose, and here again very high thresholds and overly strict requirements in order for a religion to be registered are prob-

lematic.

In conclusion, we need to see through the outward design of the system, and concentrate on the substantive issues of the position of one religion and another. A detailed scrutiny and assessment, therefore, is necessary to form a sound legal opinion on the way that registration functions in a legal system.

Now, I turn to the role of the OSCE. The predominantly non-legally binding nature of OSCE commitments and the political diplomatic functioning of the OSCE are sometimes seen as a weakness of the organization. These features are also their strength. Without duplicating other international efforts, the OSCE can contribute to the promotion of human rights including religious liberty in a very unique and supplementary way.

The importance of religious liberty was recognized by the OSCE and the Office for Democratic Institutions and Human Rights [ODIHR] in establishing an advisory panel of experts on freedom of religion or belief. This took place in the aftermath of the 1996 seminar on the topic of "Constitutional, Legal and Administrative Aspects of Freedom of Religion." The composition of the panel reflects different geographical, denominational and legal systems backgrounds, although each member acts in his own personal capacity.

Technically, the panel is an advisory body to the ODIHR. Through the ODIHR, the panel may be invited to offer its assistance on religious liberty issues

The panel recognizes that, however important the legal dimension of religious liberty is, there are often underlying problems. For this reason, the panel has three focus areas. Apart from legislative issues which deal with the subject that this meeting is concerned with, the panel has also outlined education and tolerance, and conflict prevention and dialogue as areas of distinct interest, and has formed working groups accordingly

I come to a conclusion. Issues of religious liberty need international attention, and it is very important to develop an international approach to these issues based on international human rights law. Such an international approach should have its own distinctive contribution to the protection of religious liberty, exceeding merely national perspectives. A specific value of OSCE involvement with issues of religious liberty lies in their focus on the long-term and in the contribution it can make to creating a forum of dialogue and the building of understanding, under the acknowledgment of and adherence to its human rights commitments. Thus, it offers concrete and structural assistance to states in addressing these problems which are important for the quality of society. Thank you very much.

[Applause.]

Mr. THAMES. Thank you, Dr. van Bijsterveld. With some people coming in a little late, I want to remind the audience that an opportunity will be provided at the conclusion of all the presentations, for members of the audience to ask questions of our panel.

At this time, I would like Dr. Robbers to give his presentation.

Dr. ROBBERS. Thank you, Mr. Moderator. Ladies and gentlemen. Registration of religious communities is known to most, probably to all, legal systems in the world, in one form or another. Be it centralized or decentralized registration. It need not be a roadblock to religious freedom. In fact, it can free the way to more positive religious freedom if correctly performed.

Often, religious communities carry a variety of special needs, religious needs, of and for organization, different from other secular associations. Freedom of organization and attributing offices is a key issue of freedom of religion. Registration as a religious organization can mean attributing special autonomy to religious communities, like it is the case,

for example, in the law for Sweden. It can open the door to specific rights, like tax exemptions, rights to perform religious marriages with civil effects, access to positive public funding, and other rights. Especially in countries with a legal infrastructure still further to be developed, registration can clear the positive status for religious communities. Religious communities, in this case, would not depend on various and possibly diverging decisions of many different case-to-case decision makers somewhere in the country.

Registration can thus facilitate cooperation between state authorities and religious communities, and cooperation being a striking and positive characteristic feature of the culture of many a country in religious matters, not impeding separation of state and church.

We should not forget that religion can also be misused, for detrimental activities. It can be misused to exploit the members of religious communities, as such. It can be misused to seduce people to perform criminal, even terrorist assaults, as we have seen. Registration can be a positive means to averting dangers to public safety. Registration, though, can be misused to jeopardize religious freedom easily.

Registration and registration procedures must meet certain standards, among which figure as probably most relevant—and I am just confining myself to some, leaving aside others. Religious activity in and as community, must be possible even without being registered as a religious community.

Secondly, the minimum number of members required for registration must be legitimized by the status acquired by registration. You must not need too many.

Thirdly, there should be no minimum period of existence before registration required. Any such requirement, if it exists, must have good reasons in the specific status that may follow from registration.

Registration must be based on equal treatment of all religious communities. The administration fee that may be required for registration must be adequate. The process of registration must follow due process of law, and so must the loss of the registered status follow due process of law.

Let me indicate, finally, some ways the OSCE, from my point of view, might proceed. Actions taken by the OSCE, or any other organs of the international community, to safeguard religious freedom should be further developed.

OSCE must, in this process, be conscious and considerate of local cultures and long-standing traditions. OSCE should assist to foster positive religious freedom, encouraging governments to help religious communities to actively perform their religions. OSCE activity, in the field of freedom of religion, must be ready to become involve in processes of long duration, and be more patient than it has been up to now.

OSCE should encourage, finally, and engage in cooperation with governments and religious communities in creating and maintaining an atmosphere of tolerance and cooperation. Thank you so much.

[Applause.]

Mr. THAMES. Thank you, Dr. Robbers. Next, Mr. Vassilios Tsirbas.

Mr. TSIRBAS. I will start with the thought of a Frenchman who loved, if not adored, America. He wrote much about the political system of America when he speaks of and about religious freedom. "The heart of man is of a larger mold, it can at once comprise a taste for the possessions of earth and the love of those of heaven. At times, it may seem to cling devotedly to the one, but it will never be long without thinking of the other." That is, of course, Alexis de Toqueville, the famous political thinker who basically set the tone and atmosphere that we need to realize when we talk about religious freedom and roadblocks

to the enjoyment of religious liberty.

I will first make a few statements of a general nature, and then I will try to associate these statements with specific examples, using as a case study my own country, Greece. But before I begin my short presentation on the issue under examination, I wholeheartedly express, along with many people all over the world, my condolences for the loss of all those who died on September 11, 2001. Moreover, our resolve to stand united in our fight for the preservation and the deepening of our open society and democratic societies against the irrational powers of chaos and destruction, is firmer than ever.

Getting into our topic, with a word of consolation is the case because all of us were under the influence of what happened that fateful Tuesday, and it has always been the case throughout history that upon the ruins an ever greater and more blessed present and future has been built.

On November 1950, the Foreign Ministers of the Founding Member States of the Council of Europe met to sign the European Convention on Human Rights. The goal was to lay the foundations for the new Europe which they hoped to build upon the ruins of a continent ravaged by a fratricidal war of unparalleled atrocity. This is why the international treaties, ever since the end of the Second World War, (in light of that grim experience and the fear of what could come about in the future, that is, the ever present danger of totalitarianism which also assumes religious overtones more and more as we move forward), were concerned not simply with the furthering of peaceful relations, going beyond the mere treatment of the facts of war to the treatment of its causes. This is why we find the first statements about the protection of human rights because when we speak of religious freedom, we really speak of the open society, and when we speak of human rights, we speak of the causes that left untreated, will lead us to more ruins in the future.

The ever-growing field of human rights constitutes currently a major paradigm, and this paradigm shapes our understanding of what domestic and international law is and how it is applied, but it also affects our own self-understanding, that is, who we understand our own selves to be and, correspondingly, what we believe we ought to enjoy. It is this paradigm that the recent terrorist attacks tried to overthrow.

Within this proliferation of the field of human rights—of course, we could go on for endless hours, speaking of the list of human rights covering the whole spectrum from the most personal to the most communal, from the local and the domestic to the international and then global, transcending not only place but time, extending claims all the way to the past and reaching forward as to what would or should be enjoyed in the future.

Within this proliferation of the field of human rights, the Helsinki Final Act is a more than promising note. The commitment to respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief for all, without distinction as to race, sex, language or religion, basically summarizes the overall attempt.

Among the human rights that enjoy the protection of international and domestic legal documents, religious liberty stands out as one of those *sine qua non* conditions for an atmosphere of respect for the rights of individuals or whole communities.

If the protection of the individual is considered the cornerstone of our modern legal consciousness of rights, religious freedom should be considered the cornerstone of all other rights. The right itself is one of the most recent to be recognized and protected, yet it embraces and reflects the inevitable outworking through the course of time of the fundamental truths of belief in the worth of a person—I prefer this term rather than to use the term "rights of the individual," it is better to speak of the rights of the person.

Now, in 1989, the Vienna Concluding Document stated that they wanted to ensure that laws, regulations, practices, and policies conform with the obligations—that is, I'm speaking of the contracting parties and states to this document—that practices and policies conform with their obligations under international law, and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

Since Southeastern Europe heavily operates under the influence of the European Convention on Human Rights, it is within this context that I would like to propose two major areas of consideration (that are subsequent or simultaneous OSCE commitment to further examine these areas on the basis of bilateral and multilateral dialogue) which actually would help.

The first issue is the issue of establishing common standards of human rights, and the second one is the issue of national standards and of legitimizing the laws in the respective national societies pertaining to human rights.

Europe, either through the European Union or the Council of Europe arrangements and processes, tends more and more toward a *Jus Communis* in matters of human rights. Thus, the first issue appears and actually is not simply a matter of individual states, but also of international European jurisprudence.

On December 12, 2000, last year, 16 churches and religious organizations in Greece, in a northern city of Greece, were charged and brought to court based on an antiquated set of laws regarding the operation of churches and religious organizations. The criminal charges were based on the alleged operation of all of them without proper license, although all of them had produced evidence of that license when the police made its report. Still, they were asked to come before the judge. The list included the evangelical churches, Pentecostal churches, Mormons, Jehovah's Witnesses, and the Catholic Church.

Among the many things these laws require from the churches is to actually get the opinion of the local Greek Orthodox bishop. Of course, the Greek courts, have tried within their interpretative action to modify that and alleviate it and just basically render it as a requirement of a simple opinion. That still leads to the paradox, churches distinguished by theology different from the Greek Orthodox Church to be pulled by the Greek state to an indirect, yet clear recognition, of that which they denounce to begin with as part of the integrity of their doctrinal identity.

Needless to say, high-ranking state officials were embarrassed with that case. Of course, all of those leaders, pastors, and clergy were acquitted. For one, a 70-year-old Pentecostal pastor, a war hero, it was the second time within a year that he had to appear before the court to produce the evidence of his innocence. As I said, they were acquitted.

But this is usually being taken as an incident that relates with what happens in Greece. I do want to claim today that it has to do with the jurisprudence of the European Court of Human Rights. In 1990, the Home Secretary General in Great Britain decided that a separatist sect leader living in England should be deported to India, the country of which he was a citizen, and that for reasons of national security because of his alleged involvement in terrorist acts. Well, the European Court on Human Rights, based on the Article 3 of the European Convention on Human Rights, stated that basically the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration, and that the protection that the Article 3 provides is absolute.

On the other hand, when it comes to issues of religious freedom, we see that the European Court on Human Rights is characterized by a centrifugal tendency allowing the various states, basically on the basis of national sensitivities, peculiarities, to even limit

the exercise of religious liberty. That is an issue that I would like us to think about today.

Another case, because I think here I need to close, has to do with the law, the recent law regulating private television and radio stations in Greece. Now, this law requires two things for anyone who wants to operate a radio station, either be a legal entity of public law or be a commercial legal entity. That leaves untouched the Greek Orthodox radio stations to continue operating and forces all the non-Orthodox Church radio stations to become something that, to begin with, they are not interested in becoming. The radio channel "Christianity" of the Free Apostolic Church of Pentecost and the radio station "Channel 2000" of the Free Evangelical Church have already been closed down.

Well, I could go on and on, but I just wanted us to think not only in terms of what we can do in relation to the individual national states, but also within this broader context that the Council of Europe and the European Union provides for us. And although I don't have time to tackle the second issue, I would just briefly summarize what it is all about by telling you, and we will have the opportunity maybe to talk more about that later, what a Hebrew saying has it, that "judges need to reside within their own people," alluding to the need of the law to correspond to the social reality that it needs to serve. Thank you very much.

[Applause.]

Mr. THAMES. Thank you, Mr. Tsirbas. Just to bring to everyone's attention, all the testimony given today will be on our website, which is <www.csce.gov>. Mr. Tsirbas' full statement will also be included on our website.

At this time, I give the mike to Col. Baillie.

Col. BAILLIE. Thank you. From an office in Moscow, I have responsibility for Salvation Army work in five East European countries. First, I will briefly describe our religious registration issues in each of those countries, and then I will zero in on the one biggest problem.

In Georgia, there is no law that requires us to register as a religious organization. In order for us to conduct ordinary business, we are registered as a charity.

In Moldova and Ukraine, we have full nationwide registration as a religious group. In both cases, it took years of work, but as of last year, 2000, we now have those registrations.

In Romania, we have been trying to get registered for about 3 years. At first, our own law firm did not understand us well enough and, consequently, tried to register us as a charitable foundation. When we corrected that bit of misinformation and tried to register as a church, a church which as an expression of its faith does charitable work, we learned that use of the word "church" is potentially problematic. Apparently only longtime churches in Romania can use that word. But we were told that the title "Christian Mission" might be acceptable. Well, that's all right with us, so long as we are able to do all of our ministries, so we are pursuing that possibility at present.

As a centralized religious organization—we had applied back in September of last year, and it appeared that nothing was being done with our application until December when the media had a field day with our Moscow city denial, and worldwide publicity was fairly extensive. There were quick meetings of the Committee of Religious Expertise, and their report was drafted almost overnight, and we were awarded our CRO. By the way, that renews a comparable status that we had long ago until we were liquidated by the Bolsheviks in 1923.

The city of Moscow is another story. We have been registered as a religious group in Moscow since 1992. In response to the 1997 law, like everyone else, we applied for re-

registration, thinking that it would be merely pro forma. Our application documents were submitted, a staff person in the city Ministry of Justice said everything was in order, and we would have our signed and stamped registration in two days.

Two days later, the same staffer called to say, in a sheepish voice, "There's a problem." Well, it is now 3 years later, and there is still a problem. Someone took an ideological decision to deny us. That is absolutely clear to me, and 3 years of meetings and documents and media statements and legal briefs are all window-dressing. Behind it all is an arbitrary, discriminatory, and secret decision, and to this day I do not know who made the decision, or why.

Based on what has happened in these 3 years, I can offer a few observations.

For one, the law's ambiguity gives public officials the power to invent arbitrary constructions of the law. For instance, the law says nothing about who can sit on our governing board. Still, we were told that we would have to submit copies of passports for any foreigners who happened to be on our governing board. The law does not require this, but we submitted the copies anyway. As part of the flimsy justification for denying our registration, 6 months later, the city claimed that we should also have submitted copies of visas. Nothing had been said about this earlier, but this new, invented requirement was now used as a reason to deny our registration.

