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Uzbekistan: Islam, Communism, and Religious Liberty—An Appraisal of Uzbekistan’s 1998 Law “On Freedom of Conscience and Religious Organizations”

I. INTRODUCTION

History teaches that the rise of new nation-states invites immense power struggles on a host of sociopolitical fronts.¹ From the nuclei of intense political, ethnic, and religious tension emerge governments and constitutions that affect countless numbers of human lives. Unquestionably, the early stages of these power struggles are the most crucial in defining the contours of individual liberty.

In the wake of over seventy years of communism, the newly independent Central Asian state of Uzbekistan is precisely the kind of developing nation just described. Though only a nine-year-old political sovereign,² Uzbekistan is a millennial³ epicenter of Islam⁴ that remains under the control of ex-communist bureaucrats who are steadily increasing their opposition to the free exercise of religious liberty.⁵

1. See Valeria F. Piacentini, *Islam: Iranian and Saudi Arabian Religious and Geopolitical Competition in Central Asia*, in FROM THE GULF TO CENTRAL ASIA: PLAYERS IN THE NEW GREAT GAME 25, 26 (Anoushiravan Ehteshami ed., 1994).

2. Uzbekistan gained independence from the Soviet Union on August 31, 1991. See U.S. CENTRAL INTELLIGENCE AGENCY (CIA), THE WORLD FACTBOOK (1999) [hereinafter WORLD FACTBOOK] (visited Mar. 16, 2000) <<http://www.odci.gov/cia/publications/factbook/uz.html#gov>>.

3. See Robert D. McChesney, *Central Asia’s Place in the Middle East: Some Historical Considerations*, in CENTRAL ASIA MEETS THE MIDDLE EAST 26, 29 (David Menashri ed., 1998) (stating that Islam in Central Asia remains undiminished nearly a millennium and a half after its introduction by Arab armies).

4. Uzbekistan is the most populated Central Asian state (over 24 million), 88% of whom are Muslim. Contrast Uzbekistan’s mono-religious population with other Central Asian states such as Kazakhstan and Kyrgyzstan where the Muslim populations are considerably less dominant. See WORLD FACTBOOK, *supra* note 2.

5. See Christy Cutbill McCormick, *Exporting the First Amendment: America’s Response to Religious Persecution Abroad*, 4 J. INT’L LEGAL STUD. 283, 299 (1998) (“Uzbekistan, now released from Soviet control, is governed by ex-communists who see religious expression as a threat to their new political power.”); see also Clark Troy, *And President Blames Religious Extremists*, BBC MONITORING SERVICE 62599 (June 28, 1999) (visited Mar. 16, 2000)

This Comment explores the delicate status of religious liberty in Uzbekistan through a legal analysis of Uzbekistan's 1998 legislative enactment entitled "On Freedom of Conscience and Religious Organizations" ("1998 Freedom of Conscience Law").⁶ This Comment also provides an overview of the cultural and historical constructs which led to the enactment of the 1998 Freedom of Conscience Law.

An analysis of the 1998 Freedom of Conscience Law, when viewed against the backdrop of the post-Soviet resurgence of both Islamic and non-Islamic faiths in Uzbekistan, makes it clear that Uzbekistan is in the unique but extremely volatile position to move in one of two directions: (1) forward, toward building a bridge between Islam and other faiths, or (2) backward, toward any of the various Muslim "poles," which can already be observed in the cleric extreme of Iran or the anticleric extreme of Turkey.⁷

As will be illustrated, the President of Uzbekistan, Islam Karimov, is pursuing a course of action leading to religious and ethnic conflict that could cost the lives of untold numbers of people.⁸

<<http://soros.org/uzbkstan/omri/0205.html>> (reporting that on June 25, 1999, Uzbekistan's President, Islam Karimov, told Uzbekistan's national news agency that the country is experiencing a period of "very difficult" political processes aggravated by religious groups who are trying to undermine the country's security and force a transition from "civilized democratic development").

6. Uzbekistan's 1998 Freedom of Conscience Law came into force on May 15, 1998 when it was published by the Uzbek press. It was adopted by the Uzbek parliament on May 1, 1998. See The Law of the Republic of Uzbekistan "On Freedom of Conscience and Religious Organizations," Resolution by the Oliy Majlis [Parliament] of the Republic of Uzbekistan, in *Narodnoye Slovo* (Tashkent newspaper "People's Word" in Russian) (May 15, 1998) [hereinafter 1998 Freedom of Conscience Law]. An English translation of the law was graciously provided by Mr. Felix Corely of the Keston Institute.

7. The Turkish Islamic model and the Iranian Islamic model are the most commonly accepted "competing models" that influence Uzbekistan's church-state policies. Former United States Secretary of State James Baker often referred to the post-Soviet Central Asian region as a battleground where "Western-looking Turkey" and "anti-Western Iran" are competing in a zero-sum game. See Paul A. Goble, *The 50 Million Muslim Misunderstanding: The West and Central Asia Today*, in FROM THE GULF TO CENTRAL ASIA: PLAYERS IN THE NEW GREAT GAME, *supra* note 1, at 1, 2-3.

8. Indeed, the death toll is already mounting. See U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: UZBEKISTAN (1999) (visited Mar. 30, 2000) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_uzbekist99.html> [hereinafter 1999 REPORT ON UZBEKISTAN] (stating that "several persons arrested for religious reasons apparently have died from mistreatment in custody"). A recent report by one of Uzbekistan's few registered human rights organizations claims that according to some of its calculations "the number of people who suffered (in the form of arrests) for their religious beliefs exceeded 4.5 thousand in 1992 and 6 thousand in 1998-1999,"

Warnings of a “new Kosovo” can already be heard.⁹ This Comment will demonstrate that a better course of action must entail a compromise—a “middle-of-the-road” approach—incorporated by both sides of the conflict (the Karimov regime and the “opposition” minority religions). In order to reverse the current cycle of polarized and amplified religious tensions, the first-step concession must come from the Karimov administration. The Karimov administration can take the conciliatory first step by tempering the 1998 Freedom of Conscience Law.

Part II of this Comment sets the stage for the appearance of Uzbekistan’s 1998 Freedom of Conscience Law by exploring the two major cultural constructs that led to its enactment: (1) Uzbekistan’s antireligious Soviet legacy, and (2) the new landscape of Islam in post-Soviet Uzbekistan.

Part III entails a statutory analysis of the 1998 Freedom of Conscience Law, beginning with the legal antecedents from which the law sprang and culminating with an examination of the substantive restrictions that it places on fundamental freedoms of religion and belief. In addition to suggesting that the 1998 Freedom of Conscience Law essentially criminalizes most forms of religious activity, Part III identifies specific provisions contained in the 1998 Freedom of Conscience Law that violate international covenants to which Uzbekistan has acceded.

Finally, Part IV contains a few forward-looking considerations and suggests a compromise model consisting of two fundamental shifts in Uzbekistan’s church-state paradigm, including (1) amelioration of the overly restrictive 1998 Freedom of Conscience Law, and (2) relaxed treatment of allegedly “subversive” religious minorities.

and then provides biographical sketches of a few of the 38 religious or political prisoners known to have died of spurious causes while in Uzbek prisons over the last year alone. HUMAN RIGHTS SOCIETY OF UZBEKISTAN, UZBEKISTAN: THE ATMOSPHERE OF TERROR AND VIOLENCE, reprinted in Justin Burke, *Human Rights Update from Uzbekistan*, BBC MONITORING SERVICE 110899 (Nov. 8, 1999) (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0350.html>>.

9. Statement of Max van der Stoep, Commissioner for National Minorities with the Organization for Security and Cooperation in Europe (“OSCE”), AOLNews@aol.com press release (Nov. 22, 1999) [hereinafter van der Stoep Statement].

II. BACKGROUND

This section explores the two major historical and cultural constructs that undergird Uzbekistan's controversial 1998 Freedom of Conscience Law: (1) Uzbekistan's antireligious Soviet legacy and (2) the new landscape of Islam in post-Soviet Uzbekistan.

A. Uzbekistan's Antireligious Soviet Legacy

*"We must combat religion—that is the ABC of all materialism [I]t must be linked up with the concrete practice of the class movement, which aims at eliminating the social roots of religion."*¹⁰

Thus spoke Lenin, one of the infamous demigods of communist ideology, and thus was Karimov taught from his youth, at least by the state, to consider religion as the "opium for the people."¹¹ Prior to 1991, many Sovietologists claimed that communist policy and ideology was a failure in Central Asia, and that the deep-rooted culture of political Islam posed one of the greatest challenges to the predominately Russian USSR.¹² Such statements seemed to suggest that upon independence, the Central Asian states, and Uzbekistan in particular, would see an immediate resurgence of political Islam, characterized most notably by the replacement of Soviet appointed political leaders with popularly elected Islamic religious heads. With the advantage of perfect hindsight, however, it is now clear that this was simply not the case. The fact remains that the national communist party leaders which ruled the Central Asian Republics under the Soviet regime are the same that rule the newly independent Central

10. V.I. Lenin, *Socialism & Religion*, in 10 COLLECTED WORKS 83-84, 86 (1978), reprinted in MEHRDAD HAGHAYEGHI, *ISLAM AND POLITICS IN CENTRAL ASIA* 13-14 (1995).

11. *Id.* The phrase "opium for the people" was used widely by Soviet leaders and became one of the slogans of communist antireligious thought. See Zahid I. Munavvarov, *Uzbekistan*, in *CENTRAL ASIA AND THE CAUCASUS AFTER THE SOVIET UNION: DOMESTIC AND INTERNATIONAL DYNAMICS* 133, 139 (Mohiaddin Mesbahi ed., 1994).

12. See M. Nazif Shahrani, *Muslim Central Asia: Soviet Development Legacies and Future Challenges*, in *CENTRAL ASIA AND THE CAUCASUS AFTER THE SOVIET UNION* 56, 56-57 (Mohiaddin Mesbahi ed., 1994).

Asian states today,¹³ although they have given their parties new names that avoid conjuring up images of hammer and sickle.¹⁴

Obviously, religion all across the USSR did not simply evaporate during seven decades of Communism, but to be sure, it was severely and ruthlessly stifled.¹⁵ For those newly independent states who had long resisted Soviet control (especially in the cases of the Eastern European breakaways such as the Baltic States), the fall of Communism was like the breaking of a dam, which yielded rapid and flood-like departures from antireligious Soviet doctrine. Central Asia, on the other hand, did not shed the Soviet mentality of control so quickly, in part because Central Asia did not necessarily welcome or push for independence and change. In fact, during the last months of the USSR's existence, the Central Asian republics were the only Soviet states where citizens turned out en masse to vote in favor of the March 1991 referendum for the Soviet Union's perpetuation and where "[u]p until the very last minute, almost all of Central Asia's leaders maintained hope that the union could be saved."¹⁶ The explanation was quite simple: the collapse of the Soviet Union meant not only the instant cutoff of desperately needed financial support, but a mass exodus of highly skilled Russian workers who would leave Central Asia behind to wallow in the social and ecological crises that were the consequences of fifty years of economic planning.¹⁷

13. See *id.* at 57; see also LUDMILA POLONSKAYA & ALEXEI MALASHENKO, ISLAM IN CENTRAL ASIA 142-43 (1994). Islam Karimov (President of Uzbekistan), Nursultan Nazarbaev (President of Kazakhstan) and Askar Akaev (President of Kyrgyzstan) were also the leaders of their respective Soviet Republics in 1991 during the dissipation of the Soviet Union. See WORLD FACTBOOK, *supra* note 2.

14. See WORLD FACTBOOK, *supra* note 2 (stating that the current controlling parties are: Uzbekistan, People's Democratic Party; Kazakstan, People's Unity Party; Kyrgyzstan, Social Democratic Party).

15. Within the borders of Russia itself, only 12 Christian Orthodox bishops remained alive by the end of the 1930s and of the 1105 monasteries and convents existing in 1917, only six monasteries and ten convents remained in 1986. Virtually all of the approximately 200 Buddhist temples and monasteries were destroyed and thousands of lamas were sent into exile or killed. Jews were persecuted and exterminated beginning with a campaign initiated by Stalin. See ROSANNA KELLEY, RUSSIA 212, 263-64, 281 (1994). In 1985, only two Muslim *madrasah* (religious schools) in all of Central Asia had legal permission to operate. Martha Brill OLCOTT, *Islamic Consciousness and Nationalist Ideology in Central Asia: What Role for Foreign Actors*, in FROM THE GULF TO CENTRAL ASIA: PLAYERS IN THE NEW GREAT GAME, *supra* note 1, at 6, 13.

16. MARTHA BRILL OLCOTT, CENTRAL ASIA'S NEW STATES, INDEPENDENCE, FOREIGN POLICY, AND REGIONAL SECURITY 9 (1996).

17. See *id.*; see also Shahrani, *supra* note 12, at 57 (stating that the Central Asian public's

Even today, much nostalgia for the Soviet Union lingers on in Uzbekistan. In fact, one of the stronger arguments that Karimov will not soon adopt a system of political Islam, such as that seen in Iran, is that he is a product of antireligious Soviet indoctrination and will resist, by nature (or rather, by *nurture*), the cohabitation of religion and party politics. Owing to decades of insistent communist rubric of atheism and active suppression of all forms of religion, resistance to religion may have become such a deeply engrained part of his government psyche that no religious group, Islamic or otherwise, will soon rise to the level of government administration such as is seen in neighboring Middle Eastern states.

This theory of carry-over antireligionism is corroborated by the perpetuation in Uzbekistan of the formerly Soviet-sponsored Muslim Spiritual Directorates, which were initially established under Soviet religious policy to align Muslim believers with Communist policies (to the extent possible).¹⁸ “Official” Islam was considered to flow from the Soviet appointed *imams* (Muslim leaders) of the Spiritual Directorates. Consequently, those Muslims who did not subscribe to the Soviet-Muslim partnership (who were, for the most part, members of the Suffi sect of Islam) were forced into an underground mode of worship and were considered to be reactionary and anti-government.¹⁹

Little has changed today. The perpetuation of the largely Soviet concept of “official” and “unofficial”²⁰ Islam continues to plague the

support of the continuation of Communist rule in their home republics testified of “the considerable success of the Soviet ‘modernization’ and ‘development’ policy goals in the region, and not their failure”).

18. See Piacentini, *supra* note 1, at 26.

19. See Olcott, *supra* note 15, at 13; see also HUMAN RIGHTS WATCH, CLASS DISMISSED: DISCRIMINATORY EXPULSIONS OF MUSLIM STUDENTS Vol. 11, No. 12 (D) (1999) (subsection entitled “Uzbekistan and Islam”) (visited Mar. 16, 2000) <<http://www.hrw.org/reports/1999/uzbekistan/uzbek-02.htm>> [hereinafter CLASS DISMISSED] (stating that Muslim clerics opposed the Soviet regime).

