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The Future of Religious Liberty in Russia: Report of the De Burght Conference on Pending Russian Legislation Restricting Religious Liberty

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On January 28-30, 1994, a group of international human rights experts gathered at the De Burght Conference at Berkenrode, Heemstede, the Netherlands to assess the state of religious liberty in the Russian Soviet Federative Socialist Republic (RSFSR or Russia). The Conference was convened by Dr. Yuri Rozenbaum of the Institute of State and Law in Moscow and Mr. Ernst van Eeghen of the Foundation "De Burght" for the Rights of Minorities in Heemstede.

The conference participants reviewed the remarkable development of the RSFSR Law on Freedom of Conscience and Religion, passed by the Supreme Soviet of Russia on October 25, 1990 (the 1990 Law). The group then analyzed in detail the sharp curtailment of the 1990 Law in various recent amendments, most notably the Introduction of Amendments and Supplements to the RSFSR Law on Freedom of Conscience and Religion, passed by the Supreme Soviet on August 27, 1993, but not signed by President Boris Yeltsin prior to the dissolution of the Supreme Soviet on September 21, 1993 (the August 27 Amendment). The August 27 Amendment remains a matter of serious concern, because President Yeltsin's dissolution decree provided that certain legislation (including this Amendment) would be held in abeyance and considered by the new parliament after the December elections.

It is the considered opinion of the De Burght Conference participants, as well as numerous other experts who have since reviewed a draft of this Report, that the August 27 Amendment constitutes both a significant reduction of the religious liberty rights guaranteed by the 1990 Law and a grave affront to fundamental and widely recognized principles of human rights laws that are vital to the healthy development of a democratic society. This is not the time in Russia's history to revert to oppressive patterns of the past.

The most serious infraction of the August 27 Amendment concerns various restrictions and regulations of "foreign" and "non-traditional" religious organizations. Moreover, the law weakens guarantees that all believers and religious communities will be treated equally. It guarantees fundamental human rights protection only to citizens. It expands opportunities for inappropriate state regulation of religious affairs. It appears to single out the Russian Orthodox Church for special privileges and protections that go beyond legitimate recognition of its unique role in Russian history, culture, and society.

In general, the August 27 Amendment: (1) violates the letter and the spirit of Russian obligations under applicable international treaties and other internationally recognized norms of religious liberty and human

rights; (2) conflicts with the norms of the Constitution of the Russian Federation approved on December 12, 1993; and (3) contains many ambiguous, vague, and contradictory provisions and is legally flawed in many respects.

While the August 27 Amendment does not totally dismantle the regime of religious freedom established by the 1990 Law, the changes reflect a clear effort to utilize the levers of state power to discriminate against non-citizens and to restrict access of Russian citizens to religious orientations other than those already dominant in Russian society. They clearly disadvantage those who belong to religious communities with foreign ties. In the last analysis, they constitute an entering wedge that ultimately jeopardizes the religious liberty of all inhabitants of the Russian Federation, including that of the Russian Orthodox Church and its members. The August 27 Amendment cannot be squared with fundamental international and constitutional principles of equal treatment and religious freedom. Whatever genuine problems the legislation may be attempting to address, the actual provisions are inexcusably overbroad and intrusive in religious affairs and should be opposed by everyone committed to the highest principles of human rights and religious liberty.

This Report weighs the August 27 Amendment against the Russian Constitution and applicable international law, as more particularly described below. Part I of this Report recounts the recent history of religious liberty law in Russia. Part II rehearses the religious rights provisions of applicable international instruments and of the new Russian Constitution. Part III provides a topical and article-by-article commentary on the August 27 Amendment in light of these international and constitutional instruments.

I. Background

A brief summary of the recent history of religious liberty in Russia will help to place the August 27 Amendment in context.

On October 9, 1990, the former Union of Soviet Socialist Republics (USSR) adopted a Law on Freedom of Conscience and Religious Organizations (USSR Law). At the time of its adoption (which was prior to the dissolution of the USSR), this legislation constituted major progress in the field of religious liberty within the USSR, although it was not without flaws. On October 25, 1990, the Supreme Soviet of Russia passed the Law of the Russian Soviet Federative Socialist Republic on Freedom of Religion (the 1990 Law). Although adopted at a time when Russia was still a subordinate republic within the USSR, this law has been characterized as "one of the more progressive and democratic laws of the Russian Federation." Its enactment was preceded by wide discussion of the draft legislation in the mass media and contributed in significant ways to the religious liberation of Russian society.

During the fall of 1992, the religious liberty provisions established by the USSR Law and the 1990 Law came under increasing attack. On November 10, 1992, the first proposals for amendments and additions to the law were presented to the Presidium of the Supreme Soviet of post-coup Russia (the 1992 Draft). These proposals evoked sharp criticism over the next several weeks.

On December 25, 1992, the Supreme Soviet's Committee on Freedom of Conscience, Religion, Mercy and Charity (the Committee on Freedom of

Conscience) held an open meeting with the heads and representatives of religious denominations. While only forty of the two hundred denominations registered with the Department of Justice attended, most major denominations were represented. At that time, it was proposed that a working group be established to revise the law. Mr. Sebentsov, a former union deputy who had headed a similar working group that helped develop the USSR Law, was asked to head this new working group. Father Vyacheslav S. Polosin, a Russian Orthodox Priest who chairs the Committee on Freedom of Conscience and is a primary architect of the changes that emerged in the summer of 1993, described the activities of this working group as follows: "In this group there were all in all five lawyers. Sebentsov himself could be called an expert on religion. And from the very beginning there were five representatives of confessions who were personally invited but other people attended too with varying degree[s] of regularity. The group had worked from January to May, that is about five months, weekly and in some cases two and three times a week. It worked for two, three, and four hours discussing the various amendments." Elsewhere, Father Polosin has indicated that the religious groups represented on the Committee on Religious Freedom included the Russian Orthodox Church, Muslims, Catholics, Baptists, and Seventh Day Adventists. Polosin has acknowledged, however, that, other than a Baptist representative, no Protestant representatives attended the working group meetings on a regular basis. Polosin has claimed that others were invited but did not attend because of lack of interest. In his words, they "must have found it boring to take part in this process and they just quit of their own free will." In sharp contrast, Protestants, including a leader of the Seventh Day Adventists, maintained they never received notice of the meetings, and that the draft was prepared by a handful of people without any substantial public discussion of the issues.

On February 10, 1993, Father Polosin invited the International Academy for Freedom of Religion and Belief to co-sponsor a symposium on problems related to freedom of conscience and religion with the Expert and Consultative Council of the Supreme Soviet's Committee on Freedom of Conscience (the Expert and Consultative Council). The International Academy is a non-sectarian organization of leading experts on religious liberty from various parts of the world. A major motivation for the conference was international concern with various human rights and other problems with the 1992 Draft.

The symposium was held in Moscow from March 21-23, 1993. Because of the constitutional confrontation between President Boris Yeltsin and the Supreme Soviet occurring at the time, Father Polosin himself was not able to attend the symposium sessions. Most of the members of the Expert and Consultative Council did attend, however, as did experts from Europe and the United States and representatives from various Russian denominations and from various governmental bodies dealing with religious issues.

Symposium participants criticized the 1992 Draft sharply, particularly those provisions that mandated restrictive treatment of foreign religious believers and groups. During the final afternoon of the symposium, Dr. Yuri Rozenbaum, head of the Expert and Consultative Council, indicated that the 1992 Draft could not survive such sharp criticism. He left the impression that the Russian Parliament accordingly would reject the 1992 Draft and that the restrictions of religious liberty of the type it made

possible would have no future in Russia. The concluding resolution of the symposium provided, among other things, as follows:

Inasmuch as national legislation does not always correspond to international human rights, efforts should be made to bring national legislation and practice into accord with the ideals articulated in international human rights documents.

The Conference recommends that scholars and others be encouraged to study the compliance with international religious norms in all countries, as well as problems and comparative solutions in the area of religious liberty.

The Conference further encourages all religions and their adherents to work together in a spirit of cooperation and mutual respect to foster religious liberty on the basis of mutual equality.

Unfortunately, not only the results of the foregoing symposium but, more generally, the recommendations of the Expert and Consultative Council were largely ignored in ongoing work on draft legislation respecting religious liberty. The revision was prepared hastily, and in secret, with no opportunity for informed or considered commentary by interested parties or for reasoned compromise. In an interview published in *Nezavisimaya Gazeta*, Dr. Rozenbaum reported that, even though his Expert and Consultative Council had a statutory mandate to provide recommendations on legislation affecting religion, the Council "was not invited to contribute to work on the draft law and was not given it for expert analysis." Had the advice been sought, it seems clear that Polosin's Committee would not have recommended the restrictive approach to religious liberty ultimately taken. In the same interview, Dr. Rozenbaum questioned the need to revise the 1990 Russian Law, noting that "this law has passed an international expert examination" and that the "law proved to be an act of historical importance" and that "[i]ts significance and results can hardly be exaggerated because it has drastically transformed the life in this country." With respect to the changes that ultimately emerged, Dr. Rozenbaum commented as follows: "Against the background of Russia's attempts to enter the community of civilized states it looks like a medieval anachronism, something like the government's fight against heresy."