Here is another example of arbitrary readings of the law: one paragraph in one section gets lifted out of context and applied to another. Under the terms of our existing registration, a quorum of our governing board could approve changes to the charter and, accordingly, this is what we did as part of the application process. But another section of the law, completely separate and unrelated, says that the formation of a new organization needs 10 Russian citizens to be the founders. Well, we had fulfilled this requirement back in 1992, but now this Justice Ministry official rejected the proper legal decision of our governing board, and arbitrarily asserted that the unrelated paragraph was operative.

Another observation. I think officials are unhelpful, if they choose to be. They do not see their function as assisting or enabling religious groups to fulfill the law, and so, in practice, they become obstructionist.

When our full set of application documents went to the city Ministry, the first reply we got in writing was this: "We have received your application, but we will not act on it." The official gave no explanation, as required by law, and offered no word as to what we should or might do next.

I recall a series of meetings with another official. He had asked for a written statement of our beliefs on various subjects. And when I returned with a rather lengthy statement, his response was simply, "This is not correct yet. Rewrite it and come back again." He gave no explanation as to what was allegedly inadequate, and so I rewrote it. In fact, the process went on several times coming back, and each time the response was the same.

Another observation. The law is one thing and enforcement of it is another. More than 2 years ago, the city official, a fellow by the name of Vladimir Zhbanov, said to a group of lawyers and government officials in a semi-public meeting, that the city was doing a wonderful job with the new law, and registering many groups with no problems, and so on, "but not, of course, the Jehovah's Witnesses and the Salvation Army. They will never be registered as everyone knows they are undesirables." I was not there myself, but I am told that jaws gaped open. The man's animus has been abundantly clear ever since.

I sat in a meeting with him myself last February, when he acknowledged to me that he knows the Salvation Army is a proper religious group, that we do good charitable work,

and that we are well regarded around the world, but, he said, "I will never register you in Moscow, never. And, in fact, I will liquidate you and all your properties and assets will go to the state. I will leave you penniless." Believe it or not, he has since said the same thing in a media interview.

Another observation. The lack of impartial enforcement can extend to the courts. There has been no redress for us in Moscow's courts. The procedural and substantive violations of due process convince me that the courts, at least the ones we've had to deal with in Moscow, are not independent, but are controlled by the same Minister of Justice who denied our registration.

I will give you one example. A city Justice Ministry brief to one of these courts quoted a long series of excerpts from various Russian laws about insurrection, subversion, paramilitary formations, and national security, and then, with breathtaking illogic, said that since the Salvation Army has the word 'army' in its name, it must be all the above. This was after our having been legally ministering in Moscow for 8 years. Not one bit of so-called evidence, was included in support of this nonsense and, indeed, there is none to adduce. It is, to me, sad that a lawyer would write this in a brief to a court, and it is equally sad that a court would receive it and later issue its judgment against us by quoting it at length.

A final observation. The lack of enforcement involves a tug-of-war between federal and local powers. The federal government in Russia, under various treaties and international obligations, is responsible to see that human and religious rights are upheld throughout the nation. In our case, the federal government has granted our registration, and I am grateful for that, deeply grateful, but it has failed to confront the city of Moscow about Moscow's inappropriate actions.

There have been meetings. There have been assurances, but as of this date, there has been no substantive action by federal Ministry officials to deal with Moscow Ministry officials.

In conclusion, we will not give up. We have appealed to the European Court of Human Rights, and we are confident that the case is so clear a violation of justice that we will prevail eventually. In the meanwhile, I am understandably skeptical about religious registration law, and particularly the will to uphold what the law says in regard of religious freedom. Thank you very much.

[Applause.]

Mr. THAMES. Thank you, Col. Baillie.

At this time, we will provide the opportunity for the audience to ask questions. If you have questions, please come up to the microphones in the front, state your name and your affiliation.

I have a question for our two professors. In your opinion, are the norms on religious freedom that protect religious liberty, outlined in the Universal Declaration of Human Rights, the ICCPR, the European Convention on Human Rights, and the numerous OSCE commitments—have the protections of religious freedom attained the level of customary international law? Do you see a trend to where it is reaching that level?

Dr. VAN BIJSTERVELD. Thank you very much. The OSCE has a large number of participating States. And the OSCE commitments on religious liberty are quite extensive. In my personal opinion, they are not only extensive, but they are also quite modern. They go one step further than some classical human rights standards that are incorporated in the European Convention on human rights and the International Covenant on Civil and Po-

litical Rights.

Apart from that, all participating States of the OSCE are also members of the U.N. and practically all are party to the International Covenant on civil and political rights. Most of them are also party to the European Convention on Human Rights.

So, I would say at the level of the principles, the basic norms, the protection is quite extensive and of a high standard. The challenge will be how to implement those standards in particular countries, and to give these principles flesh and blood with respect to the real issues that we are facing right now. So, we need to focus on the interpretation of these standards and their meaning for and application to today's problems. But I think that can be done.

Dr. ROBBERS. Mr. Moderator, the question clearly aims at those countries who have not signed the instruments, not all of them, or they would be involved and obligated by all these norms. I would think that apart from what I wish to be, what is the case in international law would be that part of these norms would be accepted as customary international law. Other parts of these norms I would have doubts whether we could speak as far as I would like them to be customary law, especially in the case of changing one's religion, leaving and changing one's religion and adopting a new one. The Islamic states have time and again insisted that this is not part of their understanding of freedom of religion. I deplore that, but it is the case.

So, I think from the basics of international public law, we could, unfortunately, not speak in this case of that as customary international law.

Mr. THAMES. Are there any questions from the floor? Yes, please?

QUESTIONER. My name is Cole Durham. I am the Director of the BYU International Center for Law and Religion Studies, and I want to describe just a problem and a possible solution with regard to the impact of terrorism in this area, and get responses from members of the panel as to this possible solution or how we deal with this.

The problem is, I think the events of September 11 will tend to aggravate problems of registration. I base this on work with the OSCE expert panel in Kazakhstan last spring, where there was an effort to reform, so-called, their registration rules in response to terrorism problems being experienced there. The response was essentially to tighten up the registration rules, to make it more difficult for all religious groups to register.

Now, my own sense is that that is probably counterproductive particularly since the truly illegal groups just go underground, leaving this heavier burden for legitimate groups. But it was an instinctive response of the government, they backed off. But I fear in response to the increased global concerns about terrorism, those issues will come back.

Now, the question is how to deal with that without sacrificing religious freedom principles. It seems to me that a possible line could be drawn, taking into consideration well established principles in criminal law—that is, to the extent terrorist activities violate criminal law and, in particular, violate rules dealing with what we call "inchoate" crimes, attempts, the law of conspiracy, that if you take into account the areas of the law that criminalize preparatory conduct but distinguish it from mere thought or mere joining of organizations, that that may suggest a line that would work. Every criminal law system that I know accounts for preparatory crimes, but has to draw the line between actual preparation or action that will substantially corroborate criminal activity from mere joining of organizations, and that maybe that would suggest a line for how things could be distinguished.

Among other things, it ought to be possible for organizations to disavow, formally

disavow conduct of—there might be some criminal element, someone who has belonged to a religious group, say—the group ought to be able to disavow that conduct in some formal way so that the whole group is not punished for the activity of certain malefactor. If you think about, to some extent, the approach of the U.S. and the Taliban, there is something like that. You can turn over a malefactor and you could insulate yourself from association with that.

I'd just like to pose that. Would something like that work as a solution to how one could draw the line in this difficult area, or are there other additional suggestions that could be made? Thank you.

Mr. THAMES. Who on our panel would like to step up and provide an answer? Any thoughts?

Dr. ROBBERS. You are looking at me, Mr. Moderator. Many of these rules on registration do not only have the question in mind of drawing the line where criminal law begins or ends, but they also carry the notion of prevention, as I would call it, diverting dangers from the public wheel, police the issues of the question of how to avoid getting into criminal action.

I would think that basically that is an honorable and legitimate aim. It is a very dangerous thing to do. It is very hard to draw the line.

The only thing I could say is that all these answers to a question like this would have to be answered in relation to the very country, the very legal system you are working in and you are living in with the religious community. It is different in Denmark from Tajikistan. It is just different. It is not better anywhere, but it is just different. The needs of handling these problems are different in these countries. That certainly is not a sufficient answer, but it may indicate the direction I would go into.

Dr. VAN BIJSTERVELD. Thank you. Of course, genuine political concerns can be taken into account in determining the concrete scope and extent of liberties, including religious liberty. Concerns of security and safety are legitimate concerns which may lead to the restriction of human rights. Human rights provisions themselves usually provide guidance as to the criteria to be met for such restriction. From an international point of view, the question as to how to strike the right balance cannot be answered in general but, as my colleague says, the precise circumstances of the case are highly determining for the concrete assessment of the situation.

Basically speaking, of course, it is best to target particular action through criminal law instead of aiming at banning a particular religion or putting extensive constraints on exercising religion in general.

That would be my answer. Dissolution of organizations – that is, the formulation of the legal criteria for such dissolution at the national level as well as the interpretation of these criteria at the national level, must satisfy the scrutiny of international human rights standards, in our case both freedom of assembly and of religion. Sheer suspicion does not satisfy such scrutiny.

Mr. TSIRBAS. Well, indeed, this is, I think, the issue from now on, ever since that Tuesday, September 11, 2001, that we all need to come together and find the proper solution or the proper balance. But it seems to me that, indeed, I would agree with what we have just heard about the need to be dealt with accordingly in every individual social reality, and at the same time, within, of course, the norms of the internationally binding legal documents.

Speaking in the context of the political element, it needs to be stronger; I think we

need to discriminate in order to preserve freedom, and that, of course, needs to be worked out, and it is a very precarious road, but still we need to consider that. That is my opinion.

Mr. THAMES. Yes, Col. Baillie. [Allowing Baillie to answer]

Col. BAILLIE. I guess I am representing the prime example, number one, here. I am not a lawyer, but it does strike me as ironic that more than a year ago, a Russian court said about us on this subject, that among the many reasons why they would not grant us re-registration, "It will be inevitable that members of the Salvation Army will break Russian law in the process of," so on and so on and so on. What they are talking about our membership faith commitment statement. It is strange to me that in 107 other countries of the world, our people seem to be peace-loving. I didn't know that any of them were insurrectionists.

But how do you defend yourself against the charge that your people might do something instead of saying what they have done. There is nothing adduced here to say that any of our people have done anything in Russian law, it is what they might do. And, moreover, it goes on to say that our organizational charter does not take—does not have me taking responsibility for what all our members do. How can I? I do not know what they all do.

So, these—how can I say this—this is not a theoretical issue. It is very practical, very immediate. It is one of the reasons that we have lost our case, that we apparently might do something, therefore, we are automatically excluded in advance.

Mr. THAMES. Yes, sir. [Calling on audience member for question.]

QUESTIONER. Thank you. I am a professor at the Free University of Brussels, and at the Central European University in Budapest, and also Duke University. I wanted to ask a question that is related to Professor Durham's question, but it is not about terrorism, it is about what are called in Euro Sect Hotels (phonetic). And I refer to Professor Robbers' lecture, when you said that, well, there is a danger of terrorism, but you also mentioned exploiting people and so on and so forth.

So, I would like to have the opinion of the panel about a very volatile question related to recent legislation or creation of bodies in France and in Belgium regarding sects. There was a statute, a statute was passed in France referring to a vague notion of mental manipulation, then the word "mental manipulation" was put out of the statute because of the problem this kind of very broad concept, but finally the statute has raised a lot of concerns particularly in the United States and in Congress.

In Belgium, there is no new statute, but there is, as in France, an Observatory of the Sects which is pluralist in its composition and so on and so forth.

I think that in our countries, we think that it is a legitimate aim to struggle against deleterious use of religion that is not related to terrorism, but is related really to exploiting the vulnerability of people as we saw, for instance, in the example of the Order of the Solar Temple. Probably they overreacted and these legislations or measures are debatable or should be criticized, but I would like to have the opinion of the panel between this kind of legislation and what freedom of religion in general, and maybe the problem it could affect maybe the registration system. Thank you.

Mr. THAMES. Who on our panel would like to approach that question first?

Dr. ROBBERS. France seems to be the one country where the public, say, resentment against new religious movements has persisted most in Western Europe. I would not single out France, though. In many Western European countries, there have been, as you know, investigations, parliamentary hearings and reports about new and smaller reli-

gious movements. In France, it has come to this law you are referring to, in Belgium, the Observatory, in other countries similar things.

My impression is that in some of these Western European countries, the parliamentary reports have contributed more to public tolerance, have been a means to smooth down public resentment against new religious movement. By the way, those movements have come more to public attention, thus, also to more public knowledge, so the people knew more about it and lost their fear towards it.

I am in the situation personally, and not as a member of the panel of the OSCE, but personally, to see what will come out in the long run from the French law. We have seen laws in France about religion from the beginning of the last century, which have never had any practical event, never been taken into use, practical issues.

My feeling—and it is not more than a feeling, I may be wrong—but my feeling is that there will be no dissolution of any religious movement in France in the near future. It is more a law of atmosphere. I would hope that this atmosphere calms down.

Mr. THAMES. Dr. van Bijsterveld.

Dr. VAN BIJSTERVELD. I would only like to add one observation from my own country, from The Netherlands. Already, in the early 1980s, on auspices of parliament an investigation was conducted on new religious movements. It resulted in a fairly extensive report which contained a description of activities and the beliefs of a number of new religious movements, and this was based also on interviews with representatives of the new religious movements. The moment the report was published, all interest, publicly and parliamentary, in new religious movements died down, and it hasn't been an issue since.

So I would like to say that maybe this report fulfilled a function in depoliticizing this issue.

Mr. TSIRBAS. Well, I appreciate the comment we just heard, and it is apparent that the historical element plays kind of a safety valve type of a role when things kind of alleviate themselves as they go on.

My only observation to the issue that was raised before us has to do with our tendency to think in terms of being focuses between the liberal and republican kind of approach to religion. When I say republican, I speak of that which ascribes importance in the initiative the state assumes to actually define religion, whereas the liberal would have more of a secular individualism's type of approach to religion. I think that we need to—and that is the goal, I think, for all of us—to promote a third way where we would actually positively encourage and assume the risks. We do not live in a vacuum, we live in actual history, so we need to encourage positively the expression of religion, to be manifested in all its forms.

