FREEDOM OF RELIGION OR BELIEF:
LAWS AFFECTING THE STRUCTURING
OF RELIGIOUS COMMUNITIES

Organization for Security and Co-operation in Europe
Review Conference, September 1999
ODIHR Background Paper 1999/4

by Cole Durham

This report is one of a series of papers prepared under the auspices of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe for the benefit of participants at the 1999 OSCE Review Conference. Every effort has been taken to ensure that the information contained in this report is accurate and impartial. We are grateful to a number of experts for their valuable contribution to this series.

These papers are intended to highlight key issues and to promote constructive discussion; the opinions and information they contain do not necessarily reflect the policy and position of the Office for Democratic Institutions and Human Rights or of the Organization for Security and Co-operation in Europe. Any comments or suggestions should be addressed to the ODIHR.
Contents

EXECUTIVE SUMMARY

1. INTRODUCTION

2. INTERNATIONAL STANDARDS PROTECTING THE FREEDOM OF RELIGION OR BELIEF AND RIGHTS OF RELIGIOUS COMMUNITIES TO LEGAL ENTITY STATUS
   2.1 Universal Declaration of Human Rights
   2.2 International Covenant on Civil and Political Rights
      2.2.1 The substantive right to freedom of religion or belief
      2.2.2 The right to freedom of association
      2.2.3 Non-discrimination on the basis of religion or belief
   2.3 Declaration on the Elimination of all forms of Intolerance and of Discrimination Based on Religion or Belief
      2.3.1 UN Human Rights Committee's General Comment interpreting Article 18
   2.4 The European Convention on the Protection of Human Rights and Fundamental Freedoms
      2.4.1 The substantive right to religious freedom
      2.4.2 Authoritative interpretation of Article 9
      2.4.3 Freedom of association
      2.4.4 Case law construing Article 11
      2.4.5 Other relevant standards under the ECHR

3. OSCE COMMITMENTS THAT HAVE A BEARING ON THE RIGHT OF BELIEF COMMUNITIES TO ACQUIRE AND MAINTAIN ENTITY STATUS

4. DEFINITION OF RELIGION

5. ANALYSIS OF REPRESENTATIVE PROBLEMS IN RELIGIOUS ASSOCIATION LAWS
   5.1 Organizational requirements
      5.1.1 Requirement to register
      5.1.2 Number of founders
      5.1.3 Duration requirements
      5.1.4 Foreign founders
      5.1.5 Legal entities as founders
      5.1.6 Accommodating structural differences among religions
      5.1.7 Permissibility of acquiring entity status through non-religious association law
   5.2 Document requirements
      5.2.1 Formal vs. substantive review
   5.3 Registration authority
   5.4 Registration process
   5.5 Grounds for refusal to register and grounds for involuntary dissolution
   5.6 Right to appeal
   5.7 Non-retroactivity

6. RECOMMENDATIONS
EXECUTIVE SUMMARY

The OSCE has from its inception recognized the importance of legal personality and entity structure to religious organizations as part of their right to freedom of religion or belief. The concern with this issue has been reemphasized in recent years during the OSCE Human Dimension Seminar on "Constitutional, Legal and Administrative Aspects of the Freedom of Religion" held in 1996, and by ODIHR's Advisory Panel of Experts on Freedom of Religion.

This background report first summarizes the applicable international and OSCE standards that stress the importance of religious groups being able to obtain entity status. Particularly in countries where laws governing religious associations are used as control mechanisms, religious association laws can interfere significantly with religious freedom. Such laws thus constitute limitations on "manifestations" of religion, and as such, can be justified only if they (1) are prescribed by law, (2) further one or more of a circumscribed set of legitimate objectives (excluding, for example, national security interests), and most importantly, (3) can sustain strict scrutiny analyzing whether they are "necessary in a democratic society" - that is, that there is a pressing social need for the restrictions that is proportionate to the legitimate ends pursued. Religious association laws that fail to afford broad flexibility to religious groups in structuring their own affairs (within the general framework of the applicable constitutional order) cannot pass this exacting test.

The report also notes the relevance of a number of other rights to the protection of access to entity status. Freedom of association has taken on heightened significance in light of two recent decisions of the European Court of Human Rights, which hold that this freedom covers the right both to acquire and to maintain legal entity status. If the relatively controversial political and cultural associations involved in those cases have a right to entity status, religious associations a fortiori have such a right. The report also notes the significance of international and non-discrimination and equality norms in this area.

After emphasizing the importance of avoiding narrow definitions of religion (and related terms) in ways that would discriminate against less known or less popular groups, the report turns to an analysis of representative problem areas that arise in connection with religious association laws. The report focuses primarily on
acquisition of "base level" entity status, as opposed to access to "upper tier" forms of organization such as those established pursuant to agreements with the State (e.g., Spain, Italy, and Poland), recognized churches (e.g., Austria), or public corporations (e.g., Germany). In order to comply with OSCE commitments, the base level entity status provided must grant religious communities the right to use entities with which they can carry out the full range of religious activities, subject to the narrow class of limitations permitted by international instruments. The report notes issues that can arise with respect to requiring an excessive number of founders, duration requirements, foreign founders, and in general the need for flexibility in accommodating organizational differences among religious communities. The report also notes the inappropriateness of states engaging in substantive review of the appropriateness or usefulness of religious doctrines, subject of course to the narrowly circumscribed set of permissible limitations on manifestations of religion within the general constitutional framework of the host country. Finally, representative grounds for refusal to register or for involuntary dissolution are noted. A hazard in this area is grounds that are set forth in vague terms that could allow excessive discretion on the part of reviewing state authorities.

The report concludes with a number of recommendations aimed at helping to assure that religious association laws facilitate religious freedom, rather than encumbering it.

1. INTRODUCTION

When the right to freedom of religion or belief is mentioned, the first thing that comes to mind is the right of individuals to act in accordance with conscientious beliefs, to worship (or not worship) freely, and to be able to enjoy life in society without discrimination on the basis of such beliefs. As a practical matter, however, the enjoyment of such primary religious freedom rights depends in critical ways on the legal structures available to religious communities to organize their affairs. History is replete with examples of laws which constrain individual religious practice by denying legal recognition to certain religious organizations. The old systems of special charters that antedated modern corporate structures were all too often used as means of establishing favoured religious bodies,\(^1\) and dissolution provisions could be used to reign in unpopular groups.\(^2\) Religious association laws have often been passed more as a means of controlling religious organizations than of contributing to their freedom.\(^3\) In the future, it will be important to view such laws from the perspective of freedom of religion or belief.
the Soviet era, obligatory state registration was often used to tighten state persecution of religion. Sometimes such laws have been used to establish millet or millet-like systems, such as those that existed in the Ottoman Empire, which relegate non-dominant groups to second class status (or worse). In all of these cases, individual religious freedom suffered to a greater or lesser extent because religious communities were denied access to legal structures which facilitated genuine religious freedom, or because the available legal structures condemned some religious communities to unequal status in the political community as a whole.

This report focuses on this vital aspect of the freedom of religion: namely, the right of belief communities to acquire legal personality and access to legal entity status by means of which they can carry out the full range of their legitimate belief-related activities. Every OSCE participating State has laws and regulations dealing with the registration, recognition, or the incorporation of religious communities, religious associations, and other religiously affiliated organizations. For convenience of reference, this range of legal structures will be referred to in what follows as legal entities or juridical persons. Among other things, these laws govern the terms under which legal personality or legal entity status is acquired and maintained. The result is that the religious community acquires a status and an organizational structure that is recognized by the state for purposes of carrying out the organization’s temporal affairs. Despite the fact that such laws are often similar in basic structural features, they differ widely in the way they are interpreted and administered in OSCE participating States. Such laws invariably serve both to facilitate and to control belief communities, but the degree of freedom that various belief communities experience in different countries depends critically on the rigor of the control features of such laws and the extent to which officials use these laws to restrict rather than to facilitate communities of religion or belief.

With good reason, participating States in the OSCE have undertaken commitments to make entity status available to groups prepared to practice their faith within the constitutional framework of their States. In the contemporary world, while a few groups continue to object on conscientious grounds to any requirement that they obtain entity status from the state, most religious organizations view themselves as being severely restricted if they do not have the ability to obtain entity status. To cite only a few examples, without entity status, it is difficult for a religious community to acquire or rent a place to worship, to support clergy and other religious personnel, to enter into contracts for the production of church literature and other religious articles necessary for religious life, and so forth. Moreover, as noted above, history has provided all too many examples of States that have utilized registration laws to monitor and repress religious
have utilized registration laws to monitor and repress religious life. Both the mundane needs and the specter of more extreme abuses underscore the need for protection provided by OSCE commitments that assure that religious communities will be able to exercise their religious freedom rights through legal entities.