During April, 1993, a delegation of religious leaders met with President Yeltsin complaining of the "illegal activity of foreign churches and preachers." The exact nature of the alleged illegal activity is not clear, but it is clear that various kinds of propagation of religious beliefs in Russia had struck cultural nerves. The Russians complained of being bombarded with both "evangelizing" and "proselytizing" efforts from the West. Many Protestant Christian groups in particular were inundating the Russian media with national television programs, widely-advertised revivals and crusades, widespread book distribution and pamphleteering, and many similar means of spreading their messages. Russian church leaders were troubled by the magnitude of money being spent on such activities, and the inability of the financially-strapped Russian Orthodox Church and other local institutions to compete. Russian political officials complained of the practical pressures posed by new religious groups. Small city offices faced requests for property sites from hundreds of religious groups at a time. Many communities complained of the disruption of family life and the infringement of parental rights purportedly caused by conduct of smaller, lesser known groups, such as

the Unification Church, the Hare Krishnas, and the Family. Others expressed concern about fraudulent groups masquerading as religions and about the rise of religious terrorist groups mobilizing within certain Islamic communities. In the view of many leaders, the 1990 Law on religious liberty threatened the unity of Russian society, the special place of the Russian Orthodox Church in Russian culture, and invited all manner of religious bribery, coercion, fraud, and even outright religious anarchy.

Russia was, indeed, being subjected to a bewildering array of new ideas and influences, religious and non-religious, as this formerly closed society opened its doors to the rest of the world. The pace and direction of political, economic, and social change was disturbing to many, and the new extremes of affluence and poverty helped to produce rampant materialism, crime, and despair. Some religious groups certainly contributed to this pathos. The vast majority of new religious groups, however, foreign and domestic, proceeded with the best of motives, and provided not only new religious perspectives, but also vital trained workers, and various forms of humanitarian, material, educational, and financial aid.

Following traditional patterns, religious leaders of the Russian Orthodox Church (as well as the Islamic faith) turned to the state for support and protection against this "invasion" of foreign faiths and peoples. By June, 1993, His Holiness Patriarch Aleksii II and Father Polosin, who both had seemed quite open to religious toleration in the past, were actively supporting an amendment to curtail the 1990 Law, namely, the Law of the Russian Federation on Changes and Additions to the RSFSR Law on "Freedom of Religion" (the 1993 Amended Law). The Council of Nationalities passed this 1993 Amended Law on its first reading on June 23, 1993. The Supreme Soviet passed it on its first reading on July 14, 1993. During the July 14 reading, the Patriarch distributed a letter to all the members of the Supreme Soviet urging them to support the legislation. Russian sources indicate that the Patriarch met with President Yeltsin personally the weekend after initial passage of the 1993 Amended Law to urge the President to sign it.

President Yeltsin did not sign the 1993 Amended Law, but, instead, returned the measure to the Supreme Soviet with requests for revisions. In a strong letter of August 4, 1993, addressed to the Chairman of the Supreme Soviet, Mr. Khasbulatov, Yeltsin indicated that he shared the "concern for the spiritual state of Russian society and . . . [the] importance of [the] Russian religious confession for the spiritual renewal of Russia." "However," Yeltsin continued, "the proposed Amendments to the Law, on some points, contradict the present Russian Constitution and international legal agreements, and the Law has some internal contradictions." Yeltsin noted that several articles compromised the "equal right of individuals to enjoy freedom of conscience and religion in the territory of Russia, regardless of their possession of Russian citizenship." He noted the inconsistency between guarantees of separation of church and state and freedom of conscience, on the one hand, and the requirement of state accreditation of religious organizations, and various other forms of state regulations of religious organizations, on the other. He criticized sharply a number of articles that singled out non-Russian Orthodox religious believers and groups for special restrictions and prohibitions.

In response to President Yeltsin, the Supreme Soviet drafted additional revisions of the 1990 Law. A number of interim drafts of this amended legislation were debated. The Supreme Soviet passed a final version on August 27, 1993. The August 27 Amendment was an improvement over the 1993 Amended Law, but a number of President Yeltsin's specific criticisms were not met. Moreover, the Supreme Soviet made changes to various other provisions of the 1993 Amended Law besides those noted by President Yeltsin, thereby providing the President with technical grounds to forgo signing the legislation. On September 10, 1993, President Yeltsin declared that he would not sign the August 27 Amendment, and he returned the law to the Supreme Soviet for further revisions, consistent with his August 4 instructions.

On September 21, 1993, President Yeltsin dissolved the Supreme Soviet, in his by-now famous decree. There are indications that during the final days in the White House, the Supreme Soviet had its presidential designate, Aleksandr Rutskoi, sign the August 27 Amendment, or possibly a further revised version thereof. In light of the events that followed, however, such action has turned out to be a nullity.

At first glance, the events of September 21 would appear to make the August 27 Amendment a dead letter. But it has continuing relevance for two reasons. First, political and religious pressures within Russia make it almost inevitable that some legislation along these lines will be proposed before the end of 1994. Second, the decree with which Yeltsin dissolved the Parliament contains instructions to the new Parliament (now elected) to examine draft laws that had been considered by the dissolved Parliament. This decree entitles the new Parliament (the State Duma) to include in its agenda the examination of the August 27 Amendment. The August 27 Amendment, therefore, must still be taken seriously.

II. Applicable International and Constitutional Religious Liberty Norms

The August 27 Amendment is an affront to the fundamental human rights of freedom of religion, freedom of expression, and equal treatment before the law guaranteed by the international human rights instruments that bind Russia. The August 27 Amendment, while softening some of the most problematic provisions of earlier laws (such as the outright ban on foreign proselytizing), has still substantially weakened the religious liberty protections of the 1990 Law. Some of its provisions are ambiguous or vague, thereby inviting abuse of discretion on the part of government officials administering the law. Other provisions afford the Ministry of Justice, the police, and local officials wide authority to govern religious exercise in ways that invite impermissible burdens on the rights of freedom of religion and expression. Still other provisions single out foreign religious believers and groups for special regulation and treatment in a manner inconsistent with the guarantee of equality before the law. These problems constitute clear violations of fundamental human rights and cast a significant shadow on the Russian Federation's efforts to achieve a genuinely democratic society that affords full religious liberty and freedom of expression to all people. A number of international legal instruments provide guidance on the meaning and measure of religious liberty for religious individuals and groups. Four international instruments, in particular, provide helpful guidance: (1) the International Covenant on Civil and Political Rights (1966) (ICCPR or Covenant); (2) the European Convention for the Protection

of Human Rights and Fundamental Freedoms (1950) and case law that it has generated (the European Convention); (3) The U.N. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) (the 1981 Declaration"; and (4) the Concluding Document of the Vienna Follow-up Meeting of Representatives of the Participating States of the Conference on Security and Co-operation in Europe that was promulgated in 1989 (the Vienna Concluding Document). A number of these international religious liberty norms have been incorporated into the Russian Constitution, adopted December 13, 1993. The religious liberty provisions set out in all of these instruments stand in stark contrast to many of those in the August 27 Amendment.

A. The Universal Declaration and the International Covenant on Civil and Political Rights

The right to freedom of religion is set forth in Article 18 of the 1948 Universal Declaration of Human Rights and elaborated in the Covenant, to which Russia is a party. 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, observance, practice, and teaching.
2. No one shall be subject to conversion 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.

Article 19 guarantees the important complementary freedom of expression:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 18 distinguishes between, on the one hand, the right to freedom of religion, and, on the other hand, the freedom to manifest one's religion. The right to freedom of religion, including the freedom to have, alter, or adopt a religion of one's choice, is an absolute right from which no derogation may be made and which may not be restricted.

Legislative draftsmen often fail to notice this important constraint on permissible state restrictions of religious liberty, mistakenly assuming

that permissible limitations on manifestations of religion may be extended to the core domain of freedom of conscience and belief. Moreover, state authority with respect to manifestations of religion is sharply curtailed. Article 18 insists that the freedom to manifest one's religion--individually or collectively, publicly or privately--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. The latter provision is an exhaustive list of the grounds allowed to limit the manifestation of religion; the domestic legislature may not limit the manifestation of religion on any other grounds. Moreover, the requirement of necessity implies that any such limitation on the manifestation of religion must be proportionate to its aim to protect any of the listed interests; such limitation must not be applied in a manner that would vitiate the rights guaranteed in Article 18. Finally, the power to limit the manifestation of religion may not be used for purposes other than those for which that power has been given. Limitations that have as their purpose the protection of morals must be based on principles not deriving exclusively from a single tradition.

Articles 2 and 26 of the Covenant require equal treatment of all persons before the law and prohibit discrimination based, among other things, on religion. According to international case law, unequal treatment of equal cases is allowed only if that treatment serves an objective and reasonable purpose and the inequality is proportionate to that purpose. The Human Rights Committee, established under the Covenant, has made it explicit in its General Comment No. 22(48) concerning Article 18 that: 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.

This part of the General Comment puts the opposition by President Yeltsin against some of the amendments, on the one hand, and the appeal to the Supreme Soviet by His Holiness Patriarch Aleksii II, on the other hand, in the right perspective. If it is true, as His Holiness states, that "the authors of the Bill want to bring order to the activity of the representatives of foreign religious organizations in Russia," there is a manifest tension between that purpose and the rationale of Article 18 of the Covenant as well as with the prohibition of unequal treatment laid down in Articles 2 and 26 of the Covenant.

In its General Comment the Human Rights Committee has further clarified that the freedom to manifest one's religion includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications. . . . The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own conviction, set forth in Article 18(4), is related to the guarantees of the freedom to teach a religion or belief stated in article 18(1).