20. See 1999 REPORT ON UZBEKISTAN, *supra* note 8 (stating that “[t]he Government perceives unofficial Islamic groups or mosques as extremist threats and sharply restricts their activities”); Victor Spolnikov, *Impact of Afghanistan’s War on the Former Soviet Republics of Central Asia*, in CENTRAL ASIA 96, 107 (Hafeez Malik ed., 1994) (describing some of the historical roots of the division between “official” and “nonofficial” Islam); see also CLASS DISMISSED, *supra* note 19 (subsection entitled “The Campaign Against Independent Islam”) (stating that the most recent “campaign against ‘unofficial’ Islam began in 1994-1995, with the harassment and arbitrary detentions of men wearing beards and the ‘disappearance’ of popular independent Muslim clerics, and intensified in 1997, with the closing of mosques and

allegedly secular²¹ regime of Uzbekistan. Those who fall into the “unofficial” category include minority religious movements whose ideas of pure Islam are not in line with government agendas and therefore supposedly not in line with “official” Islam. As was done so well by their Soviet progenitors, the present-day Central Asian authoritarians (and Karimov in particular) capitalize on and publicize the professed danger of unofficial Islam, using religion as a pretext for political persecution and control.

B. The New Landscape of Islam in Post-Soviet Uzbekistan

The horizons of religious tolerance in Uzbekistan will clearly be affected by factors contributing to national identity. Given the reality that Islam is already one of the defining characteristics of the Uzbek identity, any legal analysis of constitutional and statutory provisions pertaining to religion would not be complete without first understanding the Islamic movements that are at the very core of the religious and highly politicized battles that are being played out both in private offices²² and in public streets.²³

a broader crackdown on Islamic leaders and other practicing Muslims not affiliated with officially sanctioned Islamic institutions”).

21. The word “secular” is never actually used in Uzbekistan’s constitution to describe church-state relations; however, Article 5 of the 1998 Freedom of Conscience Law, which is entitled “Separation of Religion from the State,” begins by stating that “[in] the Republic of Uzbekistan religion is separated from the state. Granting any privileges to or imposing restrictions upon any individual religion is inadmissible.” 1998 Freedom of Conscience Law, *supra* note 6, at art. 5. *See also* CSCE News Release, *Uzbekistan Is One of the Most Repressive New Independent States*, (Oct. 18, 1999) (visited Mar. 16, 2000) <<http://www.soros.org/uzbkstan/uzhr10199.html>> [hereinafter CSCE News Release] (containing a statement by His Excellency Sodyq Safaev, Ambassador of the Republic of Uzbekistan, that “Uzbeks today face the numerous challenges of building a secular democracy and opposing the threats of religious fundamentalism and political extremism”).

22. *See* AMNESTY INTERNATIONAL, HUMAN RIGHTS REPORT ON UZBEKISTAN (1999) (visited Mar. 16, 2000) <<http://www.amnestyusa.org/ailib/aireport/ar99/eur62.htm>> (stating that on May 1, 1999, the same day that Uzbekistan parliament passed the 1998 Freedom of Conscience Law, Karimov “endorsed tough measures against ‘those who are trying by any means to introduce political Islam, religious extremism and fanaticism’ and told parliament that ‘fundamentalists should be shot’”); *see also* Felix Corley, *Soviet-Style Religious Persecution Now Returning in Uzbekistan*, KESTON NEWS SERVICE (July 28, 1999) (visited Mar. 16, 2000) <<http://www.keston.org/scholarsframe.htm>> (reporting that the new law was “prepared in secrecy” and that “President Karimov threatened to shoot Wahhabis [members of a particular religious minority] personally if deputies failed to approve the new law”); Paul A. Goble, *Central Asia: Analysis From Washington—Leaders Fail To Read Fundamentalism Right*, RADIO FREE EUROPE/RADIO LIBERTY (May 6, 1998) (visited Mar. 31, 2000) <<http://www.rferl.org/nca/features/1998/05/F.RU.980506121701.html>> (“[Karimov]

Clearly, Karimov is aware of the fact that his popularity depends in large part upon his maintaining a religious and particularly pro-Islamic image. Indeed, he professes to be a proponent of Islam so far as it is politically expedient for him to do so.²⁴ But his political posture is one that presents a difficult dichotomy for him to overcome: Karimov is the president of a people who believe that communism has been replaced by a democratic system guaranteeing freedom of conscience, yet he is also the undisputed leader of what used to be Uzbekistan's national communist party.²⁵ This dichotomy has resulted in a confusing ideological milieu: Islam and Communism as bedfellows in the same "democratic" state. Somehow, Karimov continues to walk the razor's edge as an ex-communist party leader who is Muslim enough to lead a popular regime in the Mecca of Central Asia, yet antireligious enough to quell popular religious movements that fall outside of his comfort zone.

1. Islamic fundamentalism in context

Islam is political by nature.²⁶ It is arguably "the most politicized religion in the world."²⁷ In part, this is because Islamic doctrine calls for strict regulation not only of religious customs but of social and political aspects of life as well.²⁸ That being said, one should be careful not to subscribe to the oversimplified assertion that Islam equals

told his country's parliament that Muslim activists were so dangerous that they 'must be shot in the head.'").

23. On February 16, 1999, in Tashkent, Uzbekistan, 15 people were killed and over 100 injured in a series of six explosions intended to kill President Islam Karimov. Uzbek government sources ascribed the explosions to religious extremists. See Fiona Dunne, *Religious Extremists Were Involved in Tashkent Explosions*, INTERFAX NEWS AGENCY (Feb. 23, 1999) (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0063.html>>.

24. For example, Uzbekistan's Karimov took his presidential oath of office on the Koran, made the *Hajj* (religious pilgrimage) to Saudi Arabia on one of his first post-independence trips abroad, and told the press that he and his family observe Muslim dietary laws. See OLCOTT, *supra* note 16, at 117.

25. See Shahrani, *supra* note 12, at 57; see also WORLD FACTBOOK, *supra* note 2.

26. See POLONSKAYA & MALASHENKO, *supra* note 13, at 120.

27. *Id.*

28. See Abdullah Ahmed An-Na'im, *Human Rights in the Muslim World*, 3 HARV. HUM. RTS. J. 13 (1990), reprinted in HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 210, 212 (1996) (stating that Muslim jurists "categorized all fields of human activity as permissible or impermissible and recommended or reprehensible" and that "[m]ost Muslim countries have experienced mounting demands for the immediate application of Shari'a as the sole, or at least primary, legal system of the land").

violence.²⁹ It must be remembered that the Islamic world encompasses approximately one billion people and constitutes the majority population in over forty states, the expected result of which is a wide range of manifestations of Islam ranging from the classical Islam (instituted by the prophet Muhammed in 622 A.D.) to contemporary Islam that differs markedly from nation to nation.³⁰ But regardless of the wide range of beliefs held by Muslims across the world, one thing is clear: wherever major Muslim populations exist, the forces driving political Islam have been a factor to be reckoned with by Muslim and non-Muslim citizens alike.³¹

a. Morphology and semantics. The question as to what exactly constitutes Islamic “fundamentalism,” or “extremism,” otherwise referred to by mainstream Islam as “Wahhabism,”³² is still open for debate. In attempting to define it, one should understand the historical nexus from which it sprang relative to the Middle East, the former USSR, and present day Uzbekistan.

First, the Arabic term for fundamentalism is *usuliya*, from the word *asl* which means “root.”³³ Fundamentalism is a return to the roots of “pure religion” that has been defiled or diluted by subsequent events. Central Asian fundamentalism represents a return to traditional Islam that was weakened by the nineteenth and twentieth century intrusion of communists, atheists, and secularists. Importantly, all three types of intruders (communists, atheists, and secularists) could easily be labeled as “heretics” so far as Islamic tradition was concerned—and heresy, like apostasy, is a capital offense³⁴ pun-

29. See Donna E. Arzt, *Heroes or Heretics: Religious Dissidents Under Islamic Law*, 14 WIS. INT’L L.J. 349, 364 (1996) (stating that torture and summary execution that occur in militant Islamic regimes “do not reflect the will of the Muslim people” and “are not ‘Islamic tradition’ any more than they are ‘Catholic’ when they occur in Latin American countries”); see also Riffat Hassan, *Religious Human Rights and the Qur’an*, 10 EMORY INT’L L. REV. 85 (1996) (arguing that Islam’s sacred text, the Qu’ran, is a “Magna Carta” of human rights).

30. See Arzt, *supra* note 29, at 356.

31. The pervasiveness of Islamic influence over a state can vary from social/cultural to legal/political. Some of the most extreme examples are Iran, where legal principles of *Shari’a* law are the primary source of government, and Sudan and Pakistan, where *Shari’a* law plays a significant (though not absolutely controlling) role in government. See An-Na-’Im, *supra* note 28, at 212.

32. See 1999 REPORT ON UZBEKISTAN, *supra* note 8 (explaining that the Uzbek government “is determined to prevent the spread of ultraconservative or extremist versions of Sunni Islam, which it labels ‘Wahhabism’ and considers destabilizing.”).

33. POLONSKAYA & MALASHENKO, *supra* note 13, at 122.

34. See Arzt, *supra* note 29, at 376-78.

ishable by death according to some of the more radical interpretations of Islam (which explains much of Karimov's discomfort). Not surprisingly, the word "fundamentalism" is not used within Muslim circles as loosely as it is used by western onlookers. In fact, both mainstream and radical Muslims consider themselves to be fundamentalists inasmuch as they both consider themselves to be adherents to the "fundamental" teachings of the Prophet Muhammed.³⁵ In short, where the western world uses the term "fundamentalist," most Muslims prefer to use such descriptors as "extremist" or "radical."³⁶

b. Wahhabism. The term "Wahhabi" technically refers to a faction of Islam stemming from an identifiable sect that originated in Saudi Arabia in the eighteenth century under the leadership of Muhammad ibin 'Abd al-Wahhab.³⁷ Wahhab's movement was relatively conservative, but advocated independent thinking as a means of purifying the Muslim faith.³⁸ In Central Asia, however, Wahhabism is quickly becoming a type of pejorative government buzz word for religious activity of minority groups in general (particularly groups that are unregistered and foreign related).³⁹

The religious underground community in Uzbekistan, commonly referred to as Wahhabites, can be traced back to the 1940s. As early as 1943, when only the Soviet sponsored Religious Board of Central Asia and Kazakhstan ("SADUM") had the right to open

35. Interview with Dr. Abdulhakim Al-Matar (Nov. 16, 1999). Dr. Al-Matar is currently living in Saudi Arabia but was educated in the United States. He is a practicing member of the Sunni mainstream (majority) branch of Islam.

36. In the Uzbek Muslim Board's official public denouncement of the 1999 Tashkent bombings, the word "fundamentalist" was not used once, though repeated references were made to so called "fanatical dogmatists." *Khalq Sozi* (Tashkent newspaper "People's Word" in Russian), Uzbekistan (Feb. 18, 1999), reprinted in Fiona Dunne, *Uzbek Muslim Board Denounces Religious Extremism*, BBC MONITORING SERVICE 22099 (Feb. 20, 1999) (visited Mar. 30, 2000) <<http://soros.org/uzbkstan/omri/0059.html>>.

37. See U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: SAUDI ARABIA (1999) (visited Mar. 30, 2000) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_saudiara99.html>. See also CLASS DISMISSED, *supra* note 19, at n.8 (subsection entitled "The 'Uzbek Way'") (stating that the eighteenth century founder of the Wahhabite strain of Islam was a scholar from Arabia named Muhammad ibn 'Abd al-Wahhab).

38. CLASS DISMISSED, *supra* note 19, at n.8 (subsection entitled "The 'Uzbek Way'").

39. See *supra* note 32 and accompanying text; see also CLASS DISMISSED, *supra* note 19, at n.8 (subsection entitled "The 'Uzbek Way'") (stating that the Mufti of Uzbekistan, Abdurashid Qori Bahromov, recently claimed that *chador*, or covering the whole face with exception of the eyes, is "Wahhabi, because *chador* is from Saudi Arabia and Pakistan").

mosques and religious schools, a legion of underground Muslim seminaries grew up out of the perceived necessity to preserve classical Islam.⁴⁰ Naturally, those *mullahs* and teachers who were appointed by SADUM to operate the state-registered mosques and religious schools were hand-picked for their moderate views and willingness to cooperate with Soviet sponsorship.⁴¹ All others were considered politically dangerous fundamentalists on whom the KGB kept close watch.⁴²

On June 9, 1990, the first attempt to create a general Muslim political party in the Soviet Union took place in Astrakhan, Russia. It would be called the Party of Islamic Rebirth (“PIR”), and its founding documents stated that “the invested schemes of [communist] social development have led mankind to a deep crisis in all spheres of life,” and “[w]e see salvation only in following the path of Allah.”⁴³ PIR’s declared objective was to make *Shari’a* (traditional Islamic law) the essential part of citizens’ daily lives without taking it so far as the Iranian-style clerical regime.⁴⁴ PIR’s members acted immediately to set up branches throughout Central Asia by organizing founding meetings in Uzbekistan and Tajikistan. The KGB was too late in Tajikistan, but Uzbekistan’s Islam Karimov, fully understanding the implications of a purely Islamic political party in Uzbekistan, reacted without delay by sending KGB agents to disrupt the founding meeting in Tashkent, where PIR members were beaten and dragged from the meeting.⁴⁵ Ironically, the KGB’s interference did not uproot the newly founded PIR. On the contrary, it acted only to force PIR members into a *modus operandi* incorporating numerous smaller branches who went “underground” and who were now popularly motivated under the flag of martyrdom and persecution.⁴⁶

40. See Olcott, *supra* note 15, at 13.

41. See *id.*

42. See *id.*

43. *Programme and Rules of the Party of Islamic Rebirth* 6, 8, reprinted in POLONSKAYA & MALASHENKO, *supra* note 13, at 123-24. Polonskaya and Malashenko also note that this is a typically fundamentalist wording, characteristic of all Middle Eastern fundamentalists, from Egyptian Sayyid Qutb to the leader of the Libyan revolution Muammar Gaddafi. *Id.*

44. See Farhad Kazemi & Zohreh Ajdari, *Ethnicity, Identity and Politics: Central Asia and Azerbaijan between Iran and Turkey*, in CENTRAL ASIA MEETS THE MIDDLE EAST, *supra* note 3, at 52, 65.

