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### Religion and the Law in the Commonwealth of Independent States and the Baltic Nations, 4 Touro J. Transnat'l L. 103 (1993)

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# RELIGION AND THE LAW IN THE COMMONWEALTH OF INDEPENDENT STATES AND THE BALTIC NATIONS

Ralph Ruebner, Mary L. Martin & Carolyn H. Gasey\*

*“The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as [he] may.”\*\**

## INTRODUCTION

The Soviet Union officially ceased to exist December 21, 1991.<sup>1</sup> From its ashes, a new Commonwealth of Independent States has risen. The Commonwealth of Independent States

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\*\* Elie Wiesel, *The Williamsburg Charter and Freedom of Conscience*, 8 J. L. & RELIGION 253, 253 (1990) (citing James Madison, *Memorial and Remonstrance*).

1. Michael McGuire, *Republics Sign Pact, Killing Soviet Union: 11 States Form New Entity, with Georgia Going Own Way*, CHI. TRIB., Dec. 22, 1991, at 1. The leaders of Russia, Ukraine, and Byelorussia proclaimed the new Commonwealth of Independent States on December 8, 1991, but Mikhail Gorbachev did not officially resign as the President of the now defunct Soviet Union until December 26, 1991. Serge Schmemmann, *End of the Soviet Union; The Soviet State, Born of a Dream, Dies*, N.Y. TIMES, Dec. 26, 1991, at A1.

("CIS") is made up of eleven of the former republics.<sup>2</sup> It is too early in the development of the CIS to determine whether it intends to institute any national laws.<sup>3</sup> In addition, the Baltic Nations are completely independent countries. Since all of these new states are in the process of developing their own new laws and new constitutions, it is not clear what legislation they will retain from the Soviet Union and what legislation they will choose to revise, either completely or in part. It is likely, however, that these states will look to recent Soviet legislation, created in the era of glasnost, for guidance in devising their own laws.<sup>4</sup>

One recent law the states of the Commonwealth may consider, and possibly adopt, is the Soviet Law on Freedom of Religion and Conscience ("Soviet Law").<sup>5</sup> This legislation was signed on

2. The CIS consists of: Russia, Azerbaijan, Armenia, Moldova, Byelorussia, Turkmenia, Uzbekistan, Tadzhikistan, Ukraine, Kazakhstan, Kirghizia. Georgia declined to join the Commonwealth. McGuire, *supra* note 1. The three Baltic nations, Latvia, Lithuania, and Estonia, gained their independence earlier in the year; thus, they also did not join the Commonwealth. *Id*

3. The primary concern for Boris Yeltsin, who spearheaded the development of the CIS, is whether there will even be an army that is under the unified control of the CIS or whether each state will maintain its own armed forces. Vincent J. Schodolski, *Yeltsin's Army Decree Widens Crack in Union*, CHI. TRIB., Mar. 17, 1992, at 1. Therefore, it is clear that until this matter is settled, the question about which governing body will determine the general laws for the region will go unanswered.

4. For example, the Ukrainian Supreme Soviet passed a law on freedom of religion, similar to the law in the former USSR, on March 22, 1991. President's 29th CSCE Report, *Implementation of the Helsinki Final Act, April 1, 1990 - March 31, 1991*, U.S. Department of State Dispatch Supplement, July 1991 (Vol. 2, Supp. No. 3), at 37 [hereinafter President's Report]. Estonia also has similar legislation relating to religious freedom, the return of church property, and the registration of religious organizations. *See Estonian Baptists Get Orthodox Church*, KESTON NEWS SERV. (Keston College), June 13, 1991, at 12.

5. Vedomosti SSSR, Law of the USSR: On Freedom of Conscience and Religious Organizations (Special Supp. Oct. 23, 1990) [hereinafter Law of the USSR] (copy on file with authors and *Touro Journal of Transnational Law*).

Ukraine and Estonia have recently enacted new legislation addressing freedom of religion. *See infra* note 184 as to Ukraine's law and *infra* note 213

October 1, 1990 by President Gorbachev in an effort to reverse the of previous decades of religious oppression.<sup>6</sup> Prior to October 1990, the Supreme Soviet reviewed a number of proposed draft freedom of religion and conscience laws.<sup>7</sup>

Since the proposed drafts were made public, scholars have voiced various concerns.<sup>8</sup> The enthusiasm for change and the

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as to Estonia's new law. Lithuania's 1990 Provisional Constitution also addresses the issue and states in pertinent part:

In the Republic of Lithuania the freedom of thought, conscience, and religious faith or lack of religious faith, equal rights to profess convictions and views, singly or in groups, to express or disseminate them by peaceful means shall be guaranteed by law.

No one shall compel another person or himself be compelled to speak out, conduct himself or act against one's own conscience or convictions.

State institutions, educational and preparatory establishments shall be secular in nature. According to the procedure established by law these institutions and establishments shall maintain contact with the Church and other religious organizations in promoting morality.

The Church and other religious organizations shall have independent legal status and they shall be guaranteed the right to independently conduct their internal affairs.

THE PROVISIONAL BASIC LAW OF THE REPUBLIC OF LITHUANIA (Provisional Constitution) ch. 3 (Fundamental Rights, Freedoms and Duties of Lithuanian Citizens), art. 31.

6. *Id.*

7. At least three major draft proposals for new laws on the "freedom of conscience" were the subject of ongoing deliberations within the Soviet legislature. These drafts include: 1) the negotiated draft, which is a negotiated combination of two original draft laws ("Negotiated Draft"); 2) a draft written by Konstantin Kharchev, the former President of the Council for Religious Affairs ("CRA Draft"); and 3) a draft written by Dr. Yuri Rozenbaum, of the Institute of State and Law of the USSR Academy of Sciences ("Rozenbaum Draft"). See generally Albert Boiter, *Drafting a Freedom of Conscience Law*, 28 COLUM. J. OF TRANSNAT'L L. 157 (1990) (discussing proposed Soviet law on freedom of religion); Harold J. Berman et al., *Draft USSR Law on Freedom of Conscience, with Commentary*, 3 HARV. HUM. RTS. J. 137 (1990) (for complete analysis of the Draft Law of the USSR on Freedom of Conscience and Religion).

8. Much of the criticism was voiced at the *Press Conference and Public Hearing on Proposed Revisions of the Laws on Religion*, held at DePaul University in Chicago, Illinois on December 9, 1988 (hereinafter *DePaul Conference*). Several religions were represented on a panel considering the

Soviet attitude towards religion is tempered by a pessimistic, although well-deserved, perception that changes in the law may not do any good.<sup>9</sup> Another concern is that the underlying purpose of a freedom of religion law is to strengthen the hand of the state that adopts it.<sup>10</sup> The Soviet Law does not explicitly answer these concerns.

While on its face this law appears to make sweeping reforms, a number of criticisms which have been raised about the various proposed drafts of the law continue to remain valid. A primary concern is whether the governments of the former Soviet Union will follow their own laws.<sup>11</sup> A second general issue is whether any "government has the right to implement a state policy toward religion."<sup>12</sup> A third concern is whether the new Soviet Law provides adequate remedies for the problems first raised by the various drafts of the law. However, despite the criticisms, it appears that the Soviet Law is a vast improvement over the past.

Part I of this paper will trace the history of the former Soviet Union, specifically the government's oppression of religious expression. Part II will then analyze the Soviet Law, and explain what this law offers to those struggling for religious freedom. Next, Part III will discuss the effects of the implementation of the Soviet Law on the religious life of the Soviet people. Finally, Part IV will examine freedom of religion in the Baltic Nations

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drafts. The expert on Moslems stated that the draft legislation would have little effect on Moslems. His reasoning was based upon the fact that four of the five pillars of the Moslem faith do not require "overt" behavior and, therefore, have been adhered to despite the former Soviet law against religion. H. Mason, Remarks at the *DePaul Conference*, *supra*.

9. Deepa Arora, *Glasnost Threatens Jews, Refusenik Says*, CHI. TRIB., Apr. 20, 1990, § 2, at 8. Soviet Refusenik Boris Kelman believes that *glasnost* and social reforms in the Soviet Union will threaten "Jewish life in the Soviet Union." *Id.* Kelman was quoted as stating that "[a]nti-Semitism has always existed in the Soviet Union, only its expression was disguised by bureaucracy and power. Today the average citizen believes he can express himself freely--and that includes his anti-Semitism." *Id.*

10. Henry Mason, Remarks at the DePaul Conference, *supra* note 8.

11. Rev. Andriy Chirovsky (Catholic Theological Union), Remarks at the DePaul Conference, *supra* note 8.

12. Ralph Ruebner, Remarks at the DePaul Conference, *supra* note 8.

and the new Commonwealth of Independent States, and it will make predictions about the state of laws addressing freedom of religion in the region.

## I. HISTORICAL OUTLOOK

Russia of the early nineteenth century enjoyed freedom of religion, similar to the freedom long recognized in the West. However, Karl Marx and Frederick Engels masterminded the beginning of the end with their *Communist Manifesto* of 1848.<sup>13</sup> Although under Stalin the Russian Orthodox Church was allowed to remain in place as the state church, its importance in peoples' lives was diminished.<sup>14</sup> Marxist theory was that the state would benefit the masses by intervening in economic and social relationships, and this ideology became the basis for policies of Lenin and the Russian revolutionaries.<sup>15</sup> Because of the integral involvement between the church and state during the Czarist era, opposition to one meant opposition to both.<sup>16</sup> Therefore, Lenin selected as his closest associates those who did not claim to hold religious beliefs, and started, within his organization, propaganda that religion and the church were threats to Communism.<sup>17</sup>

Lenin's 1918 Decree on Separation of Church from State and School from Church, separated religious activities from other aspects of life. Beyond the official facade of "religious freedom,"

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13. JOHN HAZARD, *THE SOVIET SYSTEM OF GOVERNMENT* 155 (5th ed. 1980). Byelorussians, particularly, enjoyed religious tolerance. Ambrose, *Language and Church in Byelorussia*, REPORT ON THE USSR, Feb. 9, 1990, at 18. "Orthodox, Catholics, Protestants, and some non-Christian religions existed [in Byelorussia] side by side." *Id.* Byelorussia felt the impact of Marxist ideology in part when the Byelorussian language was forbidden in the churches. *Id.*

14. HAZARD, *supra* note 13, at 156. Stalin lifted restrictions on the Russian Orthodox Church during World War II because he determined it was necessary to acquire the support of the Church's priests if he desired to defeat the Nazis. JOHN HAZARD, *MANAGING CHANGE IN THE U.S.S.R.* 74 (1982) [hereinafter *MANAGING CHANGE*].

15. *Id.* at 155-56.

16. *Id.* at 156.

17. *Id.*

also hanging over the practitioners was the threat of interference by the government if the state saw the churches impeding the socialist program.<sup>18</sup> The Orthodox Church lost its position as the state church with the 1918 Separation Decree. This change meant that the church lost its quasi-governmental roles of keeping vital statistics as to birth, marriage, divorce and death, and performing marriages and granting divorces.<sup>19</sup>

An additional point of separation in 1918 was Lenin's policy of depriving the church of its property.<sup>20</sup> This not only meant that the church did not own the land or buildings, but neither did it own the vestments or articles needed to conduct services. Thus, the state could close churches merely by denying their accessibility or use.<sup>21</sup> Further hindrances to the church included forbidding religious education in public or private schools,<sup>22</sup> forbidding taxing for church benefit, and prohibiting the placement of religious emblems in state institutions.<sup>23</sup>

The Communist Party viewed religion as the "opiate of the masses."<sup>24</sup> The government illustrated its anti-religious policy by closing houses of worship, imprisoning religious leaders, and promoting atheism.<sup>25</sup> Findings reported by representatives from the United States government following their visit in 1989 to a Soviet prison camp revealed contradictory reports concerning the types of prisoners that were in the camp.<sup>26</sup> President Gorbachev stated in 1988 "that there are no longer any persons in prison

18. *Id.*; Anderson, *Drafting a Soviet Law on Freedom of Conscience*, 19 *SOVIET JEWISH AFF.* 19, 20 (1989).