B. European Convention for the Protection of Human Rights and Fundamental Freedoms

While not technically applicable to Russia, the 1950 European Convention for the Protection of Human Rights, and its subsequent interpretation by the European Court of Human Rights, provides additional guidance on religious liberty. Russia has applied for admission to the Council of Europe, but such admission can be attained only if Russia signs the European Convention and is in a position to ratify it shortly after being admitted. Thus, the religious liberty norms of the European Convention, on their face and as interpreted by the Strasbourg Court, are clearly relevant to Russia.

Article 9 of the European Convention sets out a basic guarantee of religious freedom:

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 protections of the rights and freedom of others.

The European Court of Human Rights has interpreted the second paragraph to mean that any interference with religious rights must be motivated by "a pressing social need," and must be "proportionate to the legitimate aim pursued." Significantly, in the case of Kokkinakis v. Greece, decided on May 25, 1993, the same Court held that Greek constraints on evangelizing efforts by Jehovah's Witnesses violated Article 9 of the European Convention. To the extent that the August 27 Amendment contains any residual provisions that could have the effect of banning or discriminating against foreign proselytizing, it would appear to run afoul of this decision.

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

The 1981 Declaration of the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief expands considerably these earlier international legal provisions on religious liberty. The Declaration includes (1) prescriptions of religious rights for individuals and institutions; (2) proscriptions on religious discrimination, intolerance, or abuse of any kind; (3) provisions specific to the religious rights of parents and children; and (4) explicit principles of implementation. Like the Covenant and the European Convention, the 1981 Declaration on its face applies to "everyone," whether "individually or in community," "in public or in private."

Articles 1 and 6 of the 1981 Declaration set forth a lengthy catalogue of "rights to freedom of thought, conscience, and religion." Such rights include the right (1) to worship or assemble in connection with a religion or belief, and to establish and maintain places for these

purposes; (2) to establish and maintain appropriate charitable or humanitarian institutions; (3) to make, to acquire, and to use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; (4) to write, to publish, and to disseminate relevant publications in these areas; (5) to teach a religion or belief in places suitable for these purposes; (6) to solicit and receive voluntary financial and other contributions from individuals and institutions; (7) to train, to appoint, to elect, or to designate by succession appropriate leaders called for by the requirements and standards of any religion or belief; (8) to observe days of rest and to celebrate holy days and ceremonies in accordance with the precepts of one's religion or belief; and (9) to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Like the Covenant, the 1981 Declaration allows the "manifestation of religion" to be subjected to "appropriate" state regulation and adjudication. The 1981 Declaration permits states to enforce against religious individuals and institutions general regulations designed to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others. It is assumed, however, that in all such instances, the grounds for such regulation are enumerated and explicit, and such regulations abide by the international legal principles of proportionality and necessity discussed under the Covenant.

Articles 2, 3, and 4 of the 1981 Declaration prohibit, in strong terms, various forms of religious discrimination and intolerance. These are defined, in Article 2(2) as "any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis." Such discrimination is prohibited if perpetrated by or against "any state, institutions, group of persons, or person."

The 1981 Declaration includes special provisions concerning the religious rights of children and their parents. It guarantees the right of parents or guardians to organize life within the family and to educate their children in accordance with their religion or beliefs. Such parental responsibility, however, must be discharged in accordance with the "best interests of the child." At minimum, the parents' religious upbringing or education "should not be injurious to his physical or mental health or to his full development." Although the drafters debated at length the potential conflicts between the parent's right to rear and educate their children in accordance with their religion and the state's power to protect the best interests of the child, they offered no specific principles to resolve these disputes. Presumably, different systems will be afforded a "margin of appreciation" in this area.

The 1981 Declaration includes suggested principles of implementation and application of these guarantees. It urges states to take "all effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life." It urges states to remove local laws that perpetuate or allow religious discrimination, and to enact local criminal and civil laws to combat religious discrimination and intolerance.

Several other provisions were proposed and debated, but were excluded from the final text of the 1981 Declaration for lack of consensus. The most notable of such provisions were even more liberal guarantees of religious liberty proposed by the USSR, namely, (1) that the words "religion and belief" be defined to include religious, non-religious and atheistic convictions; (2) that all citizens have equal rights irrespective of their attitude to religion; (3) that all religions be regarded as equal before the law; (4) that there should be no coercion to profess or not to profess a religion; and (5) that church and state be separated and prohibited from interference in the other's affairs. The 1981 Declaration, though not formally binding on Russia, provides a comprehensive catalogue of religious rights, an authoritative distillation of world opinion on the subject of religious liberty, and an instrument of considerable moral suasion. Given the prominent role that the USSR played in the authorship of this 1981 Declaration, and its zeal, in fact, to extend even further the protections of the Declaration, Russia is ideally positioned to implement and exemplify its protections.

D. The Vienna Concluding Document

Various provisions of the August 27 Amendment would violate Russia's commitments assumed in connection with the Helsinki Process as a member of the Conference on Security and Cooperation in Europe (the CSCE). The CSCE has adopted some of the most advanced religious liberty norms that have yet emerged at the international level. These norms are embodied in Principles 16 and 17 of the Vienna Concluding Document. Endorsed by all countries in Europe and North America, including Russia, these principles affirm the highest ideals of religious liberty, while spelling them out with sufficient concreteness to provide guidance for national systems striving to eliminate many of the recurrent problems of application. The clear language of Principles 16 and 17 is worth quoting in full:

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

- (a) take effective measures to prevent and eliminate discrimination against individuals or communities, on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and ensure the effective equality between believers and non-believers;
- (b) foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;
- (c) 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;
- (d) respect the right of religious communities to 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;

- (e) engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;
 - (f) respect the right of everyone to give and receive religious education in the language of his choice, individually or in association with others;
 - (g) in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;
 - (h) allow the training of religious personnel in appropriate institutions;
 - (i) respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief;
 - (j) allow religious faiths, institutions and organizations to produce and import and disseminate religious publications and materials;
 - (k) favorably consider the interest of religious communities in participating in public dialogue, inter alia, through mass media.
17. The participating States recognize that the exercise of the above mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and are consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective implementation of the freedom of thought, conscience, religion or belief.

Several of the foregoing provisions warrant brief comment. Principle 16a is particularly important to smaller religious denominations. Both individual members of such religious communities and such communities as a whole need assurance that they will not suffer discrimination in comparison with other believers or non-believers. Principle 16b's commitment to "foster a climate of mutual tolerance and respect" in some respects states the obvious purpose underlying all the other principles. But it is worth remembering that in the very process of considering legislation dealing with religious organizations, a careless or insensitive government can send out signals that run directly against this principle. Certainly, patterns of harassment of smaller religious denominations or threatened discrimination against groups with substantial foreign ties are inconsistent with this commitment. Principle 16c addresses the vital practical issue of granting entity status to religious organizations and groups. If the spirit of Principle 16c is to be respected, it is important that recognition procedures and the mechanisms for attaining entity status should not constitute a bureaucratic obstacle. Moreover, the procedures should be flexible to accommodate organizational differences of differing denominations. Note that this Principle draws no distinction between "domestic" and "foreign" communities of believers, and that states are to grant, "upon their request" (presumably without imposing significant constraints) "recognition of the status provided for them" (that is, for communities of believers) "in their respective countries." The provision guarantees equal rights to entity status for all religious communities. Moreover, it is obviously not enough to grant a religious organization entity

status at the national level and then deprive that recognition of all practical effect at the local level by refusing recognition there. Of course, such guarantees of entity status do not automatically allow religious groups to evade legitimate requirements and laws necessary in any democratic society. The preferred approach that has emerged in the West is to establish procedures that facilitate recognition of religious groups at the stage of acquiring entity status (regardless of whether such a group has foreign ties). In effect, at that stage, a religious organization is presumed innocent and deserving of religious liberty protections until the contrary is proven. Problems of abuse or unlawful conduct by the religious organization can be dealt with better and more justly later, when and if they occur, in the course of enforcing independently adopted neutral and general laws. Since a religious organization often needs entity status before it is able to enter into contracts, lease or acquire property, hire employees, and so forth, the guarantee of entity status is critical as a practical matter for actualizing freedom of worship and for carrying out other religiously-motivated activities.

Principle 16d is particularly vital, because it addresses issues of a religious community's right to autonomy and self-determination.

Obviously, if religious liberty is to extend beyond the freedom to hold religious beliefs in the privacy of the home, it is vital that religious organizations be allowed to build, lease, or own edifices appropriate to their mode of worship and their religious (and social) practice. (A religious community and way of life often involves more than worship alone.). This means that land use regulations and other governmental policies affecting access to real property needed for worship and religious rites should not be manipulated effectively to ban worship activities from particular communities. It also means that religious organizations should be granted a sufficient juridical personality to be able to acquire or at least possess facilities appropriate to their needs.

Freedom to organize according to a religious tradition's own hierarchical, connectional, congregational, non-hierarchical, or other institutional structure is extremely important to most religious communities. Ecclesiology constitutes a central doctrinal issue for many religious communities that is itself a matter of conscience. State interference in these areas strikes at the heart of exercise of religious beliefs regarding the structuring of religious communities. Laws dealing with the legal structures available for religious communities to organize their affairs should be sensitive to the needs of diverse religious groups.

A major practical implication of this principle, as noted in connection with Principle 16(c), is that legislation governing the acquisition of entity status (or juridical personality or corporate status) for religious organizations should be designed to facilitate and not to obstruct or disparage the innate rights of such organizations to religious freedom. Bluntly stated, denial of the entity status of a religious organization is denial of religious liberty. Without entity status, religious organizations cannot acquire property or other physical materials required for public manifestation of religion or belief. Thus, denial of entity status to a religious group may be permitted only where this is necessary to protect some overriding state interest that can be attained in no less restrictive way.