45. See POLONSKAYA & MALASHENKO, *supra* note 13, at 125.

46. See *id.* at 126-27.

2. *The threat of religious extremism: real or perceived?*

Unquestionably, there is some legitimacy to a general sense of apprehension concerning extremist Islamic movements in Central Asia. Indeed, a senior official for the Organization for Security and Cooperation in Europe (“OSCE”) who recently “warned of a ‘new Kosovo’ looming in Central Asia[,]” cited the rapid rise in Islamic extremism which threatens stability in the region.⁴⁷ A Kyrgyz newspaper, the *Utro Bishkeka*, recently published an official statement by the fundamentalist party “Islamic Movement of Uzbekistan” proclaiming a holy war (or *jihad*) against Uzbek President Islam Karimov.⁴⁸ Moreover, the Qur’anic concept of *jihad*, which literally means “struggle in the name of Allah,” is interpreted by radical Islamic movements to have a military connotation.⁴⁹

The bombings in Tashkent on February 16, 1999, where fifteen people were killed and over one hundred injured,⁵⁰ are one of the Karimov administration’s favorite examples of the potentially deadly nature of religious extremism (although the bombings of February 16 were never conclusively tied to religious extremism).⁵¹ Smaller scale conflicts, however, are regular and continuing—both in Uzbekistan and in bordering countries. On September 21, 1999, press releases reported that “fighting [with Islamic militants] . . . left at

47. van der Stoel Statement, *supra* note 9.

A senior OSCE official has warned of “a new Kosovo” looming in Central Asia saying a rapid rise in Moslem extremism endangered stability in the region. Max van der Stoel, commissioner for national minorities with the Organisation for Security and Cooperation in Europe (OSCE), called on Western powers to forge an economic recovery plan to stave off the threat of civil war

Id.

48. See Justin Burke, *Islamic Movement in Uzbekistan Warns Bishkek*, BBC MONITORING SERVICE 91699 (Sept. 16, 1999) (visited Mar. 31, 2000) <<http://soros.org/uzbkstan/omri/0313.html>>.

49. The concept of *jihad* (meaning “sacrifice” in the path of God), entails a related belief that dying in battle is the highest form of praise to Allah; however, *jihad* does not necessarily require violence. *Jihad* can also be exercised through preaching and example, a view that is espoused by many devout Muslims. See Arzt, *supra* note 29, at 379.

50. See Dunne, *supra* note 23.

51. In fact, despite Karimov’s immediate televised attribution of the bombings to religious extremists, subsequent investigations showed that the bombings were actually the handiwork of foreign terrorists. See Fiona Dunne, *Tashkent Bombings—Various*, INTERFAX NEWS AGENCY (Feb. 16, 1999) (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0038.html>>. A more commonly accepted act of religious terrorism was the 1997 police fatalities in the Namangan region of Uzbekistan. See *infra* note 81 and accompanying text.

least twelve Kyrgyz soldiers dead and more than twice that many wounded.”⁵² On the same day it was reported that Islamic militants had been “holding hostages in the mountains for weeks” causing “[t]housands of villagers [to flee] their mountain homes.”⁵³ These events and a host of others have caused President Karimov to crack down on “suspicious” religious activity as a means of rooting out organizations and individuals considered to be national security threats.⁵⁴

The greatest fear of all may well be what Olcott has dubbed as the “contagion effect,”⁵⁵ wherein a migratory spillover into Uzbekistan of Wahhabi-indoctrinated Uzbeks from the war-torn countries of Tajikistan and Afghanistan⁵⁶ results in the infection of peaceful Central Asian states with the communal violence psychology which is blamed for the destruction in Tajikistan.⁵⁷ Indeed, the threat of civil war seems to exist not only in the minds of the Karimov regime,⁵⁸ but in the minds of opposition movements as well.⁵⁹

52. Bruce Pannier, *Kyrgyzstan/Uzbekistan: Militaries Brace For Clashes With Islamic Militants*, (visited Mar. 16, 2000) <<http://www.rferl.org/nca/features/1999/09/F.RU.990921140802.html>>.

53. *Id.*

54. 1999 REPORT ON UZBEKISTAN, *supra* note 8 (stating that “authorities are highly suspicious of those who are more pious than is the norm: frequent mosque attendees; bearded men; and veiled women. In practice this approach results in mistreatment of many devout Muslims for their religious beliefs.”).

55. Olcott, *supra* note 15, at 20; *see also* OLCOTT, *supra* note 16, at 113.

56. As of 1996, nearly 1.2 million Uzbeks were living in Tajikistan and another 1.3 million in Afghanistan. *See* OLCOTT, *supra* note 16, at 113.

57. The Tajik civil war is now over; however, the war was caused by Islamic militants who ousted the Soviet carry-over regime from power shortly after the dissipation of the USSR. Olcott writes, “The prospect of bloody civil war taking place in a country five times more populous is genuinely terrifying.” *Id.* *See also* U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: TAJIKISTAN (1999) (stating that “[t]he post-independence 1992-97 civil war was fought in part over differing views of the role of religion in the republic”) (visited Mar. 30, 2000) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_tajikist99.html>.

58. *See* Justin Burke, *Uzbek Police Chief Urges Religious Leaders To Fight Radical Movements*, BBC MONITORING SERVICE, (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0407.html>> (reporting that Uzbek Interior Minister Zokirjon Almatov and Uzbek Chairman of the Cabinet’s Department for Religious Affairs, Fozil qori Tursunov, announced on January 27, 2000 at the Uzbek capital, Tashkent, that religious extremists had declared war on Uzbekistan, and called upon Muslim leaders in the country to wage war against the extremists themselves).

59. Abdurahim Polat, Chairman of the Birlik Party and exiled political opposition leader, recently noted that “[e]xiled leaders of democratic opposition decided to delay their return to Uzbekistan” because they are “banned from participating in [the January 2000]

Whether or not the threat of religious extremism in Uzbekistan is real or perceived, the highly publicized government campaign against Wahhabites and other minority groups is leading to large-scale religious intolerance. Karimov claims to be fighting a dangerous civil disease by arresting, interrogating, and imprisoning religious activists.⁶⁰ His “war”⁶¹ against religious extremism, which is necessarily aimed at minority religions, is turning into more than just a figure of speech. For example, in early December 1999, over three hundred Uzbek agents from the Department of Internal Affairs, accompanied by over four hundred members of the people’s militia began a type of “special operation,” referred to as a *zarba* (strike), intended to capture and prosecute both “criminals” and “religious extremists.”⁶² It is precisely this type of politically convenient overreaction that led the Chairman of the OSCE, Bronislav Geremek, to warn Karimov in a personal visit that in many Muslim countries, government moves against what some call “politicized Islam” and others “Islamic fundamentalism” had actually strengthened these groups.⁶³ Indeed, in many cases, extremists have no chance to win power unless they are perceived as being persecuted.⁶⁴

campaigns.” He went on to say that “[i]t seems like civil war is unavoidable.” CSCE News Release, *supra* note 21.

60. See Testimony by the Honorable Robert A. Seiple, Ambassador-at-Large for International Religious Freedom, United States Department of State, *Hearing: The First Annual State Department Report on International Religious Freedom*, Oct. 6, 1999 (visited Mar. 16, 2000) <http://www.house.gov/international_relations/hr/irfseiple.htm>. Mr. Seiple stated the following:

In Uzbekistan, the Government’s record on respect for religious freedom has long been a source of concern. Arbitrary arrests and abuse are pervasive, and judicial proceedings are often mere rubber stamps. The pattern of harassment and detention of members of unregistered Muslim groups is alarming. Recent closed trials that fail to meet standards of basic due process have attempted to discredit members of unregistered religious groups as dangerous extremists or criminals. Defendants have been convicted of criminal offenses, reportedly based on forced confessions and planted evidence.

Id.

61. See Burke, *supra* note 58.

62. Justin Burke, *Uzbek Police Conduct Operation Against Religious Extremists*, BBC MONITORING SERVICE 120699 (Dec. 6, 1999) (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0370.html>>.

63. See Goble, *supra* note 22.

64. See *id.*; see also POLONSKAYA & MALASHENKO, *supra* note 13, at 126-27 (stating that one of the paradoxes of the Soviet domestic policy during *perestroika* was that those religious minorities who were persecuted most of all by the authorities enjoyed the greatest popularity among the people).

To summarize, Part II of this Comment has shown that the convergence of Communism with the new landscape of Islam in Uzbekistan resulted in a volatile atmosphere that was ripe for a preemptive government strike to keep political Islam in check. Uzbekistan's anti-religious Soviet legacy seems to have been perpetuated by Karimov. Against the backdrop of the "Wahhabi" revolution in neighboring Tajikistan and a supposedly growing tide of threatening religious and political extremism in Uzbekistan, Karimov's enactment of Uzbekistan's 1998 Freedom of Conscience Law marks an alarming reaction to the revival of religion, the ramifications of which must be fully understood by Karimov, the Uzbek people, and the international community.

III. THE 1998 FREEDOM OF CONSCIENCE LAW

From Uzbekistan's independence in 1991 until the enactment of the 1998 Freedom of Conscience Law, scrutiny of religious activity by the Karimov administration seemed to be more a function of protecting the "secular" ideal of Uzbekistan's new democracy and less a function of large scale religious intolerance.⁶⁵ But with the passage of the 1998 Freedom of Conscience Law and subsequent amendments⁶⁶ to the criminal and civil codes, Karimov gave himself legal cover to take extreme measures, including massive curtailment of fundamental human rights,⁶⁷ to ensure that religious activity is kept

65. See 1999 REPORT ON UZBEKISTAN, *supra* note 8 (stating that even now "[t]he [Uzbek] government does not consider this repression to be directed against religious freedom itself but instead against those who desire to overthrow the secular order").

66. Both the Administrative Code and the Criminal Code of Uzbekistan were updated in order to "stiffen the penalties for violating the religion law and other statutes on religious activities." 1999 REPORT ON UZBEKISTAN, *supra* note 8. See generally On Introduction of Amendments and Additions into Legislative Acts of the Republic Uzbekistan (1998) (Uzb.).

67. Examples of international law containing such fundamental rights include: Universal Declaration of Human Rights art. 18 (1948), available in *Fiftieth Anniversary of the Universal Declaration of Human Rights* (visited Sept. 16, 2000) <<http://www.un.org/rights/50/decla.htm>> [hereinafter UDHR] ("Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."); International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR, 21st Sess. Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (1966) art. 18, para. 1-2 [hereinafter ICCPR] ("Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to

under his control (which he deems to be a “legitimate state interest”).⁶⁸

Part III.A considers the three most significant legal antecedents from which the 1998 Freedom of Conscience Law sprang: the Constitution of Uzbekistan, Uzbekistan’s 1991 Freedom of Conscience Law, and Russia’s 1997 Freedom of Conscience Law. Part III.B asserts that the 1998 Freedom of Conscience Law places Uzbekistan in clear violation of its international human rights commitments according to three general arguments: (1) it restricts freedom to manifest religious convictions; (2) it restricts freedom to disseminate religious ideas; and (3) it restricts freedom to assemble for religious purposes. Part III.C argues that the 1998 Freedom of Conscience Law has essentially criminalized the most fundamental forms of religious activity.

A. Antecedents to the 1998 Freedom of Conscience Law

Uzbekistan’s passage of the 1998 Freedom of Conscience Law should not have been a surprise⁶⁹ to most people familiar with the legal precedents that gave rise to the new law. The 1998 Freedom of Conscience Law is a function of three principle antecedents: (1) the Constitution of Uzbekistan, (2) Uzbekistan’s 1991 law entitled “Freedom of Conscience and Religious Associations” (“Uzbekistan’s 1991 Freedom of Conscience Law”), and (3) Russia’s controversial 1997 law entitled “On Freedom of Conscience and Religious Associations” (“Russia’s 1997 Freedom of Conscience Law”).

have or to adopt a religion or belief of his choice.”); UNITED NATIONS CHARTER art. 55(c) (1945) [hereinafter U.N. CHARTER] (“[T]he UN shall promote universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction as to . . . religion.”); *see also* Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted Jan. 18, 1982, GA Res. 55, 36 U.N. GAOR Supp. (No. 51), U.N. Doc. A/RES/36/55 (1982).

68. *See* Goble, *supra* note 22. Mr. Goble reported the results of an April 1998 visit between Karimov and the OSCE Chairman Bronislav Geremek:

As he has before, Karimov insisted that Islamic fundamentalism was the main threat to stability in his country and across the region, that such a movement could either destabilize the situation as in Tajikistan or bring to power a theocratic regime as in Iran. And [Karimov] further argued that the West must understand the need to take strong, even repressive measures against such Muslim activists.

Id.

69. *See* Corley, *supra* note 22 (reporting that the 1998 Freedom of Conscience Law “came like a bolt out of the blue for all Uzbekistan’s religious communities”).

1. The Constitution of Uzbekistan

Adopted on December 8, 1992, Uzbekistan's Constitution has proved to be merely "hortatory and aspirational" at best.⁷⁰ Constitutional provisions granting freedom of conscience⁷¹ are treated as little more than the price of admission into such international consortiums as the United Nations and the OSCE.⁷² For example, Article 12 of the Uzbek Constitution states that "[n]o ideology shall be granted the status of state ideology."⁷³ To the contrary, however, the government promotes its recommended version of Islam through the state-sponsored "Spiritual Directorate for Muslims, which controls the Islamic hierarchy, the content of *imams'* sermons, and the volume and substance of published Islamic materials."⁷⁴ The government also openly funds an Islamic university and subsidizes citizens' participation in the *Hajj*.⁷⁵ Similar support is shown to no other

70. See HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 711 (1996) (stating that in less developed countries "entire instruments or particular provisions may be meant to be hortatory and aspirational rather than to form part of the state's legal system"). *But cf.* Michael Wallace Gordon, *Of Aspirations and Operations: The Governance of Multinational Enterprises by Third World Nations*, 16 INTER-AM. L. REV. 301 (1984), reprinted in RALPH H. FOLSOM, INTERNATIONAL BUSINESS TRANSACTIONS 922 (1999) (explaining that aspirational declarations are significant not because they constitute enforceable law but rather for what they imply about "current sentiments and possible future law").

71. Article 18 of the Constitution of Uzbekistan cites a list of basic characteristics against which the government may not discriminate including "sex, race, nationality, language, religion, social origin, convictions and individual and social status." UZB. CONST. art. 18 (1992). Article 29 states, "Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information, except that which is directed against the existing constitutional system and in some other instances specified by law." *Id.* at art. 29. Article 31 states, "Freedom of conscience is guaranteed to all. Everyone shall have the right to profess or not to profess any religion. Any compulsory imposition of religion shall be impermissible." *Id.* at art. 31.

72. Uzbekistan became a member of both the United Nations and the Organization for Security and Cooperation in Europe in 1992 (the OSCE was the CSCE at the time), *United Nations' List of Member States* <<http://www.un.org/Overview/unmember.html>> (visited Mar. 16, 2000) [hereinafter *U.N. Members*] (stating that Uzbekistan became a member of the UN on March 2, 1992); *OSCE Participating States* <http://www.osce.org/general/participating_states/partstat.htm> (visited Mar. 16, 2000) [hereinafter *OSCE Members*] (stating that Uzbekistan became a member of the OSCE on January 30, 1992, acceded to the Helsinki Final Act on February 26, 1992, and acceded to the Charter of Paris on October 27, 1993).