The OSCE has long been concerned with issues of access to entity status. Already at the time of the adoption of the Helsinki Final Act in 1975, the participating States recognized rights of "religious faiths, institutions and organizations..." (emphasis added). By the time of the Madrid Meeting in 1983, the participating States expressly stated that "[t]hey will favourably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations". The Madrid obligation was further strengthened by the commitment in Principle 16.3 of the 1989 Vienna Concluding Document, which provided that

[in order to ensure the freedom of the individual to profess and practice religion or belief, the participating States will, inter alia, ... 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.

The issue of entity status was a major focus of concern of the OSCE Human Dimension Seminar on "Constitutional, Legal and Administrative Aspects of the Freedom of Religion" held from 16 to 19 April 1996. Similarly, the Preliminary Report of the Advisory Panel of Experts on Freedom of Religion convened by the ODIHR to follow up on the 1996 Seminar noted as a priority issue needing further study the "[t]endency to utilize registration procedures as control mechanism[s] rather than as a means for facilitating the freedom of religious groups." This report addresses the array of human rights issues that arise in connection with the adoption and administration of laws governing the granting of entity status to belief communities. It does not attempt to give a comprehensive comparative account of the relevant laws in all the OSCE participating States. As ODIHR's Advisory Panel of Experts noted, "[t]here appears to be no single repository of the key legal documents of the various Participating States that constitute the legal framework for Religious Freedom and for the interaction of religious communities with state structures." Even if all applicable laws and regulations were easily available, key enactments are often long
and complex, and more significantly, they need to be understood against the background of significant differences in history, tradition, and culture within different societies. Accordingly, this report focuses on the bearing the OSCE human dimension commitments and more general international human rights norms have for entity-status issues. It identifies recurrent problems and sensitivities that arise in determining whether to grant (or terminate) entity status. While examples will be drawn from actual or draft legislation from particular countries, the aim here is not to single out participating States for criticism, but rather to identify recurrent problems that have arisen in several countries so that more sensitive approaches can be implemented throughout the OSCE region.

2. INTERNATIONAL STANDARDS PROTECTING THE FREEDOM OF RELIGION OR BELIEF AND RIGHTS OF RELIGIOUS COMMUNITIES TO LEGAL ENTITY STATUS

As one of the oldest and most pre-eminent of the internationally recognized human rights, the right to freedom of religion or belief is addressed in key provisions of every major international human rights instrument. These provisions have significant implications for the rights of religious communities to be able to avail themselves of legal forms and structures in arranging their affairs. It is important to bear in mind, however, that a variety of other international human rights norms have significant implications for the rights with respect to laws that affect the structuring of belief communities. This makes the task of spelling out the relevant international norms more complex than might at first be expected. In this Chapter, relevant international norms are identified. With respect to the familiar norms that directly address freedom of religion or belief, the aim is to highlight those aspects of these norms that have particular relevance to legal entity issues. Other norms that have particular ramifications for the legal structures that religious communities need to structure their affairs are then addressed.

2.1. Universal Declaration of Human Rights

For our purposes, the key international provisions dealing with freedom of religion or belief begin with Article 18 the Universal Declaration of Human Rights, which provides:
Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Emphasis added.)

The Universal Declaration also affirms rights to freedom of association and non-discrimination that bear on laws affecting the structuring of religious communities. Thus, "[e]veryone has the right to freedom of peaceful assembly and association" (Article 20). Moreover, "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of ... religion" (Article 2), and "[a]ll are equal before the law and are entitled without any discrimination to equal protection of the law" (Article 7).

### 2.2. International Covenant on Civil and Political Rights

#### 2.2.1 The substantive right to freedom of religion or belief

The Universal Declaration's commitment to the fundamental right of freedom of religion or belief was embodied in Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Because this Covenant is a legally binding treaty obligation for States Parties to it which include most of the OSCE participating States, it is both somewhat more concrete, and more careful to note the limitations on freedom of religion or belief. Article 18 of the Covenant provides:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable,
legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.
(Emphasis added.)

2.2.2 The right to freedom of association

Because the substantive right to freedom of religion so clearly covers the right of individuals to associate with others and to assert their religious freedom "in community with others", whether in "public or private", it is sometimes forgotten that religious groups are also protected by freedom of association. The special prominence and historically vindicated importance of freedom of religion implies that if anything the right to freedom of religion affords greater protection to religiously-motivated association; surely it does not provide less. This consideration is particularly important when one focuses on the issue of laws affecting the structuring of religious communities. With this in mind, it is important to note Article 22 of the International Covenant, which addresses freedom of association:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

The Universal Declaration and the Civil and Political Covenant address the full scope of the rights to freedom of religion or belief. But it is worth noting at the outset that they clearly recognize and protect the communal dimension of religious life. While religion can be an intensely private matter for some, it is fair to say that most religions cannot be practiced in isolation. Thus, the instruments stress that the right involves freedom "either alone [or individually] or in community with others and in public or private" to manifest one's religion in four broad areas vital to religious experience, namely "worship, observance, practice and teaching." Implicit in these norms is that one should be able to engage in religious life in authentic community with others of like beliefs, and that the type of communal experience should be determined in accordance with religious beliefs, and should not be dictated, monitored or otherwise "impaired" by coercive requirements of the state. Stated differently, many aspects of religious life have an associational dimension, but if anything, they deserve far stronger protection than other associational rights,
because of the intimate connection between religiously motivated association and core religious beliefs and practices.

It is also important to emphasize that while some restrictions on manifestations of belief are permissible, such restrictions must be consistent with the rule of law, and must meet the rigorous "necessary in a democratic society" test. That is, it is not enough to justify burdensome registration rules to claim that they contribute in some general sense to public order (or to one of the other legitimating grounds for imposing limitations on manifestations of religion or belief). Only when limitations further a legitimating objective and are genuinely "necessary" can negating a religious freedom claim be justified.

2.2.3 Non-discrimination on the basis of religion or belief

The ICCPR reinforces the substantive protections of freedom of religion by making it very clear that State Parties are obligated "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2(1)) (emphasis added). Moreover, the Covenant does more than articulate a recommended ideal. It obligates State Parties "to take the necessary steps ... to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant" (Article 2(2)) and to make certain that persons whose rights or freedoms are violated shall have effective remedies (Article 2(3)). Further, Article 26 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Emphasis added).

The United Nations Human Rights Committee (the body officially charged with monitoring compliance with the Covenant) has underscored the importance of non-discrimination in its General Comment No. 18 (37), which interprets the equality provisions of the ICCPR. In its view, "[n]on-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights". While the Covenant itself does not define discrimination, the Human Rights Committee believes, consistent with the general usage of this term
in international law, that

"discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

General Comment No. 18 (37) also stresses that the Covenant is not limited in its reach to discrimination with respect to the protection of the substantive rights it enunciates.

While article 2 limits the scope of the rights to be protected against discrimination to those provided for in the Covenant, article 26 does not specify such limitations. That is to say, article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds. In the view of the Committee, article 26 does not merely duplicate the guarantee already provided for in article 2 but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. Thus, when legislation is adopted by a State Party, it must comply with the requirement of article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant. (Emphasis added.)

The Committee recognizes that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". Laws governing the ways that religious associations are recognized and allowed to structure themselves as legal entities must thus be doubly sensitive. To the extent they are used as a control mechanism (as opposed to a vehicle for facilitating the structuring of religious life), they run the risk of burdening and impairing substantive norms of freedom of religion and association. In addition, they can constitute action by "public authorities" leading
to discrimination in law or in fact, resulting in violations of the non-discrimination obligations imposed by the Covenant on "States parties in regard to their legislation and the application thereof".

Article 27 affords particular protection against discrimination where "ethnic, religious or linguistic minorities exist". It provides that "persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". The term "minorities" is not clearly defined in the Covenant. Statistically speaking, there is at most one majority religion in any given country, and all others constitute minority religions. In many countries, no single group is in a majority position. There is a tendency to think of minorities as an identifiable cultural group, tied together by common language, traditions, ethnicity and so forth. But the use of the word "or" in the Covenant suggests that there may be religious minorities that are not necessarily also part of ethnic or linguistic minorities. The U.N. Human Rights Committee's General Comment No. 23 (50) on Article 27 indicates that "the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and/or a language. Those terms also indicate that the individuals designed to be protected need not be citizens of the State party". The General Comment goes on to note that

Article 27 confers rights on persons belonging to minorities which "exist" in a State party. Given the nature and scope of the rights envisaged under the article, it is not relevant to determine the degree of permanence that the term "exist" connotes. Those rights simply are that individuals belonging to those minorities should not be denied the right, in community with members of their group, to enjoy their own culture, to practice their religion and speak their language. Just as they need not be nationals or citizens, they need not be permanent residents.

This is not the place to probe the difficult question of the extent to which smaller religious groups that are religiously distinct but not necessarily culturally or ethnically different from the surrounding population constitute "minorities" within the meaning of Article 27. It suffices to note that to the extent religious minorities do exist in a country, they have an added layer of protection against religious discrimination under Article 27, and that lack of citizenship or relative permanence in the country does not disqualify a group from eligibility for this heightened protection.