19. HAZARD, *supra* note 13, at 157.

20. *Id.*

21. *Id.* at 158-59.

22. The prohibition of religious education was codified in the 1929 Law on Religious Associations. The "law defined the purpose of a religious organization as the satisfaction of believers needs," and it banned activities such as study groups. Anderson, *supra* note 18, at 20.

23. HAZARD, *supra* note 13, at 159-60.

24. *Freedom of Religion Becomes Law in USSR*, CHI. TRIB., Sept. 27, 1990, § 1, at 8.

25. *Id.*

26. Final Report, *Congressional Delegation to the Soviet Union and Perm Labor Camp 35*, Delegation Findings and Follow-Up, at 4 (Oct. 1989).

'sentenced for their political or religious convictions.'"<sup>27</sup> However, the testimony of the prisoners decried such a claim.<sup>28</sup>

The previous law concerning religious associations consisted of sixty-four rules exhibiting total governmental control over religion. One blatant example of this was Rule 59:

Religious processions and the conduct of religious rites and ceremonies under the open sky, as well as in apartments and homes of believers, are permitted with special authorization for each occasion from the executive committee of the regional or municipal council of workers' deputies.<sup>29</sup>

Additional rules required the registration of such religious associations before they could begin operations<sup>30</sup> and also required the reporting of members of religious groups to the local government.<sup>31</sup> Moreover, the prior law prohibited any charitable activities.<sup>32</sup>

Studies conducted after World War II tended to prove the effectiveness of the anti-religious measures. The results showed that "deeply religious" persons were mostly older, with substantial numbers of agnostics and atheists among the younger generation which had been raised under the system of Soviet propaganda.<sup>33</sup> Recent studies show, however, that this trend

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27. *Id.*

28. *Id.*

29. This Rule went on to state, "The petition for the permission for religious processions and the conduct of religious rites under the open sky is to be submitted no less than two weeks prior to the date of the scheduled ceremony." *Concerning Religious Associations, reprinted from XV RELIGION IN COMMUNIST DOMINATED AREAS 106-12 (1976).*

30. *Id.* at Rule 4.

31. *Id.* at Rule 62.

32. *Id.* at Rule 17. The justification for the prohibition of charity was that charitable activities were not considered necessary to satisfy religious needs (as determined by the government) and to allow charity would belittle the accomplishments of Soviet citizens. PAUL D. STEEVES, *RELIGION AND THE LAW IN THE SOVIET UNION 12* (citing A.I. BARMENKOV, *SVOBODA SOVESTI V. SSSR 70 (1979)*).

33. HAZARD, *supra* note 13, at 161-62.



away from religious expression may have dissipated.<sup>34</sup> The majority of persons in the USSR are no longer atheistic, if they ever were.<sup>35</sup> Religious believers are increasing in numbers, and sex, age, or education are not seen as factors which are indicative of one's religious indoctrination.<sup>36</sup> Thus, with this background in mind, we evaluate the October 1990 Freedom of Religion and Conscience Law.

## II. THE 1990 SOVIET FREEDOM OF RELIGION AND CONSCIENCE LAW

While the Soviet Law is an important step towards loosening past restraints on religious belief and practice, it failed to resolve a number of specific criticisms and potentially generated new concerns.<sup>37</sup> It is not clear whether the mandates of this law could actually lead to true freedom of religion and conscience. The Soviet Law contains a number of provisions that appear to obstruct freedom of religion and continue state regulation of religion and conscience.

### A. *General Concepts*

Article 2 of the Soviet Law clearly states that freedom of conscience is based upon this law as well as the USSR Constitution, the laws of the USSR, and the laws of the republics.<sup>38</sup> In other words, Article 52 of the Soviet Constitution of 1977 is incorporated into the Soviet Law.<sup>39</sup> Article 52 pertaining to religious liberty states:

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34. Goble, *Soviet Myths About Religion Crumble*, REPORT ON THE USSR, March 9, 1990, at 8.

35. *Id.*

36. *Id.*

37. See generally Boiter, *supra* note 7 (discussing proposed Soviet law on freedom of religion); Berman *supra* note 7 (for complete analysis of the Draft Law of the USSR on Freedom of Conscience and Religion).

38. Law of the USSR, *supra* note 5, art. 2.

39. KONST. [Constitution] SSR (1977) art. 52 (U.S.S.R.).

Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited. In the USSR, the church is separated from the state, and the school from the church.<sup>40</sup>

However, certain inequities appeared in the former constitution, which would thwart the implementation of a law that reinstated the rights which Lenin had taken away.<sup>41</sup> The only tenets set forth in Article 52 that the former government actually observed were “‘the right not to profess any religion and to conduct antireligious propaganda’ and ‘noninterference of the church with the affairs of the state’”<sup>42</sup> The last constitution of the USSR did not treat atheists and those who profess a religion in the same manner. In particular, there was no constitutional guarantee of religious education under that provision, nor was religious propaganda allowed. In addition, there was no accommodation by which a church could acquire property rights.<sup>43</sup> Thus, there continued to be inconsistencies between the Soviet Constitution and the Soviet Law.

Secondly, the general purpose section of the Soviet Law maintains that it “regulates the relations pertaining to the activity of religious organi[z]ations.”<sup>44</sup> It is difficult to reconcile the

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40. *Id.* All of the constitutions, from the mid-1980's, of the former republics contained an analogous provision. However, these constitutions were based upon a communist form of government. Thus, the former republics will be required to rewrite their constitutions to be consistent with their desire for a democratic form of government if they have not already done so.

41. Anderson, *supra* note 18, at 28-29.

42. Bohdan R. Bociurkiw, *The Formulation of Religious Policy in the Soviet Union*, 1986 J. CHURCH & STATE 423, 424 (quoting V. A. Kuroedov, *Religiia i tserkov v Sovetskom obshchestve* (Moscow: Politizdat, 1984), 2).

43. Even the 1918 law had allowed both religious and anti-religious propaganda; an amendment in 1929, however, deleted the right to engage in religious propaganda. Anderson, *supra* note 18, at 20.

44. Law of the USSR, *supra* note 5, art. 1. The CRA Draft law and the Negotiated Draft also set regulations as their goal. For an explanation of the CRA Draft and Negotiated Draft, see *supra* note 7. Thus, Lenin's principles

notions of regulating relations associated with freedom of religion and genuine freedom of religion and conscience. Freedom generally refers to the lack of regulation.<sup>45</sup>

Thirdly, the new law modifies the language of the United Nations declaration on religious freedoms<sup>46</sup> by stating that

relating to religion is the foundation of these drafts which is antithetical to the concept of freedom of conscience.

45. Ruebner, *supra* note 12. People in the USSR appear to approach life not knowing just what they are allowed to do; yet many do not test the law to see what is forbidden. *Id.*

46. Although not binding on the former USSR, the United Nations defined the international standard in a declaration advocating the elimination of any intolerance and discrimination which is religiously oriented. United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981), *reprinted in* 21 I.L.M. 205 (1982) (adopted Nov. 25, 1981) [hereinafter United Nations Declaration on Religion]. The first article of the United Nations Declaration promotes freedom of thought, conscience and religion, including "freedom to manifest one's religion or beliefs" unless proscribed by law and "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." *Id.* art. 1. The United Nations Declaration on Religion further sets forth the following freedoms in conjunction with conscience and religion:

- a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- b) To establish and maintain appropriate charitable or humanitarian institutions;
- c) To make, [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;
- d) To write, [to publish] and [to] disseminate relevant publications in these areas;
- e) To teach a religion or belief in places suitable for these purposes;
- f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- g) To train, [to] appoint, [to] elect or [to] designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;

freedom of conscience may be restricted only to the degree "necessary to maintain public safety, . . . well-being, and morals, and also the rights and freedoms of other citizens."<sup>47</sup> However, what constitutes maintaining public safety, well-being, morals, and protecting the rights and freedoms of other citizens is not limited anywhere in the Soviet Law.<sup>48</sup> This leaves the door open for complete disregard of the other mandates of this law under the guise of protecting the well-being or morals of the public.

### *B. Rights and Guarantees*

Article 4 of the Soviet Law grants equality to all citizens regardless of their religious beliefs.<sup>49</sup> This article establishes legal responsibility for maintaining these rights.<sup>50</sup> Specifically, this section provides for criminal liability for those persons who

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

*Id.* art. 6. Article 7 mandates the inclusion of these freedoms in national legislation.

47. Law of the USSR, *supra* note 5, art. 3. It states in pertinent part:

The exercise of freedom of conscience, religion or conviction is subject only to the limitations necessary to maintain public safety and order, life and well-being, and morals and also the rights and freedoms of other citizens as established by law and compatible with the international obligations of the USSR.

*Id.*

48. The United Nations Declaration on Religion does not speak in terms of regulations; it speaks in terms of rights and freedoms. While this declaration does include limiting language to protect the public interest, the intentions of the former Soviet government were often viewed with pessimism. It is not clear how this limiting language might be interpreted, and there is a question as to whether the former Soviet republics will follow this or any other law. Therefore, clarification of the limiting language in the freedom of religion and conscience law is necessary.

49. Law of the USSR, *supra* note 5, art. 4. It states in pertinent part that "Citizens of the USSR are equal under the law in all fields of civic, political, economic, social and cultural life regardless of their attitude towards religion."

*Id.*

50. *Id.*

directly or indirectly impose limitations on the rights of a citizen because of that individual's religious beliefs or who insult a person based upon that person's religion.<sup>51</sup> However, it is not clear whether this section provides an alternative to military service when an individual's religious beliefs prohibit such action.<sup>52</sup>

Additionally, the portion of the Soviet Law pertaining to rights and religious beliefs does not go far enough to include the right to change one's choice of religion.<sup>53</sup> The proposed draft written by Dr. Yuri Rozenbaum included a provision that defined the right to religious beliefs to include the choice of a religion and the option to change the choice.<sup>54</sup> In addition, the law does not address the right to leave a religious organization.<sup>55</sup> Further, it does specifically establish the right of religious organizations to conduct charitable activities and to accept charitable assistance.<sup>56</sup>

Additionally, the Soviet Law provides that religious education has no place in the state system of education, which is "secular in nature."<sup>57</sup> One of the more highly debated issues has been whether to prohibit optional religious courses in the schools.<sup>58</sup>

51. *Id.*

52. *Id.* The CRA Draft provided for alternative service upon approval of the court. CRA Draft, EKSPRESS-KHRONIKA, July 17, 1988, reprinted in RUSKAYA MYSL', July 22, 1988, translated in 28 RELIGION IN COMMUNIST DOMINATED AREAS 12 (1989) (art. 5 of CRA Draft); see Keston News Service, Aug. 4, 1988, at 15. For an explanation of the CRA Draft, see *supra* note 7.

53. Law of the USSR, *supra* note 5, art. 4.

54. Rozenbaum, *K razrabotke proekta Zakona SSSR Osvobode sovesti [On the Elaboration of the Draft Law of the USSR on Freedom of Conscience]*, SOVETSKOE GOSUDARSTVO I PRAVO [SOV. GOS. & PRAVO], 91, 91-98 (1989) (arts. 12-13) [hereinafter *Rozenbaum Draft*]. For a further discussion of the Rozenbaum Draft, see *supra* note 7.