Mr. THAMES. I have seen four individuals raise their hands, so I will just go—five now—in the order that I've seen them. So, I think first is the gentleman in the suit.

QUESTIONER. Good morning. James Standard, from the Seventh-day Adventist Church. First of all, I wanted to say thank you to each one of you for your fine presentations. They have been very interesting and informative.

The question that I have is, is there any evidence that registering religious bodies reduces crime or creates social stability? And, secondly, is there any evidence that those nations that go through the more elaborate or stricter standards are more effective in lowering crime or creating social stability than those that have looser standards? And if there is no difference or if there is no discernible positive impact in reducing crime or creating social stability, what is the point of these processes? Thank you very much.

Dr. VAN BIJSTERVELD. Thank you very much for this question. I think the answer to this question depends again on the particular function that registration fulfills. From the function of registration as an absolute requirement or registration as a means to tackle particular behavior, I think registration in itself is not a good solution. Either the motive is false or it is false as a method.

In the other two situations, registration, I think, can fulfill a very good facilitative function, that is, of enabling entity status or for integrating religious organizations in the general legal framework.

So, when registration fulfills the latter functions, the answer would be registration is an element in creating positive facilities for the exercise of religion. The requirements that are set for registration must be adequate and be proportionate to the function that registration fulfills.

So, in the first two instances, I think registration is not good. In the second two functions, it is good when designed in the right way.

Mr. THAMES. Any other thoughts from our panel?

[No response.]

The next person I saw was the gentleman over here in the right corner.

QUESTIONER. I am from the University of Gilg, Istanbul. I have a question to Col. Kenneth Baillie, but I have some preliminary questions.

Is it usual to have a uniform? You are not belonging to a state's army, as far as I can understand. It is a religious institution. It is a private institution. So, you are wearing a uniform. Is it possible, according to the law here in the United States—it is possible, as far as I can see.

So, to make registration in Moscow, are you going over there with the uniform? I do not know. And fill out the paper for the registration? I do not know.

Can you imagine if people would tolerate people coming from a Muslim country, with the dress some kind of Muslim dress—Taliban, let's say—making propaganda of their religion here? It gets in direct registration in this country? Would you tolerate them? Thank you.

Col. BAILLIE. Well, I am an American, but I'm not sure I can speak for all of America as to what Americans would tolerate. Our uniform, our title, and our sort of quasi-military structure is simply an accident of history and a century-old metaphor for Christians who are deeply serious about their faith and activist about the evils in the world. It is part of our identity. Lutherans put a white collar here, and others wear a cross. This happens to be how we identify ourselves. And in countries where we are known, 108 countries of the world, when I walk down the street in this uniform, I am frequently stopped because people know the Salvation Army's reputation, and someone who is hurting or troubled or needy will stop me. And if I were in plain clothes, that would not happen.

So, I can understand the confusion and misunderstanding, but all I can do is point to 130 years of our history and say, we are known by our deeds. I do not know if that answers the question, but that is how I explain this uniform.

Mr. TSIRBAS. I just want to make a comment as far as the example that you used. If a Taliban was to come—dressed up as a Taliban—if he was to help me rediscover Aristotle as Islam did, and promote science as Islam did, I would welcome that personally as a citizen of the "West," but I won't welcome anything that would actually come to force me into a lifestyle that is away from my consent. And I am saying this because I find the parallelism that you tried to imply here quite unfortunate. When I hear the term "army,"

I guess in a certain context it is frightening, but at the same time related with what we know being the work of the Salvation Army, it is more than just a consolation for my soul and of comfort to my heart; to know and see that is, people identified as such with their special uniform being actually active in our society. Their presence reminds us of what they do and that "colors" decisively what you describe as being "offensive" military outfit, rendering it back to us in the most positive and spiritually significant semiological way.

Mr. THAMES. Thank you. The gentleman in the red tie on the left side there.

QUESTIONER. Thank you, Mr. Chairman. I am a justice in the Constitutional Court of Bulgaria, and a former member of European Court of Human Rights.

In the context of all that I have heard now, I would like to remind you in the panel that there is a paragraph, second paragraph of Article 9, stressing the situation of not giving the right for religion liberty, as in the case of danger for the security, as danger of public security.

So, as a judge, I am hesitating to discuss some other court's decision because if you are judge, you cannot judge without evidence, without documents. So, I, with all my respect to Salvation Army, I am not intending to take part of such a discussion because the court is to decide whether to register, or the European Court on Human Rights will decide whether there was religion or not in this case. This is my opinion. Thank you.

Mr. THAMES. Thank you, sir. The gentleman in the blue shirt.

QUESTIONER. I am from Macedonia, and we are interested in international standards about the number of the group that should be registered because according to the law of religion communities and religion groups in the Republic of Macedonia, there was proposition which noted number of 50 members or believers of religious group, and then the Constitutional Court of Macedonia canceled this proposition. So, according to the new draft law on religious communities and groups, there is no number that is requested for one religious group to be registered. Thank you.

Mr. THAMES. Thank you.

Mr. MCNAMARA. I know that there are others who have questions in the audience, but I did want to follow up on the comments of the jurist from Bulgaria. Unfortunately, I do not have the text exactly in front of me, so I can't quote it exactly, but in the context of the OSCE, certainly the participating States are mindful of the standard sort of exceptions, if you will. However, the participating States themselves have acknowledged that those exceptions, such as public safety, morals and there's this standard list included in the international instruments, are, in fact, exceptional and do not become the rule as opposed to under extenuating circumstances exceptional, in fact. So, I think that is an important point that I did want to get out there, that the states have gone even one step further besides acknowledging those exceptions but, again, with the emphasis that the exception should, indeed, remain exceptions, and that there should be adequate legal protections for individuals whose rights are breached citing those limitations and that there be remedies against abuses that, unfortunately, do occur.

There was one point that I wanted to make as a follow-up, and it is something that struck me in the context of the law in France, and my working assumption is that developments or events such as the Solar Temple and so forth, contributed to the promotion of these kinds of notions in law.

But I guess the question that I've always asked or have had in my mind is, can we say that there is insufficient criminal law in those countries such that this promotion of such a law, such as the one recently adopted in France, somehow contributes to the ability of

law enforcement officials in that country to route out illegal and true criminal activity because then, otherwise, I seriously wonder what the motivation is. So, we can all understand the responsibility of a society to route out criminal behavior, but I guess my question, not being a lawyer, is, isn't there sufficient criminal law such that the state can prosecute individuals who are indeed involved in criminal behavior? And my understanding, also, of the French law is that an institution could actually—or religious community or organization—could actually be dissolved based on the criminal activity of as few as one member of that organization, and that certainly runs against my understanding of the notions of innocent until proven guilty, guilt by association, and so forth. And perhaps some of our other jurists or legal experts could address those issues.

Dr. ROBBERS. In fact, if I might come back to this point, it is very important that one sticks to the individual criminal action and the response of the state and the government towards individual criminal action. That must be the key issue.

On the other hand, sometimes criminal action is performed by organizational structure, with the means of organizational structures, and to disrupt those organizational structures, it can be, and is in many a country, a means of criminal law, of legitimate criminal law, to disrupt organizational structures, completely disregarding whether this is a religious or an economic, commercial, or whatever, organization, you forbid the organization, to get rid of the organizational structure, to make it impossible for them to go on getting new members and new people to commit the criminal action.

So, I would say that is the line we should not—we cannot—stick only to the individual criminal action, we also have to see the organizational structure. If that is done in a legitimate way, fine. It must never be a means to head against the religion as such.

May I also—if that would be enough. I also may come to the question of how many members a community needs to be registered, the question that was raised just now. As far as I can see, there is no, in international law, no explicit rule on a certain number of people required to register.

If registration means nothing but incorporation of a group to make them a legal person, that they may be able as a legal person to acquire goods to build a chapel or a church or a temple or a mosque, then one would, comparing all the laws we know, see that very few people should be sufficient, should suffice. Some countries know 7, some countries know 10, some 12. That should be enough. Maybe three. I would not say that you have a real minimum number, but anything around that, between 1 and, say, 15, 20, I think would be fine, and no problem. If it is only for incorporation, 50 or 100 I would think is a bit much. If, though, registration would mean attributing specific religiously related or societally related rights towards that community, like, say, performing marriages with civil effects, which is the case in many countries, then I would think you would need a most substantial number of people because there needs to be some continuity, the need to be some substance of—how would you say that—earnestness, sincerity of the thing—you know, performing marriage normally would not be something what two people do, that on the next day they are all gone again. So, you need to assure some continuity.

Again, this would be a question of which specific rights are attributed to the religious community. Registration, as such, to be able to perform their religion, we should have very few.

Dr. VAN BIJSTERVELD. Maybe I could add something to that. I fully agree with my colleague, Gerhard Robbers, and I think in cases in which more than just entity status is awarded to a registered religious group, such as, for instance, tax exemptions or access to

mass media, in which case the numerical standard could be a bit higher. There should also be an alternative option for a group which does not meet those high standards, to register as a legal entity under a different label, so that at least there is a possibility to acquire entity status.

Mr. TSIRBAS. I will have a complementary approach to what we just heard from the distinguished professors. And, again, relating with the practical experience of Greece, my own experience in Greece.

In Greece, you can basically get licensed if you can provide around five people, to operate as a church. But there is a cut. You can be licensed as a church but, as such, you cannot own property. You cannot legally interact. So you have to assume another form of existence, of legal existence, that pushes all the non-churches into the private law realm, and have to become private entities. And that many times creates problems, and potentially there is a danger upon all these arrangements that you can have an association that owns everything pertaining to the church, and you can have the church in a temple, and these two could be totally different bodies. And, anyway, that is not the case with the Orthodox Church.

So, one needs to be wise—I like very much the title of our topic—Roadblock to Religious Liberty: Religious Registration. Religious registration can be a very, shrewd way actually not allowing you to freely worship, and that is one practical example I can give and contribute to that.

Mr. THAMES. Yes, sir.

QUESTIONER. Hello. I am Secretary of State for the Religious Affairs in Romania, and a member of the government. Unfortunately, for our meeting here, I am not an English speaker, I am a French speaker, so I need an interpreter.

[Speaking through an Interpreter]: I would like to address the remarks of the Col. Kenneth Baillie, because he made a statement about Romania which is incorrect, in my view. I believe that the statement is wrong because it is based on wrong information about Romania.

Your statement is wrong, but it is not the only wrong statement about the situation in Romania. The Jehovah's Witness organization has also made similar statements about our country. So, please allow me to make some clarifications.

I would like to underline the fact that Romania is a completely democratic country that respects basic human rights. Ninety percent of the population belongs to the Orthodox religion. This religion has been present in Romania for over 2,000 years. And 90 percent of our population is Christian.

Therefore, any new religion that appears within this condition seems, let's say, exotic to us, out of the mainstream. Therefore, when a new religion has to obtain a registration, we need some time to obtain some information about it. The basic legal rights of our citizens are established in a constitution, and Article 29 ensures the free practice of religious beliefs. So, the religious freedom of the individual is guaranteed in our constitution.

If several individuals want to form a religious group or organization, and if they want this religious organization to have patrimony or assets, they have to give a copy of their bylaws to a court, and based on the bylaws they will receive a license. In his or her decision, the judge looks at the potential threat to the security of the government by the organization.

Once licensed, this religious organization, if it so wishes, can also inform the Ministry of Culture and Religious Organizations about its activities. If it wishes, the Ministry

then would issue some kind of public recognition of this religious organization. So, from a legal point of view, it is recognized as an organization with a religious activity or religious association.

So, new associations need this registration. Besides that, there is another category in Romania called Religious Sects or Cults. These cults have been around for hundreds of years in Romania, and they bring an important contribution to the spiritual life of Romania. For this particular cult, the Romanian government can apply a so-called affirmative action policy. They would be the Orthodox Church, the Catholic and Greek Catholic Church, Baptist, Pentecostal, Adventist Churches, the Armenian Church, the Evangelical Church, the Muslim and Jewish Cults. All these were also recognized as such in a communist regime. During the communist era, these religions suffered a great deal. The priests, pastors, the leaders of the church were jailed and the assets of the church were disrupted.

Therefore, now the Romanian government is trying to offer so-called moral compensation to these religions through tax exemptions and financial support. The religious organizations that arrived in Romania after 1990 do not know very well these legal definitions of religious associations and/or religious cults in Romania. Therefore, they ask to be registered under the category of the religious cults that I have mentioned before. So, if they are not recognized as such, as religious cults, they sue the Romanian government for religious discrimination. This is the case of Jehovah's Witnesses which, however, in the last 10 years received permits to build more than 75 different houses of prayer, and for the missionaries who received the visa to come and undertake their missionary work in Romania. Nonetheless, they are right now in court filing cases against the Romanian government for discrimination because they are not recognized as religious cults.

The Mormon Church arrived in Romania in the last 10 years, as an example. It took advantage of all the different freedoms that the Romanian government allowed them to have, and they can attest to that here. But because they do not want to change the legal label or the legal name, they are still quite a good, valid partner for the Romanian government, despite that.

Mr. THAMES. If you could please bring your conclusions to an end so they can have an opportunity to respond, because there are some other questions I would like to get to. Thank you.

QUESTIONER. So any organization can come and give itself a name—church, association, cult, sect, congregation—whatever they choose, a missionary organization. But the Romanian government only uses these two different names, legal names, religious association or religious cult.

As far as the Salvation Army, I personally signed a letter to the Salvation Army in which it came to my mind the court decision in your case, in the case to set up this association. And, actually, I guaranteed their right of religious activity in Romania. So, I believe it is a misunderstanding and wrong information that you had, so please come see me in the Ministry, and we can continue this discussion there. Thank you for your patience, especially since these accusations towards the Romanian government are brought at the present time when Romania is chairing the OSCE. You know very well our Foreign Minister, Geoana, who is also the Romanian Ambassador to Washington. You know very well the activities of our Prime Minister, Mr. Nastase. He is a lawyer whose work was very important in the area of human rights in the Council of Europe. Thank you very much.