2.3. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or
Belief

The United Nation's 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, though not formally binding as a treaty obligation, distills many of the principles articulated in the ICCPR. A plausible case can be made that it articulates what has now become international customary law, even in the absence of a binding convention, but no position is being taken on that issue here. The connections between the 1981 Declaration and the ICCPR are clear. Article 1 of the 1981 Declaration merely repeats, verbatim, the language of the first three paragraphs of Article 18 of the ICCPR.

Articles 2 and 3 of the 1981 Declaration reaffirm the ICCPR's anti-discrimination norms. Paragraph 1 of Article 2 states that "No one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs". This language goes beyond the language of the ICCPR in that it extends to private as well as state action, but since the focus of this background report is on statutory schemes dealing with the grant of entity status to religious organizations by states, the aspects of paragraph 1 relevant here correspond with binding treaty obligations.

Paragraph 2 of Article 2 defines "intolerance and discrimination based on religion or belief" as:

Any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

This definition is clearly consonant with that which the UN Human Rights Committee's interpretation of the meaning of discrimination in its General Comment No. 18 (37) (see Chapter 2.2.3, page ??). If anything, it is narrower, because it addresses only "nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis", whereas the Human Rights Committee's definition applies to "all rights and freedoms".

Article 3 of the 1981 Declaration underscores the significance of the anti-discrimination norm established by Article 2, noting that "Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedom proclaimed in the Universal Declaration of Human Rights..." In short, for purposes of applications envisaged by this background report there is nothing in the 1981 Declaration's anti-
Article 4, echoing language of Article 2(3) of the ICCPR, indicates that "States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief", and "shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter". Article 4 thus merely restates and makes concrete with respect to religious freedom matters general Covenant obligations to afford effective remedies for violation or impairment of human rights. The same may be said of Article 7 of the 1981 Declaration.

Article 5 addresses in greater detail the rights of parents and children that are addressed in Paragraph 4 of Article 18 of the ICCPR. It is also consistent with relevant provisions of the widely ratified Convention on the Rights of the Child. Laws dealing with freedom of conscience and religious associations in many OSCE participating States often address these parent-child issues, but these matters go beyond the focus of this report on the legal structures available to religious communities. Again, however, the substance of the 1981 Declaration is backed by treaty law that has been accepted by and is binding on most OSCE participating States.

Article 6 of the 1981 Declaration spells out the implications of the foregoing religious freedom norms for a variety of recurrent and practical contexts that are vital to religious freedom. The broad phrases of the Universal Declaration and the ICCPR obviously do not go into the same level of detail, but the concrete practices identified by Article 6 are clearly a reasonable and sensitive interpretation of the general norms as they apply to concrete realities of religious life. Article 6 provides:

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or
customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas;

(e) To teach a religion or belief in places suitable for these purposes;

(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;

(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;

(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

(i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

The opening paragraph of Article 6 makes it clear that the specific examples of "freedom of thought, conscience, religion or belief" that follow are conceived as following from and being subject to the limitations of Article 1 of the 1981 Declaration, which, as explained above, merely recites verbatim the first three paragraphs of Article 18 of the ICCPR. The opening paragraph also stresses that the examples do not exhaust the notion of religious freedom.

For purposes of this background report, it is vital to note how many of the examples advanced by Article 6 presuppose as a practical matter ability to obtain juridical personality: to legal entities through which religious associations can carry out their affairs.

Consider the "right to worship or assemble" and to "establish and maintain places for these purposes" mentioned in paragraph (a). Historically, there have been countries where it has been illegal for a religious organization to acquire or own property. Clearly, an absolute bar of this type would impair the right of affected religious groups to worship and establish places of worship that are recognized by paragraph (a). Even without an absolute bar, however, it is extremely difficult and inconvenient to acquire or rent a building or space where worship can occur without legal personality. Theoretically, a group of religious believers could meet and worship in facilities owned by one of the members, using literature and other articles owned by one or more individuals in the group, and so forth. But even if the group in question is small and manageable, the potential problems are
question is small and manageable, the potential problems are serious. If the member who owns the facility dies, the place of worship passes to his heirs, who may or may not be sympathetic to the worship of the other believers. If the owner is at fault in a traffic accident or some other legal matter, he or she can be sued, and may lose the worship facility as a result of the litigation. Often many of the individuals in the group will have contributed funds needed to purchase or rent the facilities. Placing the property in one person's name has certain risks, because that individual may leave the religious community, or may begin using the property in ways that others find objectionable.

Alternatively, the group might try to hold the property as an informal association. But then, it may be necessary to obtain the consent of all members of the association (and their heirs) before the religious facility can be sold, and this may be difficult or impossible, particularly if some members object to a proposed transaction. The rules that govern how decisions are made by informal associations may not correspond to the ways that are consonant with the beliefs of the religious group. There may be other practical obstacles. Landlords may be reluctant to lease facilities if they do not know the exact entity they are dealing with. Entering into contracts for maintaining facilities may be complex. Moreover, there may be times that a religious group needs to be able to sue for legal remedies, either against private parties or against the State. And so forth.

There are to this day some groups that have such deep conscientious scruples about avoiding dependence on and interaction with the state that they prefer the perils of proceeding without entity status. Surely, the wishes of such rare groups should be accommodated. But the overwhelming number of groups would prefer to avoid such problems. In contemporary legal settings, it is extremely important that for a religious organization to be able to establish and control a legal entity with juridical personality that is capable of owning property, entering into contracts, and in general, having the capacity to manage and carry out the association's temporal affairs. This concern applies as clearly to the immovable (real) property needed for teaching a religion or belief (paragraph (e)), and may well apply with respect to property needed for carrying out charitable, humanitarian, and publication aspects of religious work (paragraphs (b), (d) and (i)). Similar concerns can also apply to movable (personal) property, including books, clothing, vehicles, telephones and other means of communication, sacred artifacts, and so forth, that may be involved in paragraphs (a)-(f), and (i). It is for this reason that every legal system within the OSCE area has developed mechanisms for at least some religious groups to use in possessing, acquiring and owning property. The structures that have developed are diverse, including trusts, corporations, registered associations, public corporations (Körperschaften des öffentlichen Rechts).
öffentlichen Rechts), recognized churches, and so forth. But those that comply with Article 6 and the religious freedom norms it embodies make it possible for religious organizations to carry out the full range of religious activities in which they are privileged to engage under international instruments such as the ICCPR.

Article 6 rightly recognizes the practical importance of soliciting and receiving voluntary contributions. Just as a religious organization cannot carry out its temporal affairs without adequate legal structures, so it cannot function without adequate funding. The need to manage funds and make certain they are used in accordance with the beliefs of the religious community also makes it vital as a practical matter to have a legal entity with capacity to receive and manage financial resources, with authority to do so in a manner that is consistent with the religious beliefs of the religious organization in question (within the constitutional framework and legitimate legal structures of the relevant State).

The training, appointment, election and designation of religious leaders addressed by paragraph (g) goes to the core of a religious organization's internal affairs. Ecclesiastical structure is itself a deep, and sometimes deeply contested, matter of conscientious belief. In order to afford adequate respect to these religious beliefs, laws governing religious associations must be sufficiently flexible to respect the differing ecclesiologies of different religious communities, provided they do not pose a fundamental and imminent threat to the relevant legal order.

The range of entities needed is not restricted to religious entities per se, but must also be sufficiently flexible for religious organizations to carry out activities that go considerably beyond standard worship activities. There have been times in the past, for example, when religious organizations have been precluded from carrying out charitable or educational activities. Such constraints clearly impair the rights of religious organizations which have religiously-based beliefs about the importance of engaging in charitable, humanitarian or educational efforts. The law of associations of a particular state accordingly should not hamper such efforts, and on the contrary, should facilitate religiously motivated work in these areas, by making appropriate legal structures available.

The types of legal entities made available to various groups often carry with them differential access to a variety of benefits, including direct or indirect financial assistance, rights to perform rites with legal implications, such as marriage, rights to serve subgroups of their members who are in restricted settings, and the symbolic prestige that is associated with some types of recognition. Multi-tiered structures of available entities reflecting a variety of historical and cultural background considerations are common in Europe. While there is a margin of appreciation for
cultural differences in this area, the types of legal structures made available should not be manipulated in discriminatory ways that make it possible for some but not other religious groups to carry out their activities, particularly where this interferes unreasonably with normal religious ministry. For example, smaller religious groups have the same interests and rights as larger groups to train their clergy, educate their members, visit their sick in hospitals, visit their prisoners, and care for their members in the military as mainline denominations. Multi-tiered religious association laws should not preclude those on lower "tiers" from engaging in activities in these areas.

