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Problematic Issues Concerning the Freedom of Association and Group/Collective Rights in the Republic of Armenia

*Shavarsh Khachatryan**

I. INTRODUCTION: AN OVERVIEW OF THE ISSUES

The increased activity of religious organizations in Armenia is undoubtedly connected with the conclusion of the Soviet era, as the end of the restrictive impact of Soviet laws¹ has intensified the activities of both “old” and “new” religious denominations and debates about the role and place of religion in society.² On one hand, religious groups and movements have found that the wealth of a primarily post-atheistic society³ enlarges their religious presence and influences the society’s moral and religious values. On the other hand, the increase of non-traditional religious activity has produced some apprehension in what was previously a rather homogeneous society.⁴ The active proselytizing by religious groups and

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1. See S. F. Jones, *Religion and Nationalism in Soviet Georgia and Armenia*, in *RELIGION AND NATIONALISM IN SOVIET AND EAST EUROPEAN POLITICS* 171, 171–95 (Pedro Ramet ed., rev. ed. 1989) (noting that despite communist regimes’ “considerable successes against religious practices,” these regimes “often reinvigorate[] ethno-religious identity by a combination of religious repression and, in the search for national legitimacy, encouragement of church patriotism”).

2. Even the Armenian Apostolic Church recognized the void in spirituality left by the Soviet era. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, *INTERNATIONAL RELIGIOUS FREEDOM REPORT: ARMENIA (2006)* [hereinafter *RELIGIOUS FREEDOM REPORT 2006*], <http://www.state.gov/g/drl/rls/irf/2006/71366.htm> (“[T]he Armenian Apostolic Church has trained priests and committed material resources to fill the spiritual void created by the demise of communist ideology.”). Obviously, the Armenian Apostolic Church was not the only religious organization that attempted to fill the void; there are now about sixty religious organizations in Armenia, almost none of which had a presence in Armenia during the Soviet era. See *infra* note 16 and accompanying text.

3. RAZMIK PANOSSIAN, *THE ARMENIANS: FROM KINGS AND PRIESTS TO MERCHANTS AND COMMISSARS* 352 (2006) (noting the rise of atheism in Armenia during Soviet rule).

4. Armenian society is rather uniform, both ethnically and religiously. While the ethnic homogeneity remains fairly constant, religious homogeneity is beginning to change. See CHRISTOPH H. STEFES, *UNDERSTANDING POST-SOVIET TRANSITIONS* 58 (2006) (noting that

organizations, unheard of in Armenia until that time, drives much of the debate. Armenian society has become polarized on even basic issues, such as the definition and scope of religion and Christianity and the appropriate role of the state in regulating various communication channels vis-à-vis religious groups and communities.

One common problem in Armenia today is expanding the public's notions of what Christian culture and Christian religion are; contemporary public opinion about the definition and scope of Christian culture and religion was largely formed in the wake of the narrow Soviet viewpoint about religions.⁵ Additionally, while the Armenian people are facing challenges raised by the influx of new religious groups, the previously uncontested role of the Armenian Apostolic Holy Church ("Armenian Church") has contributed to a related problem—the painful perception of a split in Armenian society.⁶ The Armenian Church, in the eyes of many Armenians, occupies a special place in the socio-political life of the country and, for the majority of the ethnic Armenians, continues to play the most influential role in religious and cultural life.⁷

97% of the population of Armenia is ethnic Armenian). The CIA estimates that 94.7% of the population is Armenian Apostolic in their religious affiliation. CIA, *The World Factbook 2007*, available at <https://www.cia.gov/cia/publications/factbook/geos/am.html#People>. The United States Department of State, on the other hand, estimated that 90% of Armenian's population is Armenian Apostolic. RELIGIOUS FREEDOM REPORT 2006, *supra* note 2. However, the Department of State also noted that "[f]or many citizens, Christian identity was an ethnic trait, with only a loose connection to religious belief." *Id.* Therefore, some persons listed as members of a particular religion—such as Armenian Apostolic, for example—may lack any serious religious conviction.

5. See generally Jones, *supra* note 1, at 172 (noting that "atheist policies imposed by a Russian-dominated government [took] on a national character" in Armenia where "religious distinctiveness was interwoven with national survival"). For the opinion of a representative of the Armenian Apostolic Church regarding the registration of Jehovah's Witnesses as Christian, see *Is it Possible to Recognize the Jehovah's Witnesses as Christians?*, HAYOTS ASHKAR (Yerevan, RoA) 7, Sept. 3, 2003 (arguing that because Jehovah's Witnesses differ greatly from other Christians, they should not be allowed to use the designation) (on file with author—available only in Armenian).

6. See GERALD J. LIBARIDIAN, *MODERN ARMENIA* 6, 53 (2004) (noting the special role of the Apostolic Church as the only constantly legitimate force in Armenia). Especially during the Soviet era, the Apostolic Church held a special place in Armenian society as a political institution as well as spiritual organization. SARKIS ATAMIAN, *THE ARMENIAN COMMUNITY* 430 (1955) (discussing the Armenian Church as a political instrument); PANOSSIAN, *supra* note 3, at 353 (noting the intertwining of "[r]eligious culture and Armenian identity").

7. See STEFES, *supra* note 4, at 38 (commenting on the role the Armenian Church played in maintaining Armenia's "strong sense of nationhood").

In the first decade after Armenia declared independence in 1991, there were sporadic and incomplete efforts to govern the relationship between society, the state, and religious denominations. The war over Karabakh⁸ and the related blockade by Turkey played a pivotal role in slowing such legislative efforts.⁹ However, Armenia's willingness to join the Council of Europe (and its international system of obligations and treaties) facilitated the development of structural changes in the Armenian government.¹⁰ The founding of the Department of National Minorities and Religious Affairs was another significant step towards this structural change within Armenia.¹¹ The work of the Department has so far hastened both legislative efforts and policy development in the area of religion and

8. Karabakh is also spelled Karabagh. This Article will use Karabakh as the preferred spelling of the author. However, when referencing material written by other authors, this Article will use the preferred spelling of those authors. For information regarding the Karabakh conflict, see *infra* note 9.

9. See, e.g., RAYMOND J. STRUYK, RECONSTRUCTIVE CRITICS 28 (1999) (noting the policy development in Armenia was slowed due to conflict in Karabagh); see also Marina Kurkchian & Edmund Herzig, *Introduction*, in THE ARMENIANS: PAST AND PRESENT IN THE MAKING OF A NATIONAL IDENTITY 1, 1 (Edmund Herzig & Marina Kurkchian eds., 2005) (describing the heavily guarded border Armenia shares with Turkey preventing travel to Mount Ararat as "the most emotive geographical symbol of the Armenian homeland"); *id.* at 14–16 (discussing the battle for the Karabagh region that was made a part of Azerbaijan during the Soviet era despite that fact that it is primarily ethnically Armenian); Marina Kurkchian, *The Karabagh Conflict*, in THE ARMENIANS, *supra*, at 147, 147–65 (discussing the Karabagh conflict in more detail); STEFES, *supra* note 4, at 43–45 (noting the historical separation of Karabakh and that the conflict over Karabakh and the blockade by Turkey "brought Armenia to the brink of economic collapse").