The mode of selection of religious personnel is also a sensitive doctrinal issue for many religious groups. Unless the church in question consents, the state should have no say in the appointment, regulation, or discipline of individuals holding offices within a religious organization.

Religious organizations, like other organizations, need funds to operate. Regulations dealing with solicitation should not be structured in ways that discriminate against some groups. While fraud may be regulated in this as in other contexts, religious organizations should be granted greater flexibility in how they use their funds than other non-profit organizations to avoid inappropriate intervention in matters of religious belief.

Principle 16e contemplates that the state will "engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom."

Reasonable and ongoing dialogue among political and religious officials can eliminate both annoyance and distrust among the parties, and many unintentional state infringements on religious liberty.

Principles 16f-16h relate to religious education and training. Principle 16f provides that the state will "respect the right of everyone to give and receive religious education in the language of his choice, individually or in association with others." Generally, significant interdenominational tensions can be reduced if religious education is left to family and church, without intermeddling by the state. Certainly in those contexts, it is important to be able to provide religious education at all age levels, both at home and in religious buildings that are leased, purchased, or built by religious organizations.

Principle 16g's requirement that parents (or legal guardians) should have the right to guide the religious education of their children is widely recognized in other human rights documents. Some countries permit religious instruction designed to cooperate with parental and church efforts, but the public sector simply cannot replace what family and church can do on their own.

Principles 16i and 16j call for the protection of the acquisition, possession, production, importing, and dissemination of religious literature and other materials by the religious organizations and by members or others interested in learning about such organizations and their teachings. This principle is particularly important for relatively small denominations, because otherwise members may feel isolated and may be unable to deepen their faith and receive the full benefit of association with their church. Legislation here should recognize that many items may fit in these categories beyond the traditional forms of religious literature such as books, magazines, and other publications. The ability to use film, video recordings, and other media may be as important as the ability to have access to more standard publications. In addition, it is important that the references in Principles 16i and 16j to "other articles and materials related to the practice of religion or belief" and to "religious publications and materials" be understood to apply not only to literature and publications (in whatever media) but to physical items, such as candles, trays, sacramental vessels, statuary, artistic objects, items of clothing, or other materials used in worship services or in the daily practice of a religion.

Principle 17 goes beyond the Covenant and European Convention in calling for the "full and effective implementation of the freedom of thought,

conscience, religion or belief." Sadly, current developments in Russia appear to be moving away from fulfillment of these important commitments.

E. Parallels in the Russian Constitution

The Russian Constitution, adopted on December 12, 1993, clearly seeks to implement and respect the foregoing international norms of religious freedom. Article 14 of the Constitution reads:

1. The Russian Federation shall be a secular state. No religion may be instituted as [a] state-sponsored or mandatory religion.
2. Religious associations shall be separated from the state, and shall be equal before the law.

These provisions appear to bar statutory provisions that provide for unequal treatment of religious groups and state actions that endorse or favor any particular religion.

Article 19 of the Constitution guarantees equality before the law for all people, regardless of citizenship. Paragraph 1 states that "[a]ll people shall be equal before the law and in the court of law." Paragraph 2 indicates that "[t]he state shall guarantee the equality of rights and liberties regardless of sex, race, nationality, language, origin, property or employment status, residence, attitude to religion, convictions, membership of public associations or any other circumstance."

Article 28 of the Constitution specifically addresses the rights of religious freedom, providing:

Everyone shall be guaranteed the right to freedom of conscience, to freedom of religious worship, including the right to profess, individually or jointly with others, any religion, or to profess no religion, to freely choose, possess and disseminate religious or other beliefs, and to act in conformity with them.

Article 29 addresses the important complementary rights of freedom of expression:

1. Everyone shall have the right to freedom of thought and speech.
2. Propaganda or campaigning [to incite] social, racial, national or religious hatred and strife is impermissible. The propaganda of social, racial, national, religious, or language superiority is forbidden.
3. No one may be coerced into expressing one's views and convictions or renouncing them.
4. Everyone shall have the right to seek, get, transfer, produce and disseminate information by any lawful means. . . .
5. The freedom of the mass media shall be guaranteed. Censorship shall be prohibited.

If anything, these provisions afford even stronger protections than those required under the Covenant. They apply to "everyone," whether native or foreign. They also embrace broad protections not simply to "manifest" beliefs, but to freely "choose, possess, and disseminate them," and information about them, and to act in conformity with them.

Article 17 of the Constitution provides an important link between Russian constitutional law and the international norms described earlier.

Paragraph 1 provides: "The basic rights and liberties in conformity with the commonly recognized principles and norms of the international law shall be recognized and guaranteed in the Russian Federation and under the Constitution." Article 18 goes even further and provides that "[t]he

rights and liberties of man and citizen shall have direct effect." Thus, religious liberty is not dependent on, or subject to, legislation designed to implement religious liberty, such as the 1990 Law or the August 27 Amendment.

The rights to freedom of religion and freedom of expression can be regulated only under the narrow conditions established in Article 55 of the Constitution, which run parallel to those of prevailing international laws:

2. No laws denying or belittling human and civil rights and liberties may be issued in the Russian Federation.
3. Human and civil rights and liberties may be restricted by the federal law only to the extent required for the protection of the fundamentals of the constitutional system, morality, health, rights and lawful interests of other persons, for ensuring the defense of the country and the security of the state.

Article 56 further indicates that "[i]ndividual restrictions of rights and liberties with identification of the extent and term of their duration may be instituted in conformity with the federal constitutional law under conditions of the state of emergency in order to ensure the safety of citizens and protection of the constitutional system."

III. Critique of the August 27 Amendment

When put under the light of the foregoing international laws on religious liberty, the Russian Constitution, and the provisions of the 1990 Law, the August 27 Amendment betrays a number of serious defects. What follows is: (1) a topical commentary, which focuses on general problems with the August 27 Amendment; and (2) a specific article-by-article commentary. An English translation of the August 27 Amendment is provided as an Appendix hereto, and references to specific articles in this document are provided parenthetically.

A. Topical Commentary

1. The Restrictions on Religious Freedom in the August 27 Amendment Violate International and Constitutional Requirements. It is not enough under international law for regulations and restrictions on religious freedom to be justified on the grounds that they simply further public safety, health, welfare, morals, or order or protect the rights of third persons. To satisfy international law, such restrictions must be "necessary in a democratic society" and proportionate to the nature of the state interests involved. In general, an otherwise legitimate state objective may not override religious freedom rights if the state objective could be satisfactorily attained in a less intrusive manner. Articles 19, 55, and 56 of the Russian Constitution confirm and recognize these international standards. Many of the restrictions on religious liberty imposed by the August 27 Amendment, as further documented below, fail to meet these high standards.

The religious freedom rights, guaranteed by international and constitutional law, are particularly vital to minority religious groups. Such rights can be rendered meaningless if the majority is free to override such rights by adopting legislation by majority vote. The modern meaning of democracy as worked out in international human rights

documents is that certain rights require special protection against the potential tyranny (whether intentional or inadvertent) of political majorities. Thus the recurrent phrase "in accordance with the laws of the state" and other similar phrases used throughout the August 27 Amendment fails to respect this vital limitation (see Articles 3, 4, 9, 15, 16, 17, 18, 19, 20).

2. The August 27 Amendment Fails to Extend Protection to All Persons and Religious Organizations. With only a few exceptions, the religious freedom protections of the August 27 Amendment are extended only to citizens or in ways that discriminate in favor of citizens over non-citizens (Articles 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 16, 20, 21, 25, 26, 27). Prevailing international laws, however, most notably Articles 2 and 26 of the Covenant, insist that freedom of religion and freedom of expression be extended to all persons, regardless of citizenship. Article 19 of the Russian Constitution law likewise guarantees equality before the law for all people regardless of a person's "attitude to religion."

Moreover, the August 27 Amendment purposely singles out "traditional" religious organizations for special protection and privilege and exposes foreign or non-traditional religious groups to closer state intrusions or restrictions (Articles 8, 12, 13, 21). Such discriminatory treatment of religious organizations is in express violation of Principle 16(a) of the Vienna Concluding Document that demands equality of treatment of religious organizations. It violates Article 14 of the Russian Constitution, which declares that "religious associations shall be separated from the state, and shall be equal before law." It also violates the equality provisions of the August 27 Amendment itself, which declare that the state "does not establish any kind of preference for or discrimination against individuals, societies or organizations, by reason of their religious orientation; the state goes forth from the grounds that all are equal before the law" (Article 8).

3. The August 27 Amendment Narrows Considerably the Protections of Religious Liberty for Individuals. The August 27 Amendment eliminates a number of critical guarantees of religious freedom for the individual. The stated purpose of the 1990 Law is "implementing the rights of its citizens to the enjoyment of this freedom [of conscience and religion]." The stated purpose of the August 27 Amendment is simply "to define the legal status of religious groups and organizations" (Article 1), and the instrument accordingly pays modest attention to the religious rights of the individual.