Article 6 does not exhaust the range of situations in which religious liberty questions arise, but it clearly captures many of the most significant contexts in which the legally binding treaty provisions dealing with freedom of religion or belief arise. While Article 6 does not directly articulate a right to entity status as such, the foregoing comments help make it clear why the ability to obtain such status is necessarily presupposed by the 1981 Declaration.

2.3.1 UN Human Rights Committee's General Comment interpreting Article 18

In 1993, the UN Human Rights Committee issued its General Comment No. 22 (48), which provides a detailed official interpretation of the meaning of Article 18.14 The General Comment addresses many aspects of freedom of religion or belief, only some of which can be mentioned here. It begins by noting that "[t]he right to freedom of thought, conscience and religion ... is far reaching and profound; it encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others". It notes that "the fundamental character of these freedoms is ... reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2)."

The General Comment further notes that limitations on freedom of religion, to the extent permissible at all, are only allowed with respect to manifestations of religion.

Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). No one can be compelled to reveal his thoughts or opinion on religious matters.
adherence to a religion or belief.

Similarly, "[t]he freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted". This is consistent with the notion that internal beliefs themselves may not be regulated, and also follows from the fact that these matters are addressed separately in Article 18(2).

The General Comment pays particular attention to the permissible restrictions on manifestations of religion.

In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination ... Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. ... Paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. (Emphasis added.)

Laws governing the ways that religious communities acquire legal personality and organize their temporal affairs constitute limitations on the organizational manifestations of religion or belief. Like any other limitation on freedom of religion, they must be justifiable under the exacting standards set forth in General Comment No. 22. It is not enough to suggest that laws governing religious associations are important for public order, protection of health and other such legitimating purposes. In addition, it must be clear that the restrictions are proportionate to the ends pursued and that they are not applied with discriminatory purpose or in a discriminatory manner.

2.4 The European Convention on the Protection of Human Rights and Fundamental Freedoms

2.4.1 The substantive right to religious freedom

Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereafter European Convention on Human Rights or ECHR), which contains the
Convention on Human Rights (ECHR), which contains the
Convention's key substantive provision on freedom of religion or
belief, closely parallels the language of the Universal Declaration
and was drafted soon after the Universal Declaration:

1. Everyone has the right to freedom of thought, conscience
and religion; this right includes freedom to change his
religion or belief and freedom, either alone or in community
with others and in public or private, to manifest his religion
or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be
subject only to such limitations as are prescribed by law and
are necessary in a democratic society in the interests of
public safety, for the protection of public order, health or
morals, or for the protection of the rights and freedoms of
others.

The first paragraph of Article 9 tracks Article 18 of the Universal
Declaration word for word. The second paragraph is virtually
identical to the limitations clause of Article 18 of the ICCPR,
except that the necessity requirement is elaborated by the phrase
"in a democratic society". In practice, the "necessary in a
democratic society" constraint has imposed the sharpest
limitations on permissible justifications for overriding religious
freedom rights. As in other international instruments, the
importance of protecting communal dimensions of religious life is
stressed.

2.4.2 Authoritative interpretation of Article 9

A growing number of cases from the European Court of Human
rights have construed Article 9. These cases have dealt with issues
such as the right to engage in religious persuasion,\textsuperscript{15} the right to
issuance of a house of prayer permit,\textsuperscript{16} limitations on parental
rights to veto involvement of their children in patriotic
activities,\textsuperscript{17} the power of the a government to force the retirement
of a Muslim fundamentalist from its military,\textsuperscript{18} and the
impermissibility of requiring a religious oath.\textsuperscript{19} Moreover, if one
considers the jurisprudence of the Commission, the case law
interpreting Article 9 is much more extensive.\textsuperscript{20}

As with Article 18 of the ICCPR, the starting point for analysis of
Article 9 is to recognize that the limitations paragraph applies only
to \textit{manifestations} of religion. The "right to freedom of thought,
conscience and religion" guaranteed by paragraph 1 is absolute, to
the extent that it has not entered the realm of manifestation.\textsuperscript{21} This
distinction has numerous practical implications. As van Dijk and
van Hoof have commented,
the freedom of thought . . . implies that one cannot be subjected to a treatment intended to change the process of thinking, that any form of compulsion to express thoughts, to change an opinion, or to divulge a religious conviction is prohibited, and that no sanction may be imposed either on the holding of any view whatever or on the change of a religion or conviction.\textsuperscript{22}

Note that beliefs regarding structure are often themselves matters of conscientious belief. Whether a church should be governed by bishops, by a priesthood of all believers, by local congregations, or in some other manner is often a question of religious belief. As implemented in the life of a religious community, such ecclesiastical structures obviously manifest beliefs. But at the point where a religious community is submitting documents as part of an application for legal entity status, the situation is more ambiguous. In some participating States, religious affairs officials have been known to recommend changes in such structures, to dispute the qualifications for particular offices, and to withhold approval of entity documents until changes have been made. In some cases, this operates as state compulsion to change a view or opinion about a matter of belief. Whether because such beliefs are absolutely protected, or because it is not "necessary in a democratic society" to intervene in this area, it is clear that encroachments of this nature are inconsistent with fundamental religious freedom norms. Better practice is suggested by the German Constitutional Court, which required that civil law conditions for entity status be adjusted to meet the religious requirements of a particular religious community.\textsuperscript{23}

This leads to the second basic feature of Article 9: permissible limitations on religious freedom. The second paragraph of Article 9 establishes three tests that a limitation on a manifestation of religion must pass in order to justify overriding the right to freedom of religion or belief. First, the limitation must be "prescribed by law". The European Court of Human rights has held that this phrase "does not merely refer back to domestic law but also relates to the quality of law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention".\textsuperscript{24} Accordingly, this test can be referred to as the "rule of law constraint". Arbitrary bureaucratic fiat is not sufficient to pass this test. Similarly, rules that are impermissibly vague may fail to meet this test. Too often, standards for eligibility for acquiring entity status or for involuntary dissolution are unduly vague and may leave room for arbitrary official discretion.

The second constraint is the limited set of permissible justifications: limitations must be "in the interests of public safety, for the protection of public health, for the protection of national security, for the prevention of disorder or crime, for the protection of the reputation or rights of others, for the protection of religious peace and unity, and for the protection of morality in the sense of the general advancement of the public good".\textsuperscript{25}
for the protection of public order, health or morals, or for the protection of the rights and freedoms of others". While this list narrows somewhat the range of state interests that can justify overriding religious freedom (national security interests, for example, are not alone sufficient), this set of objectives is in fact extremely broad. There are relatively few limitations that a State might want to impose on a religious group that cannot be fit into one or another of these categories.

Not surprisingly, then, in all of the cases in which the European Court of Human Rights has found that a limitation violates Article 9, it has been the third constraint-the "necessary in a democratic society" requirement - that has been the critical constraint. In the Court's view, democratic society necessarily presupposes religious pluralism. In articulating the importance of freedom of religion or belief, the European Court has noted that it is "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it". Similarly, the Court has acknowledged the significance of the "pluralism, tolerance and broadmindedness without which there is no democratic society". The Court has, of course, recognized the importance of a margin of appreciation of cultural difference in this area. This is vital to the gradual process of European integration while maintaining respect for difference in relation to religious and cultural matters. Nonetheless, the Court has made it clear that in delimiting the margin of appreciation that applies to religious freedom issues, it "must have regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society". With this background in mind, the Court has construed the "necessary in a democratic society" requirement to mean that the limitation in question must be "justified in the circumstances of the case by a pressing social need" and that the contested measure must be "proportionate to the legitimate aim pursued". Moreover, in assessing whether a restriction is proportionate to the legitimate aim pursued, "very strict scrutiny" must be applied.

The Manoussakis case has particular relevance to typical statutes that address legal entity issues. That case involved a challenge by Jehovah's Witnesses to criminal convictions for use of facilities for worship without obtaining a house of prayer permit. In fact, efforts had been made for years to obtain such a permit, but the relevant government officials year after year continued to maintain that they were not "in a position to grant them the authorization requested". The Court found it unnecessary to determine whether the limitations in question were "prescribed by law" or legitimately furthered state objectives such as public order, since...
legitimately furthered state objectives such as public order, since the state conduct in failing to grant the house of prayer permit could not pass the "necessary in a democratic society" test. In the Court's words,

[m]ore particularly, their conviction had been persecutory, unjustified and not necessary in a democratic society as it had been "manufactured" by the State. The State had compelled the applicants to commit an offence and to bear the consequences solely because of their religious beliefs. The apparently innocent requirement of an authorization to operate a place of worship had been transformed from a mere formality into a lethal weapon against the right to freedom of religion. The term "dilatory" used by the Commission to describe the conduct of the Minister of Education and Religious Affairs in relation to their application for an authorization was euphemistic. ... [The Court noted] a climate of interference and oppression by the State and the dominant church as a result of which Article 9 of the Convention had become a dead letter.31 (Emphasis added.)