73. UZB. CONST. art. 12 (1992).

74. 1999 REPORT ON UZBEKISTAN, *supra* note 8 (emphasis added).

75. See *id.* The *Hajj* is a religious pilgrimage to Saudi Arabia made by devout Muslims all across the world. If monetary resources and distances are constraining factors, some Mus-

“ideology” in Uzbekistan. This type of interpretive application of the Uzbek constitution set an early foundation for a church-state system akin to Turkey’s, under which a professedly secularist government nonetheless encourage religious indoctrination according to a sympathetic stream of Islam and discourage all other “non-mainstream” religion that is, by default, unsympathetic to the regime.

2. Uzbekistan’s 1991 Freedom of Conscience Law

Uzbekistan’s 1998 Freedom of Conscience Law is not entirely new. In fact, it is actually a series of amendments to an Uzbek religion law enacted on June 14, 1991.⁷⁶ The 1998 Freedom of Conscience Law essentially restricts or abolishes most of the significant free-exercise provisions in the 1991 Freedom of Conscience Law.⁷⁷ Those provisions of the 1991 Freedom of Conscience Law that were particularly subject to change dealt with freedom to manifest religious convictions, freedom to disseminate religious ideas, and freedom to assemble for religious purposes.⁷⁸

3. Russia’s 1997 Freedom of Conscience Law

The third principle antecedent to Uzbekistan’s 1998 Freedom of Conscience Law, and the one which likely provided most of the impetus for the new Uzbek law’s ratification, was actually foreign. Russia’s controversial 1997 law entitled “On Freedom of Conscience and Religious Associations” (“Russia’s 1997 Freedom of Conscience

lims will only make the trip once in a lifetime, if at all. See U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: IRAQ (1999) (visited Mar. 30, 2000) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_iraq99.htm> (stating that the *Hajj* is a “religious duty of all Muslims who can undertake it” and that the *Hajj* is often a highly politicized issue for participating and non-participating governments).

76. See Law of the Republic of Uzbekistan No. 289-XII “O Svobode Sovesti i Religioznikh Organizatsiyakh,” (June 14, 1991) (in Russian) [On Freedom of Conscience and Religious Associations] [“1991 Freedom of Conscience Law”]. The Russian text of the 1991 Freedom of Conscience Law was graciously provided by Mr. Felix Corely of the Keston Institute.

77. See Felix Corley, *New Uzbek Law On Religion Renders Unregistered Religious Activity Illegal*, KESTON NEWS SERVICE (May 29, 1998) (visited Mar. 16, 2000) <<http://www.keston.org/scholarsframe.htm>> (“In the new version of the law most of the articles of the 1991 law are heavily rewritten, with liberal provisions abolished and restrictive provisions tightened or, in many cases, introduced for the first time.”).

78. See *infra* Part III.B for more detailed comparisons between the 1991 and 1998 versions of Uzbekistan’s Freedom of Conscience legislation.

Law”⁷⁹) was passed by Boris Yeltsin a mere seven months prior to the enactment of Uzbekistan’s Freedom of Conscience Law.⁸⁰ In reality, Uzbekistan’s 1998 Freedom of Conscience Law turns out to be a non-innovative but extremely harsh replicate of its Russian counterpart. Although Karimov had excuses⁸¹ to pass a harsher religion law (relative to Uzbekistan’s 1991 Freedom of Conscience Law) regardless of Russia’s lead, he was likely bolstered⁸² in his resolve to pass the new law in light of Moscow’s harsh legislative move against religious minority groups in Russia.⁸³

B. The 1998 Freedom of Conscience Law’s Substantive Restrictions on Fundamental Rights to Freedom of Religion or Belief

On its face, Uzbekistan’s 1998 Freedom of Conscience Law boasts the lofty objective of ensuring freedom of worship and religion. Article 1 begins with the proclamation that “[t]he aim of the present law is to ensure the right of every person to freedom of worship and religion, and the citizens equality irrespective of their reli-

79. For an in depth study of the harsh consequences of Russia’s 1997 law “On Freedom of Conscience and Religious Associations”, see W. Cole Durham, Jr. & Lauren B. Homer, *Russia’s 1997 Law on Freedom of Conscience and Religious Associations: An Analytical Appraisal*, 12 EMORY INT’L L. REV. 101 (1998); see also T. Jeremy Gunn, *Caesar’s Sword: The 1997 Law of the Russian Federation on the Freedom of Conscience and Religious Associations*, 12 EMORY INT’L L. REV. 43 (1998). For the full text of the law, see Law of the Russian Federation, On Freedom of Conscience and Religious Associations, Federal Law No. 125-FZ (Sept. 26, 1997), available in LEXIS, Intlaw Library, Rfarch File [hereinafter Russia’s 1997 Freedom of Conscience Law].

80. See Russia’s 1997 Freedom of Conscience Law, *supra* note 79 (President Yeltsin signed Russia’s Freedom of Conscience Law on September 26, 1997).

81. The December 1997 violence resulting in police fatalities in the Uzbek region of Namangan has all been attributed to religious extremism and to Wahhabism in particular. See 1999 REPORT ON UZBEKISTAN, *supra* note 8.

82. Uzbekistan has long been ‘connected at the brain’ with Russia; Uzbekistan was literally ‘born’ of Soviet masterminds. Unlike Kazakhstan and Kyrgyzstan which existed long before the rise of even the Russian Imperial Empire, Uzbekistan was a Soviet political creation of the 1920s. Not only were leaders carefully chosen, but even borders were strategically drawn with the express purpose of dividing religious and ethnic groups that might otherwise unite against the Soviet regime. See JOHN ANDERSON, *THE INTERNATIONAL POLITICS OF CENTRAL ASIA* 26 (1997) (stating that Central Asians “turned Bolsheviks” were responsible for carrying out the wishes of Moscow in Uzbekistan in the early years of its formation); Piacentini, *supra* note 1, at 25 (stating that borders were artificially drawn to reduce regional unity); see also MEHRDAD HAGHAYEGHI, *ISLAM AND POLITICS IN CENTRAL ASIA* 5 (1995) (stating that the Russian Imperialist regime had also divided central Asian countries along artificial lines to weaken tribal cohesion).

83. See *supra* note 79 and accompanying text.

gious convictions”⁸⁴ Despite such an admirable preface, subsequent provisions immediately reveal that freedom of religion rhetoric such as that found in Article 1 is little more than sugar coating intended to make the 1998 Freedom of Conscience Law more palatable to international peers.⁸⁵ In actuality, the 1998 Freedom of Conscience Law, coupled with Karimov’s aggressive implementation of its provisos, entails one of the most dangerous campaigns against organized religion to be found anywhere in the post-Soviet Central Asian region, and perhaps even in any of the twenty-seven post-communist (newly independent) states.⁸⁶

Restrictions of fundamental religious liberties are found scattered throughout the twenty-three articles that comprise Uzbekistan’s 1998 Freedom of Conscience Law; however, they seem to fall into three basic categories: (1) provisions restricting freedom to manifest religious convictions, (2) provisions restricting freedom to disseminate religious ideas, and (3) provisions restricting freedom to assemble for religious purposes. Importantly, most of the controversial provisions limit not only one of the above listed fundamental rights, but *all* of them simultaneously.

1. Provisions restricting freedom to manifest religious convictions

Article 18.1 of the International Covenant on Civil and Political Rights (“ICCPR”), to which Uzbekistan acceded on September 28, 1995, states in part that “[e]veryone shall have the right to freedom of thought, conscience and religion,” which right specifically includes the freedom to “to manifest [a] religion or belief in worship, observance, practice and teaching.”⁸⁷ Multiple provisions in Uzbekistan’s 1998 Freedom of Conscience law constitute clear violations of ICCPR 18.1 and related international covenants.⁸⁸

84. 1998 Freedom of Conscience Law, *supra* note 6, at art. 1.

85. On the international front, the Karimov administration has gone to great lengths to put its best foot forward on issues of religious tolerance. For example, the official Uzbek government web site for the Uzbekistan Embassy in the United States contains an extensive and very optimistic survey on human rights and religious tolerance in Uzbekistan.” *See generally* <<http://www.uzbekistan.org/newsletter.html>> (visited Mar. 16, 2000) .

86. *See* CSCE News Release, *supra* note 21 (stating that Chairman Smith of the Commission on Cooperation and Security in Europe recently stated that “[s]ince mid-1992, Uzbekistan has been one of the most repressive New Independent States under President Islam Karimov.”). *See generally* Corley, *supra* note 22. *See also* Corley, *supra* note 77.

87. ICCPR *supra* note 67, at art. 18.1.

88. Upon accepting membership in the UN and the OSCE in 1992, Uzbekistan also

a. Only clergy are allowed to wear “religious attire” in public. Article 14 of the 1998 Freedom of Conscience Law prohibits any citizen of Uzbekistan except a religious organization’s “ministers,” from appearing in public places “in religious attire.”⁸⁹ The practical effect of this broad restriction is to virtually outlaw the deeply rooted Islamic traditions of beards and headscarves.⁹⁰ This type of statutory prohibition against religious dress is explicitly denounced by section 18.1 of the ICCPR⁹¹ and punctuated by General Comment 22 of United Nations Human Rights Committee, which clarifies that “[t]he observance and practice of religion or belief may include not only ceremonial acts but also such customs as . . . the wearing of distinctive clothing or headcoverings.”⁹²

Prior to the 1998 Freedom of Conscience Law, Uzbek universities had already begun to address the “political danger” of permitting students to wear religious dress in school.⁹³ Thus, it is not sur-

committed itself to the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social, and Cultural Rights, the Helsinki Final Act of 1975, the 1983 Madrid Concluding Document, the 1989 Vienna Concluding Document, the 1990 Copenhagen Human Dimension Document, the 1990 Charter of Paris and the 1994 Budapest Concluding Document. See Corley, *Uzbekistan’s New Legislation on Religion: An Assessment 2* (2000); see also *U.N. Members*, *supra* note 72; *OSCE Members*, *supra* note 71.

89. 1998 Freedom of Conscience Law, *supra* note 6, at art. 14.

90. Numerous governmental and non-governmental reports verify that on multiple occasions men with beards have been arbitrarily arrested and forced to shave on the grounds that a beard is “Wahhabi.” See 1999 REPORT ON UZBEKISTAN, *supra* note 8; AMNESTY INTERNATIONAL, *supra* note 22; HUMAN RIGHTS WATCH, HUMAN RIGHTS REPORT ON UZBEKISTAN (1999) (visited Mar. 16, 2000) <<http://www.hrw.org/worldreport99/europe/uzbekistan.html>> [hereinafter HUMAN RIGHTS WATCH]. Likewise, even women dressed in traditional Islamic *hijab* scarves are often viewed as potential threats to national security. See also CLASS DISMISSED, *supra* note 19, at n.8 (subsection entitled “The ‘Uzbek Way’”).

91. Section 18.1 of the ICCPR states:

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

ICCPR, *supra* note 67, at art. 18.1.

92. UNITED NATIONS HUMAN RIGHTS COMMITTEE, “General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights,” ICCPR/C/21/Rev.1/Add.4, 27 Sept. 1993, Addendum, General Comment No. 22 (48) (art. 18) [hereinafter General Comment 22].

93. The Institute for Oriental Studies amended its charter in January 1998 to prohibit clothing that “attracts attention,” including clothing that covers the face. Prior to the adoption of these amendments, the institute’s rector had reprimanded students for religious attire, and had even barred at least one student from her dormitory. CLASS DISMISSED, *supra* note 19 (subsection entitled “Laws and Rules for Regulating Religious Attire”). As of February 27,

prising that following the May 1 enactment of the 1998 Freedom of Conscience Law, universities were increasingly pressured to redraft their dress codes so as to effectively ban religious dress, which forced the expulsion of many students who chose not to comply.⁹⁴ Therefore, in addition to violating ICCPR 18, Article 14 of the 1998 Freedom of Conscience Law also violates Uzbekistan's obligations under the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), which states that "higher education shall be made equally accessible to all, on the basis of capacity"⁹⁵ and that "the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁹⁶

b. Religious activity is regulated as a matter of national security. Article 3 of the 1998 Freedom of Conscience Law states that freedom of worship "or any other conviction" can be "subject only to the restrictions necessary to ensure national security, public order, and life, health, morals, rights and freedoms of other citizens."⁹⁷ The "necessary to ensure national security"⁹⁸ language comes directly from ICCPR 18.3 and the constitutions and laws of most countries contain similar provisions restricting the activity of private individuals in the name of legitimate public interest.⁹⁹ But Uzbekistan's 1998 Freedom of Conscience Law takes the concept of state-justified restrictions on personal religious freedom much further than the inter-

1998, Tashkent State University's code of conduct prohibited clothing that "attracts attention" and instructed students to wear clothing "corresponding to modern demands." *See id.*; *see also id.* at n.36.

94. For example, on May 27, 1998, the Pediatric Medical Institute's internal rules were amended to ban religious dress and declare violators "ineligible" to study at the institute. The institute's Rector had already instructed students to remove their religious clothing. Expulsions began in a matter of days. *See CLASS DISMISSED*, *supra* note 19.

95. International Covenant on Economic, Social and Cultural Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) (Dec. 16, 1966), entry into force January 3, 1976, art. 13.1(c) [hereinafter ICESCR].

96. *Id.* at art. 2.2.

97. 1998 Freedom of Conscience Law, *supra* note 6, at art. 3.

98. For further discussion of the "necessary" component of limitations clauses in religion laws, *see Gunn*, *supra* note 79, at 91.

99. For a few examples from other Eastern European and Central Asian countries (this is by no means an exhaustive international list), *see* RUSS. CONST. Art 55, 56 (1993); BULG. CONST. art. 57 (1991); BELR. CONST. art. 23 (1994); ARM. CONST. art. 44 (1995); KAZ. CONST. art. 32 (1995); KYRG. CONST. art. 21 (1993).

national norm. Not only does it make religious activity *subject* to national security interests but it goes so far as to make religious activity *itself* a matter of national security (i.e., religious offenses are regulated and punished as if they were national security offenses). For example, Article 5 of the 1998 Freedom of Conscience Law explicitly states that “[t]he use of religion for anti-state and anti-constitutional propaganda,” and “activity of religious organizations, movements, and sects which encourage terrorism, drug trade and organized crime, and other mercenary ends” is “inadmissible” and “banned.”¹⁰⁰ Thus, the 1998 Freedom of Conscience Law injects an air of criminality into religious activity by implying that it is an inherently dangerous and subversive practice. This conclusion is further supported by amendments¹⁰¹ to Uzbekistan’s Criminal Code which punish unregistered religious activity on an equal footing with such matters as corruption, organized crime, and narcotics¹⁰² by imposing a penalty of up to five years imprisonment or one hundred times the minimum monthly salary for various religious offenses (even if the offenses involve no violence).¹⁰³

In practice, the Karimov regime selectively overemphasizes the language in ICCPR 18.3 that freedom to manifest religion or beliefs

100. 1998 Freedom of Conscience Law, *supra* note 6, at art. 5.