55. The Rozenbaum Draft included a provision addressing this situation.

56. Law of the USSR, *supra* note 5, art. 23.

57. Law of the USSR, *supra* note 5, art. 6.

58. *Draft Soviet Law on Religion Published*, NEWS RELEASE (Keston College), June 11, 1990, at 1 [hereinafter *Draft Soviet Law*]. The United Nations Declaration on Religion, states that children's education is decided by the parents. United Nations Declaration on Religion, *supra* note 46, arts. 2, 3 & 4. Children also enjoy the right to be educated with or without religion. The

The law does permit religious education, either individually or in groups.<sup>59</sup> Nevertheless, a religious organization must register in order to engage in religious education of any nature.<sup>60</sup>

Lastly, another concern relating to rights and guarantees that is not resolved by the Soviet Law is that it defines the role of religious societies as merely "satisfying other religious needs."<sup>61</sup> However, laws can always change, and the interpretation of what "satisfying other religious needs" entails is clearly subject to changes. Therefore, a more precise definition is necessary to protect religious societies.

### C. Registration

The greatest criticism of the Soviet religious freedom law is the continued requirement of registration for religious organizations and societies' charters.<sup>62</sup> A religious organization or society must fulfill the obligation to register in order to enjoy any of the rights guaranteed under the Soviet Law.<sup>63</sup> Although not addressed by the United Nations declaration concerning religious freedoms,<sup>64</sup> the demand to eliminate the registration requirement was first made by a group in the United States and by a group of Orthodox believers.<sup>65</sup>

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"best interests" of the children are viewed as a priority, including guarding their mental or physical health. *Id.* art. 5, paras. 1-3.

59. Law of the USSR, *supra* note 5, art. 6.

60. *Id.*

61. Law of the USSR, *supra* note 5, art. 8.

62. *See, e.g.*, Law of the USSR, *supra* note 5, arts. 12-16.

63. Law of the USSR, *supra* note 5, art. 13.

64. The reason that this is not specifically addressed in the United Nations Declaration on Religion is probably because of the general applicability basis of this Declaration. For a complete discussion of the United Nations Declaration on Religion, see *supra* notes 46-48 and accompanying text. The issue of registration is specific to the Soviet system of government.

65. The James Madison Foundation, *An Appeal for Religious Freedom in the Soviet Union on the Occasion of the Millennium of Christianity in Kievan Rus'* (part II), in *For the Record*, WASH. POST, Apr. 29, 1988, at A20, available in LEXIS, Nexis Library, Omni File; Anderson, *supra* note 18, at 21. This appeal was made to the World Council of Churches in 1976. Additional concerns made known at that time included the right of juridical

The Soviet Law requires a religious organization or society to formulate a charter which must include the organization's location, denomination, and its procedures and powers with respect to property. Also required is a statement disclosing whether it is setting up religious training centers, but the charter need not include matters pertaining to internal regulation.<sup>66</sup> This charter must then be registered with the "appropriate state bod[y]."<sup>67</sup> However, the text of the law does not identify who or what that appropriate state body is. It is conceivable that a religious organization or society's charter could be refused by some government official for failure to register the charter with the "appropriate state bod[y]."

The section of the Soviet Law addressing registration distinguishes between religious organizations and religious societies.<sup>68</sup> Religious organizations are defined as "religious societies, boards and cent[ers], monasteries, . . . and also associations made up of religious organi[z]ations."<sup>69</sup> Religious societies are merely "formed by citizens for the purpose of jointly professing a faith . . . ."<sup>70</sup> Where it is the case, the charter must reveal that a particular religious society is part of a religious organization.<sup>71</sup> Local parishes, if they are part of a national religious organization, need only to register with the local Soviet.<sup>72</sup>

Under the Soviet Law, a charter of a religious organization or society would not be registered if it was not in accord with other existing legislation.<sup>73</sup> Additionally, a religious organization may only register its charter once it has a membership of 10 people

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personality, the prohibition on activities, and the right to religious-based education. *Id.*

66. Law of the USSR, *supra* note 5, art. 12.

67. *Id.*

68. Law of the USSR, *supra* note 5, art. 7.

69. *Id.*

70. Law of the USSR, *supra* note 5, art. 8.

71. *Id.* art. 14.

72. *Id.* art. 8; *see also Draft Soviet Law, supra* note 58, at 2. If the local parish is not part of a registered national organization, its charter must be registered by the state. *Id.*

73. Law of the USSR, *supra* note 5, art. 12.

who are at least 18 years old.<sup>74</sup> While there is no need to register if the religious organization's membership list is less than 10 persons who are at least 18 years-old, non-registration means that a religious organization does not fall within the protection of the Soviet Law.<sup>75</sup> Thus, this minimum size and age requirement gives the state more control over religious organizations.

Furthermore, "the requirement of disclosing a membership list is obnoxious and dangerous to believers."<sup>76</sup> Moreover, the disclosure of a membership list poses another possible contradiction with the language in Article 4 of the Soviet Law which states that "[n]o indication of the [religious belief] of a citizen . . . is permitted in official documents."<sup>77</sup> Clearly the membership list indicates a citizen's religious preference, and a registered charter could be construed as an official document. Additionally, to advance the pursuit for freedom of religion, all records of religious organizations should remain confidential and respected by the state as being private and beyond the reach of state inspection.

The portion of the Soviet Law that mandates registration fails to state under what circumstances a religious organization's charter could be refused. The failure of the law to identify under what circumstances registration could be refused has the obvious effect of granting officials unfettered discretion to arbitrarily refuse to register a religious organization. For example, despite their overwhelming numbers<sup>78</sup> and numerous attempts to petition for recognition from 1946 until 1989, the Soviet government denied the Ukrainian Catholic Church (Uniate Church)

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74. *Id.* art. 14.

75. *See, e.g., id.* arts. 13-14.

76. Ruebner, *supra* note 12.

77. Law of the USSR, *supra* note 5, art. 4. This article does provide an exception to the general rule which is "except in cases where the citizen himself so desires [his beliefs to be indicated in an official document]." *Id.* It is possible that by listing oneself on a membership list, this indicates the desire to have one's beliefs known. However, that argument is dubious because the purpose of the list is to obtain legal recognition and to come within the purview of the freedom of religion law.

78. By one count, the membership of this religious organization numbered at five million. Chirovsky, *supra* note 8.



registration.<sup>79</sup> If religious organizations are to be treated equally, there is no need for a special or detailed provision in a law concerning registration. At a minimum, a state should be required to account for its conduct in granting or denying registration.

The law does provide a mechanism for reviewing the refusal to register;<sup>80</sup> however, it fails to establish guidelines to aid a court in its review.<sup>81</sup> Thus, there is nothing in the Soviet Law to prevent arbitrary and capricious decisions during the review process. Because a religious organization does not enjoy the rights, guarantees, and protection of the freedom of religion law unless it is registered, a circular argument may develop suggesting that the appeal process would not apply to an unregistered religious organization.<sup>82</sup> Thus, the registration requirement clearly does not provide for true freedom of conscience and religion.

#### *D. The Return of Religious Property*

Section III of the Soviet Law, which relates to property, provides that religious organizations are permitted to use property "made available to them on a contractual basis" by the state.<sup>83</sup> It is not clear whether a religious organization must provide some form of monetary security for this use.<sup>84</sup> Under the Soviet Law, religious organizations are permitted to purchase and own

79. Mihalisko, *The Ukrainian Catholics and the Russian Orthodox Church: The Unfolding Conflict in Western Ukraine*, REPORT ON THE USSR, Jan. 5, 1990, at 12. The actual decision to permit the Uniate Church to register was made November 24, 1989. The Uniate Church had been forced to merge with the Russian Orthodox Church. Its identity and property were lost to the Orthodox Church. The government then justified its refusal to recognize the Uniate Church by saying that the matter was internal to the Church and any interference would violate the principle of separation of church and state. *Id.*

80. Law of the USSR, *supra* note 5, art. 15.

81. *Id.*

82. *See, e.g., id.* arts. 13-14.

83. Law of the USSR, *supra* note 5, art. 17. ,

84. *See* Negotiated Draft, Art. 18, para. 2 (includes a provision that required security for property that a religious organization obtained from the state). For a discussion of the origin of the Negotiated Draft, see *supra* note 7.

property, including the right to “maintain publishing, printing, production, . . . and also charitable institutions.”<sup>85</sup> However, the Soviet Law did not address the question of whether property that was confiscated by the state in the past would be returned to the religious organization from which it was taken or if the organization would receive any compensation for that property.

### *E. The Clergy and Worship*

Additionally, the Soviet Law includes a section regulating labor in religious organizations,<sup>86</sup> including a provision on the taxation of the clergy.<sup>87</sup> Such a provision on taxation should not be included in a law on freedom of religion. Religious organizations should maintain equal status with other juridical entities; including a separate provision on taxation of clergy in a freedom of religion law defeats that goal. Moreover, the status of the clergy is never fully clarified, where such a clarification would help to prevent overregulation.

The Soviet Law guarantees the rights of religious organizations to maintain places for worship and conduct services without state intervention.<sup>88</sup> Services are specifically permitted in hospitals, infirmaries and detention centers. Nevertheless, the administrators of those establishments are the ones who invite the clergy, and they determine the “conditions for holding divine service[s]”<sup>89</sup> Obviously, such broad discretion could be abused. This provision states that religious organizations have the right to submit proposals to perform religious services in these establishments; however, the law never specifies to whom the

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85. Law of the USSR, *supra* note 5, arts. 18-19.

86. Law of the USSR, *supra* note 5, § V. This section requires that the state treat those who work in religious organizations the same as any other employee or worker. *Id.* art. 26. In addition, this section establishes a social security fund for people who work in religious organizations. *Id.* art. 28.

87. Law of the USSR, *supra* note 5, art. 26. Currently the clergy pay a higher rate of income tax than other workers and employees. Boiter, *supra* note 7, at 183-84 .

88. Law of the USSR, *supra* note 5, art. 21.

89. *Id.*

proposal shall be made.<sup>90</sup> Moreover, the law does not apply to prisons but only to preliminary detention centers.

*F. The Council on Religious Affairs*

Lastly, the Soviet Law contains a section delineating the activities of the Council on Religious Affairs ("CRA").<sup>91</sup> One of the duties of the CRA is to promote the "mutual understanding and tolerance between religious organi[z]ations" throughout the USSR and abroad.<sup>92</sup> Although this law calls for separation of church and state, the CRA is vested with powers to regulate religion and, therefore, invades the right of separation of religion and the government. The religious organizations are in the best position to establish dialogue among themselves, without the aid of a government agency.

Registration and the CRA are examples of governmental interference in the exercise of religion that the Soviet Law permits. Such restrictions on religion should not be included in the legislation of any state. Thus, these provisions should not be considered as model provisions for the states of the Commonwealth or Baltic Nations to adopt.