The August 27 Amendment effectively reduces the ambit of individual religious freedom to liberty of conscience for the Russian citizen. Article 3 reads: "The freedom of conscience which is guaranteed in the Constitution of the Russian Federation includes the right of every citizen to choose freely, maintain, propagate religious and other convictions, and to profess any religion or to profess no religion at all, and to act in accordance with his convictions in accordance with the laws of the state." This language of Article 3 tracks closely the language of Article 28 of the Russian Constitution, except that it substitutes the phrase "every citizen" for the more embracing constitutional phrase "everyone." Article 6 further guarantees that "[c]itizens of the Russian republic are equal before the law . . . in all spheres of civil, political, economic, social, and cultural life, regardless of their religious orientation." This language of Article 6

largely paraphrases the language of Article 19 of the Constitution; but, again, while the Constitution guarantees equality to "[a]ll people," the August 27 Amendment applies only to "citizens of the Russian republic." Non-citizens receive only the vague assurance "that they may make use of the privilege of freedom of conscience and religion while they are on the Russian territory" (Article 4).

A number of specific guarantees for religious individuals included in the 1990 Law were eliminated from the August 27 Amendment. Gone are the guarantees to "choose and maintain religious convictions and to change these freely," to form religious denominations without hindrance, to express religious views and convictions orally or in printed form, to engage in "unimpeded" conduct of worship, and to produce religious literature. Gone are the rights of free entry to religious organizations and places of worship. Gone are the express rights to conduct and participate in religious rites in military units, medical treatment centers, orphanages and children's homes, homes for the aged and disabled, prisons and places of pretrial detention. Gone are rights--so highly coveted during the Soviet period--to possess religious literature, and to obtain, acquire, and utilize sacramental objects. Gone are the express rights to freedom of expression, thought, conscience, and religion given to children. Gone is the sweeping prohibition against "any direct or oblique restriction whatsoever of rights of citizens, or any establishment whatsoever of direct or oblique advantages for citizens which depend on their attitude toward religion, as well as any enmity or hatred in this regard." Listing citizen's "attitudes" toward religion in official documents, a well-documented source of discrimination and abuse in the Soviet period, is permitted under the new law "when the citizen desires this himself" (Article 6). Such a severely truncated set of rights falls far short of the catalogue of individual rights to religious freedom set out in Article 28 of the Russian Constitution, Article 6 of the 1981 Declaration, Article 18 of the Covenant and the General Comment thereon by the Human Rights Committee.

4. The August 27 Amendment Violates Freedom of Expression. Several provisions of the August 27 Amendment curtail the right to freedom of expression, which is guaranteed by Article 19 of the Covenant, Article 10 of the European Convention, and Article 6 of the 1981 Declaration, as well as by Article 29 of the Russian Constitution.

Article 21's explicit restriction of the right of at least some foreigners to engage in religious-missionary activities violates these guarantees of freedom of expression. Moreover, it curtails the ability of Russian citizens "to seek, receive and impart information and ideas of all kinds, regardless of frontiers," guaranteed by Article 19 of the Covenant and Article 6 of the 1981 Declaration. It also curtails the right of "everyone to seek, get, transfer, produce, and disseminate information" guaranteed by Article 29 of the Russian Constitution.

Article 10 allows for a more subtle violation of the rights of free expression by prohibiting various kinds of offensive religious expression: "Religious associations and organizations are not allowed to engage in propaganda activities that incite national, social, or religious dissension. Likewise prohibited is any propaganda or activity that brings physical harm to a citizen." Article 18 further makes it an offense to conduct certain activities in the vicinity of a place of worship if they offend or insult the religious sensibilities of believers, including "atheistic, entertainment, sports, or other public

activities." The language of these provisions is so vague that it is likely to exert a "chilling effect" on a broad range of legitimate religious and non-religious speech, including, for example, discussion of doctrinal disagreements among religious groups.

Moreover, Article 10 provides for prosecution of those that engage in "[t]he use of means, including economic ones, in religious activities to force citizens in their choice of relation to religion, such as provision of valuables or assistance dependent upon joining a religious group or leaving it, as well as the use of other means belittling personal freedom in the choice of beliefs brings prosecution according to the law"

(Article 10). There are (unconfirmed) reports that the Russian Penal Code has also been amended to make such activities punishable by payment of fines and imprisonment. Such sweeping language can easily be used to prevent religious individuals or organizations from disseminating charitable assistance or religious literature.

Article 19 affords religious organizations the "exclusive right to form enterprises for publishing specialized religious literature and producing religious goods." Missing from this provision is the qualification included in the 1990 Law, that "[p]ublication of religious periodicals and other religious literature not designated for use in worship is carried out in accordance with the general legislation on the press and mass media." The August 27 Amendment, therefore, effectively allows for prohibition against publication of religious literature by publishers not under the authority of a registered religious organization. Similar restrictions were imposed during the Czarist period to enable the state to dictate the content and style of religious art and music. They defy the freedom of expression guarantees set out in the Covenant, European Convention, and the 1981 Declaration and in Article 29 of the Russian Constitution. They contradict the explicit statement made last year by the Human Rights Committee that religious freedom includes "the freedom to prepare and distribute religious texts or publications."

The control of media access set out in Article 20 is too vague and potentially discriminatory. The language reads: "State television and radio, upon the requests of Russian religious organizations and in accordance with established legislation, will grant free of charge to their representatives--citizens of the Russian Federation--air time for special broadcasts, taking into consideration public opinion." Such language provides no protection for non-Russian religious organizations, leaving such matters entirely to "established legislation." Such restrictions violate the guarantees of freedom of expression set out in Article 19 of the Covenant and goes beyond the level of regulation permitted by Article 10 of the European Convention. Article 20 also seems to violate Article 29 (5) of the Russian Constitution which provides that "freedom of the mass media shall be guaranteed. Censorship shall be prohibited."

Article 21 gives bureaucrats at many levels the ability to interfere with the rights to produce, import, and disseminate religious literature and other materials. Such intrusions stand in direct opposition to Principles 16i and 16j of the Vienna Concluding Document and to Article 6 of the 1981 Declaration.

All these restrictions violate not only international and constitutional guarantees of freedom of expression. It is important to emphasize that in many religious traditions, the obligation to share religious beliefs with others is a deeply felt and central religious imperative. For such

believers, a law that says that one may exercise the right to freedom of conscience but may not obey dictates of conscience that require sharing beliefs with others is equivalent to telling an Orthodox believer that he or she may enter a church but may not pray or participate in liturgy. Such a direct encroachment on this "manifestation of religion" without compelling reason or obvious necessity violates Article 18 and 19 of the Covenant, Article 9 of the European Convention, and Article 55 of the Russian Constitution.

5. The August 27 Amendment Narrows Considerably the General Protections of Religious Liberty for Religious Groups. The August 27 Amendment imposes a number of intrusive and onerous regulations on the formation, registration, activity, and staffing of religious groups, particularly of foreign religious groups. In general, such regulations defy the general international and constitutional principles of necessity, proportionality, and equality referenced in topics 1 and 2 above. These regulations violate the guarantee of autonomy and self-government for religious groups set out in Principle 16(d) of the Vienna Concluding Document. They contradict the right to freedom of religion in Article 18 of the Covenant, which, according to the Human Rights Committee.

"includes acts integral to the conduct by religious groups of their basic affairs, such as, *inter alia*, the freedom to choose their religious leaders, priests and teachers. . . ."They violate the general freedom, set out in the 1981 Declaration, "to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."They also compromise the guarantees set out in Article 8 of the August 27 Amendment that the state "does not interfere in the [lawful] activities of religious organizations" and that religious organizations are free to "act in accordance with their own structure, choose, appoint to office and change their staff according to their own established principles."

Under the 1990 Law, a religious organization is defined as "a voluntary association of adult citizens formed for the purpose of jointly exercising the right of citizens to freedom of religion."A religious organization is established by registration, which is roughly the equivalent of incorporation under European and American law.Registration is allowed for the "establishment of a denomination, propagating its beliefs in society directly or indirectly through mass media, missionary activity, acts of charity and mercy, religious training and upbringing, mass media presentations, religious training" and so forth. After 1990, hundreds of religious organizations were formed to engage in interdenominational, educational, and charitable activities under these provisions.

Under the August 27 Amendment, the right of religious groups to entity status is burdened by vague and cumbersome regulations that afford substantial leeway for arbitrary conduct both in the structure of implementing decrees and in bureaucratic administration (Articles 12-17). Under the August 27 Amendment religious organizations are defined as one or more "religious unions . . . that have the rights of a legal entity," including "congregations, sisterhoods, and brotherhoods" (Article 13).

"Religious unions" are defined as groups of Russian citizens, "permanently functioning . . . (where they work or reside) for the specific purposes of corporately meeting their religious needs" (Article 12). The number of legal work locations determines whether religious organizations are local, central, or national in character. This

provision appears to allow religious organizations to be formed only by groups of people involved in joint worship or living arrangements. Such restrictions of religious association to Russian citizens, and such delimitation of the types of religious organizations that can receive entity status violates Principle 16(d) of the Vienna Concluding Document, Article 6(a) and (b) of the 1981 Declaration. They also stand in considerable tension with Russian constitutional guarantees that "[e]veryone shall have the right to association" and "to profess, individually or jointly with others, any religion."

The registration provisions, particularly as applied, display insensitivity to differences in organizational structure among different religious organizations. Too often, for example, local authorities insist that a religious organization be registered (that is, form an independent legal entity) in each city where the organization has adherents. This may be apropos for religious organizations with congregational polities, but for religious groups with other forms of organization, it is unnecessarily burdensome. New legislation, consonant with Principles 16 and 17 of the Vienna Concluding Document, should be more sensitive to differences in denominational structures.