101. The law amending the Criminal Code of Uzbekistan was passed by Parliament on May 1, 1998, the same day that the 1998 Freedom of Conscience Law was approved. *See generally* On Introduction of Amendments and Additions into Legislative Acts of the Republic Uzbekistan (1998) (Uzb.).

102. The National Security Service (“NSS”) is notorious for arbitrarily arresting and imprisoning alleged Islamic “extremists” and other religious minorities. The NSS often uses “torture, harassment, illegal searches and wiretaps, and arbitrarily detains or arrests opposition activists and other citizens on false charges, frequently planting narcotics or weapons on them.” 1999 REPORT ON UZBEKISTAN, *supra* note 8.

103. For example, Article 145 of the amended Criminal Code states in part:

Religious activity involving obstructing citizens in execution of their civil rights or performing their civil duties, forced taxation of the believers or using measures compromising personal dignity, or forcing to receive religious education or influencing citizens in defining their attitude towards religion, to practice or not to practice religion, to participate or not to participate in religious services, rites, religious ceremonies . . . is subject to fines equal from seventy five to one hundred minimal salaries or imprisonment from three to five years.

On Introduction of Amendments and Additions into Legislative Acts of the Republic Uzbekistan art. 145 (1998) (Uzb.). *See also* 1999 REPORT ON UZBEKISTAN, *supra* note 8 (stating that the series of revisions to the criminal and civil code “stiffen the penalties for violating the religion law and other statutes on religious activities”).

“may be subject to such limitations as are prescribed by law,”¹⁰⁴ and severely underemphasizes (even summarily dismisses) the full context of ICCPR 18.3, which clearly conveys that freedom to manifest religion or beliefs may be subject “only to such limitations as are prescribed by law *and are necessary* to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”¹⁰⁵ As to what constitutes “necessary,” the European Court of Human Rights (“European Court”) prefers to use the term “proportionate” when defining the statutory concept of “necessary.”¹⁰⁶ A treatise on the doctrine of proportionality in European Law illustrates how the concept of proportionality is applied by the European Court:

[T]he principle of proportionality, as a judge-made doctrine of public law, requires that [an] action by public authorities must be geared to the objective it seeks to attain, and should consequently form part of a quantifiable [casual] relationship between means and ends aimed at achieving a desired end. Proportionality, in abstract terms, simply means that public authorities shall take no action the overall costs of which are excessive in relation to its overall benefits.¹⁰⁷

According to the European Court’s interpretation of “necessary” or “proportional,” it is hardly a defensible position that the Karimov regime’s broad-sweeping and punitive measures enforced against virtually *all* basic forms of religious activity in Uzbekistan are “necessary” to protect public safety and fundamental freedoms.

In any event, ICCPR 4.1 expressly states that no derogation of the religious freedoms guaranteed in ICCPR 18 is permitted, even “in time of public emergency which threatens the life of the nation”¹⁰⁸ This remarkable qualification stresses that although many other personal rights may be impinged upon in the name of state interest—governmental restriction of this particular personal right, namely the freedom to manifest religious belief—is extremely limited, even under the umbrella of the 18.3 “necessary to protect”

104. ICCPR, *supra* note 67, at art. 18.3. For further discussion of the “prescribed by law” component of limitations clauses in religion laws, see Gunn, *supra* note 79, at 83-84.

105. ICCPR, *supra* note 67, at art. 18.3 (emphasis added).

106. Gunn, *supra* note 79, at 92.

107. NICHOLAS EMILIOUS, THE PRINCIPLE OF PROPORTIONALITY IN EUROPEAN LAW: A COMPARATIVE STUDY 6 (1996).

108. ICCPR, *supra* note 67, at art. 14.1.

exception. Therefore, sporadic religious violence (indeed, even widespread religious violence if it existed) is not ample justification for the Karimov regime's lawless departure from ICCPR 18.

2. *Provisions restricting freedom to disseminate religious ideas*

ICCPR 19 states that “[e]veryone shall have the right to hold opinions without interference,” and that “[e]veryone shall have the right to freedom of expression” which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹⁰⁹ At least five specific provisions of Uzbekistan's 1998 Freedom of Conscience Law constitute clear violations of ICCPR 19 and related international covenants.¹¹⁰

a. Proselytism and “any other kind of missionary activity” is prohibited. Article 5 of the 1998 Freedom of Conscience Law expressly states that “[a]ctions aimed at converting believers of one religion to another (proselytism) as well as any other missionary activity are prohibited.”¹¹¹ This restriction, though formerly present in

109. *Id.* at art. 19.

110. Any provisions that restrict freedom to disseminate religious ideas also violate the Vienna Concluding Document, ICCPR, General Comment No. 22, and UDHR. *See* Conference on Security and Co-operation in Europe: Concluding Document from the Vienna Meeting, Nov. 4, 1986-Jan. 17, 1989, 28 I.L.M. 527, at art. 16.9 [hereinafter Vienna Concluding Document]. The Vienna Concluding Document can also be found at <<http://www1.umn.edu/humanrts/peace/docs/oscevienna.html>> (visited Mar. 16, 2000) (“In order to ensure the freedom of the individual to profess and practice religion or belief, the participating States will, inter alia . . . respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief.”); *id.* at art. 16.10 (stating that freedom of expression includes “allow[ing] religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials.”); ICCPR, *supra* note 67, at art. 18 (everyone shall have the freedom “either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”); ICCPR, *supra* note 67, at art. 19 (stating that the freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”); General Comment No. 22, *supra* note 92 (stating that the freedom to prepare and distribute religious texts or publications is protected by ICCPR 18); UDHR, *supra* note 66, at art. 19 (stating that freedom of expression includes “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).

111. 1998 Freedom of Conscience Law, *supra* note 6, at art. 5.

Uzbekistan's 1991 Religion law,¹¹² is stated much more specifically in the 1998 Freedom of Conscience Law.¹¹³ Though not spelled out in the 1998 Freedom of Conscience Law itself, criminal penalties for "any kind of missionary activity" now range from a fine of fifty to one hundred times the minimum monthly wage¹¹⁴ and can result in as many as three years of imprisonment.¹¹⁵

b. Only religious organizations which are granted the legal status of "centralized organ of management" can disseminate religious literature. Article 19 of the 1998 Freedom of Conscience Law states that only religious organizations which are granted the legal status of "centralized organ of management" ("centralized administrative body") have the right to disseminate religious literature.¹¹⁶ The legal status of "centralized administrative body" is extremely difficult to obtain.¹¹⁷ Hence, on its face, Article 19 acts as an effective barrier to free distribution of religious literature; however, the government continues to assert that "[a]ll religious organizations have the right to receive religious literature without having to pay customs duties,"¹¹⁸ which may indicate some relaxation of the Article 19 barrier.

112. The 1991 Freedom of Conscience Law, in listing activities that were not allowed by religious organizations, included at the end of the list "and also missionary activity." 1991 Freedom of Conscience Law, *supra* note 76, at art. 5.

113. The 1998 Freedom of Conscience Law broadens "missionary activity" to include "actions aimed at converting believers of one religion to another," "proselytism," and "any kind of missionary activity." 1998 Freedom of Conscience Law, *supra* note 6, at art. 5.

114. Criminal Code of the Republic of Uzbekistan art. 216.2, *reprinted in* On Introduction of Amendments and Additions into Legislative Acts of the Republic Uzbekistan (1998) (Uzb.). The minimum monthly wage is approximately \$11 (U.S.), meaning that fines can range from \$550 to \$1,100 (U.S.) (the equivalent of four to eight years of wages for the average Uzbek citizen). See CLASS DISMISSED, *supra* note 19 (subsection entitled "Laws and Rules Regulating Religious Attire: International Law"); see also HUMAN RIGHTS WATCH, *supra* note 90.

115. HUMAN RIGHTS WATCH, *supra* note 90.

116. Article 19 reads: "Central administrative bodies are entitled to manufacture, export, import, and distribute objects of religious designation, religious literature and other information materials of religious contents in the order proscribed by legislation of the Republic of Uzbekistan." 1998 Freedom of Conscience Law, *supra* note 6, at art. 19.

117. See *infra* Part III.B.3.b (discussing requirements to form a religious organization) and *infra* Part III.B.3.c (discussing the requirement that a central administrative body must have at least eight registered religious organizations from eight different territorial entities of the Republic of Uzbekistan).

118. Uzbekistan Embassy Website, subsection entitled "Human Rights Institutions," (visited Mar. 16, 2000) <<http://www.uzbekistan.org/newsletter.html>> (containing the Uzbek government's statement that "since independence, the Muslim's sacred book, The Koran, has been translated into the Uzbek language and is in mass circulation. The Uzbek transla-

The fact remains, however, that the government continues to require that all imported religious literature be censored by the state.¹¹⁹ Prohibiting the free flow of religious literature, whether directly or indirectly, is a violation of numerous international covenants to which Uzbekistan is a party.¹²⁰

c. Private teaching of religious principles is prohibited. Article 9 of the 1998 Freedom of Conscience Law states that “[p]rivate teaching of religious principles is prohibited.”¹²¹ Unlike many of the other controversial rules in the 1998 Freedom of Conscience Law, this rule is not new to the people of Uzbekistan. It was also present in Uzbekistan’s 1991 Religion Law,¹²² which is indicative of the deeply rooted Soviet apprehension concerning “underground” religious movements that originate in places not customarily subject to gov-

tion of The Bible was completed abroad and has been distributed in a circulation of 25 thousand copies.”).

119. See HUMAN RIGHTS WATCH, *supra* note 90. The Human Rights Watch Report for 1999 stated in part:

There was no free and independent media in Uzbekistan. The State Control Inspectorate continued to censor all press materials, and a new government body, the *Qanoat* (Uzbek for abstemiousness) Center, was established in 1998 to review all religious literature and video and audio tapes, with the aim of stopping the flow of certain religious materials from abroad. Rahmonberdi Abdurakhmanov, an official of the Procuracy General, aptly stated in July that with the establishment of the Qanoat Center, “no non-state organization or state organization has any right to do anything concerning religion without the knowledge of our state.”

Id. (emphasis added).

120. Vienna Concluding Document, *supra* note 14609, at art. 16.9 (“In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia, . . . respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practise of religion or belief.”); *id.* at art. 16.10 (stating that freedom of expression includes “allow[ing] religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials.”); ICCPR, *supra* note 67, at art. 18 (stating that everyone shall have the freedom “either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”); ICCPR, *supra* note 67, at art. 19 (stating that freedom of expression includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”); General Comment No. 22, *supra* note 92 (stating that the freedom to prepare and distribute religious texts or publications is included in ICCPR 18); UDHR, *supra* note 66, at art. 19 (stating that freedom of expression includes “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”).

121. 1998 Freedom of Conscience Law, *supra* note 6, at art. 9.

122. 1991 Freedom of Conscience Law, *supra* note 76, at art. 9. See also Corley, *supra* note 77.

ernment control, such as private homes. In this respect, the Uzbek Freedom of Conscience Law is now far more restrictive than the 1997 Russian Freedom of Conscience Law, which does not forbid teaching of religious principles in the home and which under many circumstances will allow unregistered¹²³ religious groups to meet in homes.¹²⁴

The net effect of the 1998 Freedom of Conscience Law's restriction of private teaching of religious principles is the virtual prohibition of *all* religious teaching that does not fall under the purview of the Karimov regime. This is because the only alternative to private teaching of religious principles is public teaching of religious principles, but the teaching of public religious principles is severely restricted as it is a function reserved primarily for certain state sponsored universities¹²⁵ and secondarily for the highly regulated realm of religious associations.¹²⁶ Ironically, Karimov's emphasis on keeping religion separate¹²⁷ from the "secular" government of Uzbekistan

123. Russia's 1997 Freedom of Conscience Law, *supra* note 79, at art. 7.1-7.2 (stating that a religious group in Russia is only required to inform the local administration that the religious group intends to operate, and that a religious group is defined as "any voluntary association of citizens set up with the objective of joint profession and dissemination of faith, carrying on its activities *without the registration with the state authorities* and without the acquisition of capacity of a legal entity") (emphasis added).

124. CSCE News Release, *supra* note 21.

125. For a list of religious educational institutions that the Uzbek government claims to have registered, see Uzbekistan's Embassy Website (visited Mar. 16, 2000) <<http://www.uzbekistan.org/newsletter.html>> (subsection entitled "Religious Education"). Note that with exception of a Russian Orthodox Seminary, a Protestant Seminary, and a Jewish Seminary, all existing religious education institutions are run by the government-sponsored Spiritual Department of Muslims of Uzbekistan. Similarly, religious education is only permitted at the higher education level; primary and secondary religious education is forbidden by law. *See* 1998 Freedom of Conscience Law, *supra* note 6, at arts. 7, 9.

126. The following articles from the 1998 Freedom of Conscience Law (nearly half of the 23 total) regulate or limit the activity of religious organizations: art. 8 ("Religious Organizations"); art. 9 ("Religious Schools"); art. 10 ("Religious Organization's Rules"); art. 11 ("Registration of Religious Organizations"); art. 12 ("Refusal to Register a Religious Organization"); art. 13 ("Discontinuation of a Religious Organizations Activity"); art. 15 ("Religious Organization's Property"); art. 18 ("Disposal of Property of Religious Organizations which have Ceased Their Activities"); art. 19 ("Religious Literature and Objects of Religious Designation"); art. 23 ("Responsibility for Breaking the Legislation on Freedom of Religious Organizations"). *See* 1998 Freedom of Conscience Law, *supra* note 6.

127. Article 5 of the 1998 Freedom of Conscience Law states that "in the Republic of Uzbekistan religion is separated from the state." Likewise, Article 7 states that "[t]he education system in the Republic of Uzbekistan is separate from religion. Introduction of religious subjects into an academic curriculum is inadmissible." 1998 Freedom of Conscience Law, *supra* note 6, at arts. 5, 7.

does not seem to preclude Karimov from sponsoring¹²⁸ religious education that is sympathetic to his regime. At the same time, Karimov jealously guards¹²⁹ the right to regulate¹³⁰ religious education that is potentially unsympathetic to his regime, even if the targeted religious education is nonviolent.