In holding that the convictions violated Article 9, the Court noted several features of the house of prayer permit scheme that were objectionable. These are noteworthy in that they have more general implications for other regulatory schemes, such as religious association laws, that have the potential to interfere with religious life. Already evident from the above passage is that the State may not manufacture violations by manipulating seemingly innocent formalities to obstruct religious practices. The Court further objected to the fact that a certain national law allowed "far-reaching interference by the political, administrative and ecclesiastical authorities with the exercise of religious freedom", and vested officials with "very wide discretion".32 Also objectionable was the fact that the officials could postpone indefinitely decision on the house of prayer permit.33 Some of the criteria for granting the permit were substantively objectionable. For example, state officials were allowed "to assess whether there is a `real need' for the religious community in question to set up a church".34 In criticizing the discretion left to officials, the Court held that "[t]he right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate".35 The Court accordingly concluded that the house of prayer authorization requirement could be squared with Article 9 "only in so far as it is intended to allow the Minister to verify whether the formal conditions laid down . . . are satisfied".36 The analogue with respect to religious entity laws...
The analogue with respect to religious entity laws would be that formal review of statutes, charters, articles of incorporation, and so forth may be permissible, but only if there is no substantive assessment of the beliefs and practices involved. The Court also noted that conditioning permit approval on favorable review by clergy of another Church (technically required by the law, but not enforced) would clearly be impermissible.\textsuperscript{37}

2.4.3 Freedom of association

Article 11 of the ECHR, dealing with freedom of association, is also germane:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.

2.4.4 Case law construing Article 11

The European Court's 1998 decisions in United Communist Party of Turkey\textsuperscript{38} v. Turkey and Sidiropoulos & Others v. Greece\textsuperscript{39} are landmarks in freedom of association that have significant implications for the law of religious associations. In the Sidiropoulos case the Court stated categorically that "the right to form an association is an inherent part" of the right to freedom of association and that citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which the right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the
As with limitations on manifestations of religion, the Court emphasized that in assessing the right to association, exceptions in Article 11(2) are to be construed strictly; only convincing and compelling reasons can justify restrictions on freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts.

In the Communist Party case, the Court held that freedom of association would be largely theoretical and illusory if it were limited to the founding of an association, since the national authorities could immediately disband the association without having to comply with the Convention. It follows that the protection afforded by Article 11 lasts for an association's entire life and that dissolution of an association by a country's authorities must accordingly satisfy the requirements of paragraph 2 of that provision.

Taken together, the two recent rulings support a strong right to association that covers both the right to acquire and to maintain legal entity status. If citizens have a right to form a legal entity for the politically controversial type of cultural or political organizations involved in the Sidiropoulos and Communist Party cases under Article 11, they should a fortiori have the right to a legal entity for a religious association that can claim protection under both Articles 9 and 11. Both the laws of religious associations and the application of those laws in particular countries should be subject to the strict scrutiny required under both articles.

### 2.4.5 Other relevant standards under the ECHR

Several other provisions of the ECHR can no doubt be brought into play in analyzing religious association laws of participating States. Laws which do not allow appeal to independent judicial institutions from denial or termination of entity status would appear to violate the right of access to court established under Article 6(1) and, to the extent that such actions violate Articles 9
Article 6(1) and, to the extent that such actions violate Articles 9 or 11, the right to an effective remedy under Article 13.

Depending on their structure, religious association laws may violate non-discrimination provisions of the ECHR (Articles 1, 14). Given that many European countries have Church-State systems with complex Church finance schemes that tend to benefit dominant religions more than smaller or newer groups, and that such schemes antedated the Convention, it seems unlikely that the diverse financing schemes that have evolved will be struck down by the Court, provided that there are reasonable and objective criteria for differential treatment, that particularly blatant or targeted discrimination is avoided, and that less favored groups are at least accorded full freedom to carry out their perceived religious objectives and activities.

One recent case under Article 6(1) has particular relevance. In
Canea Catholic Church v. Greece, The Court held that deprivation of the right to sue would result in an impermissible deprivation of the right of access to court under Article 6(1). The Church maintained that a church, of whatever denomination, should enjoy protection appropriate to its nature and to the purpose for which it was intended. By virtue of the act of its foundation according to the rules of the religion to which it was dedicated, a church like the applicant church had the continuity which the law normally ascribed to legal persons; it therefore did not need to produce a document proving that it had acquired legal personality in accordance with the formalities laid down by law ...

Greece in contrast maintained that while religious groups were free to determine their own internal management, they had to comply with national legislation in relations with the State. Noting that the legal personality of the church in question had not been called into question for an extended period, the Court concluded that the gravamen of the claim was that access to a court was being denied. The church was entitled to rely on settled case law and administrative practice that had never previously questioned its legal personality. In effect, the Court held that as a functional matter, a church had at least sufficient legal personality to sue, simply because of its right of access to a court; denying its
to sue, simply because of its right or access to a court; denying its capacity to sue would violate its right to a court under Article 6(1).

In addition, the Greek court's denial of legal personality violated Article 14 taken together with Article 6(1). Under Greek law, both the Greek Orthodox Church and Greece's Jewish community apparently had functionally automatic access to entity status, and did not have to formally apply for such status as the Catholic Church was being required to do. The Court took no position as to whether the Church in question would be entitled to personality in public law or in private law, which might entail some difference in status. It simply noted the unfairness that the applicant Church "has been prevented from taking legal proceedings to protect [its property], whereas the Orthodox Church or the Jewish community can do so ... without any formality or required procedure".

The *Canea* case involves fairly unique facts. The Church in question had a history dating back centuries, and had in effect been treated for years as though it had legal personality. It is not clear to what extent the same analysis would hold for a newer religion that did not have the same history of transactions and reliance on having entity status for many transactions. Still, the case suggests that there may be aspects of legal personality to which a church is entitled even without complying with any formalities. Taken together with the freedom of association cases, it helps establish a fairly strong right to entity status under the ECHR.

### 3. OSCE COMMITMENTS THAT HAVE A BEARING ON THE RIGHT OF BELIEF COMMUNITIES TO ACQUIRE AND MAINTAIN ENTITY STATUS

Because of the significance of entity status to the practical functioning of religious and other belief communities, and because of the variety of ways that States may impinge on the rights of such groups in affording them legal entity status (in part because of their diversity), a variety of OSCE commitments have a bearing on the right to entity status.

Most fundamentally, of course, the right to entity status is anchored in the general commitment to freedom of thought, conscience and religion. Article 9(1) of the European Convention on Human Rights (ECHR) provides that: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to manifest his religion or belief, whether by worship, teaching or practice."
conscience, religion or belief articulated in Principle VII of the Helsinki Final Act:

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.

The participating States will 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.

They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.

Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

This fundamental commitment has been repeatedly reaffirmed, and has obvious similarities to the other international instruments.

Beginning with the Madrid meeting in 1983, the Participating States indicated that they would "favourably consider applications by religious communities of believers practicing or prepared to practice their faith within the constitutional framework of their States, to be granted the status provided for in their respective countries for religious faiths, institutions and organizations". This language was strengthened in the Vienna Concluding Document (1989) to indicate that Participating States would not only "favorably consider applications" but that they "will ... 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".

The wording of this commitment recognizes that the precise form of legal personality varies from legal system to legal system, but providing access to some form of legal entity that can carry out the full range of religious activities is vital to OSCE compliance. Not every form of legal personality will meet the test. Provisions such as the 1997 Russian Law on Freedom of Conscience and on Religious Associations which confer entity status on some organizations (those that have been in the country less than 15
years), but deprive them of the capacity to carry out certain activities vital to building and expanding the organization, do not satisfy this test. Such provisions would also seem to be contrary to the ECHR, because this kind of limited-power status does not confer rights to carry out vital religious functions. Failure to grant such status constitutes a limitation on manifestation of religion contrary to Article 9 of the ECHR. It can hardly be said that denial of entity status, simply due to an organization's failure to "exist" under a preceding, officially atheist, communist government, "is necessary in a democratic society".

Principle 16.4 of the Vienna Concluding Document also has important implications for the law of religious associations. It provides that participating States will

- establish and maintain freely accessible places of worship or assembly,
- organize themselves according to their own hierarchical and institutional structure,
- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,
- solicit and receive voluntary financial and other contributions.

Respecting these rights would appear to require that States establish laws governing religious associations that are sufficiently flexible that they can accommodate the range of differing types of religious organizations that exist in the country in question.