The Implementing Decree for the August 27 Amendment provides that the Ministry of Justice must "reregister" the charters of currently registered religious organizations within four months of the new law's publication. Moreover, the Implementing Decree allows a twelve month delay in processing registration for organizations without registered followers as of October 25, 1990 (Articles 12, 13, 16). It also permits registration officials to refuse to register groups on vague grounds, including "not being found to be a religious [group]", "being involved in illegal activity," or due to "discrepancies with other legislation" (Articles 12, 13, 16).

A number of religious organizations, that, since 1990, had gained entity status, acquired and improved property, and engaged employees in pursuit of their religious activities cannot satisfy these cumbersome requirements. Some do not fall into a recognized category of religious organization. Others will be subject to a twelve month period for registration or the new grounds for refusal of registration. Other vague provisions in the new law may also serve to delay or obstruct reregistration for existing organizations. The registration requirements fall doubly hard on new religious organizations, or those which lacked registration prior to October 25, 1990. Such obstructions violate the various freedoms of religious association guaranteed by Principles 16 and 17 of the Vienna Concluding Document, Article 18 of the Covenant, and Article 6 of the 1981 Declaration.

Lengthy delays in obtaining entity status seriously hamper the rights of unregistered groups to practice their religions. Moreover, such delays are unnecessarily burdensome, since the state could grant entity status subject to later retraction in the event of proven malfeasance. Thus, the regulation is not the least burdensome approach to achieving state objectives, and thus violates Article 18 of the Covenant and other international religious liberty norms.

6. The August 27 Amendment Singles Out Foreign Religious Groups for Numerous Special Regulations. Even further administrative burdens fall on foreign and non-traditional religious organizations.

To be sure, the August 27 Amendment softens a number of restrictions on foreign religious corporations that accounted for much of the outrage

regarding earlier versions of the legislation. Various earlier versions provided for the state to ban proselytizing by foreign religious groups. These earlier versions allowed officials to monitor activities of all religious organizations in order to verify compliance with internal charter provisions, and to suspend their activities, without a prior court hearing, while petitioning for their termination. They allowed foreign religious organizations to engage in religious activities in Russia only under the auspices of a Russian religious organization. They prevented foreign religious organizations and workers from engaging in independent "religious-missionary, publishing, or advertising propaganda activities." They required Russian citizens who were appointed as leaders or ministers by foreign organizations to obtain special state certification. They provided that a foreigner could only attain entity status as a "foreign religious society" and that registration could be denied, or revoked, if the organization's activities or doctrines involve vaguely defined offenses, including contradicting the "norms of public morality", igniting religious, national, or social friction, offending the religious feelings of Russian citizens, or having a religious/missionary (proselytizing) nature (defined as "bribing" Russian citizens to join the organization or adopt its beliefs). They allowed dissolution of foreign religious societies if their founders lost their right to remain in Russia. They insisted that foreign "professional religious workers" had to obtain special permission from three governmental agencies in order to be present in Russia. Approval had to be renewed every twelve months and could be denied or revoked if their activities were deemed to present a threat to "social security," clearly contradict Russian social morals, offend the religious feelings of Russian citizens, or have a proselytizing nature. These, and other such onerous burdens on foreign religious corporations, were ultimately dropped from the law.

Several other intrusive regulations on foreign religious organizations still remain. Article 8, for example, provides vaguely that the state "shall not ... entrust State bodies with executive, administrative or control functions over religious organizations, except the functions established by law" (Article 8). The August 27 Amendment entrusts various state bodies with such functions, including authorizing police to monitor the activities of religious groups formed by foreigners and authorizing various other bureaucrats to monitor the entry and activity of foreign professional religious workers (Articles 12, 21). Further, the Implementing Decree of August 27, 1993 provides for control by the Committee on Freedom of Conscience over the implementation of the Decree and mandates that new legislation or implementing regulations be submitted to it by a number of government bodies. Such vague and intrusive regulations, for no stated legitimate purpose, violates both the general guarantees of freedom of religion in Article 18 of the Covenant and Article 9 of the European Convention, but also the religious associational rights of Principles 16 and 17 of the Vienna Concluding Document.

Article 12 mandates close state surveillance and supervision of the activities of foreign religious organizations. The organizers of religious worship services and of other meetings "designed to meet religious needs" "must inform police about them in advance" (Article 12). Upon receipt of such notice, "[t]he proper organs of justice and police may request from the organizers additional information regarding distinct

features of their religious worship activities and monitor their adherence to the law" (Article 12). State officials are thus empowered to make continuing requests for provision of information about religious beliefs to the police and continued monitoring of religious activities of foreigner religious groups. Such intrusive regulation violates guarantees of freedoms of worship and assembly set out in general in Article 18 of the Covenant, Article 9 of the European Convention, and Article 28 of the Russian Constitution. It also violates the more elaborate guarantees in Article 6 (a), (b) and (e) of the 1981 Declaration and Principle 16(d) of the Vienna Concluding Document. Article 14 of the new law defines "professional religious work" as "activity conducted specifically for the purpose of meeting religious needs of believers, which includes making contracts, holding a position in a religious organization, and carrying out decision-making functions over believers." (Article 14). This term is used in only one other place in the August 27 Amendment, where it is applied to international contacts with foreigners and stateless persons (Article 21). Religious organizations wishing to invite foreigners to engage in professional religious work in Russia must present to "proper State organs" an application, including copies of work agreements that state their duties, authority, place of work and conditions of their residence (Article 21). Article 21 states that the "sphere of authority" of the invited foreign professional workers cannot exceed the "sphere of authority of the inviting party." The meaning of this provision is unclear but may relate to the local, central, and national distinctions of religious organizations described above. The Implementing Decree provides that procedures for processing these applications are to be adopted by the Council of Ministers-Government of the Russian Federation along with Supreme Soviet Committees.

The law states that "professional religious workers" may be refused entry into the Russian Federation "for engagement in professional religious work if the organs [law enforcement bodies] find that, in the spirit of this Law, their activities in other countries have been considered illegal, or w[ere] based on use of force, or on belittling personal freedom of choice of beliefs, or contradicts the standards of public morality in the Russian Federation" (Article 21). These provisions are so vague and subjective that they permit arbitrary exclusion of such workers by governmental authorities. The law also states that these individuals "do not have the right of religious-missionary activity" in Russia (Article 21). Thus, non-Russian clergy are placed in a position where they can do nothing but minister to the needs of existing converts. Similar limitations were imposed on the clergy during the Soviet period. An extraordinary clause in the Implementing Decree of the August 27 Amendment provides that the Committee on Freedom of Conscience, working with the Supreme Soviet Committee on International Affairs and External Economic Relations, will establish special procedures for Vatican appointment or confirmation of professional religious workers in the Russian Federation. In other words, the law contemplates that two parliamentary committees will decide how the Roman Catholic Church appoints clergy in Russia. This constitutes an extraordinary governmental intrusion into religious matters, which sharply contradicts the above-referenced international and constitutional guarantees of religious autonomy and self-government.

7. The August 27 Amendment Intrudes on the Freedom of Religious Education. The August 27 Amendment provides that the state system of education is secular but that teaching about religion is permitted in an academic framework, as long as it is not accompanied by religious worship (Article 9). Article 20 further provides that "[r]eligious organizations may . . . establish educational institutions and training groups for religious education of children and adults, as well as other means of education, using facilities that belong to them or are provided for them, including public educational institutions, by agreement with the administration" (Article 9). Such provisions could easily be read to render religious educational institutions the exclusive province of registered religious organizations alone.

Such restrictions on the instruments and institutions of religious education stands in sharp tension with recent international laws, which have emphasized that the freedom of religion has an educational dimension. Article 5 (2) of the 1981 Declaration provides that "[e]very child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religious or belief against the wish of his parents or legal guardians." The Vienna Concluding Document require states (1) "to respect the right of everyone to give and receive religious education in the language of his choice, individually or in association with others"; (2) in this context, to respect, *inter alia*, the liberty of parents to ensure the religious and moral education of their children in conformity with their convictions"; and (3) "to allow the training of religious personnel in appropriate institutions." The provisions on religious education in the August 27 Amendment fall far short of these mandates.

8. The Vagueness of Many Provisions of the August 27 Amendment Is Inconsistent with Rule of Law Ideals. Many of the terms in the law are too vague and ambiguous to be easily self-executing. For example, in Article 21, what constitutes "religious-missionary work"? What constitutes "offending the sensitivities and feelings of citizens" in Article 10? If an article by a foreigner is published in the Russian press, is the author guilty of publishing something in violation of the statute? What constitutes "desecration of citizens' feelings and convictions in connection with their attitude to religion" in Article 10? Examples could be multiplied. Such vagueness is incompatible with the rule of law and facilitates abuse of discretion by government officials.

9. The August 27 Amendment Violates Rule of Law Requirements by Failing to Provide Adequate Provision for Judicial and Other Forms of Review. Among other things, appeal processes from adverse administrative rulings are not specified. This is particularly vital to protect smaller religious groups from official abuse, especially in outlying areas.

B. Article-by-Article Comments

In addition to these general, and structural problems with the August 27 Amendment as a whole, a number of individual articles require brief textual criticism.

Article 5. The priest-penitent provision needs refinement to clarify exactly who can invoke the privilege and circumstances under which it may be waived.

Article 6. The law lacks adequate provisions to allow religious organizations to engage in preferential hiring (let alone ordination) of

their own members to further their religious missions and to maintain autonomy in structuring their internal affairs.