### III. THE IMPLEMENTATION OF THE SOVIET LAW ON FREEDOM OF RELIGION AND CONSCIENCE BEFORE THE DEMISE OF THE SOVIET UNION

Since former President Gorbachev signed the Freedom of Conscience and Religion law in October 1990, the status of

90. *Id.*

91. *Id.* art. 29. The CRA is the government body instituted as a central office that collects data about religious organizations and provides expert assistance on religious organizations to other governmental bodies. *Id.*

92. *Id.* Another power of the CRA is the registration of religious organizations. *MANAGING CHANGE*, *supra* note 14, at 74-75. In addition, in order to rebuild or construct new houses of prayer, a religious organization would need to obtain permission from the CRA. *Id.* Therefore, it is clear that the CRA is a governmental body that has the power to dramatically restrict religious practice and beliefs.

religious organizations in the USSR has advanced markedly. Even during the bleakest periods of the antireligious movement, "millions of citizens sustained their attachments to their faith, and some even found a new faith to sustain them."<sup>93</sup> Throughout the presidency of Mikhail Gorbachev, there had been a steady trend of lifting restrictions on religious organizations which culminated in the Soviet Law.<sup>94</sup>

Vast improvements in the areas of religious education, registration, freedom to worship, and the publication of religious materials were seen throughout the Soviet Union. However, other restrictions on religious freedom remained in effect throughout the USSR and continue in the new Commonwealth of Independent States and Baltic Nations. In addition, the implementation of the Soviet Law has varied among the former republics of the USSR. This section will address: first, the improvements that were engendered by the Soviet Law; second, the continued restrictions on religious activity; and lastly, the problem of growing nationalism.

### A. *Freedom of Religion in the Former Soviet Union*

#### 1. Generally

The implementation of the Soviet Law helped to ease many of the past restrictions on the practice of religion. For example, mosques have been returned to Muslims,<sup>95</sup> and the government has permitted even more Muslims to visit Mecca.<sup>96</sup> Hare Krishnas have been permitted to worship without government harassment.<sup>97</sup> Contacts between German Lutherans in Germany

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93. Jerry G. Pankhurst, *Soviet Society and Soviet Religion*, 1986 J. CHURCH & STATE 409, 412.

94. *See id.* (discussion of how restrictions on religious organizations were eased during the Gorbachev administration).

95. President's Report, *supra* note 4.

96. *Id.*

97. *Id.*

and those in the USSR have increased.<sup>98</sup> Additionally, after many refusals, the Jehovah's Witnesses were permitted to register in the Russian Republic on March 28, 1991.<sup>99</sup> However, at the recent Conference on Security and Cooperation in Europe ("CSCE") meeting in Moscow, a review of the progress of the former USSR in the area of human rights found that the Soviet Union fell markedly short of the CSCE goals.<sup>100</sup>

The former Soviet Parliament passed the country's first reform law on citizens' right to travel and emigrate on May 21, 1991.<sup>101</sup> However, the effective date of this law is not until January 1993;<sup>102</sup> thus, the current status of travel and emigration rights is unclear.<sup>103</sup> Even without the implementation of this free-travel law, Soviet travel and emigration dramatically increased during the Gorbachev era.<sup>104</sup>

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98. *International Partnership for Lutherans*, KESTON NEWS SERV. (Keston College), June 27, 1991, at 6.

99. *Jehovah's Witnesses Registered in Russian Republic*, KESTON NEWS SERV. (Keston College), April 18, 1991, at 15.

100. COMMISSION ON SECURITY AND COOPERATION IN EUROPE, THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE (Sept.-Oct. 1991), at 11-12 [hereinafter CSCE's MOSCOW DOCUMENT].

101. Esther B. Fein, *Soviets Enact Law Freeing Migration and Trips Abroad*, N.Y. TIMES, May 21, 1991, at A1.

102. *Id.* The delay is a result of concerns that the country will not be able to handle the high costs that will result from this legislation. *Id.* The costs of implementation of this law include the costs of expanding customs and passport services and transport and border patrols. *Id.* This law was passed in order to remove a major obstacle barring the Soviet Union from obtaining most-favored-nation trading status from the United States. *Id.*

103. It is possible that, as with the Freedom of Religion Law, the travel law may be viewed as a model law by the former republics as they enact their new legislation.

104. *Id.* This law creates legal guarantees. It sets specific time limits within which passports must be issued and contains strict guidelines for denying the right to travel or emigrate to an individual. *Id.* An example of the government permitting travel for religious purposes can be illustrated by the recent activities of the Unification Church of the Reverend Sun Myung Moon. Felicity Barringer, *Evolution in Europe; New Flock for Moon Church: The Changing Soviet Student*, N.Y. TIMES, Nov. 14, 1990, at A1. The Unification Church had paid the expenses for hundreds of Soviet college and graduate

## 2. Religious Communication

Communication between religious organizations among themselves and with the government dramatically increased since October 1990. At Moscow State University, two Catholic bishops and students took part in talks regarding the reopening of former Catholic churches and possibly a seminary for priests.<sup>105</sup> Also, on May 22-24, 1991, a meeting was held between Marxists and Catholics in Moscow to discuss religious freedoms, the relationship between Christianity and democracy, and the manner of teaching morals in a pluralistic society.<sup>106</sup>

Recently, representatives of the American Jewish Joint Distribution Committee ("JDC") met with the leaders from Moldavia and Azerbaijan to obtain official recognition for the humanitarian assistance agency.<sup>107</sup> The two leaders expressed their desire for better relations with Jews throughout the world, and both leaders promised JDC that they would respect Jewish freedom of worship and assembly in their republics.<sup>108</sup>

Widespread dissemination of religious information was permitted throughout the former Soviet Union. A Catholic news agency, called "Truth and Life," was registered in Russia.<sup>109</sup> In addition, the founder of this news agency has started a "Catholic Spiritual Dialogue Church" in Moscow which is a group that meets to discuss Catholic teachings and issues pertaining to

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students to come to America to be immersed in the teachings of the church and then go back to the Soviet Union to spread the word. *Id.*

105. *A New Start for the Roman Catholic Church in Moscow*, KESTON NEWS SERV. (Keston College), June 13, 1991, at 7-8.

106. *Marxist - Catholic Dialogue in Moscow*, KESTON NEWS SERV. (Keston College), June 13, 1991, at 7.

107. Larry Yudelson, *Joint Distribution Committee Seeks Official Recognition from Soviet Moldavia, Azerbaijan*, JEWISH TELEGRAPHIC AGENCY, Nov. 11 & 12, 1991, at 1. Azerbaijan's population is predominately Moslem. *Id.*

108. *Id.*

109. *Catholic News Agency Begins Service in Moscow*, 21 SOCIETY OF ST. STEPHEN, Summer 1991, at 4. "Truth and Life" also publishes a magazine which will help to inform Russian Catholics about the Church throughout the world and supply Church news. *Id.*

spiritual life.<sup>110</sup> Also, in February 1991, religious radio programs began to play on about 2,500 stations throughout the country.<sup>111</sup>

### 3. Religious Education

There was remarkable growth in the availability of religious education throughout the former USSR. Three Jewish day schools opened in Moscow, holding classes Monday through Friday and permitting its students to observe the Sabbath on Saturday.<sup>112</sup> Also, Hebrew is being taught throughout the Jewish communities.<sup>113</sup> Recently, Buddhist schools opened.<sup>114</sup>

### 4. Religious Literature

The availability of religious literature has increased since the passage of the Soviet Law.<sup>115</sup> In addition, new customs regulations permit registered religious organizations to receive and distribute religious literature sent to them as part of humanitarian aid.<sup>116</sup> However, the religious organization must provide the customs officials with documents confirming that the religious publications are intended only for non-profit distribution.<sup>117</sup>

Bibles have been a rare commodity in this region due to years of religious suppression. To aid citizens in obtaining Bibles, the

110. *Id.*

111. Daniel J. Lehmann, *Soviet Crackdown Perils a Year of Religious Gains*, CHI. SUN-TIMES, Feb. 5, 1991. One such radio program is Radio "Radonezh," an independent Russian Orthodox radio station that is broadcasting the Orthodox faith to the Soviet people. *Christian Broadcasting in the Soviet Union*, KESTON NEWS SERV. (Keston College), May 30, 1991, at 9.

112. *Jewish Students in Moscow to Have Pick of Three Jewish Day Schools*, SENTINEL, Aug. 15, 1991, at 17.

113. President's Report, *supra* note 4.

114. *Id.*

115. *Id.*

116. *Soviet Customs Seize 200,000 Rubles Worth of Contraband*, TASS, Oct. 6, 1991.

117. *Id.*

Martin Luther Federation in Germany sent over 5000 bilingual German-Russian children's Bibles to German Lutherans in the region.<sup>118</sup> Publicly, Raisa Gorbachev praised the Bible as "an important contribution to give to peace in our world . . . . It is important that the Bible is now available."<sup>119</sup> Additionally, the Bible Institute of the Air, a Santa Ana, California based group, estimates that it has passed out half a million Bibles in the former Soviet Union.<sup>120</sup> With the increased freedom of religion, the group expects to distribute many more Bibles.<sup>121</sup>

A number of major American Christian denominations helped to open new churches, bring different denominations to the Soviet Union, and provide Russian Bibles.<sup>122</sup> Most notably, during a crucial debate within the Russian Parliament about the role of the republics in the "new Soviet Union" on September 20, 1991, priests and staff from the Bible Society distributed free Bibles at the parliament building.<sup>123</sup> Politicians, bureaucrats and police all forced their way into line to obtain one of the Bibles.<sup>124</sup>

In August, at the first National Congress of Hebrew educators, a center for Hebrew language was established in Moscow.<sup>125</sup>

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118. *International Partnership for Lutherans*, *supra* note 98.

119. *Soviet President's Wife Lauds Role for Bible in USSR*, KESTON NEWS SERV. (Keston College), June 27, 1991, at 6 (citing statements made by Raisa Gorbachev while speaking to the United Bible Society's General Secretary, Rev. Ole Christian M. Kvarme, in Oslo, Norway, where her husband delivered his Nobel Peace Prize lecture).

120. Jim Newton & Robyn Norwood, *Orange County Newswatch*, L.A. TIMES, Oct. 11, 1991, at A1.

121. *Id.*

122. Vicki Brown, *Soviets Hungry for New Religions*, CHI. TRIB., Oct. 4, 1991, at 7.

123. *Free Bibles Spur Devilish Chaos*, CHI. TRIB., Sept. 20, 1991, at 4. The Bible Society is a group founded in 1812 in Russia and operates with funds from abroad. *Id.*

124. *Id.* The Bibles were hardcover editions printed in Hungary and Finland. *Id.*

125. *Center for Hebrew Language Established in Moscow*, MONITOR!, Aug. 30, 1991, at 1. This center will provide an opportunity for Hebrew teachers from all regions of the Soviet Union to participate in an intensive training session that will run for several months. *Id.*



This committee for Hebrew language will oversee all the activities of the center, which includes the printing of texts. The center plans to organize Hebrew clubs and camps across the former USSR.<sup>126</sup> In addition, the center will publish a Hebrew magazine that addresses issues in Jewish education.<sup>127</sup>

### 5. The Russian Constitution and Resolutions

Prior to the fall of the Soviet Union, two draft proposals for a new Russian Constitution were published, one written by the Supreme Soviet of the RSFSR (Russian Soviet Federated Socialist Republic), and the other one proposed by the Communist Party of Russia.<sup>128</sup> The proposals included provisions pertaining to separation of church and state, equality of all religions, and forbidding the limitation of rights based upon one's choice of religion.<sup>129</sup> However, both of these drafts contained registration requirements before the operation of a religious organization could be protected by the Constitution and laws of the Russian state.<sup>130</sup>

In addition, on September 5, 1991, two resolutions were approved by the now defunct Congress of the People's Deputies as a result of the joint statement of Mikhail Gorbachev and top officials of the republics.<sup>131</sup> The first resolution expressly provided that:

6. All state organs, institutions, organizations and officials shall insure the observance of the rights and freedoms of the people which are proclaimed and guaranteed in the USSR Constitution, the Declaration of Human Rights and Freedoms, the laws of the USSR and republics, as well as freedom of the

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126. *Id.*

127. *Id.*

128. KESTON NEWS SERVICE (Keston College), May 16, 1991, at 11.

129. *Id.* at 11-12.