10. James A. Sweeney, *Divergence and Diversity in Post-Communist European Human Rights Cases*, 21 CONN. J. INT'L L. 1, 7 (2005) (noting that Armenia joined the Council of Europe on January 25, 2001); see also Council of Europe, The Council of Europe's Member States, http://www.coe.int/T/e/com/about_coe/member_states/default.asp. Due to its membership in the Council of Europe, "the high court of Armenia is no longer the last word in cases involving human rights," but rather "cases may be appealed to the European Court of Human Rights . . . at Strasbourg, [Germany]." Jack McMahon, *The Rule of Law in Central Asia*, 44 DEC. ADVOC. (IDAHO) 13, 15 (2001). For a recent case involving the exercise of religious rights in Armenia, see *Mkrtchyan v. Republic of Armenia*, European Court of Human Rights (Application no. 6562/03). The decision has not yet been officially published by the European Court, but is forthcoming. A downloadable copy is available on the European Court's website at <http://cmiskp.echr.coe.int////tkp197/viewhbkkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&tkey=60382>.

11. The Department for National Minorities and Religious Affairs was founded in January 2004. European Commission Against Racism and Intolerance, *Second Report on Armenia* (June 30, 2006), available at http://www.coe.int/t/e/human_rights/ccri/1%20Decri/2%20country%20Dby%20country_approach/armenia/Armenia%20second%20report%20-%20cri07-1.pdf.

belief. It has also increased the amount of research done regarding protection of religious freedoms.¹² In its first two years of operation, the Department has identified key issues which need to be addressed, either through the development of domestic law or the creation of more interpretative material concerning international standards. The work of the Department has raised questions and urged research on problematic and challenging issues in an effort to understand the approaches of international law.

In discussing these necessary structural changes, this Article discusses the right to freedom of association¹³ and describes the issues that Armenia needs to address in order to harmonize Armenian laws with recent amendments to the Constitution for the Republic of Armenia ("Constitution") and with existing international standards. Furthermore, this Article also describes issues resulting from the practices of various religious organizations in Armenia. These issues are typically centered on (1) the rights of religious organizations; (2) the internal freedom of individuals; (3) the rights of children and family; and (4) the freedom of autonomy regarding such matters as property, religious doctrine, religious symbols, and manifestation of religion. This Article considers the role of the state in protecting and balancing these rights in light of the requirements of the Constitution and international law. Finally, this Article will also address some issues that result from the operation of religious organizations within the construct of Armenian domestic law,¹⁴ along with other issues that domestic law has failed to address and that international law is not exhaustive enough to cover.

Part II of this Article will address apparent conflicts between existing Armenian law and the Constitution of the Republic of Armenia. Part III will similarly examine discrepancies between existing Armenian law and international norms. Part IV of this Article will discuss some gaps in both Armenian law and

12. As some authors have noted, while "citizens' rights [have] been improved since the fall of Soviet rule," the right to religious freedom is still threatened. STEFES, *supra* note 4, at 55.

13. Though the Article discusses both collective group rights and individual rights, they are both subsets of the religious rights otherwise known as freedom of association.

14. Throughout the remainder of this Article, the term "domestic law" will refer to all laws of the Republic of Armenia outside of the Constitution.

international norms that affect religious freedom, while Part V will offer a brief conclusion.¹⁵

II. THE CONSTITUTION AND LAWS OF THE REPUBLIC OF ARMENIA: A COMPARATIVE ANALYSIS OF THE PROVISIONS ON RELIGIOUS FREEDOMS

With the recent proliferation of religious organizations in Armenia (as of the end of 2006, there were approximately sixty registered religious organizations in Armenia),¹⁶ the Armenian government has had the opportunity to construct a religious and social framework to protect and regulate such organizations. Because of the restrictions on religion during the Soviet era, many religious organizations are either new to Armenia or have resumed their operation with the independence of Armenia (and the subsequent loosening of restrictions on religious conduct). There is little independently collected statistical data describing the demographics or belief systems of these various religious organizations; all of these religions, however, operate under the framework of the Constitution, which is the “supreme legal force and the norms thereof . . . apply directly.”¹⁷

The Constitution was most recently amended in 2005 and contains several major provisions which affect freedom of religion: “freedom of thought, conscience and religion”;¹⁸ equality;¹⁹ and non-discrimination.²⁰ The Constitution also contains a recent amendment dictating that “[t]he church shall be separate from the

15. The scope of this Article does not allow for a thorough discussion of some very interesting arguments over collective and corporate dimensions of group rights. Instead, the Article shows that both of these dimensions bear upon other rights. An excellent explanation of these concepts can be found in Peter Jones, *Group Rights and Group Oppression*, 7 J. POL. PHIL. 353-77 (1999).

16. When the Department of State’s 2006 report was completed, there were fifty-six registered religious organizations in Armenia. See RELIGIOUS FREEDOM REPORT 2006, *supra* note 2.

17. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 6, available at <http://www.parliament.am/parliament.php?id=constitution&lang=eng> [hereinafter ARMENIAN CONSTITUTION].

18. *Id.* art. 26.

19. *Id.* art. 14.1.

20. *Id.* (prohibiting discrimination “based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or other personal or social circumstances”).

State in the Republic of Armenia.”²¹ The same provision also contains a newly introduced passage²² that confirms the “exclusive historical mission of the Armenian Apostolic Holy Church as a national church, in the spiritual life, development of the national culture and preservation of the national identity of the people of Armenia.”²³ This Article makes two important clarifications in analyzing discrepancies between Armenian domestic laws and the Constitution. First, it asserts that activities of all religious organizations are subject to regulation by law. Second, relations between the state and the Armenian Church are also subject to regulation by law—but by a separate law.

Both the aforementioned Articles of the Constitution and the Law on the Freedom of Conscience and on Religious Organizations (“Law on the Freedom of Conscience”),²⁴ adopted in June 1991 and amended twice,²⁵ have important roles in regulating the life of

21. *Id.* art 8.1.

22. The Armenian constitutional reforms were a lengthy process and very controversial until recently. The first constitution, adopted on July 5, 1995, created an array of issues which were supposed to be resolved in the amendments to be officially adopted on November 27, 2005. The major problem with the constitution was the absence of proper separation of powers. The process to introduce major changes dates back to the year 2000 with the subsequent failure to endorse them in the referendum on May 28, 2003. Liz Fuller, *Armenia: Both Sides Gear up for Constitutional Referendum*, EURASIANET, Nov. 22, 2005, <http://www.eurasianet.org/departments/insight/articles/pp112205.shtml>. The amendments, adopted by referendum in November, 2005, and widely criticized as having been achieved by fraudulent voting tactics, did not seem to redress those issues properly. In fact, they created new controversies, not the least of which is the issue surrounding state neutrality and the freedom of religion. For more on the election and its role in fulfilling Armenia’s international obligations, see *Process of Fulfillment of Obligations Assumed by Armenia vis-à-vis the Council of Europe*, in DITORD, HELSINKI COMMITTEE OF ARMENIA (Amaras Printing House, Yerevan Republic of Armenia 2005).

23. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 8.1; see also LIBARIDIAN, *supra* note 6, at 219 (recognizing the special role of the Apostolic Church in the Armenian Constitution).

24. The Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations, June 17, 1991 [hereinafter “Law on the Freedom of Conscience”], available at <http://www.parliament.am/legislation.php?sel=show&ID=2041&lang=eng>. For an in-depth analysis of the history and effects of a similar law in Russia, see Arina Lekhel, Note, *Leveling the Playing Field for Religious “Liberty” in Russia: A Critical Analysis of the 1997 Law “On Freedom of Conscience and Religious Associations,”* 32 VAND. J. TRANSNAT’L L. 167 (1999).

25. The Law on the Freedom of Conscience, *supra* note 24, was amended in 1997 and 2001. See RELIGIOUS FREEDOM REPORT 2006, *supra* note 2 (“The 1991 Law on Freedom of Conscience, amended in 1997 and again in 2001, establishes the separation of church and state but grants the Armenian Apostolic Church official status as the national church.”).

religious communities and groups. However, it is essential to remember that the Law on the Freedom of Conscience was created and adopted when the country had not yet formally announced its independence²⁶ and that the Constitution was adopted later in 1995.²⁷ But even at its adoption, the Constitution was not in exact harmony with the Law on the Freedom of Conscience. This Article will analyze religious protection afforded to persons and groups in Armenia by looking at both the Armenian Constitution and the Law on the Freedom of Conscience. While both of these documents provide for religious protection, these instruments differ in their methodologies and contain a number of discrepancies. The resolution of these discrepancies will be instrumental in defining and protecting the legal rights of religious organizations and individuals in Armenia.

When analyzing articles of the Constitution, such as Article 8.1, an understanding of the actual implementation of the articles of the Constitution is crucial, especially in relation to the equality guarantees. There are also questions regarding the Law on the Freedom of Conscience, as it contains some conflicts with the Constitution and with international standards.²⁸ Article 14.1 of the Constitution states that “[e]veryone shall be equal before the law.”²⁹ This article goes further, forbidding any discrimination on any ground, including religion and “personal or social circumstances.”³⁰

26. Armenia formally gained its independence on September 21, 1991 (although some sources claim September 23, 1991). Armenian Television, *Encyclopedia of the First Fifty Years: Formation of Independent State System*, <http://www.armtv.com/first/eng/?sub=history&sec=today&par=40> (last visited March 29, 2007) (“Armenia was announced a free, independent and self-governing Republic on September 21, 1991.”). While a Declaration of Independence was signed on August 23, 1990, the country was still under Soviet control at the time, and formal independence was not realized for more than a year. *See* Declaration of Independence, available at <http://www.armeniaforeignministry.com/htms/doi.html>; *see also* Evangelos Vassilakakis & Panayiotis Yiannopoulos, *Recognition and Enforcement of Foreign Judgments in Cases of State Succession: The Paradigm of the 1981 Convention Between Greece and the Former USSR on Judicial Assistance in Civil and Criminal Matters*, 12 CURRENTS: INT’L TRADE L.J. 31, 35 n.19 (2003) (noting that the disintegration of the Soviet Federal Government took place in part due to the declarations of independence of the various former Soviet republics, including Armenia’s independence on September 23, 1991).

27. LIBARIDIAN, *supra* note 6, at 218–21 (discussing Armenian constitutional development from 1992 to 1995).

28. *See infra* Section III for a discussion regarding conflicts between Armenian law and international norms.

29. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 14.1.

30. *Id.*

Another important article of the Constitution protects the essential freedom of expression, confirming that “[e]veryone shall have the right to freedom of expression including freedom to search for, receive and impart information and ideas by any means of information regardless of the state frontiers.”³¹

Thus, the Constitution, as it currently stands, may be at odds with Section 8 of the Law on the Freedom of Conscience, which forbids proselytism—restricting the freedom to disseminate information.³² To complicate matters, Section 8 contains no definite understanding of the term “proselytism” or an explanation as to why it should be forbidden. Section 17 of the Law on the Freedom of Conscience aggravates the contradiction by stating that “[t]he State shall not obstruct the efforts of the Armenian Church in pursuing the following activities” that were “expressly reserved” to be exclusive to the Armenian Church:³³

- To preach and disseminate her faith freely throughout the Republic of Armenia;
- To contribute to the spiritual edification of the Armenian people and to carry out the same in the state educational institutions within the law;
- To take practical measures which enhance the moral standards of the Armenian people;
- To expand benevolent and charitable activities;
- To have permanent representatives at retirement and disabled Homes, hospitals, army and penitentiary institutions.³⁴

Thus, under a general understanding of proselytizing, Armenian law forbids this activity for all religious organizations except the Armenian Church.

There are cases that illustrate conflicts between the Constitutional protection of freedom of religion and the application

31. *Id.* art. 27.

32. Law on the Freedom of Conscience, *supra* note 24, § 8.

33. *Id.* § 17 (noting that these privileges are granted “solely” to the Armenian Church).

34. *Id.* Though the online version of the constitution in English does not contain the last clause, it is in fact in force—the website has not yet been updated as of the publication date of this Article.

of Law on the Freedom of Conscience. In one of the most recent cases, a non-governmental charitable organization, together with two other non-governmental organizations (NGOs), whose members apparently belonged to an Evangelical Church, attempted to organize a public charitable festival.³⁵ During the event, they exercised their right to teach and worship in community with others. Moreover, while the gathering may have violated Section 8 of the Law on the Freedom of Conscience, the celebration was halted for entirely different reasons; in fact, the denying agency referenced a different law to justify the decision.³⁶ The agency denying the gathering was not, however, in compliance with Articles 26 and 27 of the Constitution. This was especially true in regards to Article 26, which delineated the right to preach and to teach religion in the community: “[e]veryone shall have the right to freedom of thought, conscience and religion. This right includes freedom to change the religion or belief and freedom to, either alone or in community with others manifest the religion or belief, through preaching, church ceremonies and other religious rites.”³⁷ Under any possible reading of Article 26, it ensures the right to teach and disseminate religious beliefs, a right which the Law on the Freedom of Conscience fails to adequately protect.

Furthermore, other important drawbacks of the Law on the Freedom of Conscience stand out. Apart from the issues of equality and non-discrimination, the right granted to the Armenian Apostolic Church under section 17 of the Law on the Freedom of Conscience, which gives the Church the exclusive privilege in enhancing “moral standards of the Armenian people” and expanding “benevolent and charitable activities,” is also questionable.³⁸ The latter provision of

35. Sh. Matevosyan, *Bari Smaratsi: Non-governmental or Religious Organization?*, HAYOTS ASHKHAR (Yerevan, Armenia) 1, 5, Sept. 28, 2006 (on file with author—available only in Armenian). The locally based group Bari Smaratsi and the foreign based group Christian Adventurers International, as well as the Moscow based NGO Christians of Evangelic Belief, were organizers of the event to be held from September 21–30, 2006. On September 27, 2006, the mayor of Yerevan halted the festival. The decision was later upheld by the Ministry of Justice under article 3 of the Law on Non-Governmental Organization of the Republic of Armenia, which, in essence, makes the same controversial argument as article 8 of the Law on the Freedom of Conscience. However, despite the controversy, the group did in fact violate the law because it did not properly operate under the statutes governing its specific type of NGO. *Id.*

36. *Id.*

37. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 26.