As relates to international covenants protecting rights to religious education, the 1998 Freedom of Conscience Law's prohibition of private teaching of religious principles broadly violates ICCPR 19.2, which guarantees the right "to seek, receive and impart information and ideas of all kinds, regardless of frontiers,"¹³¹ and explicitly violates ICCPR 18.1 which states that the right to "freedom of thought, conscience and religion" shall include "freedom to have or to adopt a religion or belief of [personal] choice, and freedom, either individually or in community with others and in public or private, to manifest religion or belief in worship, observance, practice and teaching."¹³²

d. The use of religion to spread "destabilizing ideas" is prohibited. In addition to prohibiting missionary activity, Article 5 of the 1998 Freedom of Conscience Law also goes so far as to prohibit what the government deems to be "destabilizing" religious ideas.¹³³ For the most part, the definition of "destabilizing ideas" is left open for arbitrary interpretation, although Article 5 demonstrates the intended breadth of the clause by ensuring that any religious ideas that are

128. In September 1998, Karimov attended the opening of the Tashkent Islamic University, which was established by presidential decree. The university will teach the history and philosophy of Islam as well as Islamic law. Karimov said that instruction will be based "on original sources handed down from [our] ancestors" and that "inadequate knowledge of Islam 'results in delusions among young people and tragic consequences.'" Justin Burke, *Islamic University Opens in Uzbekistan*, BBC MONITORING SERVICE 90799 (Sept. 7, 1999) (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0292.html>>. See also 1999 REPORT ON UZBEKISTAN, *supra* note 8 (noting that the government funds the university).

129. In an aggressive speech to the *Oliy Majlis* (parliament), President Karimov "threatened to shoot Wahhabis personally if deputies failed to approve the new law." Corley, *supra* note 22.

130. In June 1998, one month after the 1998 Freedom of Conscience Law was passed, new regulations covering registration of religious organizations were issued. The new regulations required documentation, approvals and large fees from numerous state institutions before an application for religious organization status would even be considered. Also, re-registration for formerly registered religious organizations was required by August 15, 1998. Not surprisingly, many failed to qualify or were denied re-registration. See Corley, *supra* note 22.

131. ICCPR, *supra* note 67, at art. 19.2.

132. *Id.* at art. 18.1.

133. 1998 Freedom of Conscience Law, *supra* note 6, at art. 5.

“anti-state,” “anti-constitutional,” “incit[ing of] hostility, hatred, or inter-ethnic discord,” or “undermin[ing of] ethical norms and civil accord” will automatically qualify as “destabilizing” and will be “prosecuted by the law.”¹³⁴

Given the sporadic occurrences of religious-based terrorism, the Karimov regime may argue that ICCPR 19.3 (which holds that freedom of expression is “subject to certain restrictions”) allows the type of current government limitations placed upon Uzbek citizens’ freedom to disseminate religious ideas. But such an argument is flawed. ICCPR 19.3 has very limited and narrow application (similar to ICCPR 18.3), in that freedom of expression can only be impinged upon by the state when necessary “[f]or respect of the rights or reputations of others” and “[f]or protection of national security or of public order (*ordre public*), or of public health or morals.”¹³⁵ The government of Uzbekistan has not proved that sporadic incidences of “destabilizing” religious-based terrorism can be curbed by the wholesale restriction of the freedom to disseminate religious ideas. Indeed, history suggests that undue restriction of the freedom to disseminate religious ideas may in fact be the greater threat to national security.¹³⁶

Despite the relative ambiguity as to exactly when the label of “destabilizing ideas” can be pinned upon any particular religious organization’s doctrines, one thing is made absolutely clear by the drafters of Article 5: religious activity has criminal repercussions,¹³⁷ and individuals who choose to practice or discuss religious principles with friends or family will do so at their own peril.¹³⁸

e. Involvement of minors in religious organizations is prohibited. Article 3 of the 1998 Freedom of Conscience Law states that “[i]nvolvement of minors in religious organizations as well as teaching them any religion against their will, or the will of their parents or custodians is inadmissible.”¹³⁹ Taken together with the fact that

134. *Id.*

135. ICCPR, *supra* note 67, at art. 19.3.

136. *See* Goble, *supra* note 22 (stating that government action against what some call “politicized Islam” and others “Islamic fundamentalism” had actually strengthened these groups).

137. *See generally* Corley, *supra* note 77.

138. *See* CSCE News Release, *supra* note 21 (stating that even a communal Bible study is prohibited in private apartments).

139. 1998 Freedom of Conscience Law, *supra* note 6, at art. 3.

(1) public religious education is forbidden until a child has successfully completed state mandated primary and secondary education,¹⁴⁰ and (2) private religious education is expressly forbidden,¹⁴¹ the result of Article 3's prohibition against minors' participation in religious organizations is to completely deny children the right to be exposed to religious teaching until they have reached college age.¹⁴² ICESCR 13.3 protects the fundamental right of parents and children to engage in both private and public religious education:

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.¹⁴³

Hence, the 1998 Freedom of Conscience Law's prohibition of minor's rights to receive religious education is a violation of the ICESCR and other related international covenants to which Uzbekistan is a part.¹⁴⁴ The government's perceived need to keep minors away from "destabilizing" religious ideas is a partially justifiable cultural and historical construct stemming from the clandestine activity of the Wahhabi extremists. But the government's broad-brush approach of altogether foreclosing children from receiving religious education is reminiscent of the decree of a first century Jewish king who ordered the death of all the infants in his kingdom so as to ex-

140. Article 9 of Uzbekistan's 1998 Freedom of Conscience Law holds in part that "citizens can enter a higher or secondary religious school after receiving general compulsory secondary education in accordance with the Law of the Republic of Uzbekistan On Education." 1998 Freedom of Conscience Law, *supra* note 6, at art. 9; *see also id.* at art. 7 ("Introduction of religious subjects into an academic curriculum is inadmissible.").

141. "Private teaching of religious principles is prohibited." 1998 Freedom of Conscience Law, *supra* note 6, at art. 9.

142. The compulsory education requirement mandates at least 9 years of state education before an individual may begin a religious college or higher education. *See* U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: UZBEKISTAN, *supra* note 8.

143. ICESCR, *supra* note 95, at art. 13.3.

144. The Vienna Concluding Document, for example, provides that states must "respect the right of everyone to give and receive religious education . . . whether individually or in association with others" and to "respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions." Vienna Concluding Document, *supra* note 14609, at art. 16.6-16.7.

terminate the threat that one of them may lead a future opposition movement against him.¹⁴⁵

In summary, compared to the 1998 Freedom of Conscience Law's other provisions which limit freedom of religion, the various provisions which restrict the freedom to disseminate religious ideas (including restrictions on missionary activity, dissemination of religious literature, private teaching of religious principles, and religious teaching of minors), seem to be particularly harsh. Cultural and historical explanations help to shed some light on the reason for Uzbekistan's strong position against the free flow of religious ideas. But these explanations would seem only to justify a small portion of the laws and practices currently employed by the Karimov regime.

3. Provisions restricting freedom to assemble for religious purposes

In general, the natural right of freedom to assemble stems from a recognition that human beings are social creatures. Combined with the fact that nearly all of the world's inhabitants also claim a natural right to determine their own religious beliefs, it should come as no surprise that the combination of these two rights (freedom to assemble and freedom of religious belief) is an internationally protected freedom, namely the freedom to assemble for religious purposes. For example, Article 16.4 of the Vienna Concluding Document of 1989¹⁴⁶ states that governments must "respect the right of religious communities to establish and maintain freely accessible places of worship or assembly."¹⁴⁷ Likewise, the Universal Declaration of Human Rights ("UDHR") states that "[e]veryone has the right to freedom of peaceful assembly and association"¹⁴⁸ and that freedom of religion includes the right "either alone or in community with others and in public or private, to manifest [their] religion or belief in teaching, practice, worship and observance."¹⁴⁹ At least three provi-

145. The Biblical account of this event is found in Matthew 2:16, which states that Herod "slew all the children that were in Bethlehem, and in all the coasts thereof, from two years old and under." *Matthew* 2:16 (King James). The Herod referred to is Herod I, otherwise known as Herod the Great, who was appointed King of Judea by Antony and Octavius during Roman occupation of Judea. See JAMES E. TALMAGE, *JESUS THE CHRIST* 100-01, n.3 (1983); see also FLAVIUS JOSEPHUS, 15 *ANTIQUITIES OF THE JEWS*.

146. Vienna Concluding Document, *supra* note 109.

147. *Id.*

148. UDHR, *supra* note 67, at art. 20.

149. *Id.* at art. 18.

sions of Uzbekistan's 1998 Freedom of Conscience violate these and other international covenants pertaining to freedom of assembly for religious purposes.

a. The creation of "social movements" based on religion is prohibited. Article 5 of the 1998 Freedom Conscience Law states that "the creation of religious political parties and public movements is inadmissible."¹⁵⁰ Exactly what constitutes a "public movement" (also translated as "social movement") is left to the arbitrary interpretation of the government. Since the 1991 Freedom of Conscience Law contained no such prohibition of religious "social movements"¹⁵¹ there is reason to believe that this language is intended at least to discourage religious gatherings, especially large religious gatherings that could easily be pegged as "social movements."

If this language is used as a justification to prohibit religious gatherings, it constitutes a violation of Articles 21 and 22 of the ICCPR, which protect the right to peaceable assembly and freedom of association,¹⁵² even if there is a certain political element involved.¹⁵³ Interestingly, the 1991 Freedom of Conscience Law explicitly permitted religious organizations' clergy to "participate in political life on an equal level with all citizens,"¹⁵⁴ which provision is nowhere to be found in the 1998 version of the law.

150. 1998 Freedom of Conscience Law, *supra* note 6, at art. 5 (1998) (Uzb.).

151. The only analogue in the 1991 version Freedom of Conscience Law is a restriction against religious organizations participating in or rendering financial support to political parties. It is noteworthy that the 1991 Freedom of Conscience Law actually contained language that "[r]eligious organizations have the right to participate in social life," which was subsequently stricken from the 1998 version of the law. *See* 1991 Freedom of Conscience Law, *supra* note 76, at art. 5.

152. ICCPR, *supra* note 67, at art. 21 states that "the right of peaceful assembly shall be recognized."

153. The ICCPR, *supra* note 67, at art. 22 states that "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." Article 21 is qualified only by the statement that "[n]o restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." *Id.* at art. 21. Similar to Article 21, article 22 is qualified only by the statement that "[n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others." *Id.* at art. 22.

154. 1991 Freedom of Conscience Law, *supra* note 75, at art. 5.

b. A religious organization may not legally function until it has a minimum of one hundred adult citizen signatories. Article 8 of the 1998 Freedom of Conscience Law prohibits registration of a religious organization until registration is applied for “at an initiative of not less than 100 citizens of the Republic of Uzbekistan aged over eighteen and permanently residing on the territory of the Republic of Uzbekistan.”¹⁵⁵ Although many newly independent states have “minimum member” requirements for registering religious organizations,¹⁵⁶ Uzbekistan’s one-hundred-member requirement is widely recognized as constituting one of the harshest.¹⁵⁷ In addition to the one-hundred-member requirement, the 1998 Freedom of Conscience Law also requires that an applicant religious association submit a significant amount of paperwork¹⁵⁸ and receive multiple government “approvals”¹⁵⁹ before being registered. On occasion, exceptions have been made to the one-hundred-member requirement to permit a few Christian and other small religious denominations to register;¹⁶⁰ however, many religious groups who do not yet

155. 1998 Freedom of Conscience Law, *supra* note 6, at art. 8.

156. Geographically- and culturally-related countries such as Kazakhstan, Russia, Belarus, and Georgia, for example, all require a minimum of ten adult citizen signatories to register a religious organization. Uzbekistan’s 1991 Freedom of Conscience Law also required only ten adult citizen signatories. *See* 1991 Freedom of Conscience Law, *supra* note 76, at art. 13.

157. The March 1999 Helsinki Report to the OSCE stated that “in practice [the 100 member requirement means], for example, most Protestant churches would have to be closed.” INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS, RELIGIOUS DISCRIMINATION AND RELATED VIOLATIONS OF HELSINKI COMMITMENTS: REPORT TO THE OSCE SUPPLEMENTARY HUMAN DIMENSION MEETING ON FREEDOM OF RELIGION (Mar. 22, 1999) (visited Mar. 16, 2000) <<http://www.ihf-hr.org/reports/osce99/99reldis18.htm>>.

158. According to Article 11, “a religious association should present the following documents: an application signed by not less than 100 citizens of the Republic of Uzbekistan who initiate setting up of a religious organization; rules of the religious organization; a constituent meeting protocol; a document certifying address of the religious organization being set up; a document certifying payment of the registration fee.” 1998 Freedom of Conscience Law, *supra* note 6, at art. 11.

159. *See* 1998 Freedom of Conscience Law, *supra* note 6, at art. 6 (stating that the Committee for Religious Affairs under the Cabinet of Ministers coordinates relations between religious organizations and the state); *id.* at art. 8 (stating that central or local departments of the Ministry of Justice grant registration and legal status); *id.* at art. 11 (stating that approval is required from the Ministry of Justice or regional justice departments along with approval of the Committee for Religious Affairs under the Cabinet of Ministers).

160. The Uzbek Embassy Website states that “a special commission for resolving the disputes in registration of small religious communities has been established and has already registered more than 30 small religious organizations with number of members less than a hundred.” *See Republic of Uzbekistan* (visited Mar. 16, 2000) <<http://www.uzbekistan.org>>.

have one hundred members simply prefer not to risk bringing themselves to the attention of authorities by attempting to register.¹⁶¹ The registration requirements themselves do not violate international covenants so long as the requirements are administered impartially. But denial of registration is a common and politically safe way to ban religious groups that are not in favor with the government.¹⁶² Arbitrary denial of registration constitutes a violation of Article 16.3 of the 1989 Vienna Concluding Document.¹⁶³

Exacerbated by Article 5's prohibition against unregistered "social movements," the practical effect of Article 8's one-hundred-member requirement is to prohibit any religious group with less than one hundred members from gathering to share religious ideas or from participating in worship service together. Uzbekistan's 1998 Freedom of Conscience Law contains no provision similar to that contained in Russia's 1997 Freedom of Conscience of Law, which allows for limited legal status of fledgling religious "groups"¹⁶⁴ prior to obtaining the full legal status of a "religious association."¹⁶⁵

c. In order to form a "central administrative body," a religion must have at least eight registered religious associations from eight different "territorial entities." Article 8 of the 1998 Freedom of Conscience Law stipulates that "[a] central administrative body shall be set up at a constituent meeting (conference) of representatives of

See also 1999 REPORT ON UZBEKISTAN, *supra* note 8 (noting that a few Christian organizations have been granted exemptions to the 100 member requirement).

161. *See* 1999 REPORT ON UZBEKISTAN, *supra* note 8.

162. *Id.*

163. Article 16 of the Vienna Concluding Document states:

[I]n order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia, . . . grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries.

See Vienna Concluding Document, *supra* note 14609, at art. 16.