130. *Id.*

131. *Soviet Turmoil; Soviet Resolutions: The Will of the Republics and the Interests of the Nation*, N.Y. TIMES, Sept. 6, 1991, § A1, at 12.

press, *freedom of conscience* and the right to establish political parties . . . .<sup>132</sup>

The second declaration stated, in Article 6, that ideological, religious, and cultural freedom shall be guaranteed.<sup>133</sup> In addition, Article 7 stated that "Freedom of Conscience and religious freedom shall be guaranteed. Everybody is free to profess a religious belief or choose not to believe in God, disseminate religious or atheist views, [and] engage in religious or atheist education. Freedom to perform religious rites shall be guaranteed."<sup>134</sup> Thus, it appears that the last Soviet government intended to ensure that the new freedom of religion law would be supported by the Constitution and other resolutions. However, it is also clear that the Soviet government refused to relinquish its registration requirement.

## 6. Return of Religious Property

Throughout the former USSR, the government began returning property to religious organizations that it had confiscated decades before. Synagogues that had been confiscated by the Soviet state have been returned to the Jewish people.<sup>135</sup> Moscow Mayor Gavrill Popov authorized the transfer of a building in the heart of Moscow for a permanent place of worship for the first Liberal Jewish congregation in the Soviet Union which had been ousted from its first residence.<sup>136</sup> The new temple will house classrooms for religious education, a Jewish library, Judaica museum, conference facilities, and a center from which they will disseminate information about Liberal Judaism (Reform

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132. *Id.* (emphasis added).

133. *Declaration of Human Rights and Freedoms*, SUMMARY OF WORLD BROADCASTS, Sept. 10, 1991, pt. 1, at SU/1173/C1/1, available in LEXIS, Nexis Library, Omni File.

134. *Id.*

135. President's Report, *supra* note 4.

136. Debra N. Cohen, *Liberal Congregation in Moscow Finally Getting a Permanent Home*, JEWISH TELEGRAPHIC AGENCY, Nov. 11 & 12, 1991, at 1.

Judaism).<sup>137</sup> Additionally, the Moscow City Council, in response to an appeal by Patriarch Aleksy II of Russia, agreed to return 175 buildings and chapels to the Russian Orthodox Church.<sup>138</sup>

Unfortunately, some actions by the Soviet government revealed that all was not improving. For example, a parish in Komsomolsk-Na-Amure withdrew from the local Soviet of People's Deputies because the local Executive Council changed its initial decision to build the Assumption Church in the city.<sup>139</sup> The new construction site is near an airfield, which will make it very difficult to deliver and hear sermons. Father Gennadi stated that "[t]he local authorities have displayed a rare inconsistency and disregard of the needs of the local believers . . . ."<sup>140</sup>

The CRA of the Supreme Soviet was working on a decree relating to the transfer of churches, religious buildings, and valuables to believers.<sup>141</sup> Exemplifying the government's recent actions as it relates to the return of religious property, nine sculptors who had their studios in the Trinity Church were ordered to move out by the Executive Council in Khimki.<sup>142</sup> The Russian Orthodox Church was registered with the CRA in February of 1990, which is when the council decided to transfer the Trinity Church to the congregation.<sup>143</sup>

In early October 1991, the Russian Court of Arbitration ruled in favor of the Lubavitch Jewish movement and ordered the release of 12,000 volumes that are sacred to the Hasidic

137. *Id.* The building has been funded by gifts from American, Canadian and other contributors. *Id.*

138. *Moscow Chronicle Column*, SOVIET PRESS DIG., July 30, 1991, at 1.

139. I. Krasikov, *Will Bells Toll in the City?*, RUSSIAN PRESS DIG., Feb. 22, 1991, News Section.

140. *Id.*

141. *Russia's Churches to be Turned Over to Believers*, SOVIET PRESS DIG., June 15, 1991, at 2.

142. M. Mironov, *Church—To Believers*, SOVIET PRESS DIG., Dec. 28, 1990, at 4.

143. *Id.* The sculptors are refusing to leave, and the Russian Orthodox community has sued for the eviction of the sculptors. *Id.* The sculptors argue that the lawsuit will fail because the Russian Orthodox community does not have the rights of a juridical person. *Id.*

community (the Schneerson collection).<sup>144</sup> For decades, the government denied that the books were even in existence, but recently the Ministry of Culture finally conceded that the books were in the Lenin Library.<sup>145</sup> The Lubavitchers are continuing to attempt to get the court order enforced so that they may bring the books back to their headquarters in Brooklyn.<sup>146</sup> The greatest obstacle the Lubavitchers face is the Ministry of Culture; it urges that the Schneerson collection has been nationalized and, as such, cannot be removed from the state library.<sup>147</sup> On November 25, 1991, the decision of the Russian Court of Arbitration was scheduled for review by the Russian Supreme Soviet.<sup>148</sup> While it should be noted that on November 25 the Lenin Library was "sealed off indefinitely," it is not clear whether this decision, by the sanitation-control station, is in any way related to the controversy over the Schneerson collection.<sup>149</sup> Thus, it remains to be seen whether the Lubavitchers will be able to transfer the books.

## 7. Treatment of Jews in the Former Soviet Union

While anti-Semitism is pervasive throughout the general population of the former Soviet Union, there were amazing reforms in the Soviet governmental policy towards Jews. On October 6, 1991, Mikhail Gorbachev broke almost 75 years of silence in an unprecedented statement; he admitted publicly that anti-Semitism had run rampant throughout Soviet society for decades and that he regretted the emigration of Jews from the

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144. Francis X. Clines, *Russian Court Backing Lubavitchers on Sacred Documents*, N.Y. TIMES, Oct. 6, 1991, § 1, pt. 1, at 12. This sect has been fighting for the release of these books that have been locked in the Lenin Library for 70 years. *Id.*

145. *Id.*

146. *Id.*

147. *In Whose Interests?*, SOVIET PRESS DIG., Oct. 20, 1991, at 10.

148. G. Orekhanova, *The Right to Plunder*, SOVIET PRESS DIG., Nov. 22, 1991, at 3.

149. Yuri Pankov & Sergei Samoshin, *Lenin Library Shut Down by Sanitation-Control Station*, SOVIET PRESS DIG., Nov. 25, 1991, at 2.

country.<sup>150</sup> Additionally, on October 24, 1991, the Israeli flag was raised during the rededication of the Israeli Embassy in Moscow, reestablishing the ties that Moscow broke off with Israel in 1967 following the Six-Day War.<sup>151</sup>

Gorbachev stated that despite the reforms during his tenure as President of the Soviet Union, anti-Semitism continues, and it has provoked the emigration of hundreds of thousands of Soviet Jews.<sup>152</sup> Although emigration had been liberalized under the Gorbachev government, thousands of Jews are still unable to leave the former USSR.<sup>153</sup> These people are primarily prohibited from leaving by regulations preventing emigration by people who have worked in sensitive government jobs where they had access to secret information.<sup>154</sup> Further, President Gorbachev had agreed to review the cases of 355 Refuseniks who had been denied permission to emigrate.<sup>155</sup> However, many of the delegations present at the recent CSCE meeting in Moscow were

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150. Vincent J. Schodolski, *Gorbachev Rues Jewish Exodus*, CHI. TRIB., Oct. 7, 1991, at 1. This statement was issued on the 50th anniversary of the Nazi massacre at Babi Yar, just outside Kiev, in Ukraine. *Id.*

151. *Israeli Flag Rises Again in Moscow*, CHI. TRIB., Oct. 25, 1991, at 3.

152. Schodolski, *supra* note 150. The Soviet government deeply regrets this mass exodus because most of those people who have left are highly educated people, often with scientific backgrounds—and these are skills that are greatly needed in the Soviet Union. *Id.*

153. *Id.*

154. *Id.* These regulations are often used to stop Jews from emigrating, even when the material they worked with is no longer considered sensitive. Starting in July 1992, new liberalized emigration and travel policies were to be implemented in the former Soviet Union. Pursuant to those rules, the prohibition against leaving the country due to prior work in sensitive government positions was going to be relaxed. *Id.*; see *infra* note 252 and accompanying text (discussing how restrictions on emigration and travel may continue to prevent Jews from leaving the new CIS).

155. *Gorbachev to Review Jewish Emigration*, CHI. TRIB., Oct. 4, 1991, at 4; see also Fred Hiatt, *Gorbachev, U.S. Jews Meet; Soviets Will Not Close Our Eyes to Anti-Semitism*, WASH. POST, Oct. 3, 1991, at A37. See *infra* notes 250-253 for a complete discussion of the continuing problems facing Jews who wish to travel and emigrate.

very disappointed that the Soviet government's promises to review the cases of these Refuseniks did not come to fruition.<sup>156</sup>

### 8. Other Restrictions on Religious Freedom

There were recently other significant restraints on religious organizations and the exercise of freedom of religion and conscience. For example, official religious activity remained subject to considerable KGB control,<sup>157</sup> such as restrictions on the numbers of clergy and places of worship.<sup>158</sup> Additionally, there is still no legal alternative to military service for those who object to serving based upon their religious beliefs.<sup>159</sup>

It is evident that, even in this era of decreasing restrictions, many of the people of this region do not perceive that they are truly free to profess religious beliefs. For example, more than one hundred letters were received in response to a series of articles addressing the new religious tolerance that were published in one newspaper.<sup>160</sup> However, almost every letter was anonymous, which seems to indicate that people continue to be afraid to identifying themselves with a particular religion.<sup>161</sup> Thus, while there were sweeping reforms in the USSR, complete freedom of conscience and religion was not a reality.

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156. CSCE's MOSCOW DOCUMENT, *supra* note 100, at 13. This failure by the former Soviet Union was called "inexplicable and distressing." *Id.* at 19.

157. President's Report, *supra* note 4; *see also* *New Data on "Cooperation" of Church and KGB*, MONITOR!, Jan. 31, 1992, at 2 (information, which was made available after documents of the KGB were declassified, revealed that numerous clergymen, up to the top ranks of the Russian Orthodox Church, were KGB agents).

158. President's Report, *supra* note 4.

159. *Id.*

160. Boris Yakovlev, *Without Extremes*, SOVIET PRESS DIG., Oct. 17, 1991, News Section.

161. *Id.*

### B. Nationalism

Religion has been gaining popularity among the young who are reviving the faiths of their grandparents.<sup>162</sup> Patriarch Aleksy II of the Russian Orthodox Church, recognizes that he faces a "barrage of new problems raised by the sudden outbreak of freedom."<sup>163</sup> The basis for concern about rising nationalism could best be seen in the former republics of central Asia and in the re-emergence of the Russian Orthodox Church as a dominant force in the former Soviet Union.

#### 1. The Rise of Islam

The new freedom has sparked concern that tensions may flare into ethnic violence, especially in mostly Islamic regions.<sup>164</sup> Precipitating the mass exodus of tens of thousands of Christians and Jews in Tadzhikistan was the Islamic majority asserting its recently regained political and religious power.<sup>165</sup> Commentators have put forth the hypothesis that it was the Marxist anti-religious policy which maintained the peace as Jews, Christians, and Muslims lived together in this region for so long.<sup>166</sup> Unfortunately, the "peace" had been broken, and, during February 1990, in reaction to rumors that immigrants were going to receive new benefits, mobs of Tadzhiks went on a rampage attacking non-Tadzhiks throughout Dushanbe, leaving 100 dead.<sup>167</sup>

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162. Mort Rosenblum, *Central Asia Hears Call of Religion*, CHI. TRIB., Sept. 30, 1991, at 5. The religious revival is most notable among Muslims. *Id.*

163. Serge Schmemmann, *St. Petersburg Journal; Patriarch's Church Revives, but Will Spirituality?*, N.Y. TIMES, A1, at 2. The Patriarch has also noted that more than 5,000 parishes have opened since 1988, baptisms have tripled, and the number of monasteries are up from 18 to 121. *Id.*

164. Rosenblum, *supra* note 162.

165. Mark Fineman, *Fearful Christians and Jews Leaving Troubled Soviet Tadzhikistan; Exodus: The Region's Long-Oppressed Islamic Majority Is Asserting Its Newfound Political and Religious Power*, L.A. TIMES, Oct. 13, 1991, at A10.