38. Law on the Freedom of Conscience, *supra* note 24, § 17.

Section 17 is even more unclear when viewed in conjunction with Section 7 of the same law, as Section 7 clearly provides the right of religious organizations “[t]o get involved in charity.”³⁹ In practice, however, it remains unclear if the privilege of participating in charitable activity is restricted to the Armenian Church; though the text of the Law does not on its face restrict this right to the Armenian Church alone, the Church appears to assert this right as exclusive nonetheless. The Church’s interpretation is likely based on the most questionable part of Section 17, which provides that the Armenian Apostolic Church has the exclusive and sole privilege “to contribute to the spiritual edification of the Armenian people and to carry out the same in the state educational institutions within the law.”⁴⁰ Nevertheless, while the practice of restricting the charitable activities of various religious organizations is rather controversial in law, it is rarely restricted in practice.⁴¹

Additionally, Section 17 may provide the Armenian Apostolic Church the exclusive right “[t]o have permanent representatives at retirement centers, disabled homes, hospitals, army and penitentiary institutions.”⁴² That wording of Section 17 also appears to allow the church to teach religion in state-sponsored education and severely restricts the rights of individuals belonging to other confessions to exercise their freedom of religion or belief.⁴³ Nevertheless, such definitions of the law, as quoted above, may qualify as the imposition of undue limitations to the external freedom of other religious organizations. Thus, the provisions of the law are questionable with relation to group institutional rights, group collective rights, as well as individual rights.

There are also additional problems with the law in relation to the above-mentioned rights. For example, the law contains problematic issues regarding the official registration of religious organizations.⁴⁴

39. *Id.* § 7.

40. *Id.* § 17.

41. This assertion is based upon the personal knowledge of the author gained while working as an expert in the Department of Religious Affairs and National Minorities.

42. Law on the Freedom of Conscience, *supra* note 24, § 17.

43. *Id.* Though Section 17 does not specifically limit the religious practices of other denominations, it does in fact reserve many rights *solely* to the Armenian Apostolic Church. *Id.*

44. Though religious organizations are not required to register in order to exist in Armenia, there are several benefits which official registration allows, including the ability to publish newspapers or magazines, rent of meeting places, broadcast programs on television or radio, or officially sponsor the visas of visitors. RELIGIOUS FREEDOM REPORT 2006, *supra* note

Section 5 of the Law on the Freedom of Conscience requires that an organization that wants recognition as a “Religious organization” must meet certain qualifications, including that it must be “based on a historically recognized holy scriptures,” and “[i]ts doctrine[] forms part of the international contemporary religious-ecclesiastical communities.”⁴⁵ Such requirements may be the instruments of discrimination and require religious organizations to prove facts that are beyond any group’s ability to effectively present. In mitigation, the above criteria might not be strictly followed when registering religious organizations; for example, the charitable activities of religious organizations, while technically against the law and reserved for the Armenian Church,⁴⁶ are rarely restricted.

There is additional uncertainty associated with the possible application of Article 8.1 of the Constitution as it is to be incorporated into the Armenian domestic law.⁴⁷ For example, currently there is a Draft Law on the Relations between the Armenian Church and the Republic of Armenia (“Draft Law”)⁴⁸ dated November 21, 2006, which simply repeats, in Articles 2, 6, and 10, the provisions of Section 17 of the current Law on the Freedom of Conscience.⁴⁹ This Draft Law also proposes recognition of church marriages performed by the Armenian Church.⁵⁰ Article 11 of the Draft Law merely echoes Section 12 of the Law on the Freedom of Conscience regarding voluntary charitable contributions made to Religious Organizations, and as such makes these contributions tax-free.⁵¹ Article 8 of the Draft Law makes another important addition, suggesting that the Armenian Church’s approval is required for decisions regarding the public school courses on the History of the Armenian Church, including the content of the course and the teachers’ qualifications.⁵² Meanwhile, Article 8 of the

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45. Law on the Freedom of Conscience, *supra* note 24, § 5.

46. *See supra* note 41 and accompanying text.

47. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 8.1.

48. Draft Law on the Relations between the Armenian Church and the Republic of Armenia, Oct. 1, 2006 [hereinafter Draft Law], available at <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=9486&lang=arm> (available only in Armenian).

49. *See* Law on the Freedom of Conscience, *supra* note 24, § 17; Draft Law, *supra* note 48, §§ 2, 6, 10.

50. *See* Draft Law, *supra* note 48.

51. *Id.* art. 11; *see also* Law on the Freedom of Conscience, *supra* note 24, § 12.

52. Draft Law, *supra* note 48, art. 8.

Draft Law does not make it clear whether parents have the right to opt out of sending their children to study subjects as set forth by the Armenian Church,⁵³ as these subjects may disagree with the perceptions of other belief systems.⁵⁴

The aforementioned problems are just some examples that can be singled out as those that Armenia needs to address. This need is demonstrated both by the discrepancies that have been discussed between the Law on the Freedom of Conscience and the Constitution, as well as the incongruities with international norms.⁵⁵ However, other issues are also problematic from the freedom of association perspective, both under international and domestic law.

III. A COMPARISON OF ARMENIAN DOMESTIC LAW AND INTERNATIONAL NORMS

As discussed in the previous section, the Law on the Freedom of Conscience contains possible contradictions with the Constitution of the Republic of Armenia. Additionally, the status of the Law on the Freedom of Conscience is challenged by its disagreements with accepted international standards. Religious norms and human rights law are important in the international arena, especially for countries in the process of developing (or redeveloping) policies on religious freedom and other protected rights, such as Armenia. These international norms developed gradually throughout the Twentieth Century with the proliferation of the 1948 Universal Declaration,⁵⁶ the 1966 International Covenant on Civil and Political Rights,⁵⁷ and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (the 1981 Declaration).⁵⁸ Though not binding in the traditional sense,⁵⁹ these

53. Adopted after this Article had been written, the final version of the law was modified to include the wording "voluntary lesson" at public schools. This change to the law reflected some of the legislative debates on the draft version.

54. Draft Law, *supra* note 48, art. 8.

55. See *infra* Section III for a discussion of Armenian domestic law and international norms.

56. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter Universal Declaration].

57. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

58. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, U.N. Doc. A/36/684 (Nov. 25, 1981) [hereinafter 1981 Declaration].

norms can assist nations in formulating their own domestic laws and policies to ensure appropriate protection of religious freedoms.⁶⁰

The right to manifest one's own religion, according to the 1981 Declaration, includes the ability "[t]o teach a religion or belief in places suitable for these purposes."⁶¹ Additionally, under any possible reading of Article 26 of the Armenian Constitution, the right to teach is combined with the right to disseminate religion or belief.⁶² Article 14.1 of the Constitution states that "[e]veryone shall be equal before the law"⁶³ and forbids religious or personal persecution.⁶⁴ The Constitution protects personal or social circumstances, as well as religious exercise.⁶⁵ The Constitution also guards the freedom of expression and the right to dissemination of information.⁶⁶ These articles of the Constitution are consistent with the relevant provisions of Articles 2 and 6 of the 1981 Declaration.⁶⁷ Thus, the Constitution seems to harmonize with many international

59. See Natan Lerner, *The Nature and Minimum Standards of Freedom of Religion or Belief*, 2000 BYU L. REV. 905, 918 ("Although not binding, the 1981 Declaration, like all solemn declarations of the United Nations General Assembly, implies an expectation of observance.").

60. See Johan D. van der Vyver, *Limitations of Freedom of Religion or Belief: International Law Perspectives*, 19 EMORY INT'L L. REV. 499, 537 (2005).

International standards for the promotion and protection of basic human rights and freedoms, though perhaps lacking in effective enforcement mechanisms, contribute in no small measure to the development of an international moral code. That code over time becomes the criterion of national introspection and reform. Governments do not like being seen as violators of international standards of human rights protection.

Id. Despite the usefulness of customary international norms in developing domestic laws and policies to regulate and protect the exercise of religion, international law has not fully addressed all of the relevant issues, including the somewhat common tension between individual religious rights and the freedom of association. See, e.g., Natan Lerner, *Proselytism, Change of Religion, and International Human Rights*, 12 EMORY INT'L L. REV. 477, 527 (1998) ("[T]o what extent should bona fide proselytizing be considered an unrestricted right? This is ultimately the crux of the conflict between proselytism versus the right to preserve and protect one's beliefs—a conflict to which the 1981 Declaration did not provide an absolutely clear answer.").

61. 1981 Declaration, *supra* note 58 art. 6(e).

62. CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 26.

63. *Id.* art. 14.1.

64. *Id.*

65. *Id.*

66. *Id.* art. 27.

67. 1981 Declaration, *supra* note 58, art. 2, 6.

norms, while, as this section will show, the Law on the Freedom of Conscience remains at odds with the norms of international law.

The Law on the Freedom of Conscience may additionally impose undue limitations on the external freedom of religious organizations. To the extent this is the case, the Law on the Freedom of Conscience is also contrary to Article 2, paragraph 2 of the 1981 Declaration.⁶⁸ The article clearly states what may constitute discrimination:

For the purposes of the present Declaration, the expression “intolerance and discrimination based on religion or belief,” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or *impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis*.⁶⁹

The provisions of the law are thus questionable in relation to group institutional rights and group collective rights as well as individual rights.

A. The Current State of International Religious Norms

The freedom of association (sometimes known as “collective group rights”), does not exist in isolation from other important rights and should not be fully exercised without appropriate consideration of its effects on other important rights.⁷⁰ One difficult and vital role of the law is to draw an appropriate boundary between a religious organization’s right to autonomy and the rights of those outside the religious organization to maintain their own equally important right to exercise (or decline to exercise) their own beliefs. Conflicts and tension between these rights are inevitable and the resolution of such conflicts can be difficult.⁷¹ Various kinds of laws,

68. *Id.* art. 2.

69. *Id.* (emphasis added).

70. *See, e.g.*, Lerner, *supra* note 59, at 487 (detailing some issues involved in balancing the right of proselytism with the right to be free from religion).

71. *See id.* at 509 for a discussion of the difficulty of drawing an appropriate line between impartial and informative religious instruction and impermissible indoctrination, concluding that the determination must be based on a careful consideration of the facts. (“The general and obvious rule is that everyone should be free to disseminate a religion or belief provided the actions ‘do not impair the right of any other individual to maintain his religion or belief.’” (quoting ARCOT KRISHNASWAMI, *STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES* 41 (1960))).

including criminal law and city ordinances, can affect the exercise of religious rights, but this section focuses on the interplay between Armenian domestic law and international norms.

The right of autonomy is generally understood to encompass the rights of a religious organization to define and set the parameters of its faith; this right allows them the freedom to administer the organization as they see fit.⁷² This right, closely related to the freedom of association, is addressed in two major instruments of international law:⁷³ the 1981 Declaration,⁷⁴ and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Human Rights Convention).⁷⁵

These documents cover a wide variety of issues, but the relevant provision of the 1981 Declaration grants the right “in community with others and in public or private, to manifest [one’s] religion or belief, in worship, observance, practice and teaching.”⁷⁶ The European Human Rights Convention also provides, “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”⁷⁷ The restriction of this right, according to the Human Rights Convention, is justifiable only

72. See Kathleen A. Brady, *Religious Group Autonomy: Further Reflections About What is at Stake*, 22 J.L. & RELIGION (forthcoming 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=918828# (arguing that “autonomous religious groups play an indispensable role in maintaining the freedom and diversity of belief” and that such autonomy is “essential for the development of new and valuable ideas, including for social and political life”).

73. Though these are by no means the only international instruments which are relevant to the issue (the 1948 Universal Declaration and the 1966 Covenant on Civil and Political Rights were unaffected by the passage of the 1981 Declaration, see 1981 Declaration, *supra* note 58, art. 8), they are the ones examined in this paper because of their greater potential to influence law- and policy-making and behavior.

74. See 1981 Declaration, *supra* note 58, arts. 1, 6(a), (b), (c). For more description of the development of this and other instruments for the regulation of international religious freedoms, see Donna J. Sullivan, *Advancing the Freedom of Religion or Belief Through the UN Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 AM. J. INT’L L. 487 (1988).

75. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 11, 1950, ETS no. 005 arts. 9, 11. [hereinafter European Human Rights Convention]. Another important aspect of the Human Rights Convention was the 1998 establishment of the European Court of Human Rights. See Protocol 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 1, 1998, E.T.S. no. 155.

76. See 1981 Declaration, *supra* note 58, art. 1(1); European Human Rights Convention, *supra* note 75, art. 9.

77. European Human Rights Convention, *supra* note 75, art. 11.

“by law [as is] necessary in a democratic society” and “in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”⁷⁸

The proper exercise of these religious freedoms requires balancing several groups of rights, including the rights of individuals, children, and families and their right to an unimpeded change of “religion or belief”⁷⁹ and the complementary freedom “not to profess any religion or belief.”⁸⁰ These other rights are subject to limitation by this international standard: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”⁸¹ This right can perhaps be called “freedom from religion.”

B. Religious Rights in Practice: Not Always so Simple

Though international declarations and conventions are fairly extensive in setting out a framework under which nation-states are to operate to ensure protection of religious rights (the most developed being freedom of association), the application of these standards and the balancing of the competing interests is far from a simple matter. In fact, this next section of the article addresses current problematic areas of Armenian law in relation to international norms, both in substance and in application.

1. The rights of children as they relate to religious freedoms

Some cases of conflict with religious rights can be examined within the framework of children’s rights as set forth in international law. Admittedly, children’s rights is likely not the first topic of international law brought to mind when the topic of religious freedom is mentioned, but there are some difficult and sensitive issues relating to children’s rights. Obligations of the state, as set

78. *Id.*

79. *Id.* art. 9.