Mr. MCNAMARA. I would just note that the Commission will actually be holding a hearing next Wednesday, on October 17, with Foreign Minister Geoana, in his capacity as

Chair-in-Office of the OSCE. And having worked very closely with him in his previous position as ambassador, as you indicated, one of the points that we have made throughout this year of Romania's chairmanship of OSCE is that Romania has a unique opportunity to lead by example. So, it would be very good to get a clarification in terms of exactly what the status is of this issue raised at this briefing, as it may be something that would be pursued further in the context of that hearing next week. I do not know if anyone else wanted to respond.

Col. BAILLIE. Just two comments. One is, perhaps we missed something in the translation here. I was not trying to be critical of the Romanian Government. In fact, I am more conscious that perhaps our own identity is not well understood by our own law firm, and that we have been trying to sort out those issues over a period of time, and understand how our potential registration would fit into the Romanian legal system. So, it is a process and we are happy to pursue it to a proper conclusion.

The only other comment would be, the application of the word "cult" and the word "sect," one of the discoveries that has been a surprise to me as an American living in Eastern Europe is the degree to which those two words have very different meanings. They are directly taken from English to Russian to Romania to whatever, a number of languages, but, in fact, the meaning changes in not subtle ways, in very profound ways, so that, for instance, the word "cult" here in North America, in the common usage, not the specific theological usage or the legal usage, but in common usage, has a very pejorative meaning.

To the contrary, in Eastern European countries, that is the better word. It is almost the reverse of what we understand here in North America.

So, I would be content to be called in North America, in some ways, a sect—that is, small, somewhat different, not well understood. But in Eastern Europe, it is better to be called a cult, believe it or not, because that has less pejorative meaning than the word "sect" does, all of which is to say we need to understand what religious groups are and what their aims and purposes are, and how they actually live it out, just what gets written down on paper, what, in fact, is the practice, and hope to overcome the misunderstandings of language and definitions of words and so on.

Conclusion: To my North American friends here, reverse the words "cult" and "sect" when you use them in Eastern Europe, and you will be closer to how it is understood there.

Mr. THAMES. The woman in the front row, I believe she had a question earlier. Time is running short, so brevity would be appreciated.

QUESTIONER. I am from the Czech Republic. I am Director of the Department of Ministry of Culture.

[Speaking through an Interpreter]: I only have one request or perhaps a note. Perhaps one word, the word "registration" actually means a lot of different things, and it could mean a lot of different things in different countries.

Most of the things that you have mentioned here are not really directly connected to the Czech Republic and the Slovak Republic. The registration does not have anything to do with religious freedom or with its level. Registered and unregistered churches are on the level of religious freedom as declared in convention and internationally ratified agreements.

The importance of registration is basically to obtain the status of a legal entity, and because in our country it is the historical tradition that this registration is performed in

accordance to a special law. The importance of the registration is also the guarantee of the state is that the state is guaranteeing that these are trustworthy people, and I would like to point out different systems of acknowledging religions in the United States and in Europe. I also had a presentation that was addressing this issue, and I would like to ask you if you would kindly try to follow up on this and pay attention to this. Just a couple of things.

In our country, there is no waiting period to register. The number of people that need to be registered is going down significantly with the new law, and the state is not allowed to try to find out the exact numbers of a religious group, and any kind of decisions that are made by the government are always able to be scrutinized by the courts. Thank you.

Mr. THAMES. Thank you. One more question. I would just remind the gentleman of the short amount of time. Please be brief.

QUESTIONER. I am from the Ministry of Justice of the Russian Federation. I am grateful for the opportunity to speak before this Commission. This session is devoted to the issue of religious freedom, or it is supposed to be devoted to the issue of religious freedom, but there has been one fact that generally prompted me to speak up.

Frankly, my jaw dropped when I heard the distinguished Col. Baillie when he used this terminology because I was that functionary who introduced correctives into the definition of Salvation Army as a religious organization. Under the existing law of the Russian Federation, any religious organization has to meet three criteria.

First of all, this is faith, education and training of the believers, and conduct of same and ritual. But when the Salvation Army came to the Ministry of Justice, they could not represent that they represent a faith, which is the primary criterion of an organization being recognized as a religious one.

We know what this organization army is very well. It is a highly esteemed international organization, and it is accredited in the United Nations as a philanthropic or charitable organization. Under the Russian law, a charitable or philanthropic organization is classified as a social organization. In view of the importance of the Salvation Army, the Federal Government of the Russian Federation decided to modify the definition and to recognize the Salvation Army as a religious organization.

As for the purely legal dispute about the registration of the Moscow division of the Salvation Army as a religious organization, I think we all recognize the importance of a civilized approach to the solution of this issue and that we should recognize that it is up to the courts. And we support the actions of the Salvation Army when it filed a grievance with the European Court of Justice. And I hope that the European Court of Human Rights will go into detail and will pass its weighted judgment. Thank you for your attention.

Mr. THAMES. Thank you, sir. Col. Baillie, would you like to respond?

Col. BAILLIE. I thank Mr. Koronov for his office's support of us in our process of obtaining the centralized religious organization status. If it sounded as if I was referring to you specifically in a negative way, Mr. Koronov, no, I wasn't. I had in mind another official in another city, as an example.

At the federal level, I must say we have been treated with respect and dispatch and fairness. We are deeply grateful. I said that in my remarks and I repeat it again, we are deeply grateful.

I realize the Salvation Army is not well known in some countries. That is part of becoming a ministry of faith community in a new country that we need to explain who we are and what we are, and that was part of the process that happened in Russia.

My comments specifically relate to Moscow where I think, as Mr. Koronov says, there is a different issue going on. We are not quite sure what it is, but it is not representative of the federal level. The federal level, I believe, has done a much different and better and commendable job of handling this issue, at least in our case, and I am thankful for it.

Mr. THAMES. Thank you, sir.

I would now like to give our panelists an opportunity, if they would like, to briefly provide a closing statement on today's discussion. I start with Dr. van Bijsterveld.

Dr. VAN BIJSTERVELD. Thank you very much, Mr. Moderator. I just would like to stress that I am glad that this session took place and that I had an opportunity to participate in it.

Dr. ROBBERS. I agree very much to that, and I hope that the OSCE, and especially also the organization here in the House about the CSCE will continue its work. Perhaps also attribute more means than we have.

Mr. TSIRBAS. I thank you as well for the honor to be invited and be part of this meeting today. It was an educational meeting for me. And just a last remark in relation to what the gentleman from Romania said. Coming from a similar culture of my own, being very relational types of culture, not so much thinking in terms of institutions but really in terms of relationships, by pointing out the needs and the shortcomings, where we need to focus and improve the legislation regarding the application of the laws pertaining to religious freedom, we are actually "saving face" more than just when we avoid naming things as they are, and in no way my comments were derogatory of, first of all, the Greek culture. Specifically and consciously, I used all of the examples from my own country and culture, which I love, not to appear disrespectful of any other, and I hope that that was clear. Thank you.

Col. BAILLIE. I am also thankful for the opportunity to be present here and just use our five illustrations as sort of where the rubber meets the road on the theoretical issues here, and I point out again that in five countries, all has gone well for us, and our only major and continuing problem is specifically located in one city. So, I think, all told, it is a good story, without misunderstandings and learning processes and procedures, and all the rest, but, nonetheless, overall, a good story for which we are thankful.

Mr. THAMES. On behalf of the Chairman and Co-Chairman, I would like to thank all the panelists for their coming a very long way to participate in this briefing. I appreciate your insights and your thoughts in highlighting how individual religious freedom is directly connected to religious registration policies.

I would also like to thank the audience for their participation and for their insightful questions. At this time, the briefing is concluded. Thank you.

[Whereupon, the briefing was concluded at 12:12 p.m.]

PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, CO-CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Ladies and gentlemen, I'd like to welcome everyone to this briefing today, convened by the Commission on Security and Cooperation in Europe, to address an issue of great importance in the promotion of religious freedom, religious registration policies in the OSCE. The Commission strives to monitor and encourage compliance with the Helsinki Final Act and other commitments of the Organization for Security and Cooperation in Europe.

As Co-Chairman, over the past decade I have observed a troubling drift away from a robust and vibrant protection of religious freedom in a growing number of OSCE States. I have become alarmed with how some OSCE countries have developed new laws and regulations that serve as a roadblock to the free exercise of religious belief. These actions have not been limited to emerging democracies, but also include Western European countries, with the definitive example being Austria.

Considering the gravity of this issue, I am pleased by the panel of experts and practitioners assembled today who have been kind enough to travel from Europe to share their thoughts and insights. Our distinguished panel includes Dr. Sophie van Bijsterveld, who is currently serving as Co-Chair of the OSCE Advisory Panel of Experts on Freedom of Religion or Belief, as well as a law professor at Catholic University in The Netherlands. Dr. Gerhard Robbers has also participated with the OSCE Advisory Panel of Experts, and is a professor of law at the University of Trier in Germany. Vassilios Tsirbas serves as interim executive director and senior legal counsel for the European Centre for Law and Justice, and he is based in Strasbourg. Lastly, Col. Kenneth Baillie is the commanding officer for the Salvation Army in Eastern Europe. He has experienced first hand registration laws which not only have impeded, but actually "liquidated," a religious group, as he has been very involved with the Salvation Army's ongoing action to register in Moscow.

During today's briefing, the panel will provide critiques of religious registration policies throughout the 55-country OSCE region. In addition, panelists will provide the "big picture" of religious registration issues throughout that region; including States which formerly were part of the Soviet Union. I feel the upcoming dialogue will be very helpful in developing a better understanding of these "roadblocks" to religious freedom.

From what I have seen through the work of the Helsinki Commission, many of these laws are crafted with the intent to repress religious communities deemed nefarious and dangerous to public safety. Certainly after the September 11th tragedies, one cannot deny that groups have hidden behind the veil of religion in perpetrating monstrous and perfidious acts. Yet, while history does hold examples of religion employed as a tool for evil, these are exceptions and not the rule. In our own country, during the Civil Rights Movement, religious communities were the driving force in the effort to overturn the immoral "separate but equal" laws and provide legal protections. If, during that time, strict religious registration laws had existed, government officials could have clamped down on this just movement, possibly delaying long overdue reform. While OSCE commitments do not forbid basic registration of religious groups, governments often use the pretext of "state security" to quell groups which espouse views contrary to the ruling powers' party line.

Another practice I have observed is the creation of registration laws designed on the premise that minority faiths are inimical to governmental goals, like respect for human

rights and rule of law. Often, proponents of these provisions cite crimes committed by individuals in justifying stringent registration requirements against religious groups. Still, as I previously mentioned, the history of religious movements is one of good will and benevolence, not hate and misdeeds. Clamping down on the ability for a religious group to exist not only contravenes numerous, long-standing OSCE commitments, but also serves to remove from society forces that operate for the general welfare. The Salvation Army in Moscow is a lucent example.

In other situations, some governments have crafted special church-state agreements, or concordats, which exclusively give one religious group powers and rights not available to other communities. By creating tiers or hierarchies, governments run the risk of dispersing privileges and authority in an inequitable fashion, ensuring that other religious groups will never exist on a level playing field, if at all. In a worst case scenario, by officially recognizing "traditional" or "historic" communities, governments declare their ambivalence, and sometimes hostility, towards minority religious groups, which can serve as the catalyst for violence. The persistent violence against Jehovah's Witnesses and other, evangelical groups in Georgia is a prime example.

Notably, religious registration laws do not operate in a vacuum; other rights, such as freedom of association or freedom of speech, are often enveloped by these provisions. Accordingly, it is with great concern that I convene this briefing to discuss religious registration roadblocks. My heightened level of concern is only equaled by my strong desire to encourage participating OSCE States to fully comply with their OSCE commitments.

In working towards this goal, I was pleased to learn of the Bush administration's shared commitment to religious freedom. In a March 9, 2001 letter, Dr. Condoleezza Rice, Assistant to the President for National Security, stated: "President Bush is deeply committed to promoting the right of individuals around the world to practice freely their religious beliefs." She also expressed her concern about religious discrimination. In a separate letter on March 30th of this year, Vice President Dick Cheney echoed this commitment when he referred to the promotion of religious freedom as "a defining element of the American character." He went on to declare the Bush administration's commitment "to advancing the protection of individual religious freedom as an integral part of our foreign policy agenda."

While some may construe the Administration's "war" on terrorism as a move away from religious freedom, Mr. Bush has repeatedly made it clear, as he stated in his address to the country, "the enemy of America is not our many Muslim friends. . . . Our enemy is a radical network of terrorists and every government that supports them." His statement that "the terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself" demonstrates his distinction between terroristic acts and religion. Accordingly, it is my belief that this administration will not stray from supporting religious freedom during this challenging time.

In closing, the Helsinki Commission is greatly appreciative to our panelists for agreeing to come and share their thoughts on this critical issue. In addition, the Commission will continue to monitor the activities of governments in light of their OSCE obligations and encourage compliance. We will now proceed with the panelists' presentations, which will be followed by an opportunity for questions.

Thank you.

PREPARED STATEMENT OF HON. ZACH WAMP, COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

In the rugged region of Central Asia, two nations have been dealing with proposed changes to current religion laws. In both Kazakhstan and the Kyrgyz Republic, new religion laws have emerged partially in response to real concerns about terrorism and state security. After the events of September 11th, our whole country has a very clear understanding of the threat terrorists pose. Still, our commitment to democracy and religious freedom stands firm.

Consequently, I want to highlight and praise both countries for seeking assistance from the OSCE Advisory Panel on Freedom of Religion or Belief. The choice to seek assistance and working to ensure the new legislation is in line with human rights norms is a mark of wise governance. Even more, I want to encourage these governments to continue their close cooperation with this body of experts, and to continue to strive to uphold OSCE commitments and international norms for religious freedom.

In Kazakhstan, there has been great discussion over a proposed amendment to its 1992 law "On Freedom of Religion and Religious Associations." The Kazakh Government has been responsive to critiques of the law and removed it from consideration during this past summer. Furthermore, it has listened to the comments made by the OSCE Advisory Panel and modified some of the more troubling sections of the proposed law. However, concerns still exist in the area of registering Islamic religious groups by the Kazakhstan Moslem Spiritual Administration. It seems likely that with the various Islamic religious groups that are at odds over purely theological issues, registration could be denied for merely being out of favor with the Spiritual Administration. This is problematic; religious organisations should not be denied registration solely on the basis of their religious beliefs. Before the proposed law is reintroduced, I hope Kazakhstan will address these issues, so as to ensure its compliance with all OSCE commitments.