Principle 17 of the Vienna Concluding Document states that "participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief [as detailed in Principles 16.1 through 16.11] may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments." This language obviously picks up the "necessary" or "necessary in a democratic society" language of the ICCPR and the ECHR, with the strict scrutiny of limitations this entails.
4. DEFINITION OF RELIGION

Before turning to analysis of typical issues that arise in connection with laws governing religious associations, it is important to address preliminary definitional issues. The most obvious is the definition of "religion" for purposes of determining eligibility to assert freedom of religion claims. Closely related questions involve the definition of a variety of other terms frequently encountered in discourse on religious freedom issues such as "church", "religious community", "sect", and so forth. The difficulty is that efforts at definition almost inevitably threaten to discriminate among religious groups at the edge of the definition. Certainly, use of terms such as "sect" to disparage or stereotype certain religious groups seems inappropriate in the context of efforts to eliminate discrimination and intolerance based on religion or belief. While the philosophical issues involved in reaching a satisfactory definition are extremely difficult in theory, as a practical matter, the approach suggested by the General Comment No. 22 of the UN Human Rights Committee promulgated in 1993 is sound and should be followed. Specifically, paragraph 2 of that document provides:

> Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.

In essence, this approach recognizes that the term religion should be broadly construed, and that it extends to non-traditional and unpopular belief systems. Also, as recognized in numerous international instruments, protection should extend to freedom of religion or belief, implying that non-believers should not be discriminated against because of their beliefs. In general, issues of definition need not be further addressed here, except to note that participating States should deal with them in a broad-minded and tolerant manner, as suggested by the General Comment.
5. ANALYSIS OF REPRESENTATIVE PROBLEMS IN RELIGIOUS ASSOCIATION LAWS

It is not possible in this background report to give an exhaustive account of the full range of legal provisions that affect the ways that religious associations structure their affairs in OSCE countries. Indeed, it is not even possible to provide a comprehensive analysis of the laws that govern access to legal entity status - referred to in what follows as "religious association laws". Rather, the aim of this section is to describe representative issues that arise in connection with laws governing access to base level entities, and to analyze the implications of international human rights norms for the associated issues.

A word is in order about the omission of a major set of issues characteristic of many European Church-State schemes. In many of the legal systems of OSCE participating States, there are two or more levels of legal status available to religious organizations for carrying out their affairs. The first level includes what can be called "base level" entities. These include entities that religious associations can use to acquire rudimentary forms of legal personality that are sufficient to carry out their affairs, but typically lack significant additional benefits (other than the advantages of the entity form itself). Beyond the base level are a diverse range of often very country-specific "upper tier" entities which are eligible for direct and indirect financial benefits from the State, and various other privileges. For example, in countries such as Italy and Spain, which have a system of agreements with major Churches or with federations of religious associations, significant benefits flow from being eligible to participate in a state agreement, and not all religious organizations are eligible to do so. In Germany, a number of benefits, as well as heightened prestige, flow from achieving status as a public corporation (Körperschaft des öffentlichen Rechts). In Austria the "recognized" Churches have more privileges and greater public status than "publicly registered belief communities" or than religious communities that have not been recognized. To date, such differential treatment has not been held to violate canons of equal treatment, presumably because of views within such systems that there are reasonable and objective considerations, growing out of history, tradition, accrued obligations, identity forming and government limiting roles, social peacekeeping and the practicalities of dealing with major churches that justify differential treatment. So long as base level entities have the full measure of freedom to carry out their affairs - a vital caveat - it seems unlikely that the differential treatment accorded "upper tier" entities will be held to violate core international religious freedom
entities will be held to violate core international religious freedom standards. It is of course important that such "upper tier" schemes be implemented in ways that are sensitive to the rights and equality concerns of smaller religious groups. But given the prevalence of such systems, and the importance of the consensus in OSCE affairs, it is reasonable to expect that the OSCE commitments requiring that "communities of believers [be given] ... recognition of the status provided for them in their respective countries" will be deemed to be satisfied by granting access to "base level" entities. With this in mind, it makes sense for this background report to focus on representative problems associated with the acquisition of base-level status.

At many points, legal provisions from particular countries will be mentioned. The aim is not to single out particular countries for criticism, but simply to take advantage of concrete examples to determine how they should be assessed. It is important to remember that no systems are perfect, and all have room for improvement. In a number of instances, examples are drawn from proposed draft laws - in some cases from drafts that no longer have active support. Again, the point is not to be critical, but to identify recurrent types of problems that need to be addressed in constructive ways. Indeed, draft laws may suggest innovative new solutions.

5.1 Organizational requirements

5.1.1 Requirement to register

Most of the remainder of this background report will focus on formal registration, incorporation or recognition systems. It is important to note at the outset, however, that protection of religious freedom requires State sensitivity to the right of individuals to gather, worship and practice their faith in informal ways. The freedom to manifest one's religion "in community with others" is not a gift granted by the State. It is a human right and does not depend for its existence on compliance with formal prerequisites. As noted earlier, for reasons both of theology and historical experience, some religious groups believe on conscientious grounds that they should not make themselves beholden to the State by submitting to state chartering practices. Moreover, particularly when a religious movement is new or new to an area, it may wish to operate initially without going to the time and expense of going through a formal registration process.

Most OSCE participating States do not require a religious organization to register. Indeed, several have mechanisms through which a religious group can achieve entity status without going through any formal process with the State. In the common law world, for example, a group can create a trust that can hold property and carry out other functions without ever securing a
State approval. Before non-profit corporations became commonplace, trusts were frequently used to hold church property. In a number of civil law countries, informal creation of a legal entity is possible. In France, a group can obtain entity status by filing a declaration with the applicable department and publishing it in the Journal Officiel. Not even publication is required for the creation of an entity in Sweden and Switzerland. The Netherlands also recognizes informal associations that can be created by following certain steps. These are simple and can be completed without a notary. Russian law poses some barriers to acquiring entity status, but it is very clear that a group can operate without entity status.

A few OSCE participating States, perhaps as a relict of their socialist past, do require registration as a condition for operating as a religion. These constraints appear to be a holdover from an earlier period, and are not consistent with the best contemporary human rights practices. Such requirements may impose limitations on the activity of religious groups, and as explained before, in States that are parties to the above-mentioned instruments these requirements can be justified only if they meet the tests set forth in the relevant limitation clauses (e.g., Article 18(3) of the ICCPR, and Articles 9(2) and 11(2) of the ECHR). Even if a legitimating ground can be found (such as protecting public order), it is difficult to imagine that there is a pressing social need for registration that is compelling enough to make proscribing protected religious conduct a "proportionate" response. Moreover, it is difficult to say that registration of small informal groups is "necessary in a democratic society" when the unanimous experience in most democracies is to the contrary. In most cases, such registration requirements typical operate to penalize law-abiding groups and to drive others underground. Any social gains are at best marginal, but the costs to religious freedom are substantial.

5.1.2 Number of founders

Turning to statutory schemes that govern formal grant of entity status, the first issue is the number of individuals required to create a legal entity. In most countries, the number is very small. In a typical American state, no more than three founders would be necessary. European countries often require a somewhat larger number of founders for religious associations than for other non-profit organizations. Whereas two to five founders is often sufficient for secular NGOs, religious associations usually require ten or more. Russia and Kazakhstan require ten; Poland requires 15; Greece 20, and Hungary 100. Latvia and Lithuania are interesting in that they require ten founders for each religious community (15 for Lithuania), but this does not suffice for entity status. In addition, there must be ten communities for a legal entity in Latvia and at least two communities in Lithuania.
More troublesome are countries that require substantially larger numbers. The Czech Republic requires 300 members, as does the 1997 Austrian law. For most smaller religious organizations, this is a very substantial number, particularly since it is presumably only adult members who can be counted. It is particularly problematic for religious traditions that take a congregational approach to church polity, and prefer to maintain smaller and more intimate congregations. In such a tradition, it may be impossible as a matter of religious practice to have a religious association that crosses the 300-member threshold. For state authorities to suggest that various congregations simply join together and aggregate the membership of several congregations ignores the religious beliefs of the particular tradition.

Particularly troublesome are proposals such as one advanced in Hungary in 1993 and being reconsidered currently that would make a minimum membership of 10,000 necessary for registration. Such a requirement would result in de-registration of approximately two-thirds of the currently registered religious associations in Hungary. Similarly, Austrian law now requires that in order to qualify as a recognized Church, a religious denominational community must have followers that number at least two per cent of the population of Austria according to the most recent census. Although these requirements may apply only to "upper tier" entities, they are sufficiently problematic to warrant special mention, as they can result in permanent discrimination against smaller groups.

5.1.3 Duration requirements

Duration requirements can be equally problematic. Of course, reasonable time periods for officials to process applications are understandable. Normally, such periods do not exceed one or two months at the most. Some make provision for some additional review period if a foreign organization is involved and more time is needed to verify that it is a bona fide group. In light of the Manoussakis decision, it is of course vital to remove any discretion which would allow repeated or indefinite delays.