80. Human Rights Comm., *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion*, ¶ 2, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993). See also van der Vyver, *supra* note 60, at 536 (“[W]hen convictions are translated into action, care must be taken that practices remain within bounds that are sensitive to the rights and freedoms of others and considerations of public safety, order within the body politic, health of members of the community, and moral perceptions of a given time and place.”).

81. ICCPR, *supra* note 57, art. 18, ¶ 2.

forth in the 1989 Convention on the Rights of the Child, include an obligation to take appropriate measures “[t]o diminish infant and child mortality,”⁸² to “take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children,”⁸³ and “[t]o ensure that all segments of society . . . are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents.”⁸⁴ Nation-states are also obligated to ensure that the child “has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”⁸⁵

Though each nation is duty-bound to fulfill these responsibilities through appropriate legislation and enforcement, there are religious organizations that oppose some applications of these provisions as related to the activities or beliefs of their respective religions. Parents belonging to one religious group have refused information, education, and even access to health facilities, claiming that such things are contrary to the moral or ethical requirements taught in the religious community.⁸⁶ In one case, a child was seriously injured and required urgent medical help. The child’s parents resolutely refused help that would involve physical interference with the body, namely a blood transfusion, stating religious faith as the basis for their refusal.⁸⁷ This would seem directly at odds with the provision in the Convention on the Rights of the Child, which admonishes states to “diminish infant and child mortality,” and “take all effective and

82. Convention on the Rights of the Child, G.A. Res. 44/25, art. 24, ¶ 2(a) (Nov. 20, 1989).

83. *Id.* art. 24, ¶ 3.

84. *Id.*

85. *Id.* art. 17.

86. *The Jehovah’s Witnesses Refrain from Blood Transfusion but They Make Use of Medical Assistance*, ARAVOT DAILY (Yerevan, Armenia), Aug. 25, 2005 (on file with author—available only in Armenian).

87. This account is based on the personal knowledge of the author, gained while working for the Department for National Minorities and Religious Affairs, Yerevan, Armenia, during 2006, and there are corroborating documents on file with the Department. *See also The Tragedy Is Not in This Family Alone*, HAYOTS ASHKHAR DAILY (Yerevan, Armenia), May 3, 2005, at 7, (giving a description of a mother whose rejection of a blood transfusion allegedly caused her child’s death) (on file with author—available only in Armenian).

appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”⁸⁸ International law, if fully complied with, could greatly diminish the scope of the parents’ right to exercise their own religious beliefs or to enforce those beliefs on their children.

The provision of medical services is not the only problematic religious issue involving the rights of children and government obligations. In another instance, a religious organization was asked to amend its charter for registration purposes because it was in conflict with the requirements of the Armenian Constitution and domestic laws on education.⁸⁹ The charter of this religious organization insisted on the parents’ right to define the length of the child’s education.⁹⁰ Articles 28 and 29 of the Convention on the Rights of the Child admonish nations to provide compulsory primary education for children, as well as to facilitate their secondary education.⁹¹ The General Comment to Article 29 goes into even more depth regarding the goals and importance of children’s education.⁹²

88. Convention on the Rights of the Child, *supra* note 82, art. 24, ¶ 1. The Convention on the Rights of the Child additionally provides that “States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” *Id.*

89. See Shavarsh Khacharyan, *Jehovah’s Witnesses: Registration Denied*, in DITORD, HELSINKI COMMITTEE OF ARMENIA (Amaras Printing House, Yerevan RoA, 2004).

90. Experts’ Comment on the Application of the Jehovah Witnesses Religious Organization according to article 5 of The Law of the Republic of Armenia on the Freedom of Conscience and on Religious Organizations, 1991 (on file with the Department for National Minorities and Religious Affairs, Yerevan—available only in Armenian).

91. Convention on the Rights of the Child, *supra* note 82, arts. 28–29. Article 1 of the Convention provides that a child is every person under the age of eighteen years. *Id.* art. 1 (defining a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”).

92. General Comment No. 1 on Article 29 of the Convention on the Rights of the Child.

The aims of education that it sets out, which have been agreed to by all States parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims, set out in the five subparagraphs of article 29 (1) are all linked directly to the realization of the child’s human dignity and rights, taking into account the child’s special developmental needs and diverse evolving capacities. The aims are: the holistic development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).

Id.

When asked why they deprive their children of certain seemingly obvious medical or educational benefits, parents most often point to the moral, religious, or doctrinal content of teachings of their religious group or organization as the reason for their decision. Thus, we have a situation of conflicting interests and rights; the state is obliged to fulfill its international legal obligations to protect the interests of the child, but still has to observe the doctrinal autonomy of a religious organization and the parents' right "to organize the life within the family in accordance with their religion or belief."⁹³

All of these types of cases involve sensitive moral, ethical, or religious issues—both for families and for the individual. Though the state may have an easier time justifying its interference with non-religiously motivated parental conduct that is in clear conflict with Armenian or international law, it becomes more difficult to justify interfering when the conduct is the result of a strongly held religious belief or the doctrine of a religious organization. In such cases, the government has the obligation to consider and balance the religious interests of the parent with the interest in protecting children.⁹⁴

2. *Proselytism and other teaching of religion*

Conflicts involving the rights of others include how the teaching of religion (especially religious missionary efforts or proselytizing) affects an individual's right to be free from intrusion in his personal religious life.⁹⁵ One example of the difficulty of protecting the freedom from religion is the relatively common practice of new religious organizations who, in order to ensure their continued vitality and growth, exercise their lawful right to teach and convert others to the new religion.⁹⁶ Newer religious organizations may also

93. 1981 Declaration, *supra* note 58, art. 5, ¶ 1.

94. The Law on the Freedom of Conscience, §17, which addresses the separation of church and state, provides that the state "[s]hall not interfere in the activities and internal affairs of church and Religious Organizations as long as they operate in accordance with the law." Law on the Freedom of Conscience, *supra* note 24, §17.

95. This is especially problematic when the attempted preaching occurs on the property of the sought-after convert. For a discussion of how proselytism fits into international human rights law, see Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. REV. 251.

96. Established churches and religions are understandably upset at this prospect, because "[i]n a zero-sum game, whatever one player wins, the other player loses" and "in inter-religious conversions, every new convert to a religion is an apostate to another religion." Moshe Hirsch, *The Freedom of Proselytism Under the Fundamental Agreement and*

place significant pressure on recently converted individuals not to relinquish membership in their religious organization. The corollary to the International Covenant on Civil and Political Rights (ICCPR) freedom to adopt a religion free of coercion⁹⁷ is the freedom to abandon that same religion if it no longer suits an individual. It would be understandably difficult to protect an individual's choice regarding the adoption of a new religion without also protecting the same individual's right to abandon the old.