164. Article 7.1 of Russia's 1997 Freedom of Conscience Law defines a religious group as follows:

Religious group under this Federal Law shall mean any voluntary association of citizens set up with the objective of joint profession and dissemination of faith, carrying on its activities without the registration with the state authorities and without the acquisition of capacity of a legal entity. The premises and property required for the activities of the religious group shall be provided for such use by such a group of its members.

Russia's 1997 Freedom of Conscience Law, *supra* note 79, at art. 7.1.

165. *See id.* at art. 8.

registered organizations of an individual religion from at least eight territorial entities of the Republic of Uzbekistan”¹⁶⁶ With the exception of the right to distribute religious literature,¹⁶⁷ it is not entirely clear what additional juridical privileges are granted to a central administrative body above and beyond those granted to a religious organization;¹⁶⁸ however, if Uzbekistan’s concept of “central administrative body” is anything akin to Russia’s concept of “centralized religious organization,”¹⁶⁹ the lack of “central administrative body” status may prove to be a significant prejudicial barrier to registration and activities of smaller religious organizations, even if member requirements are otherwise met.

Despite the ambiguity surrounding juridical privileges of a central administrative body, it is clear that the “eight territorial entities” requirement of the 1998 Freedom of Conscience Law establishes significant financial and logistical obstacles that stand in the way of a religious organization receiving central administrative status. As discussed previously, this in turn acts as an effective prohibition against the freedom to disseminate religious literature. Thus, it is clear that Article 8 of the 1998 Freedom of Conscience Law violates international covenants pertaining to free dissemination of religious literature, and it is probable that Article 8 violates international covenants pertaining to freedom of assembly as well.

To summarize, the 1998 Freedom of Conscience Law’s prohibitions of “social movements,”¹⁷⁰ along with its stiff “100 member”¹⁷¹ and “eight territorial entities”¹⁷² requirements make it clear that Uzbekistan has chosen to ignore its international obligations to protect the fundamental right of assembly for religious purposes. By way of numerous other provisions restricting such basic human rights as the freedom to manifest religious convictions and the freedom to disseminate religious ideas, Uzbekistan’s 1998 Freedom of Conscience

166. 1998 Freedom of Conscience Law, *supra* note 6, at art. 8.

167. *Id.* at art. 19. See *supra* Part III.B.2 for a more detailed discussion of a central administrative body’s right distribute religious literature.

168. A nominally enlightening explanation of the intended purpose of a central administrative body is offered in Article 8, namely “[t]o coordinate and direct activity of organizations of an individual religion.” 1998 Freedom of Conscience Law, *supra* note 6, at art. 8.

169. Russia’s 1997 Freedom of Conscience Law, *supra* note 79, at art. 11.

170. 1998 Freedom of Conscience Law, *supra* note 6, at art. 5.

171. *Id.* at art. 8.

172. *Id.*

Law on the whole has become one of the most alarming campaigns against freedom of religion in all of Eastern Europe and Central Asia combined.¹⁷³

C. The 1998 Freedom of Conscience Law's Criminalization of Religious Activity

It is clear that infractions of religious association laws in Uzbekistan can lead not only to the liquidation¹⁷⁴ of previously registered organizations, but also to criminal punishment of religious organizations' members and leaders who fail to properly comply with the new requirements of the 1998 Freedom of Conscience Law.¹⁷⁵ Unregistered religious activity, which has long been considered illegal, is now "severely punished under the amendments to the criminal and administrative codes adopted the same month [as the 1998 religion law]."¹⁷⁶ Indeed Article 11 of the 1998 Freedom of Conscience law reads like a criminal statute, explicitly stating that religious leaders' "evasion" of registering with state bodies will be "punished" in accordance with the law.¹⁷⁷ New provisions in Uzbekistan's Criminal Code¹⁷⁸ differentiate between "illegal" religious groups, and "prohibited" religious groups.¹⁷⁹ According to Article 216.2 of the

173. Indeed, one United States State Department official recently called it "one of the harshest in the world." See Justin Burke, *U.S. Calls on Uzbekistan to Modify or Drop Religion Law*, BBC MONITORING SERVICE (Feb. 16, 2000) (visited Mar. 16, 2000) <<http://soros.org/uzbkstan/omri/0431.html>> (stating that U.S. State Department representative John Beyrle told Uzbek officials in Tashkent that Uzbekistan should modify or replace the 1998 Freedom of Conscience Law and that it is "one of the harshest in the world").

174. See 1998 Freedom of Conscience Law, *supra* note 6, at art. 13 ("[a]ctivity of a religious organization shall be halted at its own volition or if it violates this law or other laws of the Republic of Uzbekistan").

175. See Corley, *supra* note 22 (stating that those who are found in contradiction of Uzbekistan's 1998 religion law face monetary fines and prison sentences of up to five years). Often, the government will simply plant drugs, grenades, or bombs on individuals (generally leaders of non-traditional religions) whom the government wishes to apprehend for purposes of questioning and imprisonment. See *id.*; see also *Uzbek Baptists Call For Protection From Government Threats*, KESTON NEWS SERVICE (July 27, 1999) (visited Mar. 16, 2000) <<http://www.keston.org/scholarsframe.htm>>.

176. Corley, *supra* note 22.

177. 1998 Freedom of Conscience Law, *supra* note 6, at art. 11.

178. For a detailed discussion of how the Uzbek Criminal Code treats unregistered religious organizations, see KESTON NEWS SERVICE, *Unregistered Religious Communities in Uzbekistan Face New Threat* (May 20, 1999) (visited Mar. 16, 2000) <<http://www.keston.org/scholarsframe.htm>>.

179. 1999 REPORT ON UZBEKISTAN, *supra* note 8.

Criminal Code, “illegal” religious activity, which includes such infractions as “failure of the leaders of religious organizations to register,” and continuance of religious activities “after administrative action has been taken,” is punishable by up to “one hundred minimal salaries” or “imprisonment [of] up to three years.”¹⁸⁰ Even worse, “prohibited” religious activity (which is essentially involvement with a religious group that has been banned)¹⁸¹ is punishable by up to five years in prison.¹⁸²

To many westerners, Uzbekistan’s regulatory atmosphere seems extraordinarily repressive. Yet, as discussed earlier, terrorism in Uzbekistan often strikes under the cloak of religion. Therefore, Uzbekistan’s 1998 Freedom of Conscience Law pegs religion as a cause of violence and bloodshed.¹⁸³ The fundamental problem with the 1998 Freedom of Conscience Law is not that it attempts to criminalize violence and bloodshed, but that it takes the critically overreaching step of *criminalizing religion* as a means of rooting out violence and bloodshed.¹⁸⁴

In all fairness to Karimov’s “national security” policies, western critics must recognize the legitimate difference in the relative danger between western types of “dangerous religious sects” (which are

180. Criminal Code of the Republic of Uzbekistan art. 216.2, *reprinted in* On Introduction of Amendments and Additions into Legislative Acts of the Republic Uzbekistan (1998) (Uzb.).

181. Article 216 of Uzbekistan’s Criminal Code defines prohibited religious activity as “[o]rganization or renewal of the activity of prohibited social associations and religious groupings, as well as participation therein.” Criminal Code of the Republic of Uzbekistan art. 216, *reprinted in* On Introduction of Amendments and Additions into Legislative Acts of the Republic Uzbekistan (1998) (Uzb.).

182. *See id.*

183. This proposition of itself is not faulty. Differing religious ideas are unquestionably a cause of terrorist attacks, not only in Uzbekistan but in many other countries around the world. *See supra* Part II.B.2.

184. Article 5 of the 1998 Freedom of Conscience Law, for example, mandates that “[t]he state shall . . . not allow religious or other fanaticism and extremism aimed at . . . stirring up hostility,” and “[a]ctivity of religious organizations, movements, and sects which encourage terrorism, drugs trade and organized crime, and other mercenary ends is banned.” 1998 Freedom of Conscience Law, *supra* note 6, at art. 5.

generally quite peaceful)¹⁸⁵ and Uzbek types of “dangerous religious sects” (which, in the name of *jihad*, are potentially lethal).¹⁸⁶

But more importantly, and in all fairness to the generally peaceful institution of organized religion, the Karimov regime must recognize that large-scale prohibition of basic forms of religious activity as a means of dealing with terrorism is not only a blatant infraction of international law, but a sure path leading to violence and bloodshed far in excess of that which is currently caused by sporadic terrorist attacks.

IV. FORWARD LOOKING CONSIDERATIONS: A COMPROMISE MODEL

Part II of this Comment discussed some of the historical and cultural constructs that gave rise to the 1998 Freedom of Conscience Law. Part III discussed some of the legal precedents that brought forth the 1998 Freedom of Conscience Law and showed how many of the provisions in the 1998 Freedom of Conscience Law violate international covenants to which Uzbekistan has acceded. Part IV is less critical and more constructive: it suggests a compromise model that seems to be a less volatile and more effective approach to church-state relations than are currently employed by the Karimov regime.

The proposed compromise model consists of two fundamental “shifts” that would help to ensure Uzbekistan’s maintenance of a moderate Islamic church-state model that mirrors neither the anti-clerical extreme observed in Turkey nor the pro-clerical extreme observed in Iran.¹⁸⁷ The two fundamental shifts entail (1) amelioration of the overly restrictive 1998 Freedom of Conscience Law and (2) relaxed treatment of allegedly “subversive” religious minorities.

185. France, for example, recently established a government agency which oversees and regulates the activity of allegedly “dangerous” religious sects. A “dangerous” religious sect in France is rarely violent and is generally nothing more than a religious minority group with unorthodox religious views. See U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: FRANCE (1999) (visited Mar. 30, 2000) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/1000/irf_france99.html> (stating that even such characteristics as “having judiciary problems” qualifies a religious organization for the label of “sect” or “cult” which merits official “public caution”).

186. See *supra* Part II.B.2 (discussing Islamic extremism and the notion of holy war).

187. See *supra* note 7 and accompanying text (illustrating the “competing” Iranian and Turkish ideologies that influence Uzbekistan).

A. Amelioration of the 1998 Freedom of Conscience Law

In its most basic form, the problem with the 1998 Freedom of Conscience Law is that the legislative means do not square with the public policy ends. In other words, criminalizing all religious activity, including peaceable religious activity, does not root out the violent religious activity that was criminal to begin with. On the contrary, it stands to reason that a law that undertakes to criminalize fundamental and good human yearnings (such as teaching of religious principles in the home) will do nothing more than turn fundamentally good people into criminals. Further, a civil society cannot long endure such a schism of core values and legal principles. Either peaceable religion will be ignored in order to practice the law, or the law will be ignored in order to practice peaceable religion. In either case, the result is lawlessness: in the first instance due to disregard for religion and in the second instance due to disregard for the law.

As it stands, the Uzbekistan model of church-state relations, and the 1998 Freedom of Conscience Law in particular, tend toward an Islamic system not dissimilar to the current ultra-secular model in Turkey, which is marked by significant restrictions on freedom to manifest religious beliefs,¹⁸⁸ state control of mainstream religious thought,¹⁸⁹ state-mandated education in state-sponsored institutions,¹⁹⁰ and strict regulation of religious minorities that are either foreign or non-mainstream.¹⁹¹

The consequences of this type of ultra-secular, anticleric, and even antireligious regime in Uzbekistan can be summed up by a concept known as “polarization amplification.”¹⁹² In the religious freedom context, polarization amplification begins when the government restricts the religious activity of a certain class of citizens.

188. See U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999: TURKEY (1999) [hereinafter 1999 REPORT ON TURKEY] (visited Mar. 30, 2000) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/1999/irf_turkey99.html>.

189. See *id.*

190. “Education and instruction in religion and ethics shall be conducted under State supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools.” TURK. CONST. art. 24 (1982). A 1997 Turkish law mandates that the instruction be for a minimum of 8 years. 1999 REPORT ON TURKEY, *supra* note 188.

191. 1999 REPORT ON TURKEY, *supra* note 188.

192. This concept derives from unpublished comments by Professor Eileen Barker of the London School of Economics.

The restricted class instinctively retaliates in order to persuade the government to return the religious privileges that were restricted. The government, instead of conceding the religious privileges, interprets the retaliation as a national security threat and steps up the restriction of religious privileges. Soon the restricted class adopts a martyr complex and other citizens begin to sympathize with the now “persecuted” class of believers. The momentum polarizes both sides of the conflict. The government’s restrictions and the citizens’ retaliation are increasingly polarized and amplified. The unavoidable end of polarization amplification is either total oppression of religious liberty or total destruction of the oppressing government.

Thus, in accordance with the theory of polarization amplification, Uzbekistan’s enactment of the 1998 Freedom of Conscience Law may well be exacerbating an already critical relationship between religious minorities and the Uzbek government. If Karimov truly intends to curb the tide of religious-based violence, he must attempt first to reverse the pattern of polarized church-state relations and amplified church-state tensions by bringing the 1998 Freedom of Conscience Law into conformity with fundamental and internationally recognized norms of religious liberty.¹⁹³

B. Relaxed Treatment of Allegedly “Subversive” Religious Minorities

The first step of the compromise model entails amelioration of the 1998 Freedom of Conscience Law. The second step entails relaxed treatment, and even a degree of congenial recognition, of presumed “subversive” religious minorities. The strategic assumption, of course, is that religious groups which have hitherto been forced to operate “underground” will be willing to trade some of their clandestine activity and violent animosity for a more “above ground” approach that might even result in some loyalty to the government. The compromise, therefore, is marked on the one side by Karimov easing his repressive grip on religious minority activity and on the other side by anti-government religious minorities abandoning their aspiration for total and absolute revolution. Admittedly, both steps call for an idealistic surrender of deeply rooted political and spiritual agendas, but granting even limited recognition of allegedly subversive religious minorities may well avert the ultimate tragedy of revo-

193. See *supra* note 173 and accompanying text (stating that United States government officials are also pushing for amelioration of the law).

lutionary or civil war. Either of which could culminate in a cleric regime akin to that in Iran—where neither secularism nor diversity are tolerated.¹⁹⁴

V. CONCLUSION

One Central Asia scholar has posited that “[a]ll of Central Asia’s rulers will sacrifice their new-found democratic values in an effort to defeat a popularly-led movement to defeat them,” and that “[b]laming their instability on Islamic ‘extremists’ may make their ‘strong-man’ tactics more palatable to foreign leaders, leaving aid-flows intact and buying them some additional time in power.”¹⁹⁵ This Comment argues that the government of Uzbekistan is clearly adopting just such a course of action. As evidence, Uzbekistan’s enactment of the 1998 Freedom of Conscience Law provides legal cover for gross violations of Uzbekistan’s international human rights obligations. The 1998 Freedom of Conscience Law restricts fundamental religious freedom based on concepts of “national security” and “public safety.” But Uzbekistan’s *de jure* and *de facto* restrictions of religious freedom are likely based more upon political expediency than public safety and should not be tolerated by the international community.