Article 8. The initial provision that "the state does not give state or privileged status to any particular religion or world view" directly contradicts the language in the sixth paragraph of the first part of that Article, which reads as follows:

the State supports religious organizations, the activity of which maintains and develops historical traditions and customs, national and cultural originality, art and other cultural heritage of the peoples of the Russian Federation--traditional confessions of the Russian Federation.

Preservation of historical landmarks, art and other cultural artifacts is guaranteed elsewhere in Russian civil law and requires no further elaboration in this provision.

Furthermore, the following references in Article 8 provide open invitations for state intrusion in the affairs of religious organizations: part 1, paragraph 3 ("do not contradict the law"), part 1, paragraph 5 ("except those established by law"), part 2, paragraph 1 ("observe the demands of acting legislation"). These provisions are too broad and state no objective purpose and thus violate Article 18(3) of the Covenant.

Part 3 of Article 8, though vague and ambiguous, appears to create private causes of action by individuals against religious organizations. Such actions could result in violation of Principle 16d of the Vienna Concluding Document by implicating courts or other state officials in impermissible intrusions in the autonomy of religious organizations. Moreover, it contradicts the express guarantee in Article 8, Part 2, that "religious associations and organizations [may] act in accordance with their own structure, [and] choose, appoint to office and change their staff according to their own established principles." The latter provision correctly corresponds to applicable international standards. To avoid any conflict, Part 3 should be interpreted as a protection against state actions and not against the permissible decisions of religious organizations.

Finally, the ban on participation of religious groups in political process in Article 8 is vague and excessively broad.

Article 9. It should be clarified that the words "upon the agreement of the administration" in Article 9 relate only to "state educational facilities," since the state may not in a general way subject to approval the use of private accommodation.

Article 11. The restriction of Article 11 to "massive religious societies" discriminates among large, well-established organizations and new, smaller religious groups, or religious groups that are organized only as small independent congregations.

Article 12. This Article, dealing with religious associations, should be dropped in its entirety. On its face, it violates principles of equality of religious individuals and groups and prohibitions against discrimination based on religion, as detailed under topic 2 in the previous section. Furthermore, the provision invites unduly intrusive intervention by various state organs in internal religious affairs in open violation of several of the international religious liberty norms referenced above, particularly Principles 16 and 17 of the Vienna Concluding Document.

Article 13. This Article imposes discriminatory requirements on religious organizations, for no objective or reasonable purpose. Article 15 concerning the statutes of religious organizations is too restrictive, postulating that the statutes "must answer the demands of civil legislation." Restrictions on individual or corporate religious freedom are only permissible to the extent they are necessary in a democratic society and proportionate and reasonably connected to the pressing social objectives pursued. General reference to "civil legislation" would mean that ordinary legislation could override and restrict a fundamental human right.

Moreover, the requirement that the statutes indicate "the sources of financial and material support" and "property questions in the event of liquidation" entails a restriction that should be related to one of the restriction grounds listed in Article 18(3) of the Covenant. Among other things, such disclosure obligations may intrude on privacy rights of the organizations, and may violate religiously-motivated desires of donors not to make public display of their generosity.

Article 16 concerning registration of an organization's statutes, review of the presented documents by the registering organ and review by the Ministry of Justice of the religious organizations for their compliance with their statutes may result in restrictions which go beyond Article 18(3) of the Covenant. It is also inconsistent with the right to entity status articulated in Principle 16c of the Vienna Concluding Document. Provisions governing the grant of entity status should not be allowed to serve as an obstacle to the activities of religious organizations, particularly before they have had an opportunity to establish a track record. As noted above, risks of abuse can be adequately addressed later by taxing authorities revoking, for example, the tax exempt status of abusers.

The requirement that registration can only be granted if supported by ten constituents "who must be adult citizens of the Russian Federation" results in unequal treatment on the basis of nationality. It also requires disclosure of religious beliefs, and has been used in the past as the basis for discriminatory treatment of individuals. In general, the grounds for refusing registration are too broad and may go beyond Article 18(3) of the Covenant. The availability of judicial appeal from such a refusal provides no guarantee that the court will directly apply Article 18 of the Covenant or domestic law that is in conformity with Article 18. The guidelines for exercising official discretion are insufficiently clear, and the vagueness leaves open the possibility of discrimination and abuse.

Article 17. Much the same can be said with respect to Article 17, which concerns termination of religious organizations. The Article marks an advance over past practice in Russia, since it permits dissolution only in the event of voluntary action in accordance with the organization's statute, or on the basis of judicial decree. However, as currently worded, the Article would permit termination not only of the status of the religious organization as a juridical entity, but also of the activities of the organization. This appears to be simply an error of wording. Even if an organization begins conducting activities that are not authorized by its statute, it is only the entity status of the organization and other attendant incidents such as tax exempt status that may be terminated. To the extent the ultra vires activities are lawful,

they may continue, but not using the vehicle of unjustified entity status.

A deeper problem is posed by subparagraphs 2 and 3 of paragraph (2). The stated grounds for termination are too vague and provide insufficient guidance for judicial review of the right to entity status. Accordingly, termination might occur that would constitute a restriction of religious liberty not permitted under Article 18(3) of the Covenant and the rights to entity status and internal autonomy vouchsafed by Principles 16c and 16d of the Vienna Concluding Document.

Article 18. The third paragraph of Article 18 is too restrictive, because the services and ceremonies mentioned there may only be restricted to designated places if that is necessary for the protection of any of the interests listed in Article 18(3) of the Covenant.

"The demands of military regulations" referred to in the fourth paragraph of Article 18 amounts to an "inherent limitation," which is not justified if and to the extent that it does not meet the requirements of Article 18(3) of the Covenant.

The last two paragraphs of Article 18 make possible too far-reaching restrictions, because they start from the presumption that subjecting religious rights to domestic law is generally justified, whereas domestic law may only contain such restrictions as are listed in Article 18(3) of the Covenant.

Articles 19 and 20. The same holds true for Articles 19 and 20 subjecting the publication of periodicals of a religious nature, the study and distribution of religious literature, other educational activities and the foundation of charity associations and cultural and educational organizations and organs of mass information to domestic legislation. The third paragraph of Article 20 discriminates on the basis of nationality in respect of the grant of air time for religious broadcasting.

Article 21. In general, Article 21 flatly violates both international and constitutional provisions respecting equality of treatment of all religious persons and institutions, whether foreign or Russian.

Moreover, the constraints on mission activity, particularly by foreign persons and religious institutions, violate numerous international norms on freedom to disseminate religious beliefs and freedom of expression. Thus paragraphs 2 and 3 of Article 21 should be deleted.

Paragraph 1 of Article 21 should be retained, provided that it applies specifically to "Russian and foreign religious institutions." In addition the list of actions at the end of the paragraph should be made an illustrative list by amending the final portion of the paragraph to read as follows: "for participation in their actions, including but not limited to for pilgrimage, for obtaining a religious education, and for practicing in these institutions professional religious activity including representative ones."

Conclusion

The August 27, 1993 Amendment to the 1990 Russian Law on Freedom of Conscience and Freedom of Religion poses a grave affront to fundamental human rights. The August 27 Amendment imposes cumbersome restrictions on "foreign" and "new" religious organizations. It weakens guarantees that all believers and religious communities will be treated equally. It guarantees fundamental human rights protection only to citizens. It

expands opportunities for inappropriate state regulation of religious affairs. It singles out the Russian Orthodox Church for special privileges and protections that go beyond legitimate recognition of its unique role in Russian history, culture, and society. It is filled with ambiguous, vague, and contradictory provisions and is legally flawed in many respects.

The August 27 Amendment violates the letter and the spirit of Russian obligations under applicable international treaties and other internationally recognized norms on religious liberty. Many of its provisions conflict directly with the guarantees set out in the new Constitution of the Russian Federation. This is not the time in Russia's history to revert to oppressive patterns of the past.

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. The De Burght Conference was originally organized by Mr. Ernest van Eeghen, a prominent Dutch businessman and former chairman of the Finance Committee of the World Council of Churches, and Dr. Landrum Bolling, Senior Fellow with the Center for International Policy in Washington, D.C., Senior Advisor to the Conflict Management Group in Cambridge, Massachusetts, and a prominent American educator, philanthropist, and diplomat without portfolio. Over the past decade, the De Burght Conference has held a series of high-level conferences designed to address significant issues of religious liberty and military security. Among other things, the group played an influential role in helping to arrange release of religious prisoners of conscience in Russia in the late 1980s, provided critical support and endorsement for the 1990 USSR law on freedom of conscience, and provided advice on the division of military assets between the Ukraine and Russia over the past year.

. See Appendix B.

. Given the nature and purpose of this Report, the analysis given herein is perforce brief, and citations to the relevant scholarly literature are kept to a minimum.

. PRAVDA, 9 October 1990. An English translation of the law appears in 33 J. OF CHURCH & STATE 191-201 (1991).

. See, e.g., the recommendations of Harold J. Berman, Erwin N. Griswold & Frank C. Newman, Draft USSR Law on Freedom of Conscience With Commentary, 3 HARV. HUMAN RIGHTS J. 137 (1990), which were, in part, incorporated into the final version of the legislation.

. Anatoly Pchelintsev, Press Conference by R[ussian] F[eederation] Protestant Religious Representatives (Official Kremlin International News Broadcast, July 22, 1993) [hereafter Protestant Press Conference].

. Id.