166. *Id.*

167. *Id.* This action led to the flight of Russians and Jews, including leaders of Dushanbe's minority religious communities. *Id.*; see also Rosenblum, *supra*

Muslims have gained more freedom to practice their religion, and this is especially apparent in Azerbaijan and central Asia.<sup>168</sup> In fact, the spiritual Board of Transcaucasia's Muslims had requested that the former Supreme Soviet make Islam the state religion.<sup>169</sup> In central Asia, there are hopes of an Islamic state.<sup>170</sup> Before the breakup of the Soviet Union, religious-based political parties were illegal under the constitutions of every central Asian republic, but, in 1991, this region saw a new political movement begin known as the Party of Islamic Renaissance.<sup>171</sup> The Islamic Renaissance Party handed the former Supreme Soviet a number of demands, including a demand that the Islamic party be legalized.<sup>172</sup> The USSR Ministry of Justice refused to register the party because the former Soviet Law outlawed religious political parties.<sup>173</sup> However, a freedom of religion law will not inhibit the aspirations of the Islamic Renaissance Party. As a young mullah stated, he believed that he would see an Islamic state within the next 30 or 50 years.<sup>174</sup>

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note 162 (during February 1990 in Tadzhikistan, where 90% of the population is Muslim, violent anti-Communist protests in the capital turned against ethnic Russians).

168. President's Report, *supra* note 4. It should be noted that on December 8, 1991, Azerbaijan was formally admitted to the Organization of the Islamic Conference. *Azerbaijan Joins Islamic Conference*, MONITOR!, Dec. 13, 1991, at 3. Because the conflict between Azerbaijan and Armenia has continued to escalate, it was announced at the CSCE Meeting in Helsinki that a conference will be held in Minsk, Belarus to implement a ceasefire between the two states. Patrick Worsnip, *Armenia Announces Three-Way Talks on Karabakh*, REUTERS, Mar. 25, 1992, available in LEXIS, Nexis Library, Int'l File; see also ISLAMIC WORLD NEWS, Mar. 24, 1992.

169. *State Islam?*, SOVIET PRESS DIG., Sept. 19, 1991, at 1.

170. Edward A. Gargan, *Tashkent Journal; A Dream of One Central Asia Under Islam's Banner*, N.Y. TIMES, Oct. 11, 1991, at A4. The lifting of restrictions on religious practice has led to a desire by those residing in Central Asia to return to their religious background. *Id.*

171. *Id.*

172. A. Karpov, *The Islamic Party Is Still Outlawed*, SOVIET PRESS DIG., Sept. 11, 1991, at 1.

173. *Id.*

174. Gargan, *supra* note 170. He also explained that "[t]here are two kinds of mullahs. There are the official, the approved mullahs, and there are the



## 2. The Russian Orthodox Church

There is also a growing concern within the former USSR that with the re-emergence of the Russian Orthodox Church, there may be a return to the czarist days.<sup>175</sup> There are about 60 million Russian Orthodox Christians in the former Union, which causes a number of other religious minorities to fear that the leaders of the Russian Orthodox Church may seek to restrict their newly found freedom by denying their right to assemble and worship.<sup>176</sup> However, Father Gleb Yakunin, recently restored as an active priest, asserted that "the forces of democracy sweeping the country will not allow a state church to develop 'ever again. . . . There is a good and warm relationship between the church and state, but we are not pressing for a full union.'"<sup>177</sup>

Nonetheless, there are examples of the growing tension between the Orthodox Church and minority religions throughout the former Soviet Union. Prior to the December 1, 1991 celebration of Channuka that took place in the Kremlin, the Orthodox Alliance protested, stating that the celebration was going to take place "in the very heart of the Russian Orthodox shrine" in Moscow.<sup>178</sup> The Alliance viewed this as a

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underground mullahs . . . [who] don't preach in the mosques, [but who] preach in people's homes." *Id.* The unofficial mullahs only feel safe preaching in people's homes because there is less risk of secret police surveillance. *Id.*

175. Russel Chandler, *A Russian Force Is Reborn; As Religious Freedoms Expand the Russian Orthodox Church Is Again a Powerful Influence. But Others Fear a Re-emergence of the Church-State Alliance of the Czarist Era.*, L.A. TIMES, Sept. 28, 1991, pt. A, at 1. Probably the best example of the manner in which the Russian Orthodox Church became an "instrument of imperial policy," was the case of Grigori Rasputin. *Id.* Rasputin, a Siberian peasant monk who many thought was a saint, was brought to Nicholas II to heal the czar's son who suffered from hemophilia. *Id.* Rasputin's success permitted him to have great influence within the imperial family. *Id.* He was able to sway political decisions and influence appointments in the church. *Id.* This led to widespread disdain which turned into distrust of the czar. *Id.* Three months after Rasputin was assassinated, the 1917 revolution broke out. *Id.*

176. *Id.*

177. *Id.*

178. *Addressed To Gorbachev, Yeltsin and Popov*, SOVIET PRESS DIG., Nov. 29, 1991, at 1.

blasphemous action against the Orthodox religion that would only elicit “a bitter sense of indignation among Orthodox Russian believers.”<sup>179</sup> Furthermore, the Alliance claims that this celebration insults the “national dignity of the Russian people.”<sup>180</sup>

Although “[r]eligious revival involves an inevitable and legitimate recovery of national heritages,”<sup>181</sup> this leads to grave concerns that religion may reinforce deadly nationalism. The effects of such nationalism can be seen in Yugoslavia<sup>182</sup> and between Armenia and Azerbaijan.<sup>183</sup>

#### IV. THE EFFECT OF THE FALL OF THE SOVIET UNION ON FREEDOM OF RELIGION FOR THE COMMONWEALTH OF INDEPENDENT STATES AND THE BALTIC NATIONS

It is too early in the political life of the CIS and the Baltic Nations to affirmatively state what the status of religious freedom will be in this region. However, there are some indications of the direction the new states and the Baltic Nations will take on this issue. This section of the paper will examine the exercise and practice of religion in Ukraine, the Baltic Nations and the CIS, including any tangible indications of the manner in which these countries address religious freedom.

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179. *Id.*

180. *Id.*

181. Peter Steinfels, *Beliefs*, N.Y. TIMES, Aug. 31, 1991, A1, at 11. For example, the Baptists in Georgia are concerned about the loosening of restrictions on religion; they are now denounced as anti-Christian by local Orthodox clergy. *Id.* These local clergy also blame the Baptists for earthquakes and prostitution. *Id.*

182. *Id.*

183. See *Violence Flares Across 3 Former Soviet Republics*, CHI. TRIB., Mar. 10, 1992, at 2, (addressing the fighting between Armenia and Azerbaijan).

### A. Ukraine

While Ukraine did not assert independence until it joined the CIS, the Ukrainian Supreme Soviet passed a law on March 22, 1991 on freedom of religion, which is similar to the Soviet Law.<sup>184</sup> Thus, Ukraine provides an appropriate example of the shape religious freedom may take since the fall of the Soviet Union. The implementation of this law led to improvements in Ukraine, but there continue to be areas that restrict freedom of religious practice and belief. A significant indication of cooperation between the diverse religious bodies in Ukraine was the creation of an interfaith religious council of Christians, Jews, and Moslems.<sup>185</sup> However, registration of religious organizations and problems associated with the return of religious property continue to impede cooperation among religious organizations and freedom of religion.

In Ukraine, local authorities continue to refuse to register the charters of the Autocephalous Ukrainian Orthodox Church ("AUOC") and Pentacostalists.<sup>186</sup> The Ukrainian Freedom of Religion Law may help the AUOC gain legal status.<sup>187</sup> The effects of this law can be seen in the western Ukraine where the

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184. President's Report, *supra* note 4. Ukraine has submitted to the optional protocol to the International Covenant on Civil and Political Rights. For a complete discussion of this protocol, see *infra* notes 214-215 and accompanying text.

185. *Ukrainian Religious Council Formed*, MONITOR!, Nov. 18, 1991, at 2. Presidential candidate Igor Yushchenko was instrumental in its creation. *Id.*

186. See *Inter-Orthodox Tension in Ukraine*, KESTON NEWS SERV. (Keston College), June 13, 1991, at 6.

187. *Ukrainian Laws on Religion*, KESTON NEWS SERV. (Keston College), May 16, 1991, at 5. The Ukrainian law is as "ambiguous about the position of churches as national bodies" as the Soviet Law, but the Ukrainian authorities revealed their intent to give legal status to national churches as well as individual congregations. *Official Recognition for Ukrainian Catholic Church*, KESTON NEWS SERV. (Keston College), June 27, 1991, at 5. The Ukrainian Supreme Soviet also passed a "Law on Property" that grants the right to own and use property for religious purposes. See *Ukrainian Laws on Religion*, *supra*.

AUOC has been able to register a number of congregations.<sup>188</sup> However, in Chernihiv, not only has the AUOC been unable to register, but the local authorities have threatened to fine them.<sup>189</sup> While the AUOC has been registered in some regions,<sup>190</sup> there continues to be controversy among the church's parishioners over the distribution of churches.<sup>191</sup> Also, following the implementation of the Ukrainian law, the Greek-Catholic Church in the Ukraine (the Uniate Church) was also registered.<sup>192</sup> Today, the Uniate Church is finally free to operate openly.<sup>193</sup>

In addition, there are ten missionary societies made up of Baptists and Pentacostalists that are either currently registered or will be registered.<sup>194</sup> Twelve hundred Baptist churches have been

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188. *Inter-Orthodox Tension in Ukraine*, *supra* note 186. The AUOC Church is also known as the True Orthodox Church. This religion is not subservient to the Moscow Patriarch, but it does have its own hierarchy. Interreligious Task Force on Human Rights Meeting at The John Marshall Law School, Sept. 6, 1991 (held at Chicago, Illinois) [hereinafter Task Force Meeting].

189. Task Force Meeting, *supra* note 188.

190. *True Orthodox Church Registered*, KESTON NEWS SERV. (Keston College), July 11, 1991, at 8.

191. *Id.*

192. *Official Recognition for Ukrainian Catholic Church*, *supra* note 187; *see also Ukrainian M.P. and Human Rights Activist Remain in Prison*, SOCIETY OF ST. STEPHEN, Summer 1991, at 1 (the Greek Catholic Church in the Ukraine has been granted full legal status since the implementation of the new Ukrainian law on freedom of conscience and religious associations).