In order to reverse the pattern of polarization amplification (i.e., polarized church-state relations leading to amplified church-state tensions) that threatens to turn Uzbekistan into a “new Kosovo,” President Islam Karimov must begin taking measures to curb the deeply seeded anxiety, much of which his regime has created, toward foreign and minority religious groups.

By way of compromise, it seems that a better approach to curtailing the spread of religious-based hostility entails a shift away from the Turkish anticleric model that may simultaneously ease the push by opposition forces for an Iranian type of cleric model. The first two steps toward attaining this “middle-of-the-road” compromise must include (1) amelioration of the overly restrictive 1998 Freedom of

194. See *supra* note 68 and accompanying text (indicating that Karimov himself admits that such a theocratic regime as is seen in Iran is not only possible in Uzbekistan, but a substantial threat).

195. Olcott, *supra* note 15, at 23. See also Graham E. Fuller, *The Impact of Central Asia on the ‘New Middle East’*, in CENTRAL ASIA MEETS THE MIDDLE EAST, *supra* note 3, at 212, 214 (stating that all the new leaders of Central Asian States, excluding Akaev, “are quite content to exclude democracy as ‘not part of the Central Asian tradition’”).

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Islam, Communism, and Religious Liberty

Conscience Law—a move on the government’s part away from Turkish ultra-secularism, and (2) relaxed treatment of allegedly “subversive” religious minorities—a concession by the government to avert a revolutionary cleric regime akin to that in Iran, which regime could likely result if the subversive opposition is pushed until it prevails by force.

For Karimov, and for the millions of Muslims, Christians, Jews, and other minority religious groups that have “elected” him to represent their interests, the highroad to stability and economic independence is not one of government *zarba* or revolutionary *jihad*, but one of mutual tolerance and compromise that will build a bridge not only between Karimov and his people, but between Islam and the host of other faiths that aspire to peaceful coexistence in Uzbekistan.

Grant Garrard Beckwith

Appendix

THE LAW OF THE REPUBLIC OF UZBEKISTAN ON FREEDOM OF WORSHIP AND RELIGIOUS ORGANIZATIONS (NEW VERSION)¹⁹⁶

Article 1: The Aim of The Present Law

The aim of the present law is to ensure the right of every person to freedom of worship and religion, and the citizens' equality irrespective of their religious convictions, and to regulate relations arising from religious organizations' activity.

Article 2: Legislation on Freedom of Worship and Religious Organizations

Legislation on freedom of worship and religious organizations consists of the Constitution of the Republic of Uzbekistan, the present law and other legislative acts. Regulations to do with ensuring the freedom of worship and activity of religious organization in the [Autonomous] Republic of Karakalpakstan shall be in addition regulated by the legislation of the Republic of Karakalpakstan. If an international agreement of the Republic of Uzbekistan sets rules different from those stipulated in the legislation of the Republic of Uzbekistan the provisions of the international agreement shall apply.

Article 3: Freedom of Worship

Freedom of worship is the citizens' right guaranteed by the constitution to profess or not to profess any religion. Any compulsion of a citizen in defining his religious convictions, deciding whether to profess or not, whether to take part in worship, religious rituals and ceremonies, or receive religious education is inadmissible. Involvement of minors in religious organizations as well as teaching them any religion against their will, or the will of their parents or custodians is inadmissible. The freedom of worship or any other conviction are subject only to the restrictions necessary to ensure national secu-

196. As published in the Uzbek Press *Narodnoye Slovo* (Tashkent newspaper "People's Word" in Russian), May 15, 1998. The English translation is courtesy of the OSCE's Office for Democratic Institutions and Human Rights, BBC, and Mr. Felix Corley of the Keston Institute.

riety and public order, and life, health, morals, rights and freedoms of other citizens. Foreign citizens and people without citizenship enjoy the freedom of worship and religion equally with the citizens of the Republic of Uzbekistan and bear the responsibility the law envisages for breaching the legislation on freedom of worship and religious organizations.

Article 4: Equality of Citizens Irrespective of Their Religious Convictions

Citizens of the Republic of Uzbekistan irrespective of their religious convictions have the same legal rights. Indication of a citizen's religious convictions in an official document is inadmissible. Any restriction of the rights and granting any direct or indirect privileges to citizens on the basis of their religious convictions, stirring up hostility or hatred or insulting citizens' feelings on the basis of their religious or atheistic convictions, as well as the desecration of treasured religious sites shall be actionable in accordance with the law. Nobody can refuse to observe any legal obligations on grounds of his religious convictions. One legal obligation can be replaced by another on grounds of religious convictions only in cases envisaged by the law.

Article 5: Separation of Religion from the State

In the Republic of Uzbekistan religion is separated from the state. Granting any privileges to or imposing restrictions upon any individual religion is inadmissible. The state shall promote establishment of mutual tolerance and respect between the citizens professing different religions and the non-believers, between religious organizations of different confession, and not allow religious or other fanaticism and extremism, and actions aimed at setting off one religion against another and stirring up hostility between them. The state shall maintain peace and accord between religious confessions. Actions aimed at converting believers of one religion into other (proselytism) as well as any other missionary activity are prohibited. People responsible for violation of this rule shall bear responsibility in accordance with the law. The state shall not charge religious organizations with carrying out any state functions, and shall not interfere into their activity provided it does not contradict the law. Religious organizations shall not fulfill any state functions. The state shall not fi-

nance activity of religious organizations and activity propagating atheism. In the Republic of Uzbekistan creation and activity of religious political parties and public movements as well as branches and sections of religious parties set up outside the republic is inadmissible. Religious organizations are obliged to follow provisions of the existing legislation. The use of religion for anti-state and anti-constitutional propaganda, and to incite hostility, hatred, inter-ethnic discord, to undermine ethical norms and civil accord, to spread libelous, and destabilizing ideas, to create panic among the people and for other actions against the state, society and individual is inadmissible. Activity of religious organizations, movements, and sects which encourage terrorism, drugs trade and organized crime, and other mercenary ends is banned. Any attempts to pressure the state authority organizations and departments and officials as well as any illegal religious activity shall be persecuted by the law.

Article 6: Rights of State Organizations and Citizens' Self-Government Organizations in Their Relations with Religious Organizations

The coordination of relations between state organizations and religious organizations and control over observation of the legislation on freedom of worship and religious organizations shall be carried out by the Committee for Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan. The committee's legal status shall be defined by a Regulation approved by the Cabinet of Ministers of the Republic of Uzbekistan. The Council of Ministers of the Republic of Karakalpakstan, regional, district and town administrations as well as citizens' self-government organizations shall in accordance with the law bear responsibility for observation of the legislation on freedom of worship and religious organizations.

Article 7: Education System and Religion

The education system in the Republic of Uzbekistan is separate from religion. Introduction of religious subjects into an academic curriculum is inadmissible. The right to secular education is guaranteed to the citizens of the Republic of Uzbekistan irrespective of their religious convictions.

Article 8: Religious Organizations

A religious organization is a voluntary association of citizens of the Republic of Uzbekistan set up for joint profession of a religion, exercise of religious services, customs and rituals (religious societies, religious education establishments, mosques, churches, synagogues, monasteries and others). A religious organization shall be set up at an initiative of not less than 100 citizens of the Republic of Uzbekistan aged over 18 and permanently residing on the territory of the Republic of Uzbekistan. To coordinate and direct activity of organizations of an individual religion they may set up a single central administration body for the Republic of Uzbekistan (further central administration body). A central administration body shall be set up at a constituent meeting (conference) of representatives of registered organizations of an individual religion from at least eight territorial entities of the Republic of Uzbekistan (a Region, the city of Tashkent, the Republic of Karakalpakstan). Religious organizations obtain the status of a legal subject and can carry out their activities after their registration at the Ministry of Justice of the Republic of Uzbekistan or its local departments in the order established by the law. Religious organization can be headed by citizens of the Republic of Uzbekistan having corresponding religious education. Foreign candidates to head a religious organization registered in the republic shall be approved by the Committee for Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan.

Article 9: Religious Schools

Religious organizations' central administration bodies have a right to set up schools to train clergy and required religious personnel. Religious schools obtain the right to operate after their registration at the Ministry of Justice of the Republic of Uzbekistan and receiving a corresponding license. Citizens can enter a higher or secondary religious school after receiving general compulsory secondary education in accordance with the Law of the Republic of Uzbekistan On Education. People teaching religious subjects in religious schools should have religious education and can work with permission from a corresponding central administration body. Private teaching of religious principles is prohibited.

Article 10: Religious Organization's Rules

A religious organization's rules should contain the following information: its name, form of organization, address and creed; aims, tasks and main forms of activity; structure and administration bodies; sources of funding and property relations within the organization; procedure for making amendments and addenda to the rules; other information on the religious organization. Rules of religious organizations having a central administration body shall be approved by that administration body.

Article 11: Registration of Religious Organizations

Religious organizations' central administration bodies shall be registered by the Ministry of Justice of the Republic of Uzbekistan, and other religious organizations by the Ministry of Justice of the Republic of Karakalpakstan, regional justice departments, and the Tashkent city justice department respectively with approval of the Committee for Religious Affairs under the Cabinet of Ministers of the Republic of Uzbekistan. To be registered a religious organization should present the following documents: an application signed by not less than 100 citizens of the Republic of Uzbekistan who initiate setting up of a religious organization; rules of the religious organization; a constituent meeting protocol; a document certifying address of the religious organization being set up; a document certifying payment of the registration fee. An application for registration of a religious organization's central administration body should be supported by the following documents: an application signed by the chairman and secretary of the constituent meeting (conference); rules of the religious organization's central administration body; the constituent meeting (conference) protocol; a document authorizing the founders; a document certifying the address of the management body; a document certifying payment of the registration fee. Registration applications from religious organizations and their central administration bodies shall be considered within a month from the date of their submission. Justice bodies have a right to ask corresponding organizations for additional materials and experts' judgments on a religious organization applying for registration. In such case the decision shall be taken during three months from the date of application. Addenda and amendments to a religious organization's

rules shall be registered in the same order and on the same terms as the religious organization itself. Religious organizations' leaders' evasion of registration of their organizations' rules at state bodies will be punished in accordance with the law. Control over a religious organization's compliance with its rules shall be carried out by a registering body. Officials who allow activity of non-registered religious organizations shall bear responsibility in accordance with the law.

Article 12: Refusal to Register a Religious Organization

A religious organization can be refused registration if provisions of its rules or other documents contradict provisions of the present law or other laws of the Republic of Uzbekistan. A religious organization which is refused registration shall be notified about the decision by a letter specifying reasons for the refusal. The religious organization's founders have a right to apply again to the Ministry of Justice of the Republic of Uzbekistan and its local departments provided they bring their rules in line with the law. Refusal to register a religious organization or violation of provisions of the present law by justice agencies can be applied against with court.

Article 13: Discontinuation of a Religious Organization's Activity

Activity of a religious organization shall be halted at its own volition or if it violates this law or other laws of the Republic of Uzbekistan. A decision to halt the activity of a religious organization shall be taken by a registering body. The decision can be appealed against in a court of law.

Article 14: Religious Rites and Ceremonies

Religious organizations have a right to create and maintain facilities for free worship and carrying out religious rites, and to maintain pilgrimage sites. Worship, religious rites and ceremonies shall be exercised at a religious organization's premises, prayer buildings and other properties belonging to the organization, at pilgrimage sites, cemeteries, and in cases of ritual necessity and at citizens' will at home. Worship and religious rites can be exercised in hospitals, nursing homes, detention centers, prisons and labor camps at the request of the people staying there. Public worship and religious rites can be held outside religious buildings in the order established by the law of

the Republic of Uzbekistan. Citizens' of the Republic of Uzbekistan (except religious organization's ministers) cannot appear in public places in religious attire. Religious organizations cannot subject believers to compulsory payment of money, or taxation, and to actions insulting their honor and dignity.

Article 15: Religious Organization's Property

Religious organizations can own buildings, objects of veneration, facilities for production, social and charitable use, money and other property required to carry out their activity and bought or built with their own money or people's or public associations' donations, or given by the state. They can also own property in a foreign country and property obtained in the other ways envisaged by the law. Religious organizations' right to property is protected by the law.

Article 16: Use of State Property

Religious organizations have a right to use for their needs buildings and other property handed over to them by state organizations under a contract. Historic or cultural sites and items can be handed over for use to religious organizations in accordance with the law. Religious organizations can be allotted land plots to build religious buildings in the established order and with permission of the Council of Ministers of the Republic of Karakalpakstan, and administrations of the Regions and the city of Tashkent, and the Cabinet of Ministers of the Republic of Uzbekistan respectively.

Article 17: Production of Goods and Services

Religious organizations' central administration bodies proceeding from their aims set out in the rules have a right to set up in accordance with the legislation of the republic of Uzbekistan publishing, production, restoration and construction, agricultural and other enterprises, as well as charity establishments (orphanages, hospitals).

Article 18: Disposal of Property of Religious Organizations which have Ceased Their Activity

After religious organizations have ceased their activity the property transferred for their use is returned back to former owners. After religious organizations have ceased their activity the ownership of

their property is exercised in accordance with their Statutes and legislation. The list of property designated for worship which may be freed from the claims of creditors is established by the Council of Ministers of the Republic of Uzbekistan on suggestions from religious organizations. In case there are no legal inheritors the property is turned into state ownership.

Article 19: Religious Literature and Objects of Religious Designation

Central administration bodies are entitled to manufacture, export, import, and distribute objects of religious designation, religious literature and other information materials of religious contents in the order proscribed by legislation of the Republic of Uzbekistan. Delivery and distribution of religious literature published abroad is done after expertise of its contents is made in the order proscribed by legislation. Central administration bodies have an exclusive right to issue and distribute the objects of religious cult provided they have an appropriate license. Manufacture, storage, and distribution of printed matter, cinema, photo, audio, and video production and other materials formulating ideas of religious extremism, separatism, and fundamentalism entail responsibility in accordance with legislation.

Article 20: Charity Activity

Religious organizations can carry out charity activity.

Article 21: Labor Relations in Religious Organizations

Citizens working in religious organizations under a contract are subject to the labor legislation of the Republic of Uzbekistan.

Article 22: International Relations of Religious Organizations

According to legislation religious organizations are entitled to establish and maintain international relations for pilgrimages and participation in other religious activities.

Article 23: Responsibility for Breaking the Legislation on Freedom of Religious Organizations

Officials, religious organizations' ministers found guilty of violating the legislation on freedom of conscience and religious

organizations are subject to responsibility established by legislation of the Republic of Uzbekistan.¹⁹⁷

197. *Signed:* Tashkent, 1 May 1998, President of the Republic of Uzbekistan, I. Karimov.