If a religious organization impedes its members' attempts at leaving the faith, that conduct might constitute an unlawful violation upon the rights of its members. Such impediment has been observed in Armenia, where the members of a recently registered religious organization reportedly stalked and verbally harassed their former members who chose to abandon their membership. The incidents were repeatedly recorded in three towns of the country.⁹⁸ On another occasion, the same organization verbally harassed an individual who attempted to leave and targeted his family members for harassment.⁹⁹ Representatives of the Armenian Apostolic Church have complained to the Department that another denomination used its premises to teach religion or belief without its permission,¹⁰⁰ while other complaints alleged that the Armenian Apostolic Church interfered with the educational process by improperly teaching religion to students in public schools.¹⁰¹ Instead of neutrally teaching

International Law, 47 CATH. U. L. REV. 407, 408 (1998) (footnote omitted).

97. See *supra* note 57.

98. A religious organization was reportedly persecuting their former members who left the organization. This was observed in the cities of Hrazdan, Charentsavan, and Stepanavan, and was reported by a team of researchers from the German Technical Cooperation who were working on a project called *Research on Social Development* from November to December 2004. Though the project has not been published, Ms. Zaruhi Hambartsumyan, who led the team, is willing to respond to inquiries concerning its findings. Her email address is hamzara73@yahoo.com.

99. *Id.* These cases were also reported to the Department for National Minorities and Religious Affairs in 2006 via telephone and in written complaints. Records of these complaints are on file with the Department for National Minorities and Religious Affairs, Yerevan 2006.

100. This is based on the author's personal knowledge gained while working in the Department. See also RELIGIOUS FREEDOM REPORT 2006, *supra* note 2 ("According to the Department of Religious Affairs and National Minorities, Armenian Apostolic Church officials filed a [complaint] against the Mormons . . . , alleging [their] missionaries were illegally proselytizing on church grounds.")

101. There are cases when priests from the Armenian Apostolic Church acted as teachers of Church History in public schools. Draft Report by S. Danelyan, *Religious Tolerance in Armenia* (2006) (on file with author; for inquiries, contact: stepandan@yahoo.com;

a subject, church representatives allegedly taught the material along with religiously biased teachings.¹⁰² In each case, worried parents expressed their strong displeasure, and many of them requested government intervention.¹⁰³ As illustrated by the examples above, conflicts and allegations of misconduct do not originate solely with any one religion, and are not directed at any one religious organization, but seem to be the result of individuals and groups sincerely and passionately exercising what they believe to be their lawfully protected religious freedoms. The law has a long way to go in helping resolve such conflicts.

3. The use of public places for religious purposes

Another area of potential conflict with the rights of others involves the use of public places for religious use. In fact, there are two major issues with the Bari Smaratsi case,¹⁰⁴ for example. One is that the denial of the right to use space for a religious festival could amount to unreasonable discrimination. The other issue is that there was a violation of the Law on the Freedom of Conscience which was not even mentioned in the official letter. The case of the Bari Smaratsi also implicates the issue of inappropriate use of residential areas. Rather than keeping an event within the approved time constraints, the organization continued a meeting until after 19:00. They used powerful, loud speakers to disseminate their message,

colfordem@gmail.com).

102. The content of the courses was allegedly far from being neutral and fair in its treatment of other religious groups. *Id.*; see also RELIGIOUS FREEDOM REPORT 2006, *supra* note 2.

The law permits religious education in state schools. Only personnel authorized and trained by the Government may teach in schools. The history of the Armenian Apostolic Church forms the basis of this curriculum; many schools cover global religions in elementary school and the history of the Armenian Apostolic Church in middle school. Students may choose not to attend religious education classes. Religious groups are not allowed to provide religious instruction in schools, although registered groups may do so in private homes to children of their members. On occasion, priests from the Armenian Apostolic Church teach classes in religious history; however, the use of public school buildings for religious "indoctrination" is illegal.

Id.

103. Possible remedies include dismissal of a schoolteacher or even a private right of action (for injunctive relief) to enforce the religious neutrality of public education.

104. See *supra* note 35 and accompanying text.

resulting in extensive noise and interference with the peace and quiet of nearby residents.¹⁰⁵

There are potentially several issues involved in the above-mentioned case. Because the organization ignored the proposed hours for the gathering, it might have disturbed nearby residents, therefore giving the municipality a valid reason to restrict the gathering. The other issue is that the use of loud speakers may be allowed in a proper place but disallowed in such residential places. If an organization is planning to hold a large religious gathering in a place of public residence, it should perhaps be subject to approval by the local residents in much the same way as the event was approved with the municipality.

IV. GAPS IN BOTH ARMENIAN AND INTERNATIONAL LAW: RIVALRY BETWEEN RELIGIOUS ORGANIZATIONS

Some situations have arisen (and will likely arise again) that have not yet been settled in Armenian law or international norms.¹⁰⁶ Such situations are important from the position of religious groups and organizations in their relationships with each other, but the conflicts also involve state institutions. States often encounter issues regarding religious organizations contending over symbols, doctrine, and property. While the position of the state should obviously be that of neutrality, Armenian and international law are not clear regarding the extent to which the state should consider rivalry between religious groups when drafting or enforcing legislation that has the potential to affect the controversy.

Some questions arise regarding how a state should treat the issue of control over religious property and the issues surrounding legal personality of rivaling religious organizations, especially when they argue over similar doctrinal concepts. This is a potential religious and political quagmire, and states should ensure that they do not entangle themselves in a dispute over the recognition of a religious organization when another religious organization applies for state

105. See Matevosyan, *supra* note 35; Phone calls to the Department for National Minorities and Religious Affairs, Yerevan (Sept.-Oct. 2006).

106. See Kalypso Nicolaidis & Joyce L. Tong, *Diversity or Cacophony?: The Continuing Debate Over New Sources of International Law*, 25 MICH. J. INT'L L. 1349, 1350 (2004) ("[I]n today's interconnected world, the map of international law looks increasingly like a mosaic of disconnected pieces: shaped by many hands, interpreted by many voices, colored by numerous contexts, made up of a huge variety of materials.").

interference. Additionally, states need to ask how to resolve the situation of two or more religious organizations appealing to the courts on the issue of the use of religious symbols. Often such issues (such as the right to use a specific style of cross) have been extensively contended between religious organizations. For example, organizations lodged several complaints with the Department for National Minorities and Religious Affairs regarding the use of a specific architectural style and symbol of cross in a way that is considered unique to the Armenian Church.¹⁰⁷ Additionally, a number of traditionally known churches in Armenia complained over the allegedly inappropriate use of the term “Christian” by other religious groups.¹⁰⁸ Traditional Armenian religious groups have often called for relevant legislative bodies to consider measures (presumably in the form of statutory law) disallowing use of the term by particular groups.¹⁰⁹

The issue of religious rivalry over property also has international implications. During the Soviet period, for example, most Armenian churches in Georgia were abandoned.¹¹⁰ Issues arose because during the early Christian period (the fourth and fifth centuries A.D.), a time when Armenian and Georgian settlements overlapped, construction of similar church buildings occurred, leading to modern

107. Reports on file with the Department for National Minorities and Religious Affairs, Yerevan. For additional information, contact the Head of the Department at azgagir@arminco.com.