The Kyrgyz Republic is currently considering a proposed law entitled "On Freedom of Conscience and Religious Organisations," which would replace the 1991 Law on Freedom of Religion and Religious Organisations. In the Kyrgyzstan's short history of independence, it has consistently joined international human rights covenants. As one of the 55 participating States in the OSCE, the Kyrgyz Republic agreed to abide by the Helsinki Final Act and all subsequent agreements, in which clear language concerning religious freedom exists. This new legislation, made long before the events of September 11th, was in response to real fears about terrorism. With religion often being used as a guise to legitimise criminal activities, I recognise the genuine concerns of Kyrgyz authorities about religious organisations existing in their country. However, while the United States has new understanding of the threat of terrorists, I want to encourage the Kyrgyz Republic from overreacting and unnecessarily limiting religious freedom.

While the current law on religion is generally in line with its OSCE commitments, it is my concern that if the new law is enacted, Kyrgyzstan will no longer be in compliance with its international obligations. This is especially true concerning the provisions addressing registration of religious groups. In its current form, the draft law's use of registration requirements appears complex, confusing and convoluted. The two step process of registering religious groups appears to be more an exercise for government involvement rather than a well outlined procedure for recognising religious communities. The vague requirement of "record-keeping" registration is especially problematic, as it could

serve as a major obstacle for successful registration that the government can utilise to block an application. Clear and transparent guidelines would be a superior way to prevent arbitrary tampering by government officials in the process of registration.

In closing, I hope both the Kazakh and Kyrgyz Governments will be mindful of 1989 Vienna Concluding Document, para 16.3, which states that governments are obligated to "grant upon their request 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."

PREPARED STATEMENT OF HON. GORDON H. SMITH COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. Chairman, I'm pleased to have the opportunity to speak for a few minutes about religious freedom in Russia. Tolerance in the Russian Federation, the Soviet Union and Czarist Russia, particularly the plight of the Jewish community, has been on the forefront of our bilateral relationship. In fact, the Senate Foreign Relations Committee has held hearings on religious freedom in Russia—and the plight of its Jewish community throughout this century and even in the 19th century.

Until 1917 the Russian Empire was home to the world's largest Jewish community. From the time of their entry into the Empire, Jews suffered from discriminatory laws, including severe limitations on where they could live, and periodic eruptions of violence, known in English by their Russian name, "pogroms." The Bolshevik Revolution of 1917 offered false hope to many Jews that the injustices of the Tsarist period would end. In time, however, the Communist Party of the Soviet Union began a systematic campaign to eradicate all religion, including Judaism.

Under Khrushchev, there was also a dramatic shift in Soviet foreign policy against Israel and toward the Arab countries.

Large-scale Jewish emigration from the Soviet Union revived in the 1960s, when the Jewish population numbered 2-3 million. Jewish emigration peaked in the late 1980s and 1990s. today, the Jewish community in Russia numbers between 500,000-600,000, the third largest in the world. (Large numbers of Jews remain in other former Soviet states, especially Ukraine.)

Since the collapse of the Soviet Union, a revival of the Jewish community in Russia has occurred. Several synagogues have reopened, and over 100 Jewish organizations and groups operate in Moscow, including religious, cultural, research and education, and charitable institutions. Despite these improvements, the Jewish community was reminded of its precarious position in Russia through a series of recent anti-Semitic actions and statements.

The August 1998 devaluation of Russia's currency, the ruble, sank the exchange rate and caused many Russians to lose their savings. It also attached a tremendous price tag to imports, including food and other consumer goods.

Amidst these difficult circumstances, there has developed an increased sense of insecurity among Russian Jews, who have in recent years confronted strident anti-Semitic rhetoric in the political arena on both the national and local levels and a number of highly public acts of anti-Semitic violence.

In addition to the age-old formula of scapegoating Jews for society's ills, the present difficult situation in Russia is compounded by another disturbing fact. A high percentage of the so-called oligarches, -the highly visible, and detested, business tycoons who are believed to have profited immensely from corrupt privatization deals-are Jews, as were a number of prominent government officials associated with the privatization process.

The Senate has spoken out yearly in letters to present and past Presidents of the Russian Federation. Last year, President Vladimir put in spoke out against anti-Semitism in response to a letter signed by 98 United States Senators on March 9, 2000. Putin, in a March 15th interview said "Russia's main constitutional principle stipulates the protection of citizens' rights and interests regardless of nationality or religious affiliation. Any

expressions of anti-Semitism are seen as aggressive nationalism and are therefore unacceptable. There is no place for them in a civilized society."

But there remain problems with religious tolerance in Russia. As a freshman senator in 1997 I offered an amendment to the Foreign Operations Bill that predicated foreign aid to the Russian Federation on the implementation of a new law restricting religious freedom in Russia. That law, passed by the Russian Duma on July 4 1997, had the potential of severely restricting freedom of religion in Russia. The bill was ironically titled "On Freedom of Conscience and On Religious Associations."

That bill was eventually signed into law—a law that required religious groups to register with the state and submit their religious doctrines and practices to scrutiny by a commission of experts with the power to deny religious status. Without this status, these groups would lose the rights to rent or own property, employ religious workers or conduct charitable and educational activities. Clearly that law in Russia and its implementation would have a grave impact on religious freedom in that country.

I'm happy to report that my 1997 amendment passed the Senate 95 to 4. In following years this amendment was included as part of the Foreign Operations Bill and was included again in the FY 2002 bill.

In my years in the Senate I have remained vigilant on the issue of religious freedom. The Foreign Relations Committee has held yearly hearings on religious freedom abroad—especially with regard to what is going on in the Russian Federation. I also host, with the Department of State, a series of yearly roundtable discussions on religious freedom.

These roundtable discussions are attended by members of each religious community impacted by this new law in Russia and by various state department and NSC officials that are responsible for religious freedom abroad.

As the years went by and the registration period closed regarding religions, it was felt by all those interested in religious freedom in that country that this amendment was a positive influence on how the new Russian law was implemented.

It let the Russian government know that Americans cared about freedom of religion in Russia—that the eyes of the world were upon the Russian government as it implemented the law on religions. Although the amendment has never been implemented—and each year aid has gone out to the Russian Federation—the amendment's influence and impact have been positive and undeniable according to those religions "on the ground" in Russia.

In general, many of the problems initially have worked themselves out under this new law. Many of the problems with denials of registration or persecution have occurred in the far reaches of the Russian Federation. The conventional wisdom regarding implementation of that law is that persecution occurs abroad—the farther away from Moscow and the centralized government, the greater the risk is for religious intolerance.

But even in Moscow there is a requirement of vigilance. And I am happy to report that this body has been vigilant on this issue—especially regarding the old problem of anti-Semitism in Russia. Some might say that we shouldn't single out Russia regarding this issue. I would agree—we should fight anti-Semitism in every nation including our own.

Because I believe that how a nation treats the sons and daughters of Israel is a bellwether for tolerance.

The Russian law, among other things, limits the activities of foreign missionaries and grants unregistered "religious groups" fewer rights than accredited Russian religious or-

ganizations such as the Russian Orthodox Church, Islam, Judaism and Buddhism. This law if poorly implemented, could also sharply restrict the activities of foreign missionaries in Russia.

One of my own constituents, Pastor Dan Pollard, is a missionary with a church in the Russian far east—in a town called Vanino. Pastor Pollard has been continually harassed by local officials, many who cite the 1997 law as an official reason for barring Pollard from ministering.

The Russian government must permit foreign missionaries to enter and reside in Russia and work with fellow believers. I strongly believe that foreign missionaries, like Pastor Pollard, should be allowed to enjoy the religious freedom guaranteed Russian citizens and legal residents by the Russian constitution, OSCE commitments, and other international agreements to which Russia is a signatory.

I want to thank the Chairman for holding this hearing and having the opportunity to discuss religious freedom in Russia. I believe that hearings such as this one shine the bright light of freedom on areas of human rights and tolerance that cannot be ignored by this country or by Russia.

PREPARED STATEMENT OF DR. SOPHIE VAN BIJSTERVELD, CO-CHAIR, OSCE/ODIHR ADVISORY PANEL ON FREEDOM OF RELIGION OR BELIEF

Mr. Moderator, Ladies and Gentlemen,

I am grateful for the opportunity to be here and to be able to share some thoughts with you on the legislative developments as regards religion in the OSCE region. I would like to stress that I am speaking in a personal capacity and not as a Co-Chair and Member of the ODIHR/OSCE Advisory Panel of Experts on Freedom of Religion or Belief. The aim of this presentation is two-fold: first, to sketch a perspective against which to assess registration of religion; second, to address the role of the OSCE in issues of religious liberty.

REGISTRATION OF RELIGIONS

In dealing with socio-religious change, states often turn to the instrument of legislation. In this legislation, the mechanism of registration of religions plays a crucial role. Indeed, one of the recurrent issues under which legal problems of religious liberty become manifested in the OSCE region is that of the registration of religions. This has also made the phenomenon of "registration" itself suspect. It is important, however, to realize that registration, even if this mechanism has become charged in the context of legislative change, is not in itself good or bad. The assessment of registration from a point of view of religious liberty entirely depends on the function that registration fulfils in a legal system and the legal consequences that are attached to registration. The assessment of registration and the criteria to be met in order for a religion to be registered depends on these underlying elements. This starting-point allows us to make some concrete observations.

REGISTRATION AS AN ABSOLUTE REQUIREMENT

A requirement of registration of religious groups as a precondition for the lawful exercise of religious freedom is worrisome in the light of international human rights standards. Prior permission of the government for allowing a person to adhere to a religion and to exercise this religion in community with others is problematic in the light of internationally acknowledged religious liberty standards. Religious liberty should not be made dependent on prior government "clearance." This touches the very essence of religious liberty. The motives for requiring registration in this case, banning or controlling religion, are not in tune with international standards. The same is true for coupling this requirement with the penalization of adherence to an unregistered religion.

A government may wish to counter particular behavior. Controlling the existence of or adherence to religions as such, introducing a requirement of registration is not the right approach. The law should deal with the actions and manifestations themselves instead of criminalizing a particular religion in general. In other words, if, in such case, the motives of a government, i.e., to tackle particular behavior, were justifiable, using the mechanism of registration is not the right means to achieve that end. The problem with registration in this case lies with the legal consequences attached to it.

REGISTRATION AND ENTITY STATUS

It is important to notice that registration also fulfils many other functions in the legal systems of OSCE countries. One of the primary conditions for being able to function as an organization in society is that of enjoying entity status, i.e., to be able to function as a legal entity, as a collective distinct from the individual members. In order to function as a legal entity, a certain structure is required; the allocation of responsibilities for decision-making and financial matters needs to be clear. Legal systems often require some sort of registration for obtaining such entity status. If registration fulfils a role in the process of requiring entity status, the role of the state is, in principle, a facilitative one. Without such a legal status, on the basis of which an organization can function independently from its members, the effective exercise of a religion as an organization would be illusory. Thus, registration for religious and other groups (whether or not this distinction is made) is basically an expression of the facilitative role of the state. The facilitative role of the state can change into its opposite if the criteria to be met in order to register are disproportionately burdensome. For instance, a requirement of having a minimum of thousands of members simply to gain entity status would be disproportionate and would hence be hard to justify in the light of religious liberty. Instead of an expression of the facilitative role of the state—allowing entity status—the requirement would be an overt expression of a restriction of collective and organizational religious liberty. The requirement of a long-standing existence in the particular country can be seen in the same perspective. Overly broad discretionary powers for administrative authorities in this perspective are obviously not desirable either.

RELIGIOUS LIBERTY AND THE STRUCTURE OF CHURCH AND STATE RELATIONSHIPS

The facilitative role of the state is not limited to the granting of entity status. Often in states more elaborate facilities exist to enable the functioning of religion and religious organizations in society, such as chaplaincy services in public institutions, religious education in (the context of) state schools, or the establishment of acknowledged private schools, access to the mass media, tax facilities, or ancient church monument care. The precise legal format of these facilitative arrangements depends on legal cultural factors and the general legal system of a particular country, for example, how the general education system is set up. These elements are, of course, important for the functioning of religions in the societal reality. In societies as ours, which are highly regulated and in which the state has a strong ordering and re-distributive function, they play an important role. However, they exceed the very basic functioning of entity status.

REGISTRATION AND THE INTEGRATION OF RELIGIOUS ORGANIZATIONS IN THE GENERAL SOCIAL SECTOR

In one form or another, facilities to enable the functioning of religion and religious organizations in society are available in all types of systems of church and state relationships, whether there is separation of church and state relationships, or systems of cooperation or of established churches. Differences in these issues often seem to depend more on the general role of the state in society (a stronger role of the private sector (more "market") or a stronger role for the public sector) than on constitutional principles regarding the role of the state vis-à-vis churches. In systems of separation of church and

state, a decision on whether a particular religion or religious organization qualifies for a facility needs to be taken in the context of the law that regulates the particular issue. In the Netherlands, for example, access to the public mass media system requires and administrative judgement. The granting of fiscal benefits, such as tax exemptions for charitable purposes, also need to be seen in the light of the requirements of the specific law. As a result, these judgements tend to be less visible and generally are not dealt with in the context of "registration," although their underlying rationale is not fundamentally different. Typically, in systems of cooperation between church and state, organizations based on a religion or belief which meet particular criteria are entitled a certain status, giving them not only entity status, but qualifying them for a set of other facilities as well. Thus, the systems becomes multi-tiered. From a viewpoint of religious liberty, this is not a problem. Indeed, the facilitative role of the state is paramount. It is also clear that, in the perspective of the facilities granted, often more and stricter requirements are needed than for simply obtaining entity status. Whether these requirements are acceptable depends on their being adequate and proportional for the purpose. As long as the system is open, that is, as long as all religions which meet the requirements qualify for the facilities, the facilitative dimension of the system is paramount. For those who do not meet the requirements, obtaining entity status in some form or other should be possible.

In conclusion, we need to see through the outward design of the system and concentrate on the substantive issues of the position of one religion and another. Not one particular type of system is *a priori* "better" from a religious liberty point of view. A more detailed scrutiny and assessment is necessary in order to form a sound legal opinion. But there are certainly some approaches and criteria that can guide us in assessing registration issues.