The most controversial duration requirement in the recent past is that adopted in the 1997 Russian Law on Freedom of Conscience and on Religious Associations. Unless affiliated with a centralized religious organization, a religious group under this law cannot acquire full religious entity status unless it has been in the country for fifteen years. What is strikingly unusual about this requirement is that to the best of our knowledge, at the time of its adoption, there were no other OSCE participating States that imposed a waiting requirement (other than document processing periods) with respect to base level entities. Lithuania had previously required 25 years. Similar requirements exist in

adopted a 25-year waiting period for acquiring status as a traditional Church, but the 25-year period began to run from the date that base-level entity status was acquired. Russia has taken some steps to mitigate the discriminatory impact on smaller groups by minimizing the evidentiary burden required to demonstrate presence in the country for the required period, and by creating a limited entity status for religious groups waiting out their 15-year period. But problems remain for smaller groups or for congregations that have split off from the Moscow Patriarchate, and while limited entity status is better than nothing, it imposes significant constraints on a religious group's ability to expand.

Duration requirements of this type are clearly inconsistent with the OSCE commitment to grant religious groups at least base-level entity status. The wording of this commitment in Principle 16.3 of the Vienna Concluding Document recognizes that the precise form of legal personality varies from legal system to legal system, but access to some form of legal entity is vital to OSCE compliance. This is clearly violated by the refusal to register religious groups that do not satisfy the 15-year rule. The drafters of the Russian legislation apparently attempted to remedy this defect by creating limited entity status, but this also fails to satisfy the OSCE commitment, because the limited status does not confer rights to carry out important religious functions. Failure to grant such status constitutes a limitation on manifestation of religion that violates Article 9 of the ECHR. It can hardly be said that denial of entity status, simply due to an organization's failure to "exist" under a preceding, anti-religious, communist government, "is necessary in a democratic society" or a proportionate response to a legitimate state interest.

In a draft currently being considered in Portugal, a rather unique tack is taken toward duration issues. The proposal suggests a 30-year waiting period requirement, but grants an exception to any group that can establish it has been present in another country for 60 years. On balance, these periods sound excessive, but the rationale is interesting. The idea is that most religious traditions stabilize after the first generation. If a religious association lasts 30 years within the country, it has presumably passed that hurdle. Meeting the 60-year test elsewhere is alternate evidence of long-term stability. Significantly, during the interim, religious organizations can organize as normal associations capable of carrying out the full range of religious activities, so the proposal does not totally rule out access to a base-level entity.

5.1.4 Foreign founders

Many countries restrict the eligible founders of an association to citizens or to permanent residents. Thus, the Czech Republic indicates that foreigners can be counted among the minimum 300
founding members, so long as they are permanent residents. Russia also recognizes the right of permanent residents to be counted among the founders. All too many laws list only "citizens" as eligible founders. This is a problematic restriction, since religious freedom rights apply to everyone legitimately in the country. To refuse to count permanent residents would clearly discriminate against them.

It is not uncommon for not-for-profit laws in general to place restrictions on foreign founders. What is particularly troubling in the religious context is that the restrictions are typically transparent efforts to restrict legitimate missionary efforts (that is, efforts that fall well within the legitimate "evangelizing" line articulated in the *Kokkinakis* case). A Kazakhstan approach grapples with the issue directly. Foreign citizens who come to Kazakhstan as missionaries are subject to accreditation by local authorities, and unaccredited missionaries are forbidden. Manipulation of foreign founder rules for the express or transparent purpose of hobbling ordinary efforts at religious persuasion is problematic.

### 5.1.5 Legal entities as founders

Insufficient attention is paid to the issue of whether legal entities themselves can serve as founders of religious associations, or how religious entities can affiliate with each other. Yet as a practical matter, this can often be extremely important. A hierarchical church may well want to be able to hold the property of one of its lower ecclesiastical units as a subsidiary entity. In a denomination with connectional structure, legal mechanisms that allow formation of an entity linking congregations may be important. Among groups with ecumenical ties, there may be reason to form an entity controlled jointly by organizations with different religious backgrounds. This is difficult or impossible under statutes such as Russia's, which makes sharing a common belief system a necessary condition for entity status.

In the United States, religious corporations are genuinely free to own or control other legal entities, whether religious or otherwise, although they often do not have as much flexibility as secular business corporations. There may be tax consequences if the subsidiary organization is not tax exempt, but there is nothing in religious association law itself that would bar legal entities from owning or controlling other religious corporations. The relationship between centralized and local organizations in Russia is theoretically just as flexible, though fixed images of the dominant church as the background for interpretation tends to somewhat wooden assumptions. It should be said, however, that creative interpretation of the centralized organization exception to the 15-year rule under the Russian law has been a major factor in minimizing the impact of the 15-year limitation (Since centralized
minimizing the impact of the 15-year limitation. (Since centralized organizations are not subject to the 15-year rule, any local organizations with ties to a centralized organization can circumvent the 15-year rule by being confirmed as part of the centralized organization.)

5.1.6 Accommodating structural differences among religions

As the preceding paragraph suggests, there is too great of a tendency in many countries for the laws governing associations to be insufficiently flexible for the needs of religious organizations. Laws designed with particular models of ecclesiastical polity in mind may force other religious organizations into Procrustean beds. In part this is a problem that what works for one faith community (say, a denomination with a hierarchical structure) does not work for another denomination (one with a congregational, or connectional, or representational structure). But it is also a problem of the complexity of religious organizations. Laws written with a church in mind do not necessarily apply neatly when the organization is a religious order. Wooden interpretations or insensitive rules can complicate the problem.

5.1.7 Permissibility of acquiring entity status through non-religious association law

One of the things that must be born in mind in analyzing religious association laws is that legal systems take rather different views of the question whether religious associations may elect to use secular non-profit entities to carry out their affairs. This is the normal state of affairs in many American states. In Europe there appears to be a much stronger pattern of enacting separate laws addressing religious association law. Most appear to allow religious groups to organize under the auspices of secular association law. Thus, even when the rules governing access to a base-level entity seem fairly restrictive, this may not constitute a human rights violation if a secular non-profit entity is available, and this vehicle is capable of carrying out the full range of religious activities. Some states, however, prohibit religious organizations from using secular non-profit entities. Another variant is represented by some versions of a draft law that has been under consideration in Romania for some time. Only religious organizations that do qualify as recognized religions are eligible to engage in practices such as building a church. Lack of access to recognized religion status in this context means that the group's religious freedom is significantly impaired.

5.2. Document requirements

5.2.1 Formal vs. substantive review

Document requirements are generally fairly straightforward and
self-explanatory. Problems arise when those charged with reviewing documents shift from providing a formal review of the submission to engaging in more substantive review that explores whether the religion's teachings are valid or not, whether the religion is a good one, or that suggests changes in aspects of the documents submitted that are in fact matters of religious belief that should not be open to review. This does not mean that religious affairs authorities are precluded from ruling out the possibility that they are dealing with a group which is simply seeking to invoke the cloak of religion to hide smuggling or other illegal activities. But it does mean that state officials have no business assessing the truth of a religion.

In most OSCE participating States, review tends to be purely formal, and is accordingly often completed in a matter of minutes or at most days. If there is subsequently reason to think a particular entity does not deserve its status, or is abusing it, taxing authorities or others administering benefits may conduct a more thorough review later on. But at the registration stage, review is fairly quick. In many Central and East European countries, as well as in the CIS, there is a tendency to be much slower in granting approvals. In many countries there are advisory committees composed of experts on religion. In some countries, the persons sitting on these expert review committees are the same individuals who addressed such issues in earlier days, when the attitude toward religion was often negative. In many cases, such individuals have adjusted to the transition that has occurred, but in some cases older views are difficult to dispel. Sometimes as well the expert committees tend to be staffed with people from dominant religious groups who may themselves be skeptical or hostile toward groups seeking approvals. A different variant is that in Greece, where an Orthodox Bishop may have a say in granting approvals needed by other churches. Care needs to be taken that such committees do not get into the business of second guessing the truth or goodness of various religious groups on which they are providing expert advice. There is an inherent tendency for such expert committees to conduct an excessively substantive review. It is also vital to make certain that religious officials from a prevailing denomination are not given undue influence in deciding the faith of other, sometimes competing groups.

One particular area of concern has to do with substantive review of matters that properly belong to a religious organization's "own" affairs. State officials violate a religious organization's religious freedom rights when they interfere in such matters. As noted in Principle 16(4) of the Vienna Concluding Document, this includes the right to establish places of worship; to organize according to the organization's own hierarchical (or non-hierarchical) structure; to select, appoint and replace their personnel in accordance with their respective requirements, and to solicit funds. Territorial structure and organization is also generally regarded as falling
within the range of a religious community's "own" affairs. A growing problem faced by a number of religious groups in Russia and in Ukraine has to do with placement of foreign representatives. Acting pursuant to OSCE commitments, religious groups invite someone from the same faith community into the country. Subsequently the religious community, through the appropriate religious officials, determines that the individual should be transferred to another location. Some groups have had experience with state officials pressuring them to revise proposed statutes to eliminate authorization to make such transfers, or more commonly, in the course of monitoring the religious organization, officials claim that such transfers are not authorized. In Ukraine, there is even a statutory provision that appears to give local officials the right to approve (or veto) invitations to foreign co-religionists. Among other things, such actions interfere with free travel. But most fundamentally, they constitute an impermissible state encroachment on what should be treated as a religious organizations "own" affairs.