108. In December 2004, during a meeting at the Department for National Minorities and Religious Affairs, representatives of several religious organizations argued against registering another religious organization under the designation “Christian,” and asserted that no international Christian unions accepted them as such. Although religious organizations need not be recognized by an international Christian union as “Christian” in order to exercise their right to freedom of religion, some religious organizations and Christian communities in Armenia are still inclined to raise the issue. These debates were reflected in numerous newspaper articles at the time. *See, e.g., Against the Registration of Cults*, AZG (Yerevan, Armenia), Nov. 18, 2004 (on file with author—available only in Armenian); A. Esayan, *Jehovah’s Witnesses Can Not be Called Christians*, HAYOTS ASHKHAR DAILY (Yerevan, Armenia), Apr. 10, 2004 (on file with author—available only in Armenian); *see also* G. Mailian, *Jehovah’s Witnesses: Who They Are and What They Preach*, EVANGELICAL CHURCH OF ARMENIA, 2001 number 4, at 16 (asserting that Jehovah’s Witnesses are not Christians and attributing them to historically similar sects).

109. *See* Esayan, *supra* note 108.

110. Richard G. Hovannisian, *Historical Memory and Foreign Affairs*, <http://www.sscnet.ucla.edu/history/centers/armenian/source106.html> (last visited Apr. 21, 2007) (noting that the “number of operational Armenian churches in Tiflis [Georgia] declined from 27 to only 2” during Soviet rule).

disputes regarding the origin and ownership of these structures. In a particular instance involving the village of Kumburda,¹¹¹ the Armenian community has hotly contested the property rights of a church building they claim is property of the Armenian Church.¹¹² Similar conflicts involving other church buildings continue to this day.¹¹³ An important issue to consider in such cases is what role the state should play in resolving competing property ownership claims made by communities or churches; the issue is largely unaddressed by law.

There are also potential issues involving the freedom of association, such as participation in religious ceremonies and rituals, protection of religious symbols, or other matters of community significance that could have religious dimensions.¹¹⁴ There is certainly a collective meaning of exercising rights, such as the right to (in association with others) conduct charitable or fund raising activities, or disseminate information and teach religious material.¹¹⁵ There is also a group collective right that exists during participation in a ceremony or ritual, as well as a right to protect signs and symbols of community significance. The interest in protection of religiously significant signs and symbols seems to implicate the interests both of individuals and of collective groups.

For example, the right to participate in a religious ceremony at a certain time and place may implicate additional religious conflicts between the rights of individual religious groups and the community interests of others. The right to wear religious symbols and use

111. The village name is also spelled "Gumburdu."

112. A visiting group of scholars, including Ms. Kharatyan, Head of the Department for National Minorities and Religious Affairs, witnessed the conflict on July 28, 2006. See SERGEY MINASYAN, *FROM POLITICAL RALLIES TO CONVENTIONS* 69, 110–11 (Caucasus Media Institute, Yerevan 2007) (Though the book is available in Russian, Armenian, and English, these are page numbers from the Russian version of the publication) for a detailed account of the rivalry over church property between the Armenian and Georgian churches.

113. *Id.*

114. For example: the use of homes for religious services and gatherings, zoning ordinances which restrict the area in which churches potentially can be built, regulations regarding large gatherings in public places, etc. Such matters are arguably neutral state regulation—they restrict behavior without regard to religious affiliation. At the same time, in order to adequately protect religious freedoms, there must be some means of ensuring that the restrictions are neutrally applied and not overly prejudicial to religious organizations.

115. W. Cole Durham, Jr., *Facilitating Freedom of Religion or Belief Through Religious Association Laws*, in *FACILITATING FREEDOM OF RELIGION OR BELIEF* 321, 356–58 (T. Lindholm et al. eds., 2004).

religious objects is an interest which deserves religious protection, but may conflict with the rights of others to participate in religious conduct in the same area. How should the state treat the use of symbols or participation in religious activities in cases where the manifestation of these rights inhibits the individual and community rights of others living within the same space? Should the state take action and restrict religious exercise based on the limitations expressed in the 1981 Declaration, which allows such restrictions when “necessary to protect public safety, order, health or morals?” Such use—or perceived misuse—of symbolic objects sometimes sparks protest from a variety of interested parties, including churches and private individuals,¹¹⁶ so it is vital that the state accurately balance the interests at stake. It is important to define with more detail both the scope of application of the already existing provisions of the international law and those that are perhaps missing. This is especially the case with the exercise of group rights.

V. CONCLUSION

The intent of this Article has been twofold: first, based on an analysis of the Armenian Constitution and relevant Armenian law, to suggest an opportunity for Armenia to expand the concept of the rights of others in their relation to the freedom of association and other traditional religious freedoms; second, to describe the state’s role in protecting and balancing religious rights in the light of existing international standards, while recognizing those areas where international law may need additional clarification and development in light of local religious activity. Finally, many more efforts are to be

116. A recent example of this was the allegedly improper use of religious symbols in the American motion picture *THE DAVINCI CODE* (Sony Pictures 2006), which raised the ire of many Catholics and other Christians alike. For one less-than-flattering take on the movie, see Collin Hansen, *Breaking the DaVinci Code*, in *CHRISTIAN HISTORY AND BIOGRAPHY*, Apr. 26, 2006, available at <http://www.christianitytoday.com/history/newsletter/2003/nov7.html>. One article went even further, positing a connection between Sony’s profit from the film (about \$212 million dollars) and the loss they are expecting as a result of 6 million defective laptop batteries (between \$175 and \$265 million dollars). The article’s author noted that “the recent debacle surrounding Sony symbolizes a higher reality. It illustrates the principle that no one profits from sin.” Michael Whitcraft, *Sony’s Domestic Da Vinci Code Profits Go up in Smoke*, *The American Society for the Defense of Tradition, Family and Property*, September 1, 2006, available at http://www.tfp.org/TFPForum/TFPCommentary/sony_profits_up_in_smoke.htm. Such responses illustrate the strength of the emotional ties individuals have to what they consider sacred signs and symbols.

made in the current legislation to ensure the freedom of religion and to redress problematic issues in Armenia.

The approach recommended here might perhaps be the creation of more interpretative material designed to facilitate the implementation of specific treaties or agreements, based on the most recent advancements of the concepts of religious rights. The norms of international instruments may also need to strengthen the protection of the rights of others in relation to traditional religious rights. It is impractical to think about the right to autonomy and freedom of association in isolation from others' rights, and equally impractical to consider them in isolation from other obligations the state has to its citizens. This does not constitute a call for a more restrictive approach to individual religious freedom to ensure the fulfillment of state obligations; rather, I suggest that the scope and meaning of the exercise of these rights should be further examined in light of state obligations.

It is essential to understand that even ethnic Armenians are not necessarily homogenous in terms of religious practice. Building a balanced civic society requires that legislative efforts involve the participation of all religious communities. The present stage of legislative changes suggests that every effort should be made, certainly with caution, in order to lead Armenia toward a more complete development of human rights. The nation-building process is a continuous process that implicates principles of state neutrality and the enforcement of equal rights, and requires extending this protection to every citizen without regard to his/her religious or ethnic affiliation. This must be done to ensure that no individual, group, community, or strata of society will feel estranged from fully participating in public life.