193. James F. Clarity, *By Any Name, Lvov Has Hard Times*, N.Y. TIMES, Jan. 19, 1992, at A12. Unfortunately, relations between the Greek-Catholic Church (Uniates) and the Russian Orthodox Church continue to be strained. *Orthodox Rap Vatican Efforts in East Europe*, CHI. TRIB., Mar. 16, 1992, at 14. The leadership of the Russian Orthodox Church has recently issued a declaration limiting its communication with the Vatican because it alleges that the Vatican is using members of the Uniate Church to extend its influence into the former Soviet Union. *Id.* The Vatican claims that it merely desires to rebuild the church and its community which were oppressed under the communist regime. *Id.* This dispute between the two churches could be considered one of the worst in our time. *Id.*; *see also Orthodox Hierarchy Puts Rivals on Notice*, CHI. TRIB., Mar. 20, 1992, § 2, at 9 (Orthodox leaders throughout the world warned Roman Catholic and Protestant leaders to stop preaching to the Orthodox Christians, especially in the former Soviet Union).

194. Task Force Meeting, *supra* note 188.

established in Ukraine. These churches fall into three categories: 1) Baptists which have always been registered and are now registered under the new law; 2) Autonomous Baptists, some of which are registered; and 3) the Council of Churches which is not registered because it believes in a complete separation of church and state.<sup>195</sup> Additionally, the Baptists have a seminary in Kiev.<sup>196</sup>

Some commentators have stated that the Ukrainian Orthodox have no place to worship because most of the churches in Ukraine had been given to the Ukrainian Catholics.<sup>197</sup> As for religious study, on June 22, 1991, a Ukrainian Bible Society was established, and it is open to all churches in Ukraine (including the AUOC and Pentacostalists).<sup>198</sup> In addition, a new youth organization was recently established called the Order of Scout Guards.<sup>199</sup> This organization requires that its members declare a belief in God, but it is open to all religious groups.<sup>200</sup>

In the spring of 1991, the Bishop of Oxford was planning to lead an inter-faith visit to Moscow and Ukraine, but the visit was canceled because the final invitations never arrived, which was necessary for the issuance of visas.<sup>201</sup> The Bishop of Oxford

195. *Id.*

196. *Id.*

197. President's Report, *supra* note 4. However, during the September 6, 1991 Interreligious Task Force on Human Rights meeting, Mr. Julian Kulas expressed his disagreement with this finding. Task Force Meeting, *supra* note 188. In addition, Ukrainian Catholics have a seminary in Lvov which is not subsidized by the government. *Id.*

198. *Ukrainian Bible Society Founded*, KESTON NEWS SERV. (Keston College), July 11, 1991, at 7.

199. *New Youth Organisation Established in Ukraine*, KESTON NEWS SERV. (Keston College), May 30, 1991, at 15.

200. Task Force Meeting, *supra* note 188. However, Keston College News Service stated that this youth organization is different from other youth organizations because its members must belong to either the AUOC Church or the Uniate Church. *New Youth Organisation Established in Ukraine*, *supra* note 199.

201. Diana Hinds, *Inter-faith Visit to the Soviet Union Is Canceled*, THE INDEPENDENT, Apr. 23, 1991, at 5. The visit was intended to be between the Inter-faith Committee for the Rights of Jews, Muslims and

expressed that he believed that the reason the visit fell through was due to the deteriorating relations between the churches involved.<sup>202</sup> The tensions between the Moscow Patriarchate and the Ukrainian Catholic Church had been rising since the passage of the new Ukrainian Freedom of Religion Law because increasing numbers of Ukrainian priests, along with their parishes, departed from the Russian Orthodox Church and returned to the Ukrainian Catholic Church.<sup>203</sup>

In the early part of 1991, the Ukrainian Parliament ordered the restoration of all property seized in the past from religious organizations.<sup>204</sup> In an attempt to take advantage of this law, Jews in Odessa compiled records detailing their claim to ownership of a number of buildings that were confiscated from them subsequent to the 1917 Bolshevik Revolution.<sup>205</sup> However, as of September 1991, the Ukrainian government had not yet returned a single building.<sup>206</sup>

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Christians in the Soviet Union and the Moscow Patriarchate and the Ukrainian Catholic Church. *Id.*

202. *Id.* It has been suggested that the Moscow Patriarchate is not willing to sponsor any ecumenical visits between the Patriarchate and the Ukrainian Catholic Church. *Id.*

203. *Id.*

204. Vincent J. Schodolski, *Ukrainian Town's Jews Hope to Reclaim Confiscated Property*, CHI. TRIB., Sept. 30, 1991, at 4.

205. *Id.* Vladimir Oks, a historian specializing in Jewish life in the Ukraine, has been the primary researcher for this project. *Id.* After reviewing title deeds and interviewing the elderly people of the area, Mr. Oks has found 54 buildings that housed synagogues at one time or another. *Id.* Many of these buildings were converted to warehouses, banks, schools, and some were demolished. *Id.*

Odessa was a center for Zionism in the late 19th Century. *Id.* The Jews of Odessa were active in the drive to establish a Jewish homeland in Palestine, and the first ship carrying Jewish emigrating to Palestine set sail from Odessa. *Id.* The Jews were active supporters of the Bolsheviks in the early years shortly after the 1917 Revolution, but the Bolsheviks quickly turned on the Jews and mass emigration began. *Id.* With the number of Jews who fled the Nazis when the city of Odessa was captured in 1941—those who were executed by the Nazis and those who have recently emigrated to Israel—the number of Jews currently residing in Odessa has dwindled to a estimated 60,000 to 100,000. *Id.*

206. *Id.*

## B. The Baltic Nations

### 1. Latvia

In Latvia, religious education, especially in the Lutheran faith, has thrived with the loosening of restrictions on religious activity. For example, Swedish and German Lutheran congregations have developed sister relationships with churches in Latvia.<sup>207</sup> In Riga, theological courses for German Lutherans have been created.<sup>208</sup> Religion is taught at Latvia University's Department of Theology,<sup>209</sup> and Riga has a Catholic seminary.<sup>210</sup> Riga has the first parochial day school run by the Lutheran Church of Latvia, and it is financed by the state.<sup>211</sup> In addition, the Lutheran Church of Latvia now has a printing press.<sup>212</sup>

### 2. Estonia

Estonia has a law on religion, a law for the return of church property, and a law on registration of religious organizations.<sup>213</sup> In addition, Estonia has agreed to be bound by the optional protocol to the International Covenant on Civil and Political Rights.<sup>214</sup> This permits individual citizens to report human rights violations by the Estonian government to the United Nations Human Rights Committee.<sup>215</sup>

Implementation of the Estonian laws is exemplified by the return of church property. For example, a Baptist congregation was given a church, which had formerly been an Orthodox

207. Task Force Meeting, *supra* note 188.

208. *International Partnership for Lutherans*, *supra* note 98.

209. Task Force Meeting, *supra* note 188. The Theology Department focuses on Lutheran and Baptist religions. *Id.*

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.*

214. *Estonia Accedes to Human Rights Protocol*, MONITOR!, Dec. 20, 1991, at 3.

215. *Id.* Ukraine has also agreed to be bound by this protocol. *Id.*

church, as compensation for one of their churches that had been confiscated in "the bad old days."<sup>216</sup> Dissemination of religious information can be found in a new Christian newspaper "Beta" which is published in Estonia.<sup>217</sup> Additionally, Lutheran church groups in Finland are permitted to visit their congregational partners in the Baltics,<sup>218</sup> and the Lutheran Church has a seminary in Estonia.<sup>219</sup>

### 3. Lithuania

Lithuania recently adopted new legislation including a provision addressing freedom of religion.<sup>220</sup> Last year, a former prisoner was appointed as an auxiliary bishop of Kaunas, Lithuania.<sup>221</sup> Fr. Sigitas Tamkevicius was the founder of the "Catholic Committee for the Defense of Believers' Rights," and he helped to publish the "Chronicles of the Lithuanian Catholic Church."<sup>222</sup> He had been arrested and convicted in 1983 for anti-Soviet agitation and propaganda and sentenced to six years in a labor camp and four years of exile. He was also sentenced for giving religious instruction to children, organizing a children's Christian program, and leading processions to cemeteries.<sup>223</sup>

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216. *Estonian Baptists Get Orthodox Church*, KESTON NEWS SERV. (Keston College), June 13, 1991, at 12.

217. *New Christian Newspaper Published in Estonia*, KESTON NEWS SERV. (Keston College), February 7, 1991, at 17.

218. *International Partnership for Lutherans*, *supra* note 98. A co-operation agreement between Estonian Lutheran churches and Lutheran churches in Finland created a partnership program where individual congregations locate partner congregations for "spiritual and financial exchange and sharing." *Id.*

219. Task Force Meeting, *supra* note 188.

220. For the text of the relevant portions of this legislation, see *supra* note 5.

221. *Former Prisoner Named Roman Catholic Bishop*, SOCIETY OF ST. STEPHEN, Summer 1991, at 1.

222. *Id.*

223. *Id.*



### C. *The Commonwealth of Independent States*

Since the birth of the new Commonwealth of Independent States,<sup>224</sup> freedom of religious practice and expression has been increasing in the former Soviet Union. In the first few days of the CIS, Boris Yeltsin went to Rome to meet with the Pope.<sup>225</sup> Yeltsin told reporters, "I respect any faith, any religion. . . . They [(the communists)] tried to impose atheism at all costs, but they didn't succeed."<sup>226</sup> In addition, the Russian State University for the Humanities in Moscow has created a Jewish Studies department which until recently was strictly forbidden.<sup>227</sup> Christmas was declared a state holiday which was also something unheard of during the seven decades of religious oppression.<sup>228</sup>

Most importantly, all of the former republics are now members of the CSCE.<sup>229</sup> This move illustrates a dedication by the former republics to strive for democracy and binds them to observe human rights and fundamental freedoms as set out in the Helsinki Final Act and subsequent CSCE documents.<sup>230</sup> Therefore, it is

224. For a discussion of the fall of the Soviet Union, see *supra* notes 1-3 and accompanying text.

225. Peggy Polk, *In Rome, Yeltsin Will Seek to Mix Religion, Economics*, CHI. TRIB., Dec. 19, 1991, at 5.

226. *Id.* Gorbachev was the first Soviet leader to visit the Vatican. *Id.* The Pope is primarily concerned about the return of property to the Uniate Church by the Russian Orthodox Church and how this has strained relations between the two churches. *Id.*

227. Stephanie Simon, *Jewish Studies No Longer Taboo at Moscow School*, CHI. TRIB., Dec. 30, 1991, at 1.

228. Serge Schnemann, *Spirit of Christmas Calls Again to Russians*, N.Y. TIMES, Jan. 8, 1992, at A1.

229. Latvia, Lithuania, and Estonia were admitted as full members to the CSCE at the commencement of the Moscow Meeting. CSCE's MOSCOW DOCUMENT, *supra* note 100, at 10. Except for Georgia, the other former republics joined at the end of January. *10 Ex-Soviet States Join Europe Group*, CHI. TRIB., Jan. 31, 1992, at 4. On March 24, 1992, Georgia was admitted to the CSCE. *Ex-Cold War Foes Sign Pact on Flights*, CHI. TRIB., Mar. 25, 1992, at 12.

230. *10 Ex-Soviet States Join Europe Group*, *supra* note 229. CHI. TRIB., Jan. 31, 1992, at 4, col. 1. The Final Document of the Moscow Meeting includes updated provisions addressing human rights and fundamental

reasonable to conclude that the individual states will devise new constitutional and/or legislative policies directed at freedom of religion.

However, while the resolution adopted in Moscow better enables the CSCE to address violations of the principles it has set out, the chairman of the United States CSCE delegation has recognized that the region is racked with political and social turmoil.<sup>231</sup> Further, the Commonwealth has promised to continue to follow human rights commitments made by the Gorbachev government. It is our hope that the former republics will, by legislation or constitutional amendments, guarantee religious liberty and the right to emigrate.<sup>232</sup> The most significant obstacles currently confronting advocates of religious freedom in the region are nationalism and growing anti-Semitism.