THE ROLE OF THE OSCE

The predominantly non-legally binding nature of OSCE commitments and the political-diplomatic functioning of the OSCE are sometimes seen as a weakness of the organization. These features, however, are also its strength. Without duplicating other international efforts, the OSCE contributes to the promotion of human rights -including religious liberty—in a unique and supplementary way. This is true with respect to religious liberty as well. The role of the OSCE in dealing with religious liberty could be—to engage (participating states) in a process of further developing a common understanding of the dimensions and requirements of religious liberty,—to focus primarily on structural developments, and—to aim at reaching viable long-term results. As religious liberty issues are seldom isolated, main streaming religious liberty issues in a broader human rights perspective is important as well.

The OSCE has manifested involvement with issues of religious liberty both in developing standards and in making their interpretation and implementation subject of attention, notably through Human Dimension Implementation Meetings and the organization of Seminars. The interest taken in issues of religious liberty is also reflected by the establishment of the OSCE/ODIHR Advisory Panel of Experts for freedom of religion or belief. This took place in the aftermath of the 1996 Seminar on the topic of 'Constitutional, Legal, and Administrative Aspects of the Freedom of Religion'. The Panel is an advisory and consultative body to the ODIHR. Through the ODIHR, the panel may provide assistance on religious liberty issues. The composition of the Panel reflects different geographical, denominational, and legal backgrounds, although each member acts in a capacity of ex-

pert. In a relatively short time, the Panel has already been able to offer advice on particular issues of religious liberty in various countries, including that of the registration of religions. However important the legal dimension of religious liberty is, legal problems often reflect underlying problems. For this reason, the Panel has three focus areas. Apart from Legislative Issues, issues with which this presentation is concerned, the panel has outlined Education and Tolerance, and Conflict Prevention and Dialogue as areas of distinct interest, and has formed its working groups accordingly.

CONCLUSION

Issues of religious liberty deserve international attention, based on international human rights law. Such an international approach should have its own distinctive contribution to the protection of religious liberty, exceeding merely national perspectives. The specific value of OSCE involvement with issues of religious liberty lie in their focus on the long term and in the contribution it can make to creating a forum for dialogue and the building of understanding, under the acknowledgment of and adherence to its human rights commitments. Thus, it offers concrete and structural assistance to states in addressing these problems which are important for the quality of society.

PREPARED STATEMENT OF DR. GERHARD ROBBERS, MEMBER, THE OSCE/ODIHR ADVISORY PANEL OF EXPERTS ON FREEDOM OF RELIGION OR BELIEF

I. Registration of religious communities is known to most, probably to all legal systems in the world in one form or another as centralised or decentralised registration. It need not be a roadblock to religious freedom. In fact, it can free the way to more, positive religious freedom, if correctly performed.

Often, religious communities carry a variety of special religious needs of organisation, different from other associations. Freedom of organisation is a key issue of freedom of religion. Registration as religious organisation can mean attributing special autonomy to religious communities like it is the case e.g. in Sweden. It can open the door to specific rights like tax exemptions, rights to perform religious marriages with civil effects, access to positive public funding, et. al. Especially in countries with a legal infrastructure still further to be developed distinct registration can clear the positive status for religious communities; religious communities would not depend on various and possibly diverging decisions of many different case to case decision makers.

Registration can thus facilitate co-operation between state authorities and religious communities, co-operation being a striking and positive characteristic feature of the culture of many a country in religious matters. We should not forget that religion can also be misused for detrimental activities. It can be misused to exploit the members of religious communities. It can be misused to seduce people to perform criminal, even terrorist assaults. Registration can be a means to averting dangers to public safety. Registration, though, can be misused to jeopardise religious freedom.

II. Registration and registration procedures must meet certain standards, among which figure as probably most relevant:

1. Religious activity also in and as community must be possible even without being registered as a religious community.
2. The minimum number of members required for registration must be legitimised by the status acquired by registration.
3. There should be no minimum period of existence before registration required. Any such requirement must have good reasons in the specific status that may follow from registration.
4. Registration must be based on equal treatment of all religious communities.
5. The administration fee for registration must be adequate.
6. The process of registration must follow due process of law.
7. The loss of the registered status must follow due process of law.

III. Actions taken by the OSCE or other organs of international community to safeguard religious freedom should be further developed. 1) OSCE must be conscious and considerate of local cultures and long standing traditions. 2) OSCE should assist to foster positive religious freedom encouraging governments to help religious communities to actively perform their religion. 3) OSCE activity in the field of freedom of religion must be ready to involve in processes of long duration. 4) OSCE should encourage and engage in co-operation with governments and religious communities in crating and maintaining an atmosphere of tolerance and co-operation.

PREPARED STATEMENT OF VASSILIOS TSIRBAS, SENIOR COUNSEL, EUROPEAN CENTRE FOR LAW AND JUSTICE

ROADBLOCK TO RELIGIOUS LIBERTY: RELIGIOUS REGISTRATION

> "The heart of man is of a larger mold: it can at once comprise a taste for the possessions of earth and the love of those of heaven; at times it may seem to cling devotedly to the one, but it will never be long without thinking of the other."—Alexis de Tocqueville

A CONTEXTUAL APPROACH

The treatment of the issue under examination cannot be but contextual if it is to preserve its integrity and this means first of all that we start from the events of the 11th of September 2001 and our wholehearted expression along with many people all over the world of condolences for the loss of all those who died in the ruins of New York and Washington DC, but also of our resolve to stand firmly united in the good fight for the strengthening of our open and democratic societies against the irrational powers of chaos and destruction.

It has always been the case throughout history that upon the ruins piled up an ever greater and more blessed present and future has been built. On November 1950, the Foreign Ministers of the founding Member States of the Council of Europe met in order to sign the European Convention on Human Rights; their aim was to "lay the foundations for the new Europe which they hoped to build on the ruins of a continent ravaged by a fratricidal war of unparalleled atrocity." The international treaties ever since the end of World War II, in light of the grim experience of that which had preceded and the fear of what could come about in the future in the face of the always close to us danger of totalitarianism, were put to place.

Only this time, they were concerned not simply with the furthering of peaceful relations. They went beyond the mere treatment of the facts of war to the treatment of its causes, as this becomes clear in the Preamble to the Charter of the United Nations and the second paragraph, where we have the first reference to human rights in an international treaty, that is "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small." Enlightening as to the endeavor's goals and the corresponding to it understanding was a statement by the Irish Minister, Mr. Sean MacBride, in Rome in November 1950 who said, when the Convention on Human Rights was signed at the sixth session of the Committee of Ministers, that:

"The present struggle is one, which is largely being fought in the minds and consciences of mankind."

Our era ever since has been characterized by a heightened sensitivity for human rights and an immense preoccupation both with the "politics of —for—human rights" and the "law explosion" that the proliferation of entitlements—rights, in short —accompanies it. Politically, the ultimate criterion of our modern democracies is the preservation of human rights as this is manifested concretely in the principle of limited government which—limited by division of powers and by the independence of church, press, conscience—is more essential feature in modern political systems which are called demo-

cratic than is the reference of authority to the people. The ever-growing acceptance of the concept of judicial review as one of the distinctive features of the modern democratic systems, originally characteristic of the American political and constitutional landscape ascertaining the enjoyment of rights by examining the constitutionality of state and federal statutes and carried out by the courts, testifies as to that.

Human Rights theory ingrained in political institutions and preserved through jurisprudence constitutes currently the major paradigm of our domestic and international systemic order; it has demonstrated, and continues to do so, its authoritative explanatory and regulatory power within our domestic vertical legal orders and also in the mainly and for the time being international horizontal one. It does not stop there, however; it shapes not only our understanding of what Domestic and International Law is and how it is applied, but also our self understanding and correspondingly what we believe we ought to enjoy! It is this paradigm that the recent terrorist attacks tried to overthrow.

RELIGIOUS LIBERTY IN OSCE

Among the human rights religious liberty stands out as one of those sine qua non conditions for an atmosphere of respect for the rights of individuals or whole communities. If the protection of the individual is considered the cornerstone of our modern, legal and not only, consciousness of rights, Religious Freedom should be considered the cornerstone of all other rights . The right itself is one of the most recent to be recognized and protected, yet it embraces and reflects the inevitable outworking through the course of time of the fundamental beliefs in the value of the human person (a preferable term than this of the individual) and for that matter of the theory of Human Rights. Moreover, it is a formative factor in the modern understanding of Human Rights and thus it lies at the roots of open society! Alexis de Tocqueville, cited at the beginning, recorded and published in 1835 his impressions of his 9 months visit to the United States, soon to become a best seller under the title "Democracy in America." Among his many acute observations he writes about religion:

> "…for if it does not impart a taste of freedom, it facilitates the use of it…"

The protection of the international and domestic legal documents ascribed to religious liberty is specific enough to clearly be distinguished from notions and secular claims of rights of conscience, since it refers to claims of rights of religious conscience and it is broad enough to also ensure the protection of religiously motivated conduct, either for individuals alone or in communities. It is thus preserved the integrity and diversity of religious life.

The Helsinki Final Act (HFA), which was signed in Helsinki, Finland in 1975, enshrines in its "Decalogue" the commitment by the participating States to respect religion and the corresponding freedom of professing and practicing it alone or in community with others. In subsequent OSCE Documents the commitment is enriched by obligations the contracting parties bear to foster a climate of mutual tolerance and respect, the enhancement of the freedom to manifest one's religion (in public or in private, through worship, teaching, practice and observance, the granting upon their request recognition of the status provided for them in the respective countries), the exercise of these rights subject only to such restrictions as are prescribed by law and are consistent with international

standards, the respect of the religious communities to organize themselves according to their own hierarchical and institutional structure, the selection, appointment and replacement of their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their States, the solicitation and acceptance of voluntary financial and other contributions, the freedom to communicate and the exchange of information.

Through these successive agreements, the OSCE participating States gradually have expanded and refined their commitment to Religious Freedom. The perspective thus built over the years in the OSCE context in regard to religious freedom points towards religious pluralism, rather than assimilation or secularism and conceives religious factions not as destabilizing factor but to the contrary as a source of peace and welfare for the countries.

It is often the case, however, that countries either desiring to be "politically correct" or succumbing to competing interests and pressures in the midst of such an all permeating international culture of rights, concede to a provision in principle, only to undermine it through the concrete operation of national laws, rules, or regulations. It is then when the paradigm suggested before manifests internal systemic malfunctions; it is when roadblocks are set on the road towards a fullest enjoyment of Religious Liberty.

RELIGIOUS REGISTRATION: JURISPRUDENCE AND LEGITIMACY

The picture would be misleading if we isolate or focus our attention only at the specific incidents of obstruction of religious liberty in various countries. Obviously we start from there and they are important as such to be noted. But if an inquiry wants to suffice has to be all-inclusive if not systemic, since we always face the constant interaction of more than one components, constituent parts of a diverse but interrelated and interdependent environment; individuals and collective entities operating independently or in networks, formally or informally, states and non state actors, international and domestic institutions, acting in the traditional hierarchical, vertical or horizontal manner but also in the way of the "day" that is, in a manner befitting the realities of the global civil society, should be taken into account. Of course, the full range of such an inquiry is far beyond what the economy of our presentation allows us to treat, however, our far narrower approach would move along these lines.

For the purposes of better facilitating our examination of the subject within its given economy, we will make, albeit arbitrary, reference to two only major issues: (a) the issue of establishing common standards on Human Rights or of a jus communis, and (b) the issue of national standards and of the legitimacy of the laws pertaining to religious liberty. Our case study would be Greece.

A. JURISPRUDENCE

The free exercise of religion is tested against the registration regulations required and it is affected by the way these regulations are interpreted and applied by the courts, the administration, even by the pace the administrative agencies respond to and handle respective requests. The registration of churches and religious societies in their pursuit to manifest their religion (in public or in private, through worship, teaching, practice and observance), the respective granting upon their request of recognition of their status, their ability to organize themselves according to their own hierarchical and institutional structure, of course subject only to such restrictions as are prescribed by law consistent

with international standards, are fundamental aspects of the free exercise of religion. We focus therefore at religious registration regulations because interestingly enough, these most often we find being at stake.

Europe, either within and through the Union or the Council of Europe arrangements and processes, tends more and more towards a sharper tuning in on matters of Human Rights and it is characterized by the strong influence of the European Convention on Human Rights and the respective judicial safeguards of compliance with it. This influence far exceeds the European Union judicial parameters within the "narrower" context of which we have also another court, the Court of Justice. Thus, the issue appears and actually is not simply a matter of individual states but also of international European jurisprudence, as it is the jurisprudence of the European Court of Human Rights that signals the direction the domestic legal orders ought to take in so many fields, and of course in the field of religious liberty.

The underlying principle in all these of course is the one of conformity and of jus communis, a major theme also in the agreements signed by the contracting States in the context of OSCE; the 1989 Vienna Concluding Document stated, "In this context, [the participating States] confirm…they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments."

The extensive jurisprudence of the European Court of Human Rights (ECHR) strongly upholds the principle of a jus communis in the protection of human rights:

In 1990 the Home Secretary in Great Britain decided that a separatist Sikh leader, Karamjit Singh Chahal, living in England, should be deported to India, the country of which he was a citizen. This was for national security reasons because of his alleged involvement in terrorist acts in Punjab. Chahal claimed political asylum. He relied on Article 3 of the European Convention on Human Rights, which states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment." The ECHR ruled in 1996 that, because there was a real risk of Chahal being subjected to ill treatment in India, he could not be removed to that country and the protection guaranteed by Article 3 is absolute and so "the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration," although the ECHR also stated that it was "well aware of the immense difficulties faced by states in modern times in protecting their communities from terrorist violence."

However, when it moves away from cases such as these or others pertaining to the right for a fair trial, etc. and comes to issues of religious liberty, it can only be described as centrifugal. It acknowledges "national sensitivities" and allows on the grounds of the domestic peculiarities of the individual states only a relative constraint upon them and usually retreats in observations on the application of the law or the juridical syllogism.

In the case of Greece, which practically has begotten the major body of the religious freedom cases the ECHR has examined (thirteen on the issue of religious heterodoxy), it means leaving intact the antiquated laws as such and instead an engagement with the application of these laws and the respective reasoning of the agencies involved, away from the fundamental issues of the cases brought before the Court . That results in legal difficulties in religious registration, intensifies the administrative obstruction tactics and many law-abiding citizens are being harassed as they are brought to courts, one or more times successively, on the basis of the "misapplication of the laws," but really on the grounds of their "heterodoxy" as it is ill treated by the unaffected by the ECHR jurisprudence registration laws:

Religious assimilation: On the 12th of December 2000, sixteen Churches and religious societies in the city of Thessalonica, in northern Greece, were charged and brought to court on the basis of an antiquated set of laws regarding the operation of Churches and religious organisations. They were all allegedly violators of the religious registration laws. The criminal charges were based on the alleged operation of all of the Churches without proper licence, although when originally asked by the police, who filed the report, they had all produced copies of their licences. The list of the churches and religious organisations thus charged, covered the religious spectrum of the city, since it included Evangelical Churches, Seventh Day Adventists, Pentecostal Churches, Mormons, Jehovah's Witnesses, and the Catholic Church.