. Vyacheslav Polosin, Press Conference of Vyacheslav Polosin, Chairman of the Supreme Soviet Committee on Freedom of Conscience and Religion (Russian American Press and Information Center, Official Kremlin International News Broadcast, July 19, 1993) [hereafter Polosin Press Conference].

. Id.

. See comments by Polosin in Protestant Press Conference, *supra* note 10.

. Polosin Press Conference, *supra* note 12.

- . Id.
- . Id.
- . Id.
- . See, e.g., Protestant Press Conference, *supra* note 10 (comments of Anatoly Pchelintsev and Mikhail Kulako).
- . For further discussion see James E. Wood, Jr., *The Battle Over Religious Freedom in Russia*, 35 J. OF CHURCH & STATE 491 (1993).
- . The full text of the concluding resolution is reprinted in *id.* at 495-96.
- . *Freedom of Conscience in Russia: Amendments and Additions: Comments by Yuri Rosenbaum of the State and Law Institute, Nezasivimaya Gazeta (Official Kremlin International News Broadcast, July 23, 1993)*.
- . Id.
- . Id.
- . David Filipov, *Yeltsin Set to Enact New Churches Law*, MOSCOW TIMES, July 16, 1993, at 5.
- . It is worth noting that in discussion of these issues at the international level, a distinction has emerged between (1) "proselytizing," which is taken to refer to coercive and manipulative efforts to attract adherents through use of economic incentives or other inappropriate means; and (2) "evangelizing," which merely involves communicating the spiritual message of a given religious group. The Russian religious leaders apparently complained against both such activities by foreign religious groups.
- . British Broadcasting Corporation, *Draft Law Banning Foreign Religious Organizations Approved* (Summary of World Broadcasts, June 29, 1993). According to the BBC report, the first reading version of the draft law banned the "independent work of foreign religious organizations, their missions and individual religious leaders who have no Russian citizenship." Further, the ban extended "to the publication of religious literature and commercial and advertising activities." The references to "independent work of foreign religious organizations" was altered before the draft was approved in its second reading on July 14, 1993.
- . David Filipov & Pyotr Zhuravlyov, *Parliament Puts Limits on Foreign Churches*, MOSCOW TIMES, July 15, 1993, at 1.
- . Id., at 1; *The Supreme Soviet of the Russian Federation Solved the Problem of Procapitalization [sic]: The Russian Orthodox Church is Permitted to Change a Law of the Russian Federation*, INDEPENDENT NEWSPAPER (Moscow, July 15, 1993, #131 (155)). The Patriarch's letter reads in pertinent part:
[O]n behalf of the Russian Orthodox Church, to which the majority of Russian believers belong, I testify that the proposed amendments and additions correspond to desires and needs of Orthodox clergy and church people. . . . [The Patriarch understands] the intention of the authors of the draft law to put in order the activities of foreign religious organizations. . . [because] while strongly calling for the safeguarding of the spiritual freedom of each Russian citizen, for the right of every person to choose religion and views and also to change his or her choice, we, being Orthodox Christians, believe that this choice should not be imposed from the outside, especially when they use the difficult living conditions of our people and rough pressure on personality thus depriving people of the freedom given by God.

Id. The Patriarch also approved "a 12 month consideration period for

accrediting nontraditional religious associations which would allow the making of a 'well-weighed approach' to them." Id.

. Gustav Spohn, Missionary Law Rejected by Yeltsin, CHICAGO TRIBUNE, August 6, 1993, at 7 (North Sports Final Edition).

. A copy of President Yeltsin's letter is on file with the Emory International Law Review.

. International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (1976) [hereinafter ICCPR].

. [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force September 3, 1953), as amended by Protocol Nos. 3 & 5 [hereinafter European Convention].

. Declaration on the Elimination of All forms of Intolerance and of Discrimination Based on Religion or Belief, adopted 18 Jan. 1982, G.A. Res. 55, 36 U.N. GAOR Supp. (No. 51), U.N. Doc. A/RES/36/55 (1982) [hereinafter 1981 Declaration].

. Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-Up to the Conference, Jan. 17, 1989, 28 I.L.M. 527 [hereinafter Vienna Concluding Document].

. The USSR ratified the Covenant on October 16, 1973. See CENTRE FOR HUMAN RIGHTS, HUMAN RIGHTS: STATUS OF INTERNATIONAL INSTRUMENTS 27 (1987).

. See also ICCPR, supra note 32, at Article 4(3).

. See Human Rights Committee, General Comment No. 22(48) concerning Article 18 (CCPR/C/21/Rev.1/Add. 4, 27 September 1993) [hereafter Human Rights Committee, General Comment No. 22(48)].

. See, e.g., the view of the Human Rights Committee in Case 172/1984, Broeks v. The Netherlands, Annual Report 1987, at 139.

. See Human Rights Committee, General Comment No. 22(48), supra note 38.

. Id.

. Case of Silver and Others, 61 Eur. Ct. H.R. (ser. A) at 38 (1983).

. Case of Kokkinakis v. Greece (3/1992/348/421) (typescript only; published version forthcoming). The Kokkinakis court leaves open the possibility that various forms of abusive or exploitative conduct carried on under the guise of spreading religious beliefs may be subject to regulation. But laws against traditional proselytizing (speaking about religious beliefs with a non-believer in that individual's home, and even attempting to sell religious literature) violate the European Convention.

. See discussion in NATAN LERNER, GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW 88 (1991).

. While CSCE commitments, by their terms, do not constitute formal legal commitments in the same way that treaty obligations, such as the Covenant, do, they are nonetheless politically binding. See Arie Bloed, Two Decades of the CSCE Process: From Confrontation to Co-operation, An Introduction, in THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE: ANALYSIS AND BASIC DOCUMENTS, 1972-1993 22-25 (Arie Bloed, ed., 1993). Non-compliance with these obligations would lead to substantial political embarrassment for Russia.

. An English translation is provided in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: THE RUSSIAN FEDERATION SUPPLEMENT (Albert P. Blaustein, ed. 1993) [hereinafter Russian Constitution].

. See European Convention, *supra* note 33, Article 9; ICCPR, *supra* note 32, Article 18. See also the language of the Kokkinakis case, *supra* note 43.

. Note, for example, the General Comment of the Human Rights Committee on Article 18: "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." See Human Rights Committee, General Comment No. 22(48), *supra* note 38.

. Similarly, the first sentence of Article 7, stipulating that "[r]eligious orientation cannot be used as a basis for refusal or avoidance in the compliance with established legislation of the Russian federation" has too broad a scope. The same holds true for the provision in Article 8 that the state does not interfere in the activities of religious organizations "provided those activities do not contradict the law" and that the religious organizations "observe the demands of acting legislation."

. See ICCPR, *supra* note 32, at Article 18; European Convention, *supra* note 33, at Article 9; Vienna Concluding Document, *supra* note 35, Principles 16a and 16b.

. RSFSR Law on Freedom of Religion, Article 1, in JPRS-UPA-90-071, 18 December 1990 [hereinafter 1990 Law].

. 1990 Law, *supra* note 51, at Articles 15, 22.

. 1990 Law, *supra* note 51, at Article 15.

. 1990 Law, *supra* note 51, at Article 22. The August 27 Amendment only permits residents of such institutions to request worship services and other religious rites (Article 18).

. 1990 Law, *supra* note 51, at Article 22.

. 1990 Law, *supra* note 51, at Article 9. Instead, children's rights are mentioned only as a part of their parents' right to educate them in accordance with parental beliefs (Article 9).

. 1990 Law, *supra* note 51, at Article 6.

. ICCPR, *supra* note 32, at Article 19 (emphasis added).

. 1990 Law, *supra* note 51, at Article 23.

. See Human Rights Committee, General Comment No. 22(48), *supra* note 38.

. *Id.*

. 1981 Declaration, *supra* note 34, at Article 6(i) (emphasis added).

. 1990 Law, *supra* note 51, at Article 17.

. 1990 Law, *supra* note 51, at Articles 18-20.

. 1990 Law, *supra* note 51, at Article 17.

. Russian Constitution, *supra* note 46, Article 30(1).

. *Id.*, Article 28.

. Committee of the Supreme Soviet of the Russian Federation on Freedom of Conscience and Relations with Public, Religious and Charitable Organizations, Resolution of the Supreme Soviet of the Russian Federation on Implementation of a Law of the Russian Federation On Introduction of Amendments and Supplements to the Law of R.S.F.S.R. On Freedom of Religion (August 19, 1993), Paragraphs 8 & 9 (hereinafter Implementing Decree). A copy of the Implementing Decree is on file with the Emory International Law Review.

. Chart of Corrections to the Law on Freedom of Conscience (August 22, 1993), Articles 14, 16, 17. A copy of the Chart of Corrections is on file with the Emory International Law Review.

- . Id., at Article 14.
- . Id.
- . Implementing Decree, *supra* note 68, at Paragraphs 3-7, 9, 10.
- . Id. at Paragraph 5.
- . Id.
- . Vienna Concluding Document, *supra* note 35, at Principles 16 (f) (g) (h).

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m of rights falls far short of the catalogue of individual rights to
religious freedom set out in Article 28 of the R333333333333333
33(333333333333333/10/94 3/2/94 d¥33eclarati, Article 18 of the
Covenant and the General Comment thereon by the Human Rights Committee.
4. The August 27 Amendment Violates Freedom of Expression. Several
provisions of the August 27 Amendment curtail the right to freedom of
expression, which is guaranteed by Article 19 of the Covenant, Article 10
of the European Convention.