The most vivid example of ethnic and religious clashes is the conflict between Azerbaijan, which has a primarily Muslim population, and Christian Armenia.<sup>233</sup> The potential for ethnic

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freedoms. See CSCE's MOSCOW DOCUMENT, *supra* note 100. Specifically, the resolution addresses the rights of national minorities which are to be protected, and religious intolerance is to be opposed. *Id.* arts. 37 & 42.2.

231. PLENARY STATEMENT BY REPRESENTATIVE STENY H. HOYER, CHAIRMAN, U.S. COMMISSION ON SECURITY AND COOPERATION IN EUROPE, Nov. 11, 1991, at 1. By granting full membership to the former republics, there is a greater chance to help avoid a full blown civil war originating from some of the current ethnic clashes. Craig R. Whitney, *Forums Are Seen As Way to Defuse Chaotic Nationalism After Communism*, N.Y. TIMES, Jan. 26, 1992, § 1, pt. 1 at 10.

An additional area of concern is whether the move towards democracy is genuine. This concern is derived from the fact that most of the new leaders were previously Communist Party members who have just recently stated they are now in favor of democracy. Vincent J. Schodolski, *In Belarus, New Commonwealth Fails to Ignite Much Optimism*, CHI. TRIB., Feb. 9, 1992, at 5. However, this concern may be inaccurate. Boris Yeltsin was also a party member and is now a fervent advocate for democracy.

232. *But cf. Breakup of the Soviet Union Creates Uncertainty About Jewish Emigration*, JEWISH TELEGRAPHIC AGENCY, Dec. 30, 1991, at 3 (stating that the former republics are not bound by any laws of the former Soviet Union).

233. Francis X. Clines, *The World; Islamic Militance Along Russia's Rim Is Less Than a Sure Bet*, N.Y. TIMES, Feb. 9, 1992, § 4 at 2. Moreover, former Foreign Minister Eduard Shevardnadze called the current ethnic

clashes is greatest where one ethnic group controls a territory primarily populated by another ethnic group.<sup>234</sup> Consequently, the fall of the Soviet Union left the region ripe for an increase in nationalism.<sup>235</sup> Communist rule kept these problems buried, and only now political, economic and religious issues are coming to the forefront.<sup>236</sup> One of the greatest concerns is that the rise in religious expression will lead not to oppression by the government of all religions but will lead to oppression by dominant religions over minority religions.<sup>237</sup>

To exacerbate these problems, all of the new republics are also searching for a new political ideology to fill the void left by the fall of Communism.<sup>238</sup> In the former republics of central Asia, Islam is seen as the replacement for the Communist ideology.<sup>239</sup> On the positive side, the fall of the Soviet Union has only helped to further promote the resurgence of Islam in the region. For example, leather-bound copies of the Koran, translated into various languages, are being sold on street corners.<sup>240</sup> New mosques are opening every week to the extent that the number of mosques in the region has doubled in the past two years.<sup>241</sup>

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conflicts the "most acute problem facing the former USSR." *Shevardnadze Warns of Danger of Ethnic Clashes*, MONITOR!, Feb. 14, 1992, at 2.

234. Whitney, *supra* note 231. See *supra* notes 162-183 and accompanying text for a complete discussion of the growing concern about nationalism prior to the fall of the Soviet Union.

235. *Id.* For example, in the 1930's in the name of collectivization, millions of Ukrainian farmers were killed. In the face of the bitterness that this piece of history has engendered, it is difficult to imagine Russia and Ukraine freely cooperating. *Id.*

236. *Id.*; see also Peter Steinfels, *Beliefs*, N.Y. TIMES, Jan. 18, 1992, at A9 (stating that the intermingling of "ethnicity and religion can be highly explosive").

237. Steinfels, *supra* note 236.

238. Clines, *supra* note 233.

239. Tom Hundley, *Islam Surges As Communism Recedes: Political Implications Concern U.S.*, CHI. TRIB., Mar. 1, 1992, at 1. Commentators question whether Islam can fill the political void, as well as the ideological void, left by the fall of Communism. *Id.*

240. *Id.*

241. *Id.* There are currently more than 5,000 new mosques in Central Asia. *Id.*

However, for most of the former republics of central Asia, difficulties are arising not merely out of the mixture of religion and ethnicity but also out of economics. The Asian republics that have lost their Kremlin funding are now looking for new ways to meet the economic demands of their citizens.<sup>242</sup> Moreover, the search for economic assistance is closely intertwined with the search for a new political ideology. Both Turkey and Pakistan have invested in these former republics and have proposed that their forms of government should be implemented in the region.<sup>243</sup> In addition, Saudi Arabia and Iran have injected themselves into this political and economic arena, each "pushing its own vision of an Islamic utopia" to help fill the political void.<sup>244</sup> Because 85% of the citizens of this region are Muslim, it is clear that any new political system will probably reflect this majority religion. The primary question is whether the system ultimately chosen will be the Turkish model, which is secular in nature, or a more fundamentalist Islamic regime.<sup>245</sup>

Another major concern is the revival of anti-Semitism in the former Soviet Union. One example is the recent bombing of a synagogue in Moscow.<sup>246</sup> Another example of this resurgence is the rhetoric of Russian opposition leader, Vladimir Zhirinovsky,

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242. Clines, *supra* note 233.

243. Hundley, *supra* note 239.

244. *Id.*

245. *Id.* Uzbekistan's President Karivov has chosen the Turkish form of government as the model for his country's new administration. *Id.* It is important to distinguish between Shiite Muslims and Sunnis. Editorial, *Is Islamic Fundamentalism a New Red Scare?; Shiites and Sunnis*, N.Y. TIMES, Jan. 29, 1992, at A20. The Shiites are considered the radical fundamentalists; however, over 80% of the Muslims are Sunnis. Iran is predominantly Shiite. *Id.* Pakistan, Egypt, and Turkey are primarily Sunni. *Id.* With the exception of Azerbaijan, most of the Asian republics are Sunni. *Id.* If the fundamentalists come into control, then the non-Muslims in the region will leave in all probability. Hundley, *supra* note 239.

246. *Hasidic Synagogue Firebombed in Moscow*, CHI. TRIB., April 7, 1992, at 9. The synagogue that was firebombed serves as the Moscow headquarters of the Lubavitcher Hasidic Movement. *Id.*

who blames the Jews for the current economic crisis in Russia.<sup>247</sup> During recent Communist demonstrations, anti-Semitic placards were seen, and, for two days, a banner bearing an anti-Semitic slogan hung on the Kremlin tower.<sup>248</sup> Fortunately, anti-Semitism is not universal in the former Union. For example, Ints Calitis, a Latvian Parliament member, stated that the status of Jews is much better in Latvia than in a number of the other former Soviet republics.<sup>249</sup>

However, the greatest illustration of continued anti-Semitism is the plight of the Refuseniks. In Ukraine, while twelve families finally received permission to emigrate, there were nine Refusenik families left behind.<sup>250</sup> Additionally, seventeen more families were added to the already seventy Refusenik families living in St. Petersburg.<sup>251</sup> The primary reason for this continuing problem is that the former Soviet emigration law does

247. *Zhirinovsky on Jews*, MONITOR!, Feb. 21, 1992, at 1. Zhirinovsky claims that he is not an anti-Semite, "but [the Jews] concept is anti-governmental." *Id.*

248. Yuri Semenovsky, *Anti-Semitic Slogan Hung From Kremlin Tower*, MONITOR!, Feb. 21, 1992, at 3; see also *Congress of Civil and Patriotic Forces*, MONITOR!, Feb. 14, 1992, at 1 (anti-Semitic literature is readily available at protests calling for the resurrection of Communism, and these protests are organized by the Russian Constitutional Democrats and the Christian Democratic Union, which are groups that formerly supported Yeltsin).

249. Chicago Conference on Soviet Jewry (Jan. 8, 1992) (report by Roman Kahn) (copy of conference minutes on file with authors).

250. *Kiev Refuseniks Still Waiting*, MONITOR!, Feb. 14, 1992, at 3. The Helsinki Commission cited Ukraine for human rights abuses and urged the government to free all Refuseniks. *Helsinki Commission Calls on Ukraine to Free Refuseniks*, MONITOR!, Jan. 10, 1992, at 2.

However, Mr. Chornovil, the deputy chairman of the Lvov district government and parliament member, stated that "there is no anti-Semitism in everyday life." James F. Clarity, *Free Ukraine's Nationalism: Will Pride Become Prejudice?*, N.Y. TIMES, Feb. 12, 1992, at A10. A professor of Ukrainian history at Harvard, Roman Szporluk, explained that there are people who are anti-Semitic but these people are not in politics. However, he added that this is subject to change if the economy collapses. *Id.*

251. *St. Petersburg: 17 New Refusenik Families in 3 Months*, MONITOR!, Jan. 31, 1992, at 3.

not provide authority in the former republics.<sup>252</sup> Moreover, it is conceivable, because of the growing fear about scientists leaving with nuclear weapons technology and information, that Jewish scientists may be refused permission to emigrate under the guise that they may sell their knowledge to third world countries.<sup>253</sup> Therefore, it is imperative that the new states address the issue of free emigration and create legislation that will lessen the restrictions and be in line with CSCE standards.

## CONCLUSION

Since the independence of the Baltic Nations and the birth of the new Commonwealth of Independent States, freedom of religious expression and practice has been increasing in the former Soviet Union. Moreover, with all of the former republics now members of the CSCE, the new states are bound to observe human rights and fundamental freedoms as set out in the Helsinki Final Act and subsequent CSCE documents. In order to meet this goal, the individual states must devise new constitutional and/or legislative policies directed at permitting the unfettered expression and practice of religion. The Soviet Law may be the most likely model for these states to adopt; however, the United Nations Declaration on Religion is also a proper model for implementing these changes.

While the Soviet Law was a great step towards removing many of the restrictions on religious belief and practice, a number of apprehensions that stemmed from the earlier drafts of this law

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252. *Breakup of the Soviet Union Creates Uncertainty About Jewish Emigration*, *supra* note 232. Additionally, the former Soviet Union had a centralized agency for processing individuals who wished to emigrate, and this no longer exists. *Id.* Each new state will be required to develop its own method for processing these applications. *Id.*

253. *Cf. Interview by Professor V. Mikhailov, Head of the Military Nuclear Program of the Former USSR* (Official Kremlin Int'l News Broadcast, Jan. 31, 1992), available in LEXIS, Nexis Library, Current File. Professor Mikhailov explained that scientists leaving with information about nuclear weaponry will not become a considerable problem because the former government had laws restricting travel by people who possessed this type of information, and he believes that Russia will pass similar laws. *Id.*

continue to remain valid. Questions remain regarding how any governmental regulation of freedom of religion and conscience will lead to true freedom. One of the greatest concerns is the continued requirement that religious organizations and religious societies must register with the government. Until the registration requirement is abolished, it is difficult to comprehend how this law could serve as a model for truly free exercise of religion and conscience for the region. It is our hope that the ambiguities within the Soviet Law will be resolved in favor of greater freedoms rather than allowing the continued restriction of religious organizations and beliefs.

Clearly, the condition of religious freedom has progressed since the passage of the Soviet Law and the fall of the Soviet Union. Improvements have ranged from increased religious education and registration of assorted religious organizations to the availability of religious literature. However, several restrictions on religious organizations endure. Currently, the primary areas of concern are increasing nationalism and a growing anti-Semitism. Therefore, continued reform is necessary. As a starting point, we urge the prompt, orderly, and equitable return of churches, mosques, synagogues, religious literature, and all personal religious property to their former owners.