The Greek laws in question were enacted in 1938–39 (AN 1363/1938, 1672/1939) during a time when Greece was under the authority of a dictator. It requires Protestants and non-Greek Orthodox to accept the authority of the local Greek Orthodox Bishop. Towards that end any religious group must get the permission of the local Orthodox Bishop in order to be licensed. The interpretation of the Supreme Administrative Court has reduced it down to a requirement of a simple opinion of the Greek Orthodox Bishop on any religious registration petition Greek citizens desiring to exercise their religious rights bring forth ! That, still, leads to the paradox, Churches distinguished by an ecclesiology different from that of the Greek Orthodox Church being pulled by the State to an indirect yet clear recognition of that which, to begin with, they denounce according to the integrity of their doctrinal identity. Therefore, the defendants representing their own Churches and religious societies had to produce once more before the Court their licence granted to them by the Greek Ministry of Religious Affairs, which encompassed of course the corresponding for each one of these Churches consent of the local Greek Orthodox Bishop.

The Greek Police and the respective City Department of the State Security without prior examination of the records of the "Department of Heterodox" of the Ministry of Religious Affairs, filed the report against the Churches utilizing the existing registration laws which have been left intact by the ECHR. High-ranking State officials who were contacted on the occasion of the trial were concerned that this law will be the source of continued embarrassment for Greece. The extend of the burden these registration laws impose upon unsuspected, law abiding citizens on the basis simply of their heterodoxy, is the case the Pastor of a local Pentecostal Church of the city of Thessalonica, N. Demetriadis. For him it was the second time within one year that he had been called to appear before the court on the same false charge. Pastor Demetriadis is seventy years old and a war hero, yet he was forced twice to come to court to prove his innocence on facts already known by the administrative and police authorities!

The Thessalonica criminal court (!) of first instance, finally acquitted all sixteen churches that had been charged as operating without a licence, since it was "proven" that they did adhere to religious registration requirements, among which of course the opinion of the local Greek Orthodox Bishop still stands strong.

Therefore, apart from the obvious dysfunctional legal framework of Greece on this matter, we need to make a note in this regard of the equally influencing and enabling such a legal framework cautious jurisprudence of the ECHR. Substantiating even further our contention we highlight how much more complicated thus becomes the enjoyment of religious liberty: Religious legal entities and procrustean measures: The Orthodox Church and her institutions are recognised within the Greek legal framework as legal entities of public law. The non-Orthodox Churches however, apart from the Muslim and Jewish institutions, are not recognised as such.

The case of the Catholic Church of Chania. This major insufficiency of the religious registration laws, which licence a community to operate as a Church but do not allow it to engage in any transactions of legal significance associated with its very existence as a Church, led recently to the judicial diagnosis of the lack of any legal personality of the Greek Catholic Church!

Under the existing laws in order to assume such a legal personality a Church has to resort to the format of the common legal entities of the private law. The substantial technical difficulties and not only of the non-Orthodox Churches having to adapt their church life into the structure and the form of non religious associations or other private law entities are easy to discern. The probability to have procrustean solutions is very serious, when two distinct entities could develop out of such an arrangement one owning the property and another one being the church, per se; it has been considered serious enough recently and by the ECHR, which convicted Greece in the case of the Catholic Church of Greece.

Interestingly enough, ever since the decision of the ECHR the administration has not yet given a satisfactory solution to the problem of legal existence of the Catholic Church of Greece. It only accommodated the minimum solution for the deadlock created with the specific Catholic Church of Chania and for all those Catholic institutions that had been established until 1943; all the other Catholic institutions after that date are still in a legal state of limbo, let alone their continuous inability under the existing framework to organize themselves according to their own hierarchical and institutional structure!

The case of the Evangelical and Pentecostal Radio Stations. What however, makes clearer why and how religious registration can be characterized as a roadblock to religious liberty, enabled by a more than cautious jurisprudence, is the case of the two religious radio stations recently closed down by the Greek administration.

Upon the major insufficiency of the Greek laws pertaining to the legal personality of the non-Orthodox churches, we recently had the build-up of the administration's closure of the only two non-Orthodox radio stations, the one of the Free Apostolic Church of Pentecost ("Christianity") and the one of the Free Evangelical Church of Greece ("Channel 2000"), while the two Orthodox radio stations, of the Greek Orthodox Church and of the local Orthodox Church of Piraeus are still operating.

According to the Greek law regulating private television and radio stations a candidate to qualify for a licence has to be either a legal entity of "public law" or a commercial company. The law of course, as is the case in most European countries, came a posteriori to regulate, that is retrospectively, the already existing field of private radio waves and to put order by granting licences to those meeting the standards it set up. In light of what we explained before, however, the Orthodox Church's stations didn't have but remain as such, due to their legal nature of being public law entities. On the other hand the Evangelical and Pentecostal radios stations were thus forced to take a different route that of becoming commercial companies, although they were clearly religious organizations and simple extensions of the respective Churches.

Apart from the enlightening details of how the administration delayed and even obstructed the whole procedure of the application of the two "heterodox" radio stations ("Channel's 2000" petition was lost for six months, its equipment confiscated on grounds that could not hold under judicial inquiry and then returned creating all kinds of logistical and not just only such problems, its "peculiar," albeit professional, operation not befitting a "commercial company" with volunteers–members of their Church working in it under adverse assessment by the respective Committee weighing candidacies, etc.), and apart

from the discrimination issue ensued thus upon them on the basis of the discriminatory regulation of the non-Orthodox entities, we have also the additional handicap within the ECHR jurisprudence context.

Commercial companies, it has been established, although eligible to claim violation of certain rights of the European Convention of Human Rights are not under the protection of all rights; not all rights are of relevance to them and of course in that light they cannot be subjects of religious liberty rights and obligations . A commercial company therefore, as such that the Free Evangelical Church and the Free Apostolic Church of Pentecost were forced to become, operating by definition within the Greek legal framework for commercial purposes, does not constitute a manifestation of religion and of religiously motivated conduct and thus cannot be protected by the Article 9 of the Convention! The above convincingly attest as to how shrewdly religious registration can temper the fundamental identity of those whom is called supposedly to protect and positively encourage, only rendering them finally with reduced or even at times limited protection. If, as in the case of the radio stations, they conform with what is asked from them and assume commercial legal nature, are cut off from the protection allotted to them; if they do not conform, then they do not qualify and simply they cannot fulfill their religious mission identified with the proclamation of their religious message through radio waves, edifying "believers" and evangelizing "non believers." It is a fair statement to argue that it is not only by what we regulate but also by what we don't in reference to the free exercise of religion that unsurpassable difficulties are created. But then the perspective towards religious pluralism, rather than assimilation or secularism and the acceptance of religious factions not as destabilizing factor but to the contrary as a source of peace and welfare for the countries, fades away.

B. LEGITIMACY

We have been examining how international jurisprudence and the strong current for conformity and jus communis can influence religious registration. However, our inquiry directs us also to domestic juridical and non-juridical agents of meaning against which religious registration needs to be examined. Religious liberty is not just an international juridical phenomenon.

We expressed earlier our concern regarding the cautious stance of the ECHR in interpreting Article 9 of the European Convention on Human Rights so that it does not impose substantial constrains on the individual states and of the enabling effect that such a stance has on dysfunctional domestic legal frameworks pertaining to religious registration. However, the acknowledgment of "national sensitivities" and of domestic peculiarities of the individual states highlights a counterbalancing active factor of influence in the enjoyment of religious liberty equally important to reckon with. It is this factor that directly affects religious registration in the manner it is framed and carried out in actuality.

A Hebrew saying enjoins judges to "reside within their own people" implying the importance of public responsibility and the need for legitimacy of laws and their corresponding application. This is what we mean by speaking of national standards and the legitimacy of the laws pertaining to religious liberty as a counterbalancing active factor of influence. Religious registration is not carried out in a vacuum. It is always contextual, in place, time, and culture, that is people. It differs only in scale from the broader correlation between culture and human rights.

The 1989 Vienna Concluding Document states that, "In this context [the participat-

ing States] confirm that they will respect each other's right freely to choose and develop their political, social, economic and cultural systems as well as their right to determine their laws, regulations, practices and policies. In exercising these rights, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments." In that sense the OSCE framework is well prepared to engage and face the twofold challenge religious liberty poses; conforming to and aiming at international standards and maintaining a sense of ownership that a culturally meaningful legal framework provides.

During the Cold War era, the OSCE was one of the few forums for dialogue between East and West where human rights issues could be discussed and norms could be agreed upon. Today, the OSCE remains an important arena for discussion and action regarding human rights and of course religious liberty, this time promoting not just democracy but what constitutes the real test of an open society, the sense and the degree of ownership of human rights and religious liberty in particular.

Many today live in a constant state of dichotomy between what they have grown up to feel and sense to be true and that which is all around them real, coming "from abroad" permeating every thing they do or want to do; a culture for many where they sing songs and tell stories (that is mainly, watch movies!) that are not "their own" or maybe have come to become "their own" creating a lot of confusion and the need for a catharsis.

Human life is essentially cooperative; we comprehend the world by sharing stories, experiences and purposes with others, which in turn provide us with a familiar frame of meaning and implant in us a corresponding sense of ownership. Being part of a culture is an innate need human beings are born with —culture, whatever its contents, is a natural function and a liberating experience when we grow naturally first into it and then out of it, always transforming it as we become transformed. This participation leads to "evaluations of reality not as scientists…but in active negotiation of creative imaginings" and a norm is successfully and operational when is evaluated as such. This is what Alexis de Tocqueville refers us to when he notes of the American political system:

> "Religion in America takes no direct part in the government of society, but it must be recorded as the first of their political institutions; … I do not know whether all Americans have a sincere faith in their religion —for who can search the human heart?—but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation and to every rank of society."

To be joined complementarily by a Colonial Presbyterian Minister who noted that: "The United States have lately formed their several systems of civil government so as to leave religion free…"

The goal in other words is not to impose norms only on the basis of legal reasoning and external statutory or even foreign structural associations, just to save face, which as practice has shown leads often to legal rationalization, external adherence and ultimately imperils the very thing we try to protect; but to own them. It is important to have a culturally meaningful correspondence of norms and reality, if necessary re-create norms in order to own them, actively drawing from the reservoirs of cooperatively shared and shaped notions of fundamental ideas and ideals. A well known dictum express it very succinctly

when it describes laws that do not correspond to the social reality they aim to serve as simply a piece of paper.

We recognize the theory of Human Rights as a Western cultural evolvement, having grown up in the Christian West; this does not at all diminish its established value for the whole world, only it raises our awareness as to the issue of its proper applicability and legitimization in diverse cultures. Every time we have roadblocks in the enjoyment of religious liberty, mainly manifested in dysfunctional religious registration frameworks, we need to arise in examining the level of affinity or alienation of the people of the land with the rights in peril.

The Human Rights paradigm derives its authoritative explanatory and regulatory power from the fundamental belief in the empowerment of each person. This is an all-powerful "doctrine" capable of providing a central, ideological and operational coherence even in different from the Western cultural norms, which happen to be collective and communitarian. It is in such settings that we observe the most difficulties with religious pluralism, as in Greece, since it comes against the primary value of the central, cohesive notion of the community against which the value of the individual is measured in terms of his participation in it. However, even in such environments there are always cultural reservoirs, which could support a successful decentralization of the convincing value of the empowerment of each person.

The OSCE forum can encourage such processes of a successful decentralization of the core values at stake, enabling the parts [participating states] to be of "one mind" even though they are diverse in culture and place. If the Cold war dialogue and agreement processes could be measured in "dinosaur" like sizes and methods, the new reality, especially after the events of Tuesday 11th of September, 2001, can only be pursued through smaller and more flexible forms of engagement; not simply a cross institutional, cross structural, statutory and hierarchy-oriented approach and influence but also a network-oriented approach. When many herald the "network society" in the midst of an ever-deepening global civil society, power and legitimacy are more and more to be fostered and reinforced in networks, pushing us to rethink our typologies. The importance of the social capital in the new morphology of our societies, affecting the conceptualization, establishment and application of rights, starting from, as a core reinvigorating systemic value, and going all the way down to religious registration, would be crucial.

In all these OSCE could play a leading role, through consultative and consensus-building mechanisms, employing the social capital dimension within its broader methodological category of Human Dimension.

PREPARED STATEMENT OF COL. KENNETH BAILLIE, COMMANDING OFFICER, SALVATION ARMY, MOSCOW, RUSSIA

From Moscow I direct Salvation Army work in five east European countries. First I will briefly comment on our religious registration situation in each of the five, then comment at more length on our one major problem.

In Georgia there is no law requiring religious registration. In order for the Salvation Army to conduct ordinary business, i.e. hold title to a vehicle, open a bank account, sign a rental lease, etc., we are registered as a charity.

In Moldova and Ukraine we have full nationwide registration as a religious group. In both cases we were present in the countries for several years, doing our ministries and establishing our reputation, as a result of which in the year 2000 we were granted our registrations, for which we are thankful.

In Romania we began our ministries over two years ago. Admittedly we are not yet well known. In our first attempts to register our own law firm did not understand us well enough, and consequently tried to register us as a 'charitable foundation'. When we corrected that misinformation and tried to register as a church (a church which, as an expression of its faith, does a variety of social ministries) we encountered apparent difficulty in using the word 'church.' It seems only some in Romania can use that word. But we were told that the alternate title 'Christian mission' may be acceptable. That is all right with us, so we are pursuing that possibility at present. An interesting historical footnote: in late nineteenth century England where the Salvation Army began, our legal name prior to "The Salvation Army" was "The Christian Mission." So we are returning to our roots.