5.3 Registration Authority

The actual registration authority varies considerably from country to country. In the United States, the process is handled at the state level, typically by a staff member in the office of the Lieutenant Governor or Secretary of State. In Albania and Uzbekistan, the Council of Ministers handles registration. In Austria, registration is a matter for the Federal Minister of Education and Cultural Affairs. In Bulgaria, local units are registered to the relevant level in a hierarchy of national and local offices. In the Czech Republic, registration is handled by the Office of Religious Affairs, which is housed within the Ministry of Culture. In Hungary, registration takes place in court. In Latvia, registration is handled by the Minister of Justice. The same is true in Russia, although there, because of the federal system, local offices of the Ministry of Justice may handle registrations where the parties are local. Typically, the registration official in the United States is a low level functionary with no discretion. The individuals handling these matters in European countries generally have much greater discretion and authority.

Typically, a religious association acquires legal entity status either at the time is registered by the appropriate registration authority, or at the time the registration is published.

5.4 Registration process

Once an application is filed, registration authorities typically have a relatively short time - typically one or two months - to respond. As indicated earlier, where foreign parties are involved, an extension in time to conduct the review process is often allowed.
To eliminate the impermissible indefinite withholding of approval, in accordance with Manoussakis, there is an increased tendency to make sure that a decision must be made within a certain fixed time period.

5.5 Grounds for refusal to register and grounds for involuntary dissolution

Generally, the grounds for refusal to register and the grounds for dissolution are very similar. The major problem in this area is that the standards tend to be excessively vague and in effect confer vast discretion on whoever assesses whether the statutory grounds are present. In addition, some of the statutory grounds cater to stereotypical thinking about smaller groups or appear to be drafted without being sensitive to certain religious groups. Perhaps the easiest way to portray the range of such grounds is simply to provide a representative list. In addition to voluntary dissolution, the following grounds are representative:

- the founders failed to meet the conditions defined in registration process (virtually all countries)
- the faith or worship and ritual practices are counter to "public order" (virtually all countries)
- court decision finds that the activities of a religious association run counter to its own charter or the effective legislation of the country (Georgia)
- religious institution status has already been granted to another religion on the "same faith" basis (Bulgaria)
- a religious institution has already registered under the same name (Bulgaria)
- organization failed to terminate disagreeable activities upon warning by public officials (Hungary)
- the organization has abandoned its activities and does not provide for its assets (Hungary)
- the unit being formed "is not considered a religious unit" (Kazakhstan)
- for violation of social safety (Kazakhstan)
- for igniting of social, racial, national, or religious dissension (Kazakhstan, Russia)
- for break up of families (Kazakhstan, Russia)
• for infringement of personality, rights and freedom of citizens (Kazakhstan, Russia)

• for damaging norms of morality (most countries)

• for instigation to commit suicide (many countries)

• coercing members to give up their property for the benefit of the religious unit (Russia)

5.6 Right to appeal

At this point, most religious association statutes provide a right to appeal to a court, or if registration is in a court, to an appellate court. Failure to do so could easily run afoul of the right to access to court assured among other things by Article 6(1) of the ECHR.

5.7 Non-retroactivity

Because of the relative frequency with which many countries revise their religious association laws, a word should be said about changes in laws that apply retroactively to deprive religious groups of benefits they have previously been granted. Once religious groups are granted legal personality, they almost invariably purchase property and use their entity status in a variety of ways that establish vested rights and settled expectations. Most legal systems recognize this fact at times of transition, and protect these established rights. Failure to do so can cause severe ramifications to religious communities that violate a number of international norms designed to protect rule of law concerns. Proposals that would have the effect of de-registering Churches by applying eligibility criteria retroactively should accordingly be avoided.

6. RECOMMENDATIONS

• Governments should take effective measures to prevent and eliminate discrimination against religious groups that results from denial of access to appropriate legal entity structures;

• Governments should enter into dialogue with religious communities in order to better understand their respective needs and to foster a climate of mutual tolerance and respect;

• Provisions requiring registration should be eliminated in
• Provisions requiring registration should be eliminated in accordance with prevailing practice in most OSCE countries, and because such requirements are not "necessary in a democratic society";

• Religious associations should be allowed the option of registering under normal not-for-profit laws if they prefer, and that such associations have competence to carry out the full range of religious activity;

• The process of establishing "base level" religious entities should be quick, simple and inexpensive;

• Review of documents should focus on formal matters, and should be structured to minimize risks of substantive intermeddling in matters of ecclesiology and doctrine;

• Opportunities for bureaucratic discretion and delay should be minimized, among other things by providing for default registration, so that registration is automatic after the expiration of a stated and reasonably short deadline;

• The number of documents registration authorities are required to submit should be kept to a minimum;

• Appeal processes should guarantee adequate access to independent courts; and

• Retroactive legislation that would operate to deprive religious association of vested rights should be forbidden, and care to avoid such problems should be taken in drafting transition provisions of new religious association legislation.

Notes


2 Ibid., pp. 1518-20.


5 Evans, Malcolm, Religious Liberty and International Law in Europe 59-61
6 Helsinki Final Act, Co-operation in Humanitarian and Other Fields, 1. Human Contacts (d).


8 OSCE/ODIHR, Human Dimension Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion: Consolidated Summary, Warsaw, 16-19 April 1996. The issue of status was a significant focus of concern in all three discussion groups of the seminar.


12 Adopted and Opened for Signature by United Nations General Assembly Resolution 44/25 on 20 November 1989; Entered into Force 2 September 1990. Particularly relevant are Article 5, addressing the "rights and duties of parents", and Article 14, addressing a child's right to "freedom of thought, conscience and religion".

13 This caveat should not be understood to mean that religious organizations can be compelled to have a structure similar to that of state institutions. For example, the fact that the constitutional order is democratic does not mean that all religious organizations must be democratic as well. The structure of many religious communities is hierarchical, and religious freedom respects the right of different religious communities to structure themselves this manner.


16 Manoussakis, 29 August 1996.


18 Kalac v. Turkey, 23 June 1997.

19 Buscarini and Others v. San Marino, 18 February 1999.


21 van Dijk/van Hoof, *supra* note 20, p. 397.

22 Ibid. The authors note that in their view, compulsion to change views would constitute "inhuman or degrading treatment" in the sense of Article 3 of the Convention.


26 Manoussakis and Others v. Greece, paragraph 41.

27 Ibid, paragraph 44.


29 Manoussakis, paragraph 44.

30 Ibid, paragraph 33.

31 Ibid, paragraph 41.

32 Ibid, paragraph 45.

33 Ibid.

34 Ibid.

35 Ibid, paragraph 47.

36 Ibid.

37 Ibid, paragraphs 50-51.


40 Sidiropoulos, paragraph 40 (emphasis added).

41 Ibid.

42 Communist Party, paragraph 33.

43 16 December 1997.

44 Ibid, paragraph 35.


46 Ibid, paragraph 47.
47 Ibid.


49 Concluding Document of the Madrid Meeting, paragraph 14 (Questions Relating to Security in Europe). Paragraph 10 of the portion of the document dealing with Co-operation in Humanitarian and Other Fields: Human Contacts also noted that the Participating States "will further implement the relevant provisions of the Final Act, so that religious faiths, institutions, organizations and their representatives can, in the field of their activity, develop contacts and meetings among themselves and exchange information". The focus of this provision is obviously on international contacts, but it implicitly presupposes that religious organizations will have entity status.


51 In this regard, two drafts prepared as "model" laws may be of interest. The first, prepared by Dinah Shelton and Alexandre Kiss, is found in their article, "A Draft Model Law on Freedom of Religion, With Commentary," in: van der Vyver/Witte, John Jr., supra note 20, pp. 559-92. This draft focuses more broadly on general religious freedom issues, and deals with legal entity issues by providing that "organizations formed on the basis of religion or belief may benefit from the status and privileges afforded other non-profit organizations and are subject to the provisions of this law and the laws and regulations governing such entities". Essentially, this approach treats religious organizations as a species of not-for-profit organizations, and assumes that religious organizations should be given the same treatment as other civil associations. The Revised Model Nonprofit Corporation Act, adopted by the Subcommittee on the Model Nonprofit Corporation Law of the Business Law Section of the American Bar Association in 1987 (Michael C. Hone, Reporter, Official Text, Prentice Hall, 1988) contains model provisions coupled with a book-length commentary. Here again, religious organizations are treated as a sub-species of the general class of nonprofit entities. But in the Model Act, the important implications of freedom of religion for religious entities is recognized, and the code gives greater latitude and flexibility at various points to religious associations in structuring their affairs. That is, the right of religious organizations to religious freedom and autonomy in their own affairs exempts religious entities from some burdens and grants them greater deference from the state than other nonprofit organizations.

OSCE ODIHR Warsaw