In Russia as of February 2001 we are registered nationwide as a centralized religious organization ("CRO"). We had applied for CRO in September 2000 but we did not know what was happening with our application until three months later. That was when the media had a field day with the Moscow city denial of our local city registration. It was an entirely separate issue, of course, but the worldwide publicity did not make a careful distinction, and consequently misdirected criticism redounded to the federal ministry though the real problem was with the city ministry. The federal ministry of justice did take up our case. There were meetings of the federal 'committee of religious expertise,' the report endorsing us was drafted promptly, further meetings were held with federal ministry of justice officials, and we were awarded our CRO in early February 2001. Another historical footnote: the CRO registration renews the comparable status we in 1922 until 'liquidated' by the Bolsheviks. We are very grateful for the federal ministry's positive actions on our behalf.

The city of Moscow is another story. We returned to Moscow in late 1991 and were well received by numerous public officials. We obtained registration as a religious organization in 1992. We have worked in Moscow ever since, with never a hint from any official of any dissatisfaction with our ministries. On many, many occasions we have worked in cooperation with officials to distribute humanitarian aid. Our records show involvement with over 800 government departments, orphanages, hospitals, prisons, etc. Never had anyone in the city government voiced any criticism or raised any questions.

In response to the 1997 federal law we applied for re-registration of our Moscow branch, never imagining it would be anything but pro forma. Over a period of weeks from November 1998 to late January 1999 we worked with a staff person in the city Ministry of Justice. Through numerous meetings and phone calls we fulfilled requests for additional documents, changes in wording, etc. until everything was deemed satisfactory. On 18 Janu-

ary 1999 the staffer called to say we should have our signed and stamped registration on Friday, two days hence. On Friday, however, the same staff person called to say in rather sheepish voice, "There's a problem."

It is now nearly three years later, and to say the least there is still a problem! On 19 or 20 January 1999 someone in the Moscow Ministry of Justice ("MMJ") took an ideological decision to deny our application. That is abundantly clear. Three years of meetings, documents, media statements, and legal briefs all point to an arbitrary, discriminatory, secret decision. To this day we do not know who made the decision, or why.

At first MMJ's B.S. Saliukov said he had received our application but would not act on it. He gave no reason though such is required by law. Our lawyer insisted he tell us what requirements of the law we allegedly had not fulfilled. In discussion Saliukov told our lawyers what needed to be changed in our application documents. We agreed, and submitted the changed documents. Saliukov's response was to say again that our application would not receive any consideration. This time he gave two reasons: his department was not competent to judge whether we are a religious group, and our documents were not in order according to the law. This second reason was a contradiction to what he had said in requiring various changes, to which we had agreed. Now evidently there were more aspects "not in order" but he did not give specifics.

In regard to the first reason ("not competent to judge") Saliukov said our case was being sent to the city's "committee of religious expertise" ("CE") for the purpose of determining if we are a legitimate religious group with a favorable reputation. However, in April we learned Saliukov had not in fact sent our case to the city CE. In reality, there was no city CE. Instead, Saliukov now asserted that in the absence of a CE he could function in the CE's role. There is no provision for this in the law. To the contrary, the law established the CE precisely to keep government bureaucrats from making decisions about religious matters for which they have inadequate competence. This was what Saliukov acknowledged in his earlier letter, but now, contradicting himself and asserting a power he did not possess, he said he would conduct the "expertise" himself.

In June our lawyers complained that no answer had been received within the three months maximum time allowed by law. Under the law when a case is referred to CE up to six months is allowed so that the CE has time to function. But it was improper for the ministry to claim it was a CE, and to claim the CE did function. The effect was to waste six months of our time. No CE was ever done. The ministry has not produced any findings of the CE as required by law (as apparently there are none). Six months to the day V. N. Zhbankov issued a flat denial of our application. It was clear to us, however, that the decision had been taken six months earlier. But now we had six months less time before the expiry deadline.

Zhbankov gave four reasons for denial. Three of them were misapplications of the law.

(1) He said our governing board had only five members present when it approved the new proposed charter while there are actually six members of the board. But the existing charter under which the board was functioning clearly specifies a quorum as four.
(2) He claimed that ten Russian citizens would have to form the religious organization. But to construct this assertion he extracted a sentence from article 8.3 of the law, having to do with forming an original, new organization. There is no mention of the number ten in article 8.1 having to do with making changes to an existing charter.

(3) He claimed that photocopies of the visas of non-Russian members of the governing board were not submitted, therefore the vote on the charter revision was invalid. But the law does not state that visas must be submitted. Six months earlier the MMJ had asked for photocopies of passports, and these were supplied by our lawyers, but MMJ never asked for visa photocopies. Further, MMJ staff had said in February 1999 that all necessary documents were to hand. And further still, when our lawyers submitted our application documents the cover letter specifically said that if any further documents were required that we would supply them. Nonetheless, Zhbankov failed to ask for visa copies, waited an improperly long six months, then blamed the Salvation Army for not having submitted the copies he never asked for, and the law doesn't require!

(4) The fourth alleged reason for denial was significant. The Salvation Army is a worldwide organization with headquarters in London, England. Zhbankov claimed that we could only have a "representative office of a foreign organization" in Moscow. There is provision for such in the 1997 law, but a "representative office" status grants little or no opportunity for our ministries. The "representative office" category would leave us unable to hold worship services, visit a hospital or orphanage, import humanitarian aid, operate our leaders" training college, etc. The hidden injustice in this is that since 1992 we had a much higher category of registration, a "local religious organization," which allowed our ministries to operate legally. Why the 1992 category of "local religious organization" could not be renewed was not explained by Zhbankov. We can only conclude it was a veiled attempt to foreclose on our religious rights.

Ever since Zhbankov has made statements to the media to the effect that we have "failed to meet the requirements of the law" or we are "trying to evade obeying Russian law." This is disingenuous at best. What it really means is that we have refused to be forced into the "representative office" category because it would deny virtually all religious rights, rights we have had since 1992.

Zhbankov would not discuss the three spurious legal claims or the injustice of the "representative office" category so we had no choice but to sue in court. Ten months were wasted while two courts claimed lack of jurisdiction. Ultimately an appeals court directed the case back to the first court but the ten months lost time were never to be recovered, and the clock was ticking toward expiry of the existing charter.

The court trial of our case violated due process. The city failed to send its lawyer to the trial. Under proper procedure the judge should have issued a declaratory judgment in our favor. Instead, the judge permitted the city to submit a written brief after the trial date, and completely unknown to us! Any first year law student knows how wrong this is yet the judge not only permitted the city attorney to do this secretly but quoted the city's brief at considerable length in the text of the eventual judgment. The Salvation Army's lengthy verbal arguments and accompanying written brief were dismissed with exactly one sentence. The judge simply noted we had submitted arguments but did not address a single one of them, as required by proper procedure.

The city's brief violated procedure by introducing new reasons for denial of our registration. Under proper procedure the city could only defend its original four reasons, not introduce new ones. But it did so, and the judge allowed it. For instance, the city argued that the Army's documents did not make clear the religious beliefs of the Salvation Army. This cannot be true. The full statement of beliefs had been included in the 1992 charter

and had sufficed for eight years. No explanation was given why the same statement was now deemed "unclear."

In what became the focal point of media attention later, the city claimed the Salvation Army was a military threat to Russia. MMJ quoted at length from various Russian laws having to do with insurrection, subversion, militaristic formations and national security. Then, in a leap of illogic, the city asserted that since the Salvation Army has the word "army" in its title then "it will be inevitable that members of the organization will break Russian law." But no evidence was submitted. One would think that if we were a threat to Russia and were "inevitably" going to break the law that after eight years of properly registered work in Moscow the city could cite at least a few instances in support of their charge. So a peace-loving organization, known and respected for its work in 107 other countries, was rendered a threat to Russia's security by the pen of the city's lawyer. Most lawyers would be embarrassed to submit such legal illogic. And most judges would toss it out of court.

Finally, the MMJ brought up the "representative office" claim again. By this time, almost a year later, another similar case had worked its way to decision at Russia's Constitutional Court. In that case the Jesuits had been denied registration because their "headquarters" was in Rome. The Constitutional Court overturned the government denial of registration, noting that an article in the 1997 law specifically provided for foreign-based churches to be registered. Our lawyers noted the provision in the law, and the Constitutional Court decision with its direct parallel to our situation, but the judge ruled for the city.

We appealed the lower court decision. Three months later (November 28, 2000) the appeal was denied. Most of the lower court arguments were re-hashed but there were a few new arguments. (1) The governing board visa copies had been submitted in the meantime but now the court claimed that "a visa is not the document that proves [board members] are lawfully residing on the territory of the Russian Federation." But these visas are precisely what the MMJ and lower court said, after the fact, were needed to prove lawful residency. Furthermore, if the visas would not prove legal residence then what would? There is nothing else! (2) In long and convoluted language the court asserted that the Salvation Army's documents did not meet requirements of the law. But the MMJ's own staffer had said they did. And if the staffer was wrong, why did the MMJ's deputy minister take six months to say so? And why did it not spell out clearly in what ways the documents were supposedly at fault? In fact, MMJ gave only four reasons, each of which the Salvation Army challenged. Both the MMJ and the courts have continued —improperly —to invent new alleged reasons for denial. (3) Interestingly, the appeals court did agree that the MMJ and lower court were wrong in asserting that the Salvation Army is a military threat. But the MMJ's Zhbankov has continued for almost a year to make the discredited charge in statements to the media.

Under Russia's legal system there was no further automatic right of appeal for the Salvation Army. Reluctantly we took our case to the European Court of Human Rights. The case has been accepted and efforts are underway through diplomatic channels to achieve a resolution.

In the summer of 2001 the city's MMJ took the matter much further by filing in court for "liquidation" of the 1992 charter. This was a serious escalation of the situation at a time when city officials were giving assurances in diplomatic channels that the problem would be resolved soon. The MMJ claimed two reasons. (1) It said the Army had failed to re-register by the legal deadline. Yes, of course —because the MMJ had refused to issue

our re-registration. (2) The city claimed the Army had not filed a required annual report about its continued operations for three years. There is a provision in the law for liquidation of a religious group which becomes defunct, three consecutive years of non-reporting being the presumed proof. We admit we failed to report in two of the three years, a mistake we regret. But we did report in 1999 (we have conclusive proof) so the law's requirement of three consecutive years (1998, 1999, 2000) cannot be sustained. And in any event, considering all the meetings and documents and correspondence which the Salvation Army had with the MMJ in the three year period, it is ludicrous for MMJ to assert that it doesn't know of the Army's existence any longer!

The case was heard in another Moscow court on September 11-12, 2001. On the first day, when about 30 media reporters were present with TV cameras, the judge appeared to be interested in receiving documentation to show the Army's lawful presence in Moscow —tax audits, payment of employee taxes, correspondence with MMJ, etc. Court was adjourned one day so that the judge, as she said, could contact the tax authorities about us. By the next day media interest had turned to the terrorist attacks in America and only four print reporters returned to the courtroom. The judge refused to let the Army's attorney speak at all, and refused to consider the Salvation Army's many documents stacked on tables in front of her. She left the courtroom and within ten minutes returned to read out a lengthy, already-typed judgment for liquidation.

The written judgment was not given to the Army for twelve days though the law requires a maximum of three days. Right of appeal ends after ten days. The Army intends to appeal anyway, even though the late document theoretically precludes an appeal. The outcome is very uncertain.

A further concern is the threat by Mr. Zhbankov to confiscate Salvation Army properties and assets in Moscow. To protect our three properties we applied to transfer ownership from the old, expired city registration to the new national registration. But city property registration officials have required change after change, document after document, in a process that has gone on for months when it normally takes two weeks. We note that the deputy head of the city ministry of justice (Zhbankov), the property registration office, and the courts are all under the same ministry of justice.

In addition to dealing with the MMJ and the courts the Salvation Army has had to endure repeated public disinformation to the media by the MMJ's Vladimir Zhbankov. He has repeatedly linked us with the Jehovah's Witnesses when there is absolutely no connection. Around the world Jehovah's Witnesses do not enjoy the same public recognition and respect as the Salvation Army. Zhbankov appears to be sowing seeds of doubt and distrust in the public mind by linking us to an unpopular religious group.

Zhbankov has claimed we have not brought our documents into line with the law. This is another way of making the Salvation Army seem at fault. What he doesn't say is that he is attempting to deny our religious rights by forcing us to settle for the useless "representative office" status. The only way we are not in line with the law is that we won't bend to his discriminatory construction of the law.

He has called our lawyers foreigners, appealing to populist Russian fears of all things foreign. It is not true. At all times in the past three years our lawyers have been Russians.

He has called our lawyers "unscrupulous" and "incompetent." One of our law firms is a major international law firm with a large Moscow office. Our second law firm has established itself with a national reputation for matters dealing with religious law. Zhbankov's un-lawyerly characterizations are regrettable. But he has privately and publicly demanded

that the Salvation Army abandon use of our law firms and use a law firm which he (Zhbankov) "recommends." We reject the demand, for obvious reasons.

He has claimed that we are not a legitimate religious organization but rather a military group bent on the violent overthrow of the Russian government. The federal government's committee of religious expertise ruled otherwise almost a year ago, and anywhere else around the world people know better. But Zhbankov has continued to make the charge to the media.

We have offered again and again to negotiate revised wording of the proposed registration, changing it to the precise wording already approved by the federal ministry for our CRO. But Zhbankov has refused, and then given statements to the media that we "refused to bring the documents into line with the lawö.

In conclusion, we believe the Salvation Army has been discriminated against by the Moscow city Ministry of Justice. Moscow courts have followed the MMJ line. And Zhbankov has manipulated the popular understanding of the issue through propaganda and disinformation.

The federal ministry of justice has failed to intervene with the city though we understand it should do so in order to uphold Russia's constitution and any number of international treaty obligations. We continue to hope federal officials will step in soon to resolve the situation.

We remain hopeful that various high level contacts and diplomatic efforts may still prompt federal officials to resolve the matter. But if all such efforts fail then we believe the European Court of Human Rights will eventually establish justice where it has been denied.

We are saddened to have been drawn into this situation. It is not something we have experienced elsewhere. We do not normally resort to the courts. We just want to be left alone to do our ministries. We regret the embarrassment and ill will the Moscow situation has brought upon Russia, which is particularly ironic when it was the federal ministry whom we commend and thank for having granted us full registration. We desire harmonious, cooperative relationships with government officials. We have such relationships in other countries, and in fifteen other Russian cities where we minister. Despite all that has happened we still wish to have good relationships in Moscow, and look forward hopefully to the day when that may